

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.29765 OF 2015

ORDER:

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Heard.

The petitioners are aggrieved by the action of the Tahsildar/ Mandal Executive Magistrate, Kondapuram Mandal, SPSR Nellore District, the 4th respondent, in attempting to dispossess them by invoking proceedings under Section 144 Cr.P.C. in the village.

A press notice to that effect is filed by the petitioners, while seeking a mandamus as sought for. Since no order as such was produced along with the Writ Petition, learned counsel for the petitioners has taken time and has filed W.P.MP.No.1935 of 2016 through which he has produced the proceedings of the 4th respondent in Rc/N.379/2015, dated 22.08.2015.

The petitioners state that

in fact respondents 1 and 2 have already filed various civil suits claiming declaration of title and consequential injunction and so far the petitioners are concerned, the details of the suits mentioned in paragraph No.16 are as under:

“16. It is submitted that on being part of 31 suits the following suits were filed against the writ petitioners herein on the file of the District Court, Nellore for

A. Declaration of right, title and interest of the Government over the respective suit subject land.

B. Directing the defendants/writ petitioners herein to deliver possession of the respective plaint schedule land to the Govt. within a specified time, in case if the defendant fails to do so the same may be done through process of law.

C. And to declare the pattadar passbooks and title deeds issued to the defendants/writ petitioners herein in relation to the respective plaint subject land is not valid and binding on the plaintiff.

S.No.	O.S.No.	Name of the Parties	Particulars of the suit subject land survey numbers
1	72/2012	The State of A.P., v/s Mannem Bharathi	400/2, 401 403/1, 403/3, 404, 402, 405/1, 405/3, 413
2	80/2012	The State of A.P., v/s Adusumali Gopala Krishna	399, 406

3	82/2012	The State of A.P. v/s Adusumalli Krishna Mohan	414, 415, 613/4, 629, 465/3
4	85/2012	The State of A.P., v/s Devineni Subbulu	593, 596
5	66/2012	The State of A.P., v/s Tappeta Chinnakondamma	387, 388/1
6	70/2012	The State of A.P. v/s Sujathamma	11, 12, 13, 14, 15
7	76/2012	The State of A.P. v/s Chinna Nagaiah	390, 394, 395/2, 398/2
8	90/2012	The State of A.P., v/s Nimmakanti Audemma	75, 516, 517-1, 518-1, 521, 522
9	81/2012	The State of A.P., v/s Nimmakanti Kondamma	587/1, 588/1, 588/3, 589, 590

It is submitted that all the suits mentioned above were filed by Govt. they are pending before the District Court, Nellore.”

It is evident from the above that the said civil suits are pending before the competent civil Court since 2012. When respondents 1 and 2 themselves filed the suits and civil dispute are pending adjudication, they cannot resort to proceedings under Section 144 Cr.P.C., and the legal position in this regard is already decided by the Hon’ble Supreme Court in ***Ram Sumer Puri Mahant v. State of U.P.***^[1], which holds that during pendency of the civil suits, proceedings under Section 144 Cr.P.C. are not maintainable. Following the said decision, I am therefore unable to see any justification for the 4th respondent in particular to invoke proceedings under Section 144 Cr.P.C. as has been done in the present case. Though the order dated 22.08.2015 as such is not questioned in the Writ Petition, the petitioners sought a mandamus on the same grounds.

In view of the same, the action of the 4th respondent resorting to the proceedings under Section 144 Cr.P.C. are liable to be declared as invalid and contrary to law, as they are in the teeth of the pending civil suits filed by the respondents themselves. Consequently, there shall be a mandamus as prayed for and the order dated 22.08.2015 shall stand declared as invalid and contrary to law.

The Writ Petition is accordingly allowed. There shall be no order as to

costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

VILAS V. AFZULPURKAR, J

27.01.2016
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[\[1\]](#) AIR 1985 SC 472