
(2009) 07 MAD CK 0275

In the Madras High Court

Case No : Criminal O.P. No. 17525 of 2007 and M.P. No. 1 of 2007

N. Sellappan

APPELLANT

Vs

The Sub Divisional Execution Magistrate and Revenue
Divisional Officer

RESPONDENT

Date of Decision : 30-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2009) 07 MAD CK 0275

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : R. Subramanian, for the Appellant;

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The petitioner has filed the above Criminal Original Petition No. 17525 of 2007 to quash the proceedings in ROC No. 3896 of 2007(B) dated 8.6.2007, passed by the Respondent herein.

2. The Respondents proceedings dated 8.6.2007, which has been passed against the petitioner herein is as follows:

Order for the removal of nuisance u/s 133.

Whereas it has been made to appear to me that your are carrying on as owner of stone crushing and mining business in R.S. No. 339/2, extent, 1.58.5 hectares of Marapari Village, Tiruchengode Taluk, in the name of R.P.M crusher and that the same is injurious to the public health and dangerous to human life and hereby it should be suppressed or removed to a different place.

I, do hereby direct and require you, within seven days, to cease carrying on the said Trade or Occupation at the office of the Sub-Divisional Magistrate & Revenue Divisional Office, Tiruchengode on 18.6.2007, by 11 a.m and not again to carry on the same or to remove the said Trade from the place where it is now carried

on, or to appear etc.,

Dated this 8th day of June 2007

3. The above said order was passed by the Respondent. Challenging this order, the petitioner filed the above Criminal Original Petition to quash the proceedings for the following reasons.

(a) The petitioner stated that the Executive Magistrate is requiring the petitioner to stop his stone crushing and mining activities in R.S. No. 339/2, Marappari Village, Tiruchengode Taluk is against law, and all principles of natural Justice. The Respondent erred in invoking the power u/s 133, Cr.P.C against the petitioner, who has been carrying on the business from 1997 with all required permissions, obtained from the various Government departments like Department of Geology and Mining, Tamilnadu Pollution Control Board etc.,

(b) The Respondent, did not give an opportunity to the petitioner to put forth his case before directing Stoppage of Operations. Further, one Kandasami filed a Writ petition in W.P. No. 15947 of 2004. In the Writ Petition, the Respondent was also a party, who should have seen that the objection raised by the said Kandasami were considered by the District Collector and it was found that the writ of the petitioner is not an objectionable one. In fact, the District Collector had relied upon the report of the Revenue Divisional Office, who is the Respondent herein dated 6.1.2004 to come to the above said conclusion. Further, the Respondent erred in not adverting to the fact that the District Collector has granted a lease for a period of five years to the petitioner to quarry in the site in his proceedings dated 25.2.2004, based on the report of the respondent and his Assistant Geologist and the said lease is still in force. The Respondent should have seen that the Tamilnadu Pollution Control Board has granted consent to the petitioners unit and the said consent is valid till 30.9.1997. Further, the Respondent erred in invoking the Jurisdiction u/s - 133 Cr.P.C without satisfying himself about the existence of possibilities of injury to health or physical comfort of the community. Further, the Respondents action is beyond the powers conferred on him u/s - 133 of the code of criminal procedure. The petitioner further submitted that supporting the quash petition, he has filed six documents including writ petition order in W.P. No. 15947 of 2004.

4. Considering the facts and circumstances of the case and connected documents filed along with the petition, the Respondent invoked Section -133 of Cr.P.C. Section -133 of Cr.P.C. states that "whenever a District Magistrate or Sub-divisional Magistrate or any other executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence, if any, he thinks fit considers,

A). That any unlawful obstruction or nuisance should be removed from any place from any way, river, or channel which is or may be lawfully used by public.

B). That the conduct of any trade or occupation is injurious to the health or

physical comfort of the community and that in consequence, such trade or occupation should be prohibited or regulated or should be removed

5. As per the above, the usage of his power u/s - 133 of Cr.P.C by the Respondent is absolutely correct. If the petitioner is aggrieved by the order of the Respondent, he has to approach the appellate authorities, who already have granted him permission to operate the quarry for his remedy.

6. Under the circumstances, the Criminal Original Petition No. 17525 of 2007 is not maintainable under law and has got to be dismissed. Accordingly, the quash petition is dismissed. Connected Miscellaneous Petition is closed.