

(1996) 12 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No. 10883 of 1995 and C.M.P. No. 15248 of 1996 in W.A. No. 1023 of 1996

K.S. Antony, Secretary Punitha Oyappar Meenavar Munetra Sangam

APPELLANT

Vs

1. Punitha Rayappar Meenavar Munnetra Sangam, The Revenue Divisional Officer, Cheran-madevi, Tirunelveli Dt., The Tahsildar, Radhapuram, Tirunelveli District., Deputy Superintendent of Police, Valliyoor, Tirunelveli Dt., Assistant Director of Fisheries, Tuticorin. and Stalin
Punitha Rayappar Meenavar Munnetra Sangam Vs K.S. Antony, Secretary Punitha Oyappar Meenavar Munetra Sangam

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Citation : (1997) 1 LW(Cri) 174

Hon'ble Judges : K.A. Swami, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : A. Sankarasubramanian, in W.A. and G.R. Edmund, in W.P, for the Appellant; A. Sankarasubramanian, 6th Respondent in W.P., G.R. Edmund, for the 1st Respondent in W.A. and K.P. Sivasubramanian, for the Respondents 2 to 5 in W.A. and Respondents 1 to 4 in W.P., for the Respondent

Judgement

K.A. Swami, C.J.—When the writ appeal came up for admission, we considered it necessary to hear the writ petition itself, as the writ

appeal arises out of an interim order passed in the writ petition. Hence, the writ petition No. 10883 of 1995 is also posted along with the writ

appeal.

2. The writ appeal is preferred against the order dated 31st January, 1996 passed by the learned single Judge in W.M.P. No. 900 of 1996. That

was a petition filed to set aside the order dated 12-12-1995 passed in W.M.P. No. 17291 of 1995 filed in W.P. No. 10883 of 1995. Under that

order, the learned single Judge directed Respondents 1 and 2 therein, viz., the Revenue Divisional Officer and the Tahsildar to remove the seal

affixed to the building in question and hand over the same to the Petitioner Association. It is this order the learned single Judge has refused to set

aside on the ground that the order has been executed and the possession has been handed over to the Petitioner Association. One of the reasons

given in the order dated 12th December, 1995 passed in W.M.P. No. 17291 of 1995 is that Respondents 1 and 2 therein viz. Revenue Divisional

Officer and the Tahsildar respectively exceeded their authority/jurisdiction in sealing and attaching the premises and taking possession of the

premises without there being no order passed u/s 145(1)/and (4) of the Code of Criminal Procedure.

3. In the writ petition, the Petitioner-association has sought for issue of a writ in the nature of mandamus restraining the Respondents from

interfering with the possession and enjoyment by the Petitioner-Association of the building at Meenvadi Street, Idinthakarai, Tirunelveli district for

the purpose of carrying out activities in connection with the objectives of the Association viz., storage and ice processing of the fish, marine catches

by the Petitioner association members and to pass such other orders as may be deemed fit and proper in the circumstances of the case.

4. It may be pointed out here that the Writ Petition came to be filed after the premises in question was sealed and taken possession of by the

Tahsildar under the directions of the Revenue Divisional Officer. In the counter-affidavit filed by the 2nd Respondent herein Revenue Divisional

Officer, Cheranmahadevi, it is stated that there was a serious law and order problem created as a result of clash between the two warring groups,

one group representing the Petitioner association and another group representing the sixth Respondent by name Mr. Stalin, that a peace committee

meeting was held on 11.7.1995 in which a decision was taken to seal and take possession of the premises in question by the Tahsildar,

Radhapuram in order to keep peace and order and the said decision was accepted by both the parties who attended the peace meeting. It was

also agreed that the possession of the premises to remain with the Tahsildar till the Court or the Government passed suitable orders. It may be

pointed out here that the object of the action taken by the Respondents 2 and 3 was to prevent the law and order situation going out of control.

Such an object may be appreciated. But it is not possible to appreciate the sealing of the premises and taking possession of the premises by the

3rd Respondent Tahsildar at the instance of the Revenue Divisional Officer-2nd Respondent without initiating and passing a preliminary order

under Sub-section (1) of Section 145 of the Code of Criminal Procedure, and thereafter u/s 146 of the Code of Criminal Procedure if the

Executive Magistrate considered the case to be one of emergency could have taken possession and attached the premises in question, which is the

subject of dispute until a competent Court determined the rights of the parties thereto with regard to the person entitled to the possession thereof.

Even in such an event, it would be open to the Magistrate to withdraw the attachment at any time if he was satisfied that there was no longer any

likelihood of breach of the peace with regard to the subject of dispute. Another option open to the Respondents 2 to 4, if the law and order

situation was going out of control, was to initiate a proceeding u/s 107 of the Code of Criminal Procedure for keeping the peace. On the contrary,

Respondents 2 to 4 appear to have taken the law into their hands. Eventhough they are considered to be law enforcing authorities, they have

sealed and taken the possession of the premises without any proceeding as per the provisions contained, either under Chapter VIII or under

Chapter X of the Code of Criminal Procedure. It is really surprising that the Sub Collector, Deputy Superintendent of Police and the Tahsildar of a

taluk, have acted in disregard of law. In the absence of a preliminary order passed under Sub-section (1) of Section 145 Code of Criminal

Procedure and treating the case to be one of emergency as per Sub-section (1) of Section 146 of the Code of Criminal Procedure, neither the

subject in dispute could have been sealed, nor the possession of the same could have been taken. Learned Government Pleader submits that

Respondents 2 to 4 have acted in good faith to maintain peace and their decision has been accepted by both the parties. We could only say that

even if the parties had agreed for sealing of the premises and taking possession of the same it could not have been done by the Respondents 2 to

4, without observing the required procedure and without initiating the necessary proceedings and passing necessary orders. It is not as though the

Respondents 2 to 4 were not aware of initiation of the proceedings u/s 145 of the Code of Criminal Procedure and passing of a further order u/s

146(1) thereof, if they considered the case to be one of emergency. We cannot and do not appreciate the action taken by Respondents 2 to 4. If

such actions were to receive the seal of approval by this Court, it would amount to allowing them to adopt their own procedure in disregard of law.

An action like this cannot at all be appreciated by this Court. We refrain from proceeding further against Respondents 2 to 4 in this matter, in view

of the fact that there was a peace meeting held in which both the parties have agreed for the aforesaid action taken by the Respondents 2 and 3.

However, Respondents 2 to 4 should in future ensure that their actions under all circumstances accord with the law and the procedure laid down

therein.

5. As the Petitioner has now been put in possession of the building and such possession will not affect the right if any of the 6th Respondent or any

other person claiming any right title and interest in the premises in question to establish the same in the Civil Court, we do not see any justification

to issue any further direction in this matter.

6. In view of this, we dispose of the writ petition and the writ appeal with following observation.

The order passed by the learned single Judge directing that the possession be handed over to the Petitioner-association cannot be taken as

conferring any right, title and interest on the Petitioner-Association in respect of the said premises in question. It is open to all the parties to

establish such right as they claim to have in the premises in question before the competent Civil Court. In that event, it is open to the Civil Court to

pass any appropriate order without reference to the orders passed in the W.M.P. No. 17291 of 1995 and this judgment. No costs.

7. C.M.P. No. 15248 of 1996 is dismissed.