

**THE HON'BLE SRI JUSTICE Dr B. SIVA SANKARA RAO**

**CRL.P.No.5863 of 2015**

**ORDER:**

This criminal petition is filed by the petitioner under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.313 of 2014 on the file of the II Special Magistrate Court, Cyberabad at Rajendra Nagar, Ranga Reddy District.

2. The petitioner is accused of C.C.No.313 of 2014 on the file of II Special Magistrate Court, Cyberabad at Rajendra Nagar. The first respondent is the State represented by Public Prosecutor and second respondent is the Forest Beat Officer of Gaganpahad, Ranga Reddy District in the quash petition.

3. The crime is registered on the report of the *de facto* complainant by the police concerned for the offence punishable under Section 20(c )(vii) of A.P.Forest Act, 1967 (for short "the Act") for the alleged illegal encroachment of the case allegedly booked vide POR No.6-6/2013-14, dated 18.04.2014 by second quash petitioner/*de facto* complainant through police concerned of State represented by first respondent to the quash petition..

4. The alleged encroachment is of reserved forest land of Ac 0.24 guntas. The grounds sought in the quash petition to quash the proceedings are that the *de facto* complainant purchased Ac 3.19 guntas in Sy.No.124 of Kowthwalguda Village, Shamshabad Mandal, Ranga Reddy District from one Syed Alauddin, which is purely private patta land and the same was in the possession and enjoyment of his vendors in title and after purchase, the quash petitioner is in possession and enjoyment. While so, in the year 2010, the Forest Officials tried to fix the boundary stone/line by encroaching into the subject land to an extent of Ac 0.29 guntas, which is resisted by the petitioner and he made a written representation dated 12.4.2010 about

the subject land is purely private patta land and he has purchased the same under registered sale deed supra from previous owners and that they cannot encroach into the subject land under the guise that the subject land is covered by Reserve Forest Area and requested to conduct joint survey through the respondent No.3 and fix the boundaries. Pursuant to which, the forest officials requested Assistant Director, Survey and Land Records, R.R. District for joint survey and the Assistant Director issued notice dated NIL in August 2010 and again on 14.09.2010 calling upon the petitioner, the Forest Range Officer & the Divisional Forest Officer, R.R. District to depute responsible person for joint inspection along with the connected records. In pursuance of the same, a joint survey was conducted by the Assistant Director in his presence for total land in Sy.No.124 to an extent of Ac 10.27 guntas as per Setwar and Tipans, and that, whereas only Ac 9.38 guntas was found in possession of different individuals and remaining Ac 0.29 guntas was in Reserved Forest possession and that was also confirmed that it is a private patta land and not forest land and when the officials of forest department trying to interfere, the quash petitioner submitted police complaint to the Station House Officer, Shamshabad on 12.05.2013, and for no action, he constrained to file W.P.No.16949 of 2013 to declare the action of the forest officials and their staff for fixing forest boundary by constructing a protection wall encroaching the land in an extent of Ac 0.29 guntas out of Ac 3.19 guntas in Sy No.124 of Kothwalguda village, even after joint survey and without being any notification under Section 4 of the A.P. Forest Act, 1967 notifying the same as Reserved Forest land, as illegal and not to interfere in any manner pending writ petition and obtained interim direction vide order dated 18.06.2013 in W.P.M.P.No.20556 of 2013 not to interfere by the forest officials with quash petitioner's possession over the land in Sy.Nos.124/4, 124/6, 124/2, 124/3 and 124/4 of Kothwalguda village, except in accordance with due procedure laid down by law. Despite of it, the forest officials started to

construct the stone compound wall in fixing their boundary on 30.12.2013. Thereafter, he made a written representation on 30.12.2013 bringing to their notice about their highhanded action and requesting them to comply the orders of this Court dated 18.06.2013. In spite of that they completed the construction of compound wall highhandedly within two days. Therefore, the petitioner was constrained to file Contempt Case No.249 of 2014 on the file of this Court seeking to punish the forest officials. After receipt of notice in the contempt case, the Forest Range Officer and the Divisional Forest Officer, R.R. District filed a complaint under Section 20 (c ) (VII) of the Act through the respondent No.2 before VIII Metropolitan Magistrate Court at Ranjendra Nagar and the learned Magistrate has taken cognizance for the said offences numbered as C.C.No.831 of 2014 and made it over to II Special Magistrate Court, Cyberabad and the II Special Magistrate at R.R. District renumbered the said C.C.No.831 of 2014 to C.C.No.313 of 2014. The allegations levelled against the petitioner is that he has contravened the provisions of Section 20(c ) (Vii) of the Act, whereas there is the material filed along with Writ Petition as well as the Contempt case including the joint survey report, would clinchingly establish that the Forest Officials have encroached into the land owned and possessed by the petitioner to an extent of Ac 0.29 guntas. The respondent No.2 having fully aware that the Forest Department has encroached into petitioner's land lodged a complaint at the instance of the Forest Range Officer & the Divisional Forest Officer, R.R. District who are facing C.C.No.249 of 2014 by abusing the process of the Court. Hence, the petitioner filed present petition to quash the proceeding in C.C.No.313 of 2014 on the file of II Special Magistrate Court, Cyberabad.

5. The counter filed by respondents to the quash petition i.e., by Forest officials, through Public Prosecutor. According to the counter, the Domnair Forest Block is notified under Section 15 of the A.P.Forest Act, 1967 with G.O.Ms.No.431, Forest and Rural

Development (Forest III) on 09.06.1975 and the petitioner claimed to have purchased land from Syed Allaiddin on 18.12.1987 with an extent of Ac 3.19 guntas and claiming that as his name was mutated in the Revenue records, whereas the record showing Syed Allaiddin owns only Ac 2.33 guntas and that is mutated in the name of quash petitioner as per copy of Pahani of 124/4 and he obtained pass book also for that and in fact in the sale deed the quash petitioner got it registered an excess area of Ac 0.26 guntas than the area as per revenue records and the area owned by Syed Allaiddin. The letters have been addressed to the Sub Registrar, Registrar and CCLA to invalidate the registration document as per the revenue records by reducing the area from Ac 3.19 guntas to Ac 2.33 guntas vide DFO Roc.No.2014/2010/S6: dated 09.05.2014. The boundaries stones are intact at the location where pillars were constructed and the petitioner made a representation to the Assistant Director of Surveys and Land Records on 12.04.2010 and 05.05.2015 and the survey was conducted based on the village map of Kothwalguda, which is not a legal document for both parties and that the Forest block falls into the Shamshabad revenue village in Sy.No.626/2 and the survey was conducted by using Kothwalguda village map only and not considered the Shamshabad village map, where reserved forest was notified as per Gazette notification supra, and it is thereby requested to fix the boundary based on legal documents like registered documents, gazette notification and the maps of Kothwalguda and Shamshabad village are overlaid on Google image showing the forestland occupied by the petitioner. The forest block boundary was notified under Section 15 of the Act under G.O.Ms.No.431 supra dated 09.06.1975, by using chain and compass method and the survey conducted by Assistant Director with reference to Kothwalguda village map that was prepared prior to forest block notification and the writ petition filed by petitioner is under contest and what the interim order in the writ petition is not to enter into the petitioners Sy.Nos.124/6, 124/4, 124/1, 124/2,

124/3 and 124/4 of Kothwalguda village and not otherwise and the petitioner's claim of he got Ac 3.19 guntas is false as he got only Ac 2.33 guntas and the remaining is encroachment and having encroached Ac 0.29 guntas of forestland to the said claim and thereby he is not entitled to claim more than Ac 2.33 guntas. As per permanent revenue records, his vendor got and the various parts of Sy.Nos and total area in Sy.No.124 as per the Pass book and Raitwari Register is Ac 10.37 guntas of which petitioner got through vendors only Ac 4.15 guntas. However showing any registered documents as Ac 5.02 guntas by his encroachment occupation beyond Ac 4.15 guntas, which is forestland and for which encroachment the prosecution is sustainable and thereby there is nothing to quash and particulars and description is also given. In fact the survey conducted shows petitioner's land as per village map of Kothwalguda is there that no encroachment, whereas it is the contention by the forest officials, the de facto complainant that the forestland is in Shamshabad. The survey was not conducted with reference to Shambashabad village also and a combined maps further survey to be conducted and also with reference to the source title of the vendors of the quash petitioner which shows they got lesser extent whereas he obtained in the sale deeds without existence for more than existence and claiming the same by encroachment of forest land. So it is involving a conflicting question of fact, which the quash court cannot go into minute details.

6. Having regard to the above, without prejudice to such contest, it is left open to the petitioner to raise the same before the trial court.

7. Accordingly, this Criminal Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

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**JUSTICE Dr B. SIVA SANKARA RAO.**

Date : -12-2015

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