

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.4757 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner/accused M/s Rao's Educational Society to quash the proceedings No.L/1079/2015 dated 29.05.2015 under Section 145 of Cr.P.C. issued by the 1st respondent i.e. Sub Divisional Magistrate and Revenue Divisional Officer, Malkajgiri which issued based on the report of Station house Officer(R.2), P.S. KPHB, Cyberabad, dated 28.05.2015 in respect of the land in Sy.No.145 admeasuring of Ac.2-20guntas under Pragathi Nagar Grampanchayat, Bachupally village, Quthbullapur Mandal, Cyberabad claimed by quash petitioner herein as party-I vis a vis respondents 2 and 3 of quash petition as party-II.

2. Heard both sides and perused the material on record.

3. The grounds of the petition are that the petitioner is M/s Rao's Educational Society situated in House No.5-8/A, Sangeeth Nagar, Kukatpally, Hyderabad represented by its Executive Member P.Nidhin Rao, the respondents 1 to 5 are the Sub Divisional Magistrate—cum—Revenue Divisional Officer, Malkajgiri Mandal, Station House Officer, Kukatpally, Cyberabad, Smt. Gaddam Karunadevi and her son Gaddam Sampathkumar and the State represented by the learned Public Prosecutor, High Court, Hyderabad. The petitioner as a registered society established to improve the education by establishing and running educational institutions like schools and Junior Colleges with good reputation by securing good ranks in State level and in order to expand their activities by establishing more colleges, that the petitioner-society issued advertisement in Eenadu daily telugu newspaper dated 22.12.2013 regarding their project and establishment of colleges in and around Hyderabad and in response to it, 3rd respondent and her husband G.Narasimha Reddy came forward to lease out their lands under the negotiations agreed that they will construct ground+5 at their land in Survey number supra and after negotiations leased out the land under lease deed dated 02.05.2015 for 10 years therefrom and they agreed to make constructions and further in terms of said lease, the petitioner-society paid 51 lakhs as advance and also several amounts time to time either to the lessor or to the supplier of material for the construction or to the contractor of the construction on the directions of the lesser in all as on date

75lakhs. It is also averred that prior to the lease document dated 02.05.2014, the semi finished ground + first floor was handed over to the petitioner-society on 01.05.2014 itself and since then the petitioner-society is in possession and as per the lease deed, the 3rd respondent has to complete the construction and hand over the possession by June, 2014 which they could not complete fully by saying some ruse and the petitioner-society is running the office in the ground floor since the academic year is going to be commenced shortly by them to have admission process after declaring results of SSC and other qualifying examinations. Thus while so, due to adamant attitude and evil design of the lesser, it came to know by the petitioner-society that, 3rd respondent-lessor wants to enter into a separate agreement with other educational institution to cause loss to the petitioner-society by postponing completion of the project and without knowledge of petitioner, the 3rd respondent clandestinely gifted part of the property to her son—the 4th respondent and attempted to make or distinguish the property covered under the lease with evil design to show that lease property is different. In fact even before alleged gift deed No.7531/2014 dated 09.06.2014 entered between the 3rd respondent and her son-4th respondent, structures are raised on the land in terms of the lease agreement and the same not mentioned, which cause to show said gift is created to create legal problems if possible by depriving the petitioner-society from occupying building and knowing the same the petitioner-society filed a criminal complaint before XIX Metropolitan Magistrate, Miapur vide Cr.No.1270 of 2014 registered by police when the Magistrate referred under Section 156(3) for investigation, for the offences under Sections 406,420,418 and 120-B of I.P.C that later the respondents 3 and 4 came for compromise and assured to give entire possession of the premises as per the lease deed to the petitioner-society by December, 2014 in a completed shape and will not interfere with peaceful possession of the ground and First floor already in the occupation of the petitioner-society from 01.05.2014 for their running administration work of day-to-day affairs of the college and society, however, they have not provided amenities in the portion handed over like flooring water connection, generator provision, leave about drainage, and the petitioner-society made temporary arrangements for basic amenities of the staff and students by spending huge amounts. The petitioner-society came to know that the respondents 3 and 4 are planning to alienate the property and are making all efforts hiring private gundas to vacate the petitioner-society from the said premises and therefrom the petitioner-

society filed O.S.No.1465 of 2014 for specific performance of the lease agreement and for permanent injunction pending before the XIV Additional District Judge, Ranga Reddy District, at Malkajigiri where ad-interim injunction passed in I.A.No.961 of 2014 dated 19.12.2014 under extension from time to time and while the matter stood thus, the respondents having colluded with Sri Chaitanya Educational institutions and to cause inconvenience to the petitioner-society by creating one or other problems and with evil design, having connived with police in managing to summon the Executive Member P.Nidhin Rao and his father P.Prabhakar Rao of the petitioner-society to police station in demanding to vacate the premises or to pay higher lease in entering premises, else threatened as not to allow the petitioner-society to stay therein and by threatening to invoke Section 145 of Cr.P.C. to take possession of the entire possession by the Executive Magistrate and the police and respondents 3 and 4 supra started harrassing the petitioner-society employees and other members on 21/22.05.2015 which made petitioner-society to file W.P.No.15000/2015 dated 25.05.2015 for a direction against the police not to interfere in civil matters by calling frequently to police station and the matter is coming for instructions from 08.06.2015. It is while so, the 1st respondent-SDM, issued the impugned proceedings served on the petitioner-society on 30.05.2015 directing taking over the possession of the semi-constructed building with open land of Ac.2-20guntas in Sy.No.145 of Pragathi Nagar Grampanchayat, Bachupally village, in directing the Tahasildar, Qutubullapur to take physical possession of the same and to see that no activities are taken up by either parties, that said proceedings under Section 145 of Cr.P.C. are arbitrary and irregular besides excessive use of power since the petitioner is in possession of the building and is going ahead with the process of admissions of students for the first year intermediate and the persons are not allowing the petitioner-society to function for the building resulting injury and loss, that the cursory reading of the impugned order of the Respondent No.1 established the order as if a final one from the information of R.2-SHO though no notice is averred issued to the petitioner-society much less any enquiry made to invoke Section 145 Cr.P.C. proceedings but for outcome of the hand in glove between the respondents 1 to 4 and are arbitrary, irregular and illegal and without application of mind and not showing reasons on what basis concluded as there is likelihood of breach of peace and the respondents 3 and 4 made demands to dispossess the petitioner-society from the anti social elements and local gundas, that the proceedings of the Section 145 Cr.P.C. won't lie in the civil dispute,

that too, same won't lie as the matter is in civil Court by granting interim injunction in I.A.No.961 of 2014 dated 19.12.2014 in O.S.No.1465 of 2014, hence, to quash the proceedings of R.1-SDM, dated 29.05.2015 under Section 145 of Cr.P.C.impugned herein and consequently direct the respondents not to interfere with the administration of the petitioner-society.

4. A perusal of the proceedings of the 1st respondent-SDM from the report of S.H.O. shows it is in relation to Ac.2-20guntas of land in Sy.No.145 supra where Polasani Nidhin Rao S/o Prabhakar Rao-the petitioner herein (party-I) is the lessee of the schedule property in terms of lease deed dated 02.05.2014 and Smt. Gaddam Karuna Devi and Gaddam Sampath Kumar -the respondents 3 and 4 herein(party-II) are the lessors and in pursuance with the said contract they were constructing college building and differences have arise between them. The contention of the Party-I that he paid an advance of 51 lakhs to the party-II towards construction of Junior College in the land and the delay in said construction of college building was said occurred as building permission was rejected by HMDA. The party-II returned the advance amount by cheque two times through post, but the party-I have refused to take the same and requested to follow the terms and conditions of the lease deed and in this regard some criminal cases have been registered by both the parties at P.S.KPHB, Cyberabad. while the matter stood thus, the party-I(petitioner-society) filed a civil suit and got ad-interim injunction order dated 19.12.2014 through the XVII Addl.District Judge, Ranga Reddy, which are extended till 14.07.2015. Thus, petitioner-Society being Party-I is claimed that as per the lease deed they are in possession of the schedule property and have obtained injunction order from the Court and claimed that the landlords should be restrained.

5. On the contrary, party-II(Respondents 3 and 4 herein) claimed that the lease deed executed in favour of petitioner-Society was an un-registered and their application for building construction was rejected by HMDA and the present owner of the schedule property is Gaddam Sampath Kumar(4th respondent herein) and the HMDA granted building permission in the name of Gaddam Sampath Kumnar. Thus, on the submission of the police that both the parties are indulging in lodging complaints against each other claiming rights over the schedule property pending Civil Case in I.A.No.961 of 2014 in O.S.No.1465 of 2014 may adversely affect the

public peace and tranquility and request to initiate proceedings under Section 145 of Cr.P.c. duly taking the possession of the disputed site into Government custody, this office feels just and necessary to take the site of dispute into Government custody by promulgating the orders under Section 145 of Cr.P.C. till disposal of O.S.No.1465 of 2014 and accordingly promulgated orders Under Section 145 of the Cr.P.C. duly taking over the semi-constructed building with open land cited supra, into the custody of Government and authorized the District Collector and Tahasildar, Quthbullapur to take physical possession of the above site of dispute and see that no activities shall be taken up by either parties till further orders and the S.H.O., P.S.KPHB is also directed to provide sufficient police force in vacating the individuals or persons whenever present in the disputed premises. In the meantime, the parties are directed to appear before the undersigned in person or through a counsel to adduce evidence in the matter on 11.06.2015 at 2.00 P.M., in his office.

6. The unregistered lease dated 02.05.2014 between the R.3-G.Karunadevi of Hyderabad who is absolute owner of newly constructing building in an area of 1.00 Guntas under Sale deed No.1952, dated 04.03.1995 and the and petitioner-society to lease out the newly constructed building consisting of cellar, ground, first second and third floor admeasuring 10,600sq.feet in an area of 1-00 guntas(with building construction in 2100 sq.yards and open ground 2740 sq.yards west of the building) in sy.No.145 supra for a period of ten years for rent at the rate of Rs.10.50(Rupees ten and fifty paise) per sft, an amount of 51lakhs given as advance to the lessor of which the six(6) months advance shall be retained by lessor as refunded interest from the deposit and remaining balance advance shall be deducted at Rs.20,000/- in monthly rents and it is referred how the advance amount of 51lakhs paid between 10.01.2014 to 08.04.2014 and it refers to lessor handed over the premises to lessee on 01.05.2014 as it is a condition of the construction in the premises for the lessor to continue the construction of floors, walls, plastering, tiles, paintings, sanitary work, plumbing work, electrical work, bathrooms in each room, portico, ground leveling etc., the lessor agreed to complete construction by 05.06.2014 of at least cellar, ground and first floor and by 01.05.2015 of 2nd and 3rd floors and the rent commences thereafter and the lease referred as 10 years from 01.06.2014.

7. On perusal of the lease agreement in fact shows it is confined to one acre of land and not for 2-20 guntas and the construction is also only to that extent of one acre, the construction in 2100 sq.yards and open ground of 2740 sq.yards towards the

west of the building. Now coming to the lease deed schedule which also speaks measurement of cellar of 12,152 sq.feet and ground and first floor each 10,600 sq.feet and the boundaries are North: open land with Sy.No.146, South: 40feet wide road, East: plot Nos.73,74,75 and west: Open land with S.No.144. After the lease entered into dated 01.05.2014 executed the gift or settlement deed on 19.06.2014 by the R.3 lessor in favour of her son R.4 donee under registered document No.7531/2014. The gift deed contents speak the donor-R.3 is sole and absolute owner and in peaceful possession of the land measuring

2-20guntas in Sy.No.145 out of Ac.4-37guntas in village having purchased under sale deed dated 08.03.1995 and mutated the same in the patta No.556, passbook to Z-80154 title deed Z-287993 issued by the M.R.O., Qutbullapur with the donor obtained proceedings in respect of the land from Deputy Collector and M.R.O. Qutubullapur mandal on 09.04.2002 and the donee is her son thereby out of love and affection towards the Donee, the donor decided to gift the open land in Sy.No.145-A(145 old) admeasuring 2160 sq.yards which is out of Ac.2-20guntas as shown in the plan affixed and schedule described. The schedule shows North: neighbour's land in Sy.No.145/part; South: 40feet width road, tallying to lease deed schedule; East and West: Sy.No.145/A (old 145) belongs to donor. The plan appended to the gift deed also describes the same.

8. It is not even in dispute of Ac.2-20guntas belongs to R.3 of the quash petition and the gift deed dated 19.06.2014 is by R.3 to her son –R.4 of the quash petition. The lease deed between the quash petitioner and R.3 dated 02.05.2014 is for Ac.1-00guntas by referring eastern boundary plot Nos.73,79,75 of the survey number 145, south: 40 feet road, whereas north: is Sy.No.146 and West Sy.No.144. It is to say the lease deed schedule property supra is part, also the gift deed schedule property out of Sy.No.145. Coming to the plaint O.S.No.1465 of 2014 filed by the quash petitioner against the respondents 3 and 4 as defendants 1 and 2 along with temporary injunction application vide I.A.No.961 of 2014 restraining them from interference with the schedule described as in lease deed only by showing in A-schedule ground floor, 1st floor, 2nd, 3rd floor and common works. The proceedings of the 1st respondent-SDM referred supra were dated 29.05.2015. Whereas, the temporary injunction application and the suit filed are even in the year 2014. Thus, so far as the suit property of Ac.1-00 which is subject matter of alleged lease property with building construction in 2100 sq.yards and open ground of 2740 sq.yards to the west

of the building in Sy.No.145 showing cellar 12,152 sq.feet, ground, 1st floor and 3rd floors each 10600 sq.feet approximately, once the matter is pending in the civil Court, Section 145 of Cr.P.C. proceedings cannot be sustained so far as that extent concerned, but for to the remaining extent of Ac.1-120guntas, out of the 2-20 guntas in Sy.No.145 within the boundaries as shown in the gift deed.

9. From this background, it is the contention of the learned counsel for quash petitioner-party-I of the Section 145 proceedings that once civil Court seizes of the matter, Section 145 of Cr.P.C. proceedings won't lie and there is taken if at all it mentioned lease deed for one acre though it is 2-20guntas the same cannot be taken advantage by any of the respondents 1 to 4. Whereas, it is the contention of the respondents 3 and 4- II party to Section 145 proceedings that the proceedings issued are for Ac.2-20gutas and the description of the lease schedule no way tallies to the said proceedings and thereby there is nothing to quash the proceedings and the quash proceedings are liable to be dismissed.

10. The Apex Court in **Amaresh Thiwari Vs. Lalithaprabhu Dhubhey** held that once civil Court seizes of the matter, Section 145 Cr.P.C. proceedings won't lie in respect of that property. In fact Section 145 of Cr.P.C. sub Section 4 speaks after service of notice and serving of copies of the order from report of police officer if not passed by the Executive Officer required parties to the dispute to attend and submit written statement of the respective claims as to actual possession of the subject property of the dispute , peruse the statements put forth, hear parties and receive such evidence that may be produced and any further evidence if thinks necessary and possible, to decide once any or each of the parties was, at the time of the order, may in possession of the property in dispute provided that if it appears to the Executive Magistrate of any party has been wrongfully dispossessed within two months next before the date on which report of police officer or other information received or after that date and before the date of his order under Sub Section (1), he may treat party so dispossessed as if that party had been in possession on the date of his order.

11. In fact, the impugned order passed by the 1st respondent-S.D.M. referring to lesser or lessee relationship between the first party–lessee-quash petitioner and second party lessors (R.3 and 4) and pursuant to the lease contract, the college building is under construction, there differences arose between them in regard to the

advance amount of 51lakhs first party gave to second party for the college building construction and for the delay in construction so occurred from the permission for building was rejected by HMDA and the second party returned the advance amount through cheque two times through post which first party refused to take by requested to follow the terms and conditions of the lease deed and therefrom both the parties as per the report of the police quarrelling frequently and disturbing public tranquility and police cases were also registered against both parties by Police Station, K.P.H.B. Cyberabad to say the first party lessee filed complaint against the 2nd party in Cr.No.1270 of 2014 based on private complaint referred to the police station for investigation and second party against the first party in Cr.No.1278 of 2014 which are pending and the 1st party filed civil suit against the 2nd party and obtained interim injunction and there are against each other three more crimes and 1st party claims as lessee in possession and obtained injunction by filing civil suit and the 2nd party claims the unregistered lease deed executed since permission of construction of building rejected by HMDA to 3rd respondent, later from the gift in favour of R.4, R.4 got permission from HMDA and from the police authorities by self-narrating facts as both parties disturbing public peace and tranquility proceeding under Section 145 of Cr.P.C. requires to be initiated and from perusal, it is just and necessary to take the site in dispute into the Government custody by terminating proceedings under Section 145 Cr.P.C till disposal of O.S.No.465 of 2014 for the land admeasured Ac.2-20guntas in Sy.No.145 as referred supra, once civil Court seizes of the matter from the civil suit filed, leave about the temporary injunction also granted, as from the very proceedings of the Sub Divisional Magistrate at least insofar as Ac.1-00 of land with building under construction as a cellar, 1+3 more floors which is out of Sy.No.145 Ac.2-20 guntas in total issuing proceedings under Section 145 Cr.P.C. for the entire land including Ac.1-00 land with building therein seizes for by safeguard is unsustainable and it is in relation to say even gift executed pending lis between the 3rd respondent and petitioner, by 3rd respondent in favour of 4th respondent-her son, it is subject to the lease right by the petitioner for the 4th respondent stepped into the shoes of 3rd respondent and not otherwise, subject to the lease deed enforceability, of the matter pending in civil Court. Thereby the taking of the entire Ac.2-20 guntas as ***custodian legis*** by the S.D.M. by the impugned order is unsustainable and it is liable to be quashed for Ac.1.00guntas, so far as lease extent covered by schedule of O.S.No.1465 of 2014. Needless to say the 1st

respondent-S.D.M. is at liberty to pass any order to the extent, not covered by civil suit which is subject matter of the lease deed for Ac.1-00 described supra, for the other Ac.1-20guntas out of 2-20 by issuing fresh proceedings.

12. Accordingly, the Criminal Petition is allowed by setting aside the proceedings vide No.L/1079/2015 dated 29.05.2015 under Section 145 of Cr.P.C. issued by the 1st respondent i.e. Sub Divisional Magistrate-cum- Revenue Divisional Officer, Malkajgiri and restored the police report with status quo ante. Needless to say the 1st respondent-S.D.M. is at liberty to pass fresh order for the other Ac.1-20 guntas out of the total extent of Ac.2.20guntas by issuing fresh proceedings, except to the extent covered by civil suit which is subject matter of the lease deed for Ac.1-00 described supra, if necessary by identification on ground through surveyor. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:29.10.2015

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