

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

WRIT PETITION No.2547 of 2007

ORDER:

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This Writ Petition is filed seeking a Writ of Prohibition to prohibit the Court of Principal Junior Civil Judge, Vizianagaram from adjudicating and granting orders/decrees in O.S.No.196 of 2004 filed by 3rd respondent, and consequently declare the orders passed by the 4th respondent in I.A.No.372 of 2004 on 07-09-2004, I.A.No.212 of 2005 on 08-02-2005 and I.A.No.508 of 2005 on 04-03-2005 in the said suit as null and void and without jurisdiction.

2. The suit O.S.No.196 of 2004 was filed by 3rd respondent against one Baki Guruvulu Reddy and the 2nd respondent for a permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the 3rd respondent in respect of extent Ac.10.71 cents in Sy.Nos.175/1, 174/2 part, 175/4 part, 206, 206/1, 206/2 and 159 of Velduru village, h/o Konada in Poosapatirega Mandal of Vizianagaram District.

3. The petitioner herein is not a party to the said suit.

4. On 07-09-2004, the Principal Junior Civil Judge,

Vizianagaram in I.A.No.372 of 2004 granted an order of temporary injunction restraining the defendants in the suit from interfering with the peaceful possession and enjoyment of the 3rd respondent in respect of the above lands by committing any unlawful interference or illegal acts pending disposal of the said suit.

5. The petitioner claims to have been granted an assignment of Ac.05.19 cents in Sy.No.175/1 of the above village on 03-05-1982. The land in this survey number is also part of plaint schedule in the above suit.

6. The petitioner had earlier filed O.S.No.47 of 1996 before the

I Additional Junior Civil Judge, Vizianagaram for permanent injunction against 3rd respondent in respect of the above extent of Ac.5.19 cents in Sy.No.175/1 of the above village. The said suit was dismissed on 24-09-2003.

7. Petitioner filed A.S.No.96 of 2003 before the Additional District judge, Vizianagaram against the judgment and decree in O.S.No.47 of 1996. The said appeal was dismissed by the said Court on 20-01-2004.

8. After dismissal of the above appeal, the petitioner applied to the Joint Collector, Vizianagaram on 17-02-2004 for eviction of 3rd respondent claiming that he was granted D-form patta

for the extent of Ac.5.19 cents in Sy.No.175/1 on 03-05-1982 by the Tahsildar, Bhogapuram, that he had entered into the some transaction for sale of casurina trees, but the 3rd respondent and another person claimed physical possession of this land and also fabricated an agreement of sale and a receipt for money and interfered with his right on the land.

9. The said petition of the petitioner was forwarded by the Joint Collector, Vizianagaram to the 2nd respondent, who issued a show cause notice under Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act,1977 (for short “the Act”) to 3rd respondent and another person on 10-03-2004. The 3rd respondent and the other person submitted explanations stating that the land, which the petitioner claimed to be assigned to him, was not assigned land within the meaning of the term “assigned land” in Section 2(1) of the Act since the petitioner is an Ex-service Man and it had not been assigned to him on the basis that he was a landless poor person.

10. The 2nd respondent then passed an order on 17-01-2005 in Rc.No.65/2004-A stating that the explanations of the 3rd respondent and the other person, who are encroachers of the land, are not convincing and that there is a violation of the provisions of sub-Section (1) of

Section 3 of the Act and the said land is liable to be restored to the petitioner under the provisions of Section 4(1)(b) of the Act. He directed the Mandal Revenue Inspector-II, Poosapatirega Mandal and Mandal Deputy Surveyor, Poosapatirega Mandal to evict the 3rd respondent and other person from this land and handover the same to petitioner

11. On 29-01-2005, the Mandal Revenue Inspector restored possession of lands to petitioner by conducting a panchanama in spite of the fact that as on that day, there was a temporary injunction order dt.07-09-2004 granted in favour of 3rd respondent in I.A.No.372 of 2004 in O.S.No.196 of 2004 filed by 3rd respondent against the 2nd respondent and another party B.Guruvulu Reddy.

12. In view of this development, 3rd respondent filed I.A.No.212 of 2005 in I.A.No.372 of 2004 in O.S.No.196 of 2004 for restoration of possession of land by 2nd respondent, which had been handed over to the petitioner. The said I.A. was allowed on 08-02-2005 and a direction was issued by the Principal Junior Civil Judge, Vizianagaram to the 2nd respondent herein to restore possession of extent Ac.5.19 cents in Sy.No.175/1 of the above village with casurina plantation to the 3rd respondent.

13. This was questioned in C.R.P.No.977 of 2005 by

2nd respondent herein before this Court. The said Revision was dismissed on 11-03-2005.

14. The 3rd respondent filed I.A.No.508 of 2005 in O.S.No.196 of 2004 seeking police aid directing the Sub-Inspector of Police, Poosapatirega to restore possession of the above land with casurina plantation to her by impleading the 2nd respondent as a respondent in the said application.

15. On 04-03-2005, the said I.A.No.508 of 2005 was also allowed on the ground that the 2nd respondent herein had not restored possession of the property even after the order dt.08-02-2005 in I.A.No.212 of 2005, and therefore the 3rd respondent is entitled to grant police aid for restoration of possession of the above land to her.

16. This was questioned by petitioner in this Court by seeking leave of the Court by filing C.R.P.No.4438 of 2005 before this Court. On 29-03-2006, this Revision was also dismissed as infructuous in view of the order dt.11-03-2005 in C.R.P.No.977 of 2005.

17. It is not in dispute that I.A.No.176 of 2006 filed by petitioner to implead himself as 3rd defendant in O.S.No.196 of 2004 is pending.

18. At this stage, this Writ Petition was filed by petitioner seeking a Writ of Prohibition to direct the

Principal Junior Civil Judge, Vizianagaram from deciding O.S.No.196 of 2004 filed by

3rd respondent against him or in granting orders/decrees therein on the ground that the said Court had no jurisdiction and to declare the orders passed in I.A.No.372 of 2004, I.A.No.212 of 2005 and I.A.No.508 of 2005 as null and void and without jurisdiction

19. The principal contention of the petitioner is that 3rd respondent had filed O.S.No.196 of 2004 on the file of the Principal Junior Civil Judge, Vizianagaram, that he obtained orders behind the back of petitioner suppressing initiation of proceedings by 2nd respondent under the Act and had committed fraud on the Court, and that he was seeking to take advantage of the orders passed behind the petitioner's back to dispossess him from his alleged lawful possession. He contends that 3rd respondent had been lawfully evicted under the proceedings issued by 2nd respondent on 29-01-2005 pursuant to the order dt.17-01-2005 passed by him; and that the Court of Principal Junior Civil Judge, Vizianagaram (4th respondent) had exceeded its jurisdiction in granting reliefs to 3rd respondent for restoration of possession and by granting relief of police aid behind petitioner's back in spite of the fact that the possession of the property, which is subject matter of O.S.No.196 of 2004, was restored to

the petitioner lawfully in exercise of jurisdiction of the 2nd respondent under the above statute. He contended that the jurisdiction of 4th respondent is impliedly ousted under the provisions of the Act, that any orders passed under the Act are final and cannot be questioned in any Court and no injunction shall be granted by any Court in respect of any proceedings taken by any Officer or authority in pursuance of any power conferred under the said Act. According to petitioner, the institution of the suit by 3rd respondent against 2nd respondent is a clear act of abuse of process of law and therefore Principal Junior Civil Judge, Vizianagaram should be restrained from entertaining the suit and granting any reliefs therein.

20. Sri N.Pramod, learned counsel for the petitioner reiterated the said contentions.

21. On 21-02-2007, in W.P.M.P.No.3274 of 2007, this Court suspended the order dt.07-09-2004 in I.A.No.372 of 2004 and all consequential orders passed in I.A.No.212 of 2005 and I.A.No.5008 of 2005. This order was subsequently modified as an order of *status quo* on 15-03-2007.

22. The 3rd respondent fled a counter-affidavit contending that the Writ Petition itself is not maintainable and that the land had been assigned to petitioner, not on the ground that he was a landless poor person but as an

Ex-serviceman; so provisions of the Act are not attracted; that the petitioner, after his retirement, is drawing pension of more than Rs.3,000/- p.m, that he owns lands and coconut garden at his native place, and so he cannot be considered to be a 'landless poor person' and cannot invoke the provisions of the Act. It is further contended that since the provisions of the said Act have no application, Section 8 of the Act also has no application, and it cannot be said that the Civil Court has no jurisdiction to entertain the suit and pass orders therein. It is pointed out that the petitioner lost O.S.No.47 of 1996. She stated that an earlier suit O.S.No.395 of 1995, which the petitioner had filed against the 3rd respondent before the Additional Junior Civil Judge Court, Vizianagaram was also dismissed on 24-09-2003, and suppressing these facts, with the assistance of one Baki Guruvula Reddy, Sarpanch of Veldur village and the 2nd respondent herein, he had dispossessed the 3rd respondent from the subject land. It is further contended that the 2nd respondent could not have directed dispossession of 3rd respondent from the subject land when on 07-09-2004 in I.A.No.372 of 2004 in O.S.No.196 of 2004 a temporary injunction had been granted by the Civil Court restraining the 2nd respondent from interfering with petitioner's possession and enjoyment of the subject land. It is contended that ouster of Civil Court's jurisdiction

cannot be presumed in the facts and circumstances of the case and that after I.A.No.212 of 2005 was allowed, the 3rd respondent had been put in possession of the property through police aid. She contended that the Writ Petition is filed with *malafide* intention to dispossess her from the subject land.

23. Sri P.R. Prasad, learned counsel for 3rd respondent also reiterated the above submissions and pointed out that the

2nd respondent had suffered the order of injunction on 07-09-2004 in I.A.No.372 of 2004 in O.S.No.196 of 2004 passed by the Court of Principal Junior Civil Judge, Vizianagaram; that even if the petitioner had been put in possession by 2nd respondent in violation of the said order, the same would be contrary to law. According to him, having regard to

- (i) the order dt.08-02-2005 in I.A.No.212 of 2005 directing restoration of the possession of land to 3rd respondent;
- (ii) the grant of police aid to 3rd respondent on 04-03-2005 in I.A.No.508 of 2005;
- (iii) the dismissal of C.R.P.No.977 of 2005 filed by 2nd respondent against the orders in I.A.No.212 of 2005 on

11-03-2005; and

- (iv) the dismissal of C.R.P.No.4438 of 2005 filed by petitioner against the order in I.A.No.508 of 2005 on 29-03-2006,

the petitioner cannot file this Writ Petition and circumvent the order dt.11-03-2005 in C.R.P.No.977 of 2005 and the order dt.29-03-2006 in C.R.P.No.4438 of 2005 and the said decisions operate as

res judicata. It is further contended that the 2nd respondent or the petitioner cannot decide for themselves that the order of temporary injunction granted in the suit against the 2nd respondent, is one granted without jurisdiction, and then flout it even if ultimately the Civil Court is found to have no jurisdiction to entertain the suit. He relied upon the judgment in **Tayabbhai M.Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd., etc.** [\[1\]](#).

24. No counter affidavit has been filed by respondent Nos.1 and 2 in spite of service of notices on them.

25. I have noted the submissions of both sides.

26. On 22-09-2014, the sole petitioner in the Writ Petition died and his son was impleaded as 2nd petitioner and as legal heir of the deceased 1st petitioner in W.P.M.P.No.33609 of 2014 in W.P.No.2547 of 2007.

27. From the facts narrated above, it is not in dispute that in respect of extent Ac.05.19 cents in Sy.No.175/1 of Konada Village, O.S.No.350 of 1995 filed by petitioner against 3rd respondent on the file of the Additional Junior Civil Judge, Vizianagaram for permanent injunction was dismissed on 24-09-2003.

28. Another suit O.S.No.47 of 1996 filed by petitioner also against the 3rd respondent before the same Court in respect of the same land was also dismissed on 24-09-2003.

29. The judgment dt.24-09-2003 was questioned in A.S.No.95 of 2003 by the petitioner and the said appeal was also dismissed on 20-01-2004 by the Additional District Judge, Vizianagaram.

30. Having lost both these suits, the petitioner filed the application on 17-02-2004 before the Joint Collector, Vizianagaram seeking eviction of 3rd respondent admitting that she was in possession of the above land.

31. It is thereafter that on 15.3.2004, the 3rd respondent filed O.S.No.196 of 2004 against B.Guruvulu Reddy and the 2nd respondent before the Principal Junior Civil Judge, Vizianagaram for permanent injunction. She filed I.A.No.372 of 2004 for grant of temporary injunction and it was allowed on 07-09-2004.

32. The 2nd respondent, to whom the said petition dt.17.2.2004 of petitioner was forwarded, initiated proceedings under the Act and passed orders on 17-01-2005 resuming the land from the 3rd respondent and directing restoration of the said land to the petitioner under the provisions of the Act, and on the basis of the said order, the Mandal Revenue Inspector restored possession of the land to petitioner on 29-01-2005.

33. Thereafter 3rd respondent filed I.A.No.212 of 2005 for restoration of possession and it was also allowed on 08-02-2005. Though this was questioned in C.R.P.No.977 of 2005 by 2nd respondent, but on 11-03-2005 the C.R.P. was dismissed. The 3rd respondent filed I.A.No.508 of 2005 seeking police aid for restoration of her possession. It was allowed on 04-03-2005 and C.R.P. No.4438 of 2005 filed by petitioner to revise the said order in this Court was dismissed on 29-03-2006.

34. Thus, admittedly after the petitioner lost O.S.No.350 of 1995 and O.S.No.47 of 1996, the petitioner instigated the 2nd respondent to initiate proceedings under the Act.

35. It is the case of the petitioner that the Civil suit O.S.No.196 of 2004 filed by 3rd respondent against him is not maintainable in view of Section 8 of the Act.

36. Assuming for the sake of argument that the petitioner is right in his submission, the petitioner has failed to explain how the two suits O.S.No.350 of 1995 and O.S.No.47 of 1996 filed by him against the 3rd respondent could have been maintained since they too relate to the same land.

37. Secondly, if the petitioner is of the opinion that the Civil Court had no jurisdiction to entertain the suit, any way I.A.No.176 of 2006 is pending in O.S.No.196 of 2004 to implead the 1st petitioner. Nothing prevents the 2nd petitioner to either come on record in that application or file an independent application to implead him in the said suit and raise the question of jurisdiction of the Civil Court to entertain and decide the suit.

38. It is settled law that mere objection to jurisdiction does not instantly disable the Court from passing any interim order. If the objection as to jurisdiction of the Civil Court is raised before it, it would certainly consider the said issue, but the interim orders passed by it have to be treated as orders within jurisdiction when passed and effective till the Court decides that it has no jurisdiction to entertain the suit. These interim orders granted would undoubtedly come to an end once it decides the issue of jurisdiction in favour of petitioner.

39. This principle has been laid down in **Tayabbhai**

M.Bagasarwalla (1 supra). The Court observed:

“28. The learned counsel for Defendants 1 and 2 submitted that this is not a proceeding for contempt but a proceeding under Rule 2-A of Order 39 of the Civil Procedure Code. The learned counsel submitted that proceedings under Order 39 Rule 2-A are a part of the coercive process to secure obedience to its injunction and that once it is found that the Court has no jurisdiction, question of securing obedience to its orders any further does not arise. The learned counsel also submitted that enforcing the interim order after it is found that the Court had no jurisdiction to try the said suit would not only be unjust and illegal but would also reflect adversely upon the dignity and authority of the Court. It is also suggested that the plaintiff had instituted the present suit in the Civil Court knowing fully well that it had no jurisdiction to try it. It is not possible to agree with any of these submissions not only on principle but also in the light of the specific provision contained in Section 9-A of the Code of Civil Procedure (Maharashtra Amendment). In the light of the said provision, it would not be right to say that the Civil Court had no jurisdiction to pass interim orders or interim injunction, as the case may be, pending decision on the question of jurisdiction. The orders made were within the jurisdiction of the Court and once this is so, they have to be obeyed and implemented. It is not as if the defendants are being sought to be punished for violations committed after the decision of the High Court on the question of jurisdiction of the Civil Court. Here the defendants are sought to be punished for the disobedience and violation of the order of injunction committed before the decision of the High Court in Vishanji Virji Mepani¹. According to Section 9-A, the Civil Court and the High Court did have the power to pass interim orders until that decision. If they had that power they must also have the power to enforce them. In the light of the said provision, it cannot also be held that those orders could be enforced only till the said decision but not thereafter. The said decision does not render them (the interim orders passed meanwhile) either non est or without jurisdiction. Punishing the defendants for violation of the said orders committed before the said decision (Vishanji Virji Mepani¹) does not amount, in any event, to enforcing them after the

said decision. Only the orders are being passed now. The violations are those committed before the said decision.

29. The correct principle, therefore, is the one recognised and reiterated in Section 9-A — to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction.”

The Court held that as long as the interim order subsists, they have to be obeyed and implemented and if they are not obeyed, proceedings under Order 39 Rule 2-A of C.P.C. can also be initiated if the violation of the order of

the Court is committed before the decision of the Court on the question of jurisdiction.

40. But in this case, admittedly during the subsistence of the temporary injunction granted in I.A.372 of 2004 on 7.9.2004 in O.S.No.196 of 2004 restraining the 2nd respondent from interfering with the peaceful possession and enjoyment of 3rd respondent, the 2nd respondent passed order under the Act on 17.1.2005 and directed the Mandal revenue Inspector to restore the subject land to the petitioner. Thus his action is clearly in willful disobedience of the order of the Civil Court. Even if the 2nd respondent felt that the Civil Court had no jurisdiction, he should first obey the said order and he cannot decide for himself that it is passed without jurisdiction.

41. It is also on record that the challenge by the 2nd respondent to the order in I.A.No.212 of 2005 in C.R.P.No.977 of 2005 failed when the said C.R.P. was dismissed by this Court on 04-03-2005. Likewise, the challenge to the order dt.04-03-2005 in I.A.No.508 of 2005 by the petitioner herein failed when C.R.P.No.4438 of 2005 filed by him was dismissed on 29-03-2006.

42. This being the position, it is not open to the Writ petitioner to collaterally attack the orders in I.A.No.372 of 2004 or I.A.No.212 of 2005 or I.A.No.508 of 2005 in this

Writ Petition. Such a collateral attack is impermissible.

43. In **Ritesh Tewari v. State of U.P.**^[2], the Supreme Court has held that jurisdiction under art.226 is to be exercised to promote honesty and good faith but not to perpetrate legal fraud. It observed:

“The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner. (Vide Champalal Binani v. CIT; Chimajirao Kanhojirao Shirke v. Oriental Fire and General Insurance Co. Ltd.; LIC v. Asha Goel; Haryana Financial Corpn. v. Jagdamba Oil Mills; Chandra Singh v. State of Rajasthan and Punjab Roadways v. Punja Sahib Bus and Transport Co.)

27. *Where a party’s claim is not founded on valid grounds, the party cannot claim equity. A party that claims equity must come before the court with clean hands as equities have to be properly worked out between parties to ensure that no one is allowed to have their pound of flesh vis-à-vis the others unjustly. (Vide Sikkim Subba Associates v. State of Sikkim.)*

44. In my opinion, the conduct of the petitioner in the present case is not in good faith and he had not come with clean hands. Therefore he is not entitled to any relief.

45. For all these reasons, I do not find any merit in this Writ Petition. It is accordingly dismissed with costs of Rs.2,000/- (Rupees Two Thousand only) to be paid by petitioner to 3rd respondent. However, it is open to 2nd petitioner to get impleaded in O.S.No.196 of 2004 and raise the question of jurisdiction of the Civil Court to entertain the said suit and if such question is raised, the same shall be decided by the Principal Junior Civil Judge, Vizianagaram in accordance with law.

46. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-07-2016

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[\[1\]](#) AIR 1997 SC 1240

[\[2\]](#) (2010) 10 SCC 67