

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.6351 of 2015

ORDER:

Heard.

The petitioner herein claims that he has purchased the land admeasuring Ac.28-33 gts., comprising of Ac.2-10 gts., in Sy.No.108/A, Ac.14-35 gts. in Sy.No.112 and Ac.11-28 gts., in Sy.No.115/A situated at Umenthal Lalapet, Kondurg Mandal, Mahaboobnagar District, from the 3rd respondent under a registered sale deed, dated 27-06-2008 being Doc.No.6603/2008. The petitioner claims to be in possession and enjoyment of the said land since the date of purchase and his name is also stated to have been mutated in the revenue records as well as in the record of rights. It is stated that the 3rd respondent filed O.S.No.239 of 2011 before the II Assistant Senior Civil Judge (F.T.C.), Mahaboobnagar, seeking cancellation of the said sale deed and the said suit is now stated to be transferred before the Civil Court, Shadnagar, and renumbered as O.S.No.160 of 2014. The petitioner alleges that the 3rd respondent and his family members are attempting to trespass into his lands and trying to dispossess him. Hence, against the said illegal actions, the petitioner has filed a complaint against the 3rd respondent on 03-02-2015 before the 2nd respondent alleging that the attempt to trespass and grab the property by the 3rd respondent is required to be taken cognizance and appropriate criminal case is required to be registered. He also alleges that the 3rd respondent is coming with the customers and proclaiming that he is the owner of the property and intends to sell the property. The said complaint is followed by the petitioner's another complaint, dated 13-02-2015 to the same effect. Alleging that no action is taken by the 2nd respondent, the present writ petition is filed.

Learned Government Pleader has received instructions, which state that the petitioner's complaint, dated 03-02-2015 was received by registered post and the 2nd respondent also received another complaint, of the petitioner dated 13-02-2015

through the Deputy Superintendent of Police, Shadnagar with an endorsement addressed to the Circle Inspector of Police, Shadnagar Rural, which states that “instruct to SI to call the people who are currently doing agriculture in the land and enquire as to why and how and what basis they are working there. Later, the 3rd respondent also has to be enquired and initiate action as per law.” As per the aforesaid instructions, the 2nd respondent is stated to have made enquiries and he was informed by the persons, who are presently doing agricultural work in the disputed site, that they were granted oral lease by the 3rd respondent for two years. The enquiry of the 2nd respondent also revealed that though the petitioner’s name is recorded in the revenue records and ROR, the 3rd respondent has filed a suit in O.S.No.160 of 2014, which is pending before Civil Court at Shadnagar. The instructions further state that the 2nd respondent is no way concerned with the dispute between the petitioner and the 3rd respondent, which is purely of civil in nature and hence, no further action is taken.

Learned counsel for the petitioner submits that on the basis of ratio of decision of the Supreme Court in ***LALITA KUMARI Vs. GOVERNMENT OF UTTAR PRADESH AND OTHERS***, the 2nd respondent is bound to register the FIR, when the same discloses commission of cognizable offence. He placed strong reliance upon para ‘120.3’ of the said judgment and submits that police cannot deny registration of FIR merely on the ground that the dispute is of civil in nature.

Learned Government Pleader has placed before this Court the instructions issued by the Government of India addressed to all the Additional Chief Secretaries/Principal Secretaries of the Home department, dated 05-02-2014, which were issued pursuant to the directions of Hon’ble Supreme Court in the decision aforesaid. He also pointed out para ‘3’ of the said instructions, which relate to the directions of the Hon’ble Supreme Court regarding mandatory registration of FIR and for conducting preliminary enquiry.

A look at the complaint, dated 03-02-2015, filed by the petitioner would show the allegations that the 3rd respondent with his family members with unsocial elements committed acts of trespass with an intention to grab the property of the petitioner and threatened the petitioner. The complaint also states that the 3rd respondent is coming with customers and proclaiming that he is the owner of the

property and intends to sell it. The said acts according to the petitioner amounts to falsely claiming to be the owner of the property. Hence, he seeks registration of the crime.

Going by the contents of the complaint, I do not see any cognizable offence alleged therein inasmuch as attempt of trespass as alleged against the 3rd respondent is stated to have been repelled by the petitioner with the help of neighbours and consequently with respect to the right claimed by the 3rd respondent that he continues to be the owner, I am unable to see how an offence is made out if a person having executed sale deed proclaims to others that he continues to be owner of the property. A look at the complaint, therefore, goes to show that no cognizable offence as such is made out by the said complaint and when the 2nd respondent after enquiry states that though the dispute appears to be a civil in nature, a direction cannot be given to the 2nd respondent to register an FIR inasmuch as this Court has been repeatedly directing the police authorities not to interfere with the civil dispute. Thus, on facts, I do not find any reason to issue Mandamus as prayed for.

Learned counsel for the petitioner, however, placed strong reliance upon para '120.3' of the decision aforesaid, which states that as and when preliminary enquiry is made for determining whether cognizable offence is made out or not, the report of such enquiry must be supplied to the first informant within a week. Learned counsel, therefore, submits that the petitioner has not been furnished with such a report of the enquiry made by the 2nd respondent.

In my view, paras '120.2' and '120.3' of the aforesaid decision have to be read together, which are extracted herein:-

"120.2:- If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3:- If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not

proceeding further.”

The aforesaid paragraphs would show that an enquiry is required to be made whether any cognizable offence is made out or not. However, in the present case, the enquiry reveals that the dispute is of civil in nature. The situation envisaged under para ‘120.3’ is not attracted to the facts and circumstances of the case. Apart from this, apparently, if the possession of the petitioner is being interfered either by the 3rd respondent or by any other person, the petitioner can always approach civil court and seek appropriate preventive relief. The role of the police in a settlement of civil dispute however cannot be encouraged and whatever be the dispute between the petitioner and the 3rd respondent that being civil in nature, which is subject matter of suit aforesaid, the petitioner is at liberty to defend himself in the said suit and can also take appropriate preventive remedy, if the situation so requires. However, I am not satisfied with the view as contended by the learned counsel for the petitioner that the 2nd respondent should be compelled to register a crime and compelled to investigate the civil dispute between the parties.

The writ petition is, therefore, dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 19-03-2015

Prv

