

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.16532 of 2015

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ORDER:
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Registration of FIR.No.94 of 2015, on the file of Thukaramgate Police Station, Secunderabad, against the petitioner on the complaint of the revenue authorities for the alleged offences under Sections 447 and 427 IPC is under challenge in the present writ petition.

2. Heard the learned counsel for the petitioner and the learned Government Pleaders for Home and Revenue for the respondents.

3. The case of the petitioner is that he is the absolute owner of the house property bearing No.10-5-778/19 on Plot No.276/C, 277/C, 276/1C. 277/1C admeasuring 395.1 sq yards situated at Thukaramgate, Secunderabad, having purchased the same by way of a registered sale deed bearing Doc.Nos.1311/2013 from one Sri P.hanumanth Rama Raju. It is also pleaded that earlier when there was interference of the revenue authorities, the vendor of the petitioner filed O.S.No.114/2011 and the same was decreed and later petitioner also filed O.S.45/2014 and the same was also decreed. It is the complaint of the petitioner in the present writ petition that despite the same, only with an intention of harassing the petitioner, the revenue authorities lodged a complaint before the Thukaramgate Police Station and the police registered the same as the First Information Report which is under challenge in the present writ petition.

4. Submissions/contentions of the learned counsel for the petitioner:

4.1. The complaint which culminated in the registration of the present crime is a patent abuse of process of law.

4.2. The instant prosecution is a deliberate attempt to frustrate the decree passed by the civil Court.

4.3. Having failed to implement the decree, the authorities ought not to have set the criminal law into motion by making the

allegations contrary to the decree.

5. Submissions/contentions of the learned Government Pleaders:

5.1. There is no illegality nor there is any procedural infirmity in the impugned action and there is no element of abuse of process of law.

5.2. In the absence of any element of abuse of process of law, the writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India and the same are required to be gone into during the investigation by the police.

5.3. The veracity of the allegations cannot be gone into under Article 226 of the Constitution of India and the same is required to be enquired into during the investigation by the police.

5.4. The respondents filed an application under Order 9 Rule 13 of the C.P.C to set aside the *ex parte* decree dated 22.08.2014 and also filed an application to condone the delay of 161 days in filing the said application inn O.S.No.45 of 2014.

6. The information before this Court, in clear and unequivocal terms discloses that previously one Mr.P.Hanumantha Rama Raju, the vendor of the petitioner instituted O.S.No.114/2014 for declaration and perpetual injunction against the respondents 4 and 5 herein by arraying them as defendants 1 and 2 respectively, on the Court of the file of the First Additional Chief Judge, City Civil Court, Secunderabad.

7. The learned Additional Chief Judge, City Civil Court, Secunderabad decreed the said suit on 23.04.2012 and the same reads as under:

“1. That the suit be and the same is hereby decreed.

2. That the plaintiff is declared as owner of the plaint schedule properties.

3. That the defendants and there men are perpetually restrained from dispossessing the plaintiff from the schedule properties.

4. That the defendants do pay to the plaintiff a sum of Rs.32,370/- towards costs.”

8. The material available on record further manifestly discloses that the

petitioner herein subsequently filed O.S.No.45/2014, on the file of the XXVII Additional Chief Judge, City Civil Court, Secunderabad, against the respondents 4 and 5 herein for demolition of three side walls raised by the defendants surrounding the suit schedule property and for perpetual injunction restraining the defendants/respondents 4 and 5 from raising wall on four sides of the suit schedule property and also for costs. The said Court decreed the said suit on 22.09.2014 and the same reads as under:

“In the result, the suit is decreed with costs, granting, mandatory injunction directing the defendants to demolish the walls on three sides of the suit schedule property, and perpetual injunction restraining the defendants from raising wall on the forth side of the suit schedule property. One month time is given to the defendants to remove the three side wall, failing which the plaintiff would be entitled to get removed the same and claim the costs incurred therefor, from the defendants.”

9. The only justification sought to be offered by respondents 4 and 5 is that they already filed application under Order 9 Rule 13 C.P.C to set aside the decree and under Section 5 of the Limitation Act to condone the delay of 161 days in filing the said application and on the other hand in the reply affidavit filed by petitioner, it is categorically stated that till date notice on said application has not been served on the petitioner nor the same has been served on the counsel for the petitioner. The material filed before this Court by respondent herein, is totally silent on these aspects.

10. It is very much evident from the above narration that the respondents herein were directed by the decree in O.S No.45 of 2014 on the file of XXVII Additional Chief Judge, City Civil Court, at Secunderabad, to remove the walls within one month, failing which the plaintiff is entitled to get removed the structures. The said decree was passed on 22.08.2014. It is also the case of the petitioner that he made a representation to Tahsildar on 09.03.2015 to demolish the compound wall as per the decree.

11. The conduct on the part of the authorities is highly illegal, and patent

abuse of process of law. Having failed to adhere to the decree passed by the Civil Court in O.S No.45 of 2014 and keeping the petitioner in dark on filing of Interlocutory applications under Order 9 Rule 13 C.P.C and Section 5 of Limitation Act, it would be highly unreasonable on the part of the petitioner to set the criminal law in motion making allegations and the decree and this Court can not sit as a silent spectator for such abuse of process of law. This Court in these circumstances, has absolutely no scintilla of hesitation nor any traces of doubt but to hold that the Crime registered against the petitioner is liable to be quashed and deserves to be declared as being violative of Article 14 and 21 of Constitution of India. However, it is open for the respondents herein to proceed with the I.As filed already.

12. For the aforesaid reasons, the writ petition is allowed, quashing the FIR No.94 of 2015 of Tukaramgate Police Station, Secunderabad/second respondent herein and the respondents-police authorities are directed to release the seized vehicles immediately. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 14.09.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Dated 14th September, 2015

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