

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.16387 of 2016

ORDER :

This criminal petition is filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in Crime No.255 of 2016 of Bhimavaram II Town Police Station, West Godavari District, registered for the offence punishable under Section 447 read with 34 IPC.

2. The Tahasildar, Bhimavaram Mandal, West Godvari District-2nd respondent herein lodged a complaint with the police alleging that the land in Sy.No.172/1 admeasuring Ac.9.34 cents at China Amiram Village, Bhimavaram Mandal, has been acquired for providing house sites to weaker section people under Indiramma Programme and possession was taken on 13.08.2015 by the then Tahasildar, under a panchanama and passed award No.4/2015-16 by the then Revenue Divisional Officer, Narsapur (RDO) and an amount of Rs.5,30,81,321/- was deposited in Civil Court by the then RDO and now the land is in possession of the Government. While the matter stood thus, the petitioners filed W.P.No.16881 of 2015 and obtained the following direction in W.P.M.P.No.21904 of 2015 as follows:

“status quo shall be maintained in respect of the lands of the petitioners”.

However, it is alleged that the petitioners by making misrepresentation that they are in possession and raising paddy crop,

obtained status quo order in the writ petition, therefore, the petitioners are not allowed to enter into the land. Hence, the possession of petitioners is of trespasser and requested the police to stop agricultural operations, which are going on in the land in Sy.No.172/1 in an extent of Ac.9.34 cents.

3. The proceedings are challenged on the ground that in view of the status quo order dated 16.06.2016 was passed by this Court, while observing that the petitioners are in possession and raised the paddy crop, the question of alleged taking possession by the Tahasildar and criminal trespass by the petitioners would not arise, therefore, sought for quashment of the proceedings.

4. The Public Prosecutor contended that the RDO passed an award and deposited the award amount in to the Civil Court after taking actual possession of the property, as such, the petitioners are not in possession and enjoyment as on that date of the alleged encroachment.

5. In view of rival contentions, it is relevant to advert to the order dated 16.09.2016 passed by this Court in W.P.M.P.No.21904 of 2015. Learned counsel appearing for the petitioners contended that the petitioners are in possession and raised paddy crop and on the strength of the contention, this Court directed the respondents not to dispossess the petitioners, by the date of lodging complaint. It means that the petitioners are in possession as on the date of passing of the order ie., on 16.09.2016. When this Court passed an order not to dispossess the petitioners, the question of their criminal trespass on 12.09.2016 i.e.,

four days subsequent to passing of the order in the writ petition, does not arise and therefore, possession cannot be said to be criminal trespass and thereby that would not attract the offence punishable under Section 447 read with 34 IPC on the face value of the allegations made in the complaint together with the order passed by this Court in W.P.M.P.No.21904 of 2015.

6. It is also alleged in the complaint that the petitioners obtained status quo order by mis-representation. But, the said question cannot be gone into in the present criminal petition. Therefore, it is not a ground to proceed against the petitioners for the said offence. Lodging the complaint is itself is an abuse of process of Court and on that ground Court cannot allow the proceedings against the petitioners, who are in possession of the property as per the orders of this Court dated 16.09.2016, therefore, it is a fit case to quash the proceedings.

7. Accordingly, the criminal petition is allowed quashing the proceedings in Crime No.255 of 2016 of Bhimavaram II town Police Station, West Godavari District, against the petitioners, for the offence punishable under Section 447 read with 34 IPC.

8. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th December 2016

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