

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

WRIT PETITION No.26080 of 2015

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ORDER:
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This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“To issue any writ or direction more particularly one in the nature of Writ of Mandamus declaring the inaction of the respondents 2 to 4 in not considering the petitioner representation dated 06-08-2015 and the earlier representations dated 23-11-2014 and 3-6-2015 made to the 4th respondent is illegal arbitrary and consequently direct the respondents 2 to 4 to provide police aid in the petitioner's favour to enjoy the properties for which permanent injunction is granted in the petitioner's favour and as against the defendants in O.S.No.13/1997 on the file of the Court of the Senior Civil Judge, Hindupur and confirmed in the Appeals filed against the said Judgment.”

2. Heard Sri Raja Reddy Koneti, learned counsel for the petitioner and the learned Government Pleader for Home for the respondents.

3. Petitioner herein instituted O.S.No.13/1997, on the file of the Court of the Senior Civil Judge, Hindupur, Anantapur District, against one

Sri Mamilla Papireddy and 21 others for permanent injunction to restrain the defendants from interfering with his possession and enjoyment in respect of the suit schedule properties situated within the limits of Sandlapalli village area of Ananthapur District. The learned Senior Civil Judge, on 04.10.2004, decreed the said suit to the extent of items 1, 5 and 6 of the schedule properties. As against the said decree, the defendants 8, 11 to 13 preferred A.S.No.20/2004, on the file of the Court of the Additional District Judge, Hindupur and the plaintiff/petitioner herein also filed a Cross-Appeal to the extent of the decree which went against him. The learned Additional District Judge, by way of judgment and decree dated 14.08.2012, confirmed the judgment rendered by the trial Court. As against the same, the

defendants preferred S.A.No.1231/2012 before this Court, and initially this Court in SAMP.No.2032 of 2012, granted *status quo* order on 12.02.2013, and thereafter, the petitioner herein filed SAMP.No.2032/2014 and this Court, by way of an order dated 06.11.2014 vacated the said *status quo* order. Thereafter, the plaintiff/petitioner herein filed EP.1/2013 in O.S.13/1997, seeking arrest of the judgment debtors 7, 9, 17, 20 and 21 alleging violation on their part under Order 21 Rule 32 (1) of the Code of Civil Procedure. The Second Appeal No.1231/2012 filed by the defendants was eventually dismissed by this Court on 10.04.2015.

4. According to the petitioner, he made an application/representation to the fourth respondent/Station House Officer, II Town Police Station, Hindupur, on 23.11.2014, requesting police protection, stating that the children of the first defendant on 22.11.2014 attacked him when he entered into the properties for cultivation. The fourth respondent/Station House Officer, made an endorsement on the said representation on the even date, stating that the issue is purely civil dispute and requested the petitioner to get direction from the Court to enforce the Court orders.

On 03.06.2015, once again the petitioner herein made another representation, requesting for police protection, and subsequently, he made another representation dated 06.08.2015 to the fourth respondent, and according to the petitioner, the copies of the same were also submitted to the Superintendent of Police and the Deputy superintendent of Police/respondents 2 and 3 herein.

5. Complaining inaction on the part of the respondent police authorities, the present writ petition has been filed.

6. It is contended by the learned counsel for the petitioner that the inaction on the part of the respondent police authorities is highly illegal, arbitrary, unreasonable and violative of Articles 14, 21 and 300-A of the Constitution of India. It is the further submission of the learned counsel

that it is obligatory on the part of the respondent police authorities to protect and safeguard the rights of the citizens, guaranteed under Chapter-III of the Constitution of India. It is further submitted by the learned counsel for the petitioner that even if the violators are sent to jail, the petitioner herein would not get any benefit and eventually it is submitted by the learned counsel that the impugned action is opposed to various pronouncements of this Court.

7. Learned counsel for the petitioner, to bolster his submissions and contentions, placed reliance on the judgments of this Court in **SATYANARAYANA TIWARI VS. S.H.O.P.S. SANTHOSHANAGAR, HYDERABAD AND ORS^[1]**, **Y.CHANDRAIAH @ Y.CHANDRA REDDY V. COMMISSIONER OF POLICE^[2]** and **BIJIGA PAPA RAO V. JONNALAGADDA SRINIVASA RAO^[3]**.

8. Per contra, it is vehemently argued by the learned Government, appearing for the respondents that there is no illegality in the action of the respondent authorities and in view of availability of alternative remedy to the petitioner by way of execution, the present writ petition is not maintainable and it is also the submission of the learned Government Pleader that in the event of the petitioner obtaining any orders from the Civil Court, the police authorities will have no objection to enforce the orders. It is further contended that having filed the execution petition, seeking arrest of the judgment debtors, it is not open for the petitioner to approach this Court under Article 226 of the Constitution of India.

9. In the above backdrop, now the issue that boils down for consideration of this Court is_

“In the facts and circumstances of the case, whether the respondent police authorities are justified in not providing police protection to the petitioner for the purpose of cultivation of the subject properties?”

10. The material available before this Court, manifestly reveals that the learned Senior Civil Judge, Hindupur decreed O.S.13/1997 on 04.10.2004 in part to the extent of items 1, 5 and 6 of the plaint schedule properties. The particulars of the said items are as follows:-

Sl.No.	Ac.cts	Survey number	Location
1	0-58	378/1	Sandlapalli Panchayat, Anantapur
2	0-22	373/1	-do-
3	1-00	365/4	-do-

11. The said decree dated 04.10.2004 passed in O.S.No.13/1997 by the learned Senior Civil Judge, Hindupur has attained finality in view of the Judgments rendered by the learned Additional District Judge, Hindupur, in A.S.No.20/2004 dated 14.08.2012 and this Court in SA.No.1231/2012 dated 10.04.2014. Referring to the said judgments, the petitioner herein sought police protection for the purpose of cultivation of the lands. The respondent police authorities are obviously refusing to provide the same on the ground that unless the petitioner gets necessary orders from the Court, they cannot provide the police protection.

12. In order to consider and resolve the said aspect, it would be highly essential to refer to the judgments cited by the learned counsel for the petitioner.

13. In the case of **SATYANARAYANA TIWARI** (supra 1), this Court, at paragraphs 4 to 7, held as follows:

“4. Mr. Jagannadha Rao, learned counsel for respondents 4 and 5 vehemently contended that a temporary injunction order issued by this court is not capable of implementation and the only remedy of the person in whose favour there is a temporary injunction order and who complains of its contravention and who

complains of its contravention is to move the court for taking proceedings in contempt against the persons who are contravening the injunction. We can not envisage a situation where the High Court, which has confirmed the injunction order issued by the trial court, is powerless to enforce its orders and be a silent spectator to its being violated with impunity and leave the parties to seek their remedy by way of contempt alone.

5. This very question was raised and answered against Mr. Jagannadha Rao's contention by an earlier Division Bench of this court in *R. Audemma v. P. Narasimham*, MANU/AP/0117/1971[□] : AIR1971AP53 . Our learned brother Ramachandra Rao, J. while referring to the unreported judgement of a single Judge of this Court in C. R. P. No. 67 of 1959 dated 22-7-1960 which held that an order of injunction is capable of enforcement only by punishing its disobedience in the manner provided by Order 39, Rule 2 (3) CPC and that it is not open to the Civil Courts to enforce the same with the aid of the police, held:

"Order 39. Rule 2 (3) provides only for punishment by attachment of the property or by detention in civil prison of the person who committed breach. But it does not further provide for implementation of the order of injunction itself. Order 39, Rule 2 (3) cannot be said to be an express provision with respect to implementation of the order of injunction, but is only a provision which provides penalty for disobedience of the order. In such a case there being no other express provision in the code for enforcement of the order, it is not only proper but also necessary that the courts should render all aid to the aggrieved party to derive full benefits of the order. Though an order of injunction under Order 39 C. P. C. is only interim in nature, still it clothes the person who obtained order with certain rights and he is entitled to enforce the aforesaid right against the party who is bound by the order. No doubt in such a case, the aggrieved party himself could approach the police authorities to prevent obstruction to the enforcement of the order or to the exercise of the Court. But we do not see why when the same person brings to the notice of court that enforcement of the order is sought to be prevented or obstructed, the court should not exercise its inherent power under Section 151 C. P. C. and direct the police authorities to render all aid to the aggrieved party in the implementation of court's order.

In our opinion, the exercise of such power is necessary for the ends of justice or to prevent abuse of the process and the civil court has ample jurisdiction to pass such orders under Section 151 C. P. C."

The court further held that the police are bound to obey such directions. We find ourselves in full agreement with the view expressed above. It is the duty of all the authorities in the State to

see that the orders of the civil court and that of the High Court are not only enforced faithfully but all persons seeking enforcement of such orders are given full help and protection in furtherance thereof. In the aforesaid judgement the learned Judges further observed (at p.57 of AIR):

"We are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of the Court, the Civil Courts have ample jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of the court or the exercise of the rights created under the orders of the Court. That the police authorities owe a legal duty to the public to enforce the law is clear from a decision of the Court of Appeal, resorted in R. v. Metropolitan Police Commr. (1968) 1 All ER 763 xx xx xx xx xx xx xx xx

If the police authorities are under a legal duty to enforce the law and the public or the citizens and entitled to seek directions under Article [226](#) of the Constitution for discharge of such duties by the police authorities, we feel that the civil courts also can give appropriate directions under Section [151](#) CPC to render aid to the aggrieved parties for the due and proper implementation of the orders of Court."

We feel it unnecessary to add anything further to these observations except to record our full agreement with those views.

6. Mr. Jagannadha Rao, learned counsel, however, contended that the said decision is an authority for the position that the civil courts can under inherent powers, grant such directions under Section [151](#) C.P.C. but a writ of mandamus, does not lie. We are unable to agree with this contention. Section [151](#) CPC reserves the inherent power of the Court. Articles [226](#) of the Constitution goes a step further and vests extraordinary jurisdiction in the High Court of a State to issue not only a writ of mandamus but also appropriate writs, directions or orders for the enforcement of any of the right conferred by part III and for any other purpose. As held by the Supreme Court in Calcutta Gas Company (Prop) Ltd. v. State of W.B. [MANU/SC/0063/1962](#) ☐ : AIR1962SC1044 'any other purpose' means 'the enforcement of any legal right, of course, means any legally enforceable right. Nothing more can be a higher purpose than the enforcement of the orders of the civil court and that of the High Court which confirms or recognises the rights of a party. By any interpretation of the provisions of C. P. C. the power of the High Court under Article [226](#) of the Constitution of India to enforce its own orders or the orders of the Civil Court cannot be curtailed. As observed by the Supreme Court in T.C. Basappa v. T. Nagappa [MANU/SC/0098/1954](#) ☐ :

[1955]1SCR250 the High Court, in issuing directions, orders and writs under Art. [226](#) can travel beyond the contents of the writs which are normally issued as writs of habeas corpus, Mandamus, prohibition, quo warranto and certiorari, provided the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law , are not transgressed. The Supreme Court also observed that the very language of Art [226](#) makes it clear that in the exercise of power under Article [226](#), our High Courts need not feel oppressed by the procedural technicalities of the English Writ. The article empowers the High Court to grant appropriate relief and also to modify the form of relief according to the exigencies of each case without being obsessed by the limitation of the prerogative writs.

7. In *Satyanarayan v. Mallikarjun* [MANU/SC/0169/1959](#) [□] : [1960]1SCR890 the Supreme Court reiterated this principle and went a step further that for doing justice between the parties, the High Court has absolute jurisdiction to issue such directions and orders as it may deem fit to do justice between the parties and enforce the law of the land. The only limitations on the wide powers conferred on the wide powers conferred on the High Court and exercisable by it in the matter of issuing writs are (1) that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction and (2) that the person or authority to whom the writ is issued, is within the territories over which the respective High Court exercise jurisdiction. None of these limitations come in the way of the High Court issuing appropriate direction to further secure the right determined and recognised by the civil Court. The power which a civil court has under Section [151](#) C. P. C., the High Court has in much larger measure under Article [226](#) of the Constitution. We have, therefore, no hesitation in concluding that this court has ample jurisdiction, to issue a writ or direction to all the authorities including the police within the State to enforce the civil court as confirmed by the High Court in a civil revision petition and maintain the rule of law. The police authorities are therefore bound to give all assistance to the appellant to enforce and see that the orders of this court as confirmed in C. R. P. No. 3258/81 are implemented and my enquiry or report of any other authority, revenue or police cannot be pit as an excuse for not rendering the required help to the appellant to maintain his possession. This order will be subject only to the final orders of the Civil Court in O. S. 3770/80.”

14. In the case of ***Y.CHANDRAIAH @ Y.CHANDRA REDDY***

(supra 2), this Court, at paragraphs 19 and 23, held as under:

“19. In the case on hand the petitioner’s entitlement to possession and enjoyment of land was declared by the certificate and order of

the Tahsildar dated 8.12.1980. By a subsequent order dated 31.3.1982 the Tahsildar exercising his consecrated statutory power and jurisdiction (under Section [32](#) of the Act) directed restoration of possession to the petitioner. This order of the statutory Tribunal was confirmed by all relevant quasi judicial and judicial authorities. As a result the petitioner is entitled and the respondents 5 to 8 disentitled, to possession of the schedule lands. These respondents may not interfere with the possession and enjoyment of the schedule land by the petitioner. Yet they have done so, relentlessly and with manifest impunity. The Executive authority of the State is required to ensure the continued protection of the petitioner from transgression of the declared right, by the respondents 5 to 8. The State failed to do so despite repeated representations of the petitioner (which have been chronicled in this judgment). The physical force of the respondents 5 to 8 cannot prevail over the lawful authority of the State to the extent the petitioner's right to possession and enjoyment of the schedule land has been declared. To countenance such a proposition would be to obfuscate the seminal principles of constitutional Government. The law of the jungle would overtake the Rule of Law. That ought not to be.

23. It is the constitutional obligation of this Court to issue a mandamus to enforce the established legal right of the citizen. The petitioner has an adjudicated and duly declared legal right to continue in possession and to peacefully enjoy the schedule land. The respondents 5 to 8 have conclusively suffered a declared disentitlement to be in possession and enjoyment of these lands. These declared rights and the corollary obligations (of the petitioner and of the respondents 5 to 8) could and must be enforced by issuing a mandamus to the State to deploy State power to enforce the declarations and orders of statutory and legal authorities. The above contention of the respondents 5 to 8 is accordingly rejected. No other contention or defence is urged by or on behalf of the respondents 5 to 8 except what have been recorded and dealt with in this judgment.”

15. In the case of **BIJIGA PAPA RAO** (supra 3), this Court, at paragraph 17, held as under:

“17. As held by a Division Bench of this Court in Satyanarayana Tiwari v. SHO, PS, Santoshnagar: [MANU/AP/0145/1982](#) : AIR 1982 AP 394 (DB), no authority in the State, Revenue or Police, can ignore the finding of the Civil Court or refuse to take steps to see that the order of the Civil Court is implemented and the party, in whose favour there is an order of the Civil Court should get all help to maintain the law and order and the other party cannot be allowed to contravene the injunction order and create law and

order problem. No doubt, these observations were made in the context of the power of the High Court under Article 226 of the Constitution of India to issue a writ or direction to police to enforce the orders of the Civil Court to provide protection in furtherance of an order of injunction, but in my opinion, the said observations equally apply to a situation where a party approaches a Civil Court for police protection having obtained an interlocutory order for temporary injunction.”

16. It is quite limpid from the principles laid down by this Court in the above referred judgments that this Court, in the present circumstances, under Article 226 of the Constitution of India can issue Writs in the direction of enforcement of the orders passed by the Civil Court when they attained finality. In the case on hand also the decree rendered by the learned Senior Civil Judge attained finality because of the orders passed by this Court in S.A.No.1231/2012 dated 10.04.2015. It is to be noted that in EP.1/2013, the petitioner herein sought for arrest of the judgment debtor under Order 21 Rule 32 of the Code of Civil Procedure, and in the considered opinion of this Court, the same cannot be a ground to deny the protection to the petitioner for cultivating the lands covered by the decree. This Court absolutely does not find any justification in the explanation sought to be offered by the respondent authorities. The ultimate endeavour of the Courts should necessarily be in the direction of upholding the majesty of the judicial system in the interest of the people and the nation. The law and order safeguarding system should also work towards such constitutional goal as enshrined under Chapter III of our *Magna Carta*.

17. For the aforesaid reasons and having regard to the facts and circumstances and the nature of controversy, this writ petition is allowed, directing the respondents 2 to 4 herein to provide police aid in favour of the petitioner herein in respect of the properties covered by the decree in O.S.13/1997, on the file of the Court of the Senior Civil Judge, Hindupur. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:28-09-2015
grk

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

WRIT PETITION No.26080 of 2015

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Dated 28th September, 2015
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[\[1\]](#) AIR 1982 AP 394 (DB)

[\[2\]](#) 2007 (1) ALT 533

[\[3\]](#) 2015 (2) ALD 171