

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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WRIT PETITION No.23266 OF 2012

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ORDER:

The present Writ Petition came to be filed seeking issuance of writ of *certiorari* calling for the records in M.C.No.1 of 2012 on the file of the 2nd respondent- Tahsildar and Mandal Executive Magistrate, Kothapalli, and quash the same.

2. The averments in the affidavit filed in support of the writ petition would show that land to an extent of Acs.3.32 cents in Sy.No.314/A in Musalamadugu village, Kothapalli Mandal was assigned in favour of the petitioner in the year, 1982 and D-form patta to that effect was also issued. His name was mutated in the revenue records and pattadar pass books were also issued. In the year, 2001, when the revenue officials along with three neighbouring villagers of Yerramatam village interfered with his peaceful possession and enjoyment over the property alleging that there was a water tank in his land and tried to dig the land, he filed a suit O.S.No.156 of 2001 on the file of the Junior Civil Judge's Court, Atmakur, seeking permanent injunction against respondents 1 and 2. Respondent No.2 contested the suit and filed a written statement. After considering the oral and documentary evidence, the suit was decreed on 27.08.2007, which has become final. In the said suit, the 2nd respondent herein failed to prove the existence of the tank in the land, which is subject matter of the dispute in the M.C. proceedings. It is further stated that after disposal of the suit, respondents 4 to 7 approached the 1st respondent and filed a complaint making allegation of existence of water tank in the land and sought for cancellation of D-form patta. Respondent No.1 issued a show cause notice to the petitioner on 05.06.2012 requiring his presence before him along with records and further directed the 2nd respondent to appear before him on 08.06.2012 with a detailed report. It is said that the petitioner appeared before the authorities along with the records and submitted a detailed explanation.

While things stood thus, respondent No.2 initiated proceedings under Section 145 of the Code of Criminal Procedure, 1973 and passed the impugned order. Challenging the same, the present writ petition is filed.

3. No counter is filed by any of the respondents till date.

4. Learned counsel for the petitioner submitted that for the purpose of invoking the provisions under Section 145 Cr.P.C., there must be dispute with regard to immovable property and likelihood of such dispute causing breach of peace. A reading of Section 145(1), (4) and (6) Cr.P.C., makes it clear that the powers can be exercised only with regard to dispute of possession alone. It is further stated that in the absence of any dispute with regard to possession over the property, since D-form patta was granted in the year 1982 itself, continuation of proceedings under Section 145 Cr.P.C., are illegal and arbitrary.

5. A perusal of the proceeding sheet shows that notices were served on respondents 4, 6 and 7. But, there is no representation on their behalf. Notice sent to respondent No.5 was returned unclaimed with an endorsement addressee refused to receive the notice. Therefore, it appears that the unofficial respondents are not interested in prosecuting their case.

6. A perusal of the Order, dated 11.06.2012, passed under Section 145 Cr.P.C., in M.C.No.1 of 2012 shows that the dispute relates to land in Sy.No.314/A admeasuring Ac.3.32 cents in Musalamadugu village and there exists a dispute between the ryots of Yerramatam village and the petitioner herein. The suit, which has been filed by the petitioner herein also relates to the land, which is subject matter of the dispute in this petition. The order further shows existence of a tank in the land of the petitioner, which is sought to be filled up by the petitioner with mud by using tractors with the assistance of his brother Venkateswarlu. The same has been challenged by the villagers on the ground that the petitioner herein cannot fill up the kunta with mud. In view of breach of peace, proceedings under Section 145 Cr.P.C., have been issued. O.S.No.156 of 2001 on the file of the Junior Civil Judge's Court, Atmakur, filed by the

petitioner also relates to the same dispute and ultimately his suit was decreed granting injunction in favour of the plaintiff i.e., the petitioner herein against the defendants by restraining them from interfering with the peaceful possession and enjoyment of the property. Respondents in the said suit are the State represented by District Collector, Nellore District, Mandal Revenue Officer and the Mandal Development Officer, Kothapally, and two others. It has been urged that when the dispute between the parties is civil in nature and the Civil Court has already ceased the above matter, proceedings under Section 145 Cr.P.C., cannot be resorted to since parties have to decide their rights before the Civil Court. As observed earlier, a civil suit in respect of the very same dispute was filed and being unsuccessful in the said suit, the MRO initiated the proceedings under Section 145 Cr.P.C., which act was held by this Court and also by the Hon'ble Apex Court as illegal since MRO cannot decide title of the property by resorting to the provisions under Section 145 Cr.P.C.

In **Indian Airlines Ltd., Vs. Prabha D.Kanan**, the Apex Court held that if any party claims to be in possession of the property and seeks its protection, it is for that party to approach the Civil Court to get appropriate remedy. It is further held that the proceedings under Section 145 Cr.P.C., cannot be allowed to be continued. The situation is somehow identical to the case referred to above. In view of the dispute raised by the neighbouring villagers with regard to existence of the tank and also filling up of the tank with mud, the petitioners herein was forced to approach the Civil Court, which was decreed in his favour and the findings in the said suit have become final. Instead of challenging the decree, the Mandal Revenue Officer initiated the proceedings under Section 145 Cr.P.C.

7. Having regard to the circumstances stated above, the observation of the Apex Court and in the absence of any counter being filed, the writ petition is allowed and the proceedings in M.C.No.1 of 2012 before the Mandal Executive Magistrate, Kothapalli, are set aside.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

Date:08.12.2015

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