

(2014) 07 MAD CK 0181

In the Madras High Court

Case No : Writ Petition No. 28724 of 2013 and M.P. Nos. 1 to 3 of 2013 and 2 of 2014

P. Muthusamy

APPELLANT

Vs

The Sub Collector

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1)

Citation : (2014) 07 MAD CK 0181

Hon'ble Judges : Meenakshi Sundaram Sathyanarayanan, J

Bench : Single Bench

Judgement

M. Sathyanarayanan, J.—By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner claims that he is the Managing Trustee of Arulmigu Ariyalur Pilimisai, Sri Kallanaiyar Emapuri, Sri Ponnambalanar, Sri Karuppusamy and Sri Muniyappan Temple, situated at Kuppanur, Chikkampatti Village, Omalur Taluk, Salem District and it is more than 200 years old, established by his ancestors and also a community temple. The petitioner would further state that in the year 1937, re-settlement proceedings took place and as per the resurvey, lands admeasuring to an extent of 42 cents in Survey No. 4/5, was registered/incorporated in the name of the Kuttaiyagoundan and two others and it is the case of the petitioner, that it is a mistake on the part of the revenue officials and therefore, made a request to delete the name of the Kuttaiyagoundan and the same is pending adjudication and taking advantage of the said mistake, the family of Kuttaiyagoundan, claims ownership of the temple property situated in Survey No. 4/5.

3. It is further stated that the family of Kuttaiyagoundan, started claiming that the temple also belongs to them and since the petitioner's group have to celebrate the temple festival by way of their customary rights and they were prevented, there arose a dispute between "A" and "B" parties, which resulted in

the issuance of the impugned notice dated 04.10.2013 by the 1st respondent.

4. The learned counsel for the petitioner would submit that the 1st respondent has failed to advert to the mandatory provisions of Section 145(1) of Cr.P.C., before issuing the impugned summons for appearance and for holding the enquiry and therefore, prays for quashment of the impugned order.

5. Learned counsel appearing for the impleaded 3rd respondent also made submission on similar lines and the Court heard the submissions of Mr.R.Vijayakumar, learned Additional Government Pleader also.

6. It is relevant to extract Section 145(1) Cr.P.C., which reads as follows:

Whenever an Executive Magistrate is satisfied from a report of a police or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

7. As per the said provision, the jurisdictional Executive Magistrate has to derive a satisfaction from the report of the police official or upon other information that a dispute likely to cause a breach of peace, concerns with any land or water or the boundaries thereof, exists within his local jurisdiction, and thereafter, he shall make an order in writing, stating the grounds of his satisfaction and summon the parties for the purpose of attending an enquiry.

8. A perusal of the impugned order would disclose that though, it made a reference to the FIR No. 233 of 2008, registered on the file of Tharamangalam Police Station, under Section 145 Cr.P.C., on 08.05.2008, the 1st respondent has failed to arrive at the subjective satisfaction as to the likelihood of breach of peace.

9. Since the 1st respondent has failed to follow the mandatory provision contained in Section 145(1) of Cr.P.C., the impugned notice, on the face of it, is unsustainable and it is liable to be quashed.

10. In the result, the writ petition is partly allowed and the impugned order in Na.Ka.No.257/2013/D, dated 04.10.2013 on the file of the Sub Collector / Revenue Divisional Officer, Mettur Revenue Division, Mettur Dam-1, Salem, the 1st respondent herein, is quashed and the 1st respondent is at liberty to proceed in the event of breach of peace, in accordance with law. No costs. Consequently, the connected Miscellaneous petitions are closed.