

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No. 3431 OF 2016

ORDER :

The Civil Revision Petition is filed against the order dated 21.04.2016 passed in I.A. No.31 of 2016 in I.A. No.836 of 2014 in O.S. No.1486 of 2014 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad.

2) The revision petitioner is the sole defendant in O.S. No.1486 of 2014 on the file of VII Senior Civil Judge, City Civil Court, Hyderabad, which is filed by the revision respondents for the relief of permanent injunction in respect of the plaint schedule property consisting of Ac.1.05 gts in S.No.54, Ac.1.33 gts in S.No.55, Ac.2.15 gts in S.No.56, total admeasuring Ac.5.13 gts situated at Bandlaguda Khalsa Village & Mandal, Hyderabad District bounded by East-Road and on all other sides neighbours house by alleging the threatened interference by the defendant. Pending the suit, the revision respondents filed I.A. No.836 of 2014 for grant of ad-interim injunction in respect of the suit property that was allowed on contest, on merits on 14.12.2015.

3) It is alleging that despite the temporary injunction granted against the revision petitioner herein/ defendant not to interfere with the plaintiffs' possession and enjoyment of the suit property supra, the defendant is violating the same and even plaintiffs reported the matter to the Station House Officer, Chandrayanagutta Police Station with no action which resulted in moving the application for police protection in I.A. No.31 of 2016. The affidavit supporting the allegations supra in the nut shell are that the

defendant and his associates at the instigation of Wakf Board, despite knowing the injunction order which is in subsistence, with no regard or respect to the Court orders are wilfully and intentionally trying to violate the interim orders and trying to interfere with the plaint schedule property and in view of their illegal acts, plaintiffs are constrained to file the application.

4) The said petition was opposed by sole defendant saying that the Telangana State Wakf Board having superintendence over the Wakf institution and the defendant never violated any of the orders of the Court and petitioners are not entitled to police aid. It is further contended that respondent filed W.P. No.2730 of 2016 and obtained interim order against the police, as such petitioners are not entitled to police aid. It is also the contest that the respondent filed C.M.A. No.2 of 2016 along with interim suspension application in I.A. No.50 of 2016 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad against the order passed in I.A. No.836 of 2014 and the plaintiffs are dragging on the matter in the miscellaneous appeal and thereby not entitled to police aid and there is no disobedience of the injunction order to get police aid.

5) From the respective contest, the lower Court allowed I.A. No.31 of 2016 on 21.04.2016 directing the Station House Officer, Chandrayanagutta Police Station to give police aid to the petitioners for implementation of the order of the temporary injunction passed in I.A. No.836 of 2014 dated 14.12.2015 and with observation that respondent and his associates are interfering at the instigation of Wakf board, as per the petition averments and thereby to implement the orders of injunction passed in I.A. No.836 of 2014. Petitioners even moved an application for police protection before the SHO,

Chandrayanagutta and higher officials in the end of December, 2015 and in the month of January, 2016 with no use and what the contest of respondent is by filing copy of the order dated 01.02.2016 passed in W.P.M.P. No.3420 of 2016 in W.P. No.2730 of 2016 with observation that injunction granted in favour of the petitioners by the competent trial Court is still in operation and thereby, it is not open to the police authorities to act in violation thereof even at the instance of the Wakf Board, which is not even a party to the injunction order and the police cannot act contrary to the findings recorded by the trial Court as long as the same remains in operation and accordingly, directed the police authorities not to act in violation of the injunction order as long as the same remains in operation and in view of the same and in the circumstances, the police aid can be granted in favour of the petitioners.

6) The contest of the revision petitioner/ defendant is that the defendant filed written statement in O.S. No.1486 of 2014 and I.A. No.164 of 2015 is filed for rejection of plaint saying the suit property is a Wakf property duly notified in the official gazette and against the impugned order of injunction, C.M.A. No.2 of 2016 is filed pending appeal with I.A. No.50 of 2016 for suspension of the injunction order and in view of the facts and from the defendant is claiming possession over the suit property and the title is not in dispute, the trial Court should not have granted the police aid and thereby, sought for setting aside the impugned order granting police aid by allowing the revision. Learned counsel for the revision petitioner/ defendant reiterated the contentions raised in the grounds of revision. Whereas it is the submission of the learned counsel for the respondents/ plaintiffs in support of the order of the

lower Court that the same holds good supported by reasons and no way requires interference by sitting in revision.

7) Heard both sides at length and perused the material on record.

8) The Apex Court in ***Meera Chauhan vs Harsh Bishnoi and another***¹ observed that inherent powers of the Civil Court can be exercised only in exceptional circumstances where there is no specific provision and when the parties violated the injunction order, Court can exercise not only the mandatory injunction invoking Order XXXIX CPC but also to restore the possession back by exercising power under Section 151 C.P.C in claiming possession as to who is in actual possession of the property for such restoration, the plaintiff is in actual possession and dispossessed by defendant pending injunction. It was observed on facts, that the injunction order alleged violation was, in fact, against transferring, alienating or encumbering the suit property and not against interfering with possession of plaintiff and when plaintiff has not even prayed for injunction not to interfere with possession from what the injunction granted, there is no violation of the Court order in seeking restoration of possession pending injunction. The said order is unsustainable of ordering restoration, for no injunction not to interfere with the possession, though otherwise it is the well settled law that when parties violate order of injunction or stay order or act in violation of the injunction, the Court can exercise its inherent power, to prevent any violation or even to put back the parties with status quo anti by restoring the same position as they stood by the time of passing injunction order or even to give proper direction to the police authorities to render aid

¹ 2007 (12) SCC 201

to the aggrieved parties for the due and proper implementation of the orders passed and such an exercise of the inherent power is recognised by the Apex Court in ***Manohar Lal Chopra vs Rai Bahadur Rao Raja Seth Hiralal***² with observation that inherent power of the Court to pass orders for the ends of justice or to prevent the abuse of the process of the Court including to issue temporary order of injunction in relation to the circumstances or facts not covered by Order XXXIX CPC for Section 151 C.P.C is available to exercise. However, the exercise of the inherent power is in exceptional circumstances for which the Court not provided specific provision. At the same time, it is well settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or to give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. In the event of utter violation of injunction order, the party forcibly dispossesses the other despite the order, the Court can order restoration of possession to the party wronged in holding therefrom the trial Court is justified in ordering restoration of possession from plaintiff in whose favour injunction is granted was dispossessed violating the injunction by the defendants. Thus, the Apex Court fairly lays down that to implement the orders of the Court including to grant police aid, inherent powers inheres in every Court under Section 151 C.P.C can be exercised. In ***Polavarapu Nagamani and others vs Parchuri Koteshwara Rao***

² AIR 1962 SC 527

and others³ the Division Bench of this Court observed that of late, the Court has noticed that number of suits for injunction in all the Courts is on increase. It is not without truth to say that more often than no frivolous suits of injunction are filed only to bring the defendants around the plaintiff's view and accept some via-media arrangement to avoid long drawn, expensive and time consuming proceedings in the Courts, during which the defendants would not be able to enjoy the property with peace. In all such cases, ordinarily, urgent motion is moved before the civil Court, an order of *ex parte* injunction is obtained and waiting for a period of fortnight or so and immediately moving application under Section 151 C.P.C for police protection. Instances are not rare where defendants are subjected to harassment after obtaining order of injunction. Police have no role in civil adjudication and Courts should be very cautious and vigilant not to introduce police intervention in civil adjudication in indirect manner at the instance of a clever and resourceful plaintiffs. In view of this, all the Civil Courts in the State of Andhra Pradesh are directed to exercise abundant caution in dealing with interlocutory applications filed by the party, obtaining an order of injunction seeking police protection. For the guidance of all the civil Courts, it is laid down as under:

- i) When the allegations are made by the party obtaining an order of injunction, that the said order has been violated, an application seeking police protection would not lie. The aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of CPC seeking attachment and/or arrest of the violator for contempt of the Court.**

³ 2010 (2) ALD 41 DB

- ii) When a petition is filed seeking police protection, whether or not to exercise of power under Section 94 (e) or Section 151 of CPC, the facts alleged or pleaded, an order for police protection cannot be passed in a routine manner.**
- iii) If an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of the order of injunction, subject to proof, the Court has power to order police protection imposing necessary conditions not to interfere with the life and liberty, and rights of the opposite party.**
- iv) The standard of proof required in the case of threat of disobedience of injunction or alleged breach, disobedience or violation of an order of injunction should be very high and it should be in between the standard of beyond reasonable doubt and a standard of balance on possibilities. Be it noted, as held by Supreme Court in (2001) 7 SCC 530 and (2002) 4 SCC 21, in all cases of contempt the plea should be proved applying the very high standard of proof and not mere affidavits or self serving statements of the party seeking the intervention of the Court.**

From the said guidelines (i) to (iv), the granting of police aid is observed as not in routine, if an application is filed by the person obtaining ad-interim injunction alleging that there is a threat of breach, disobedience or violation of ad interim injunction orders, Court got power to provide police protection by imposing necessary conditions including not to interfere with life, liberty and rights of the opposite party to proceed and the proof is not very mere vague allegations but something more and otherwise, there is a possibility to seek for violation of temporary or interim injunction under Order XXXIX Rule 2-A CPC and in case of permanent injunction under Order XXI Rule 32 CPC.

9) The Division Bench of this Court did not refer the expression of the Apex Court in *Meera Chauhan* (supra) though it referred *Manohar Lal Chopra* (supra) and quoting therefrom Court has power to direct the police to prevent violation of disobedience of prohibitory injunction orders by providing necessary protection to enforce the order of injunction, by invoking Section 151 C.P.C and Section 94 (e) C.P.C though there is no express provision in passing the orders.

10) In ***Yarlagunta Bhaskar Rao and others vs Bommaji Danam and others***⁴ the Single Judge of this Court by referring to the expression of the Apex Court in *Meera Chauhan* (supra) and also the Division Bench expression of this Court in *Polavarapu Nagamani* (supra) apart from another Division Bench expression earlier of this Court and ***Satyanarayana Tiwari vs SHO, PS, Santoshnagar***⁵ holding no authority in the State, Revenue or Police, can ignore the finding of the civil Court or refuse to take steps to see that the order of the civil Court is implemented and the party, in whose favour there is an order of the civil Court should get all help to maintain the law and order and the other party cannot be allowed to contravene the injunction order and create law and order problem. It was observed so, in a writ petition filed under Article 226 of the Constitution of India for direction to police to enforce the orders of the Civil Court to provide police protection to implement the orders of injunction and concluded therefrom, that was held by the Apex Court even in cases where there is violation of an injunction order in a suit or threat of violation exists, orders of police protection may be granted. No doubt, it is necessary that the rights of the parties should be determined

⁴ 2014 (1) ALD 309

⁵ AIR 1982 AP 394 DB

either finally in the suit or at least at an interlocutory stage in an unambiguous manner. Therefore, the Division Bench expression in **Polavarapu Nagamani** (supra) insofar as it held that an application for police protection is not maintainable, if there is a violation of an injunction order passed in a suit has to be held to be *per incuriam*.

11) The Learned Single Judge in **Yarlagadda Bhaskar Rao** (supra) also referred, to the conclusion, the expression of the Madras High Court in **N.Karpagam and others vs P.Deivanaiammal and others**⁶ where it is referring to earlier Division Bench of Madras High Court in 1992 TLNJ 120 referring to the case law on the scope of inherent powers under Section 151 C.P.C, in appropriate cases, civil Court has the power and is indeed under a duty, to issue suitable directions to police officials, as servants of law, to extend their aid and assistance in the execution of decrees and orders of civil Courts or implementing an order of injunction passed by it. It also referred the expression of the Bombay High Court in **Smt.Nirabai J. Patil vs Narayan D.Patil**⁷, where it is observed that, it is the duty of every police officer to enforce the law of the land as reflected in Sections 64 and 66 of the Bombay Police Act, 1951 and the inherent power under Section 151 CPC enables the Court to pass the order directing the police to provide their aid to implement the orders. No doubt, grant of police aid is an extreme step and therefore order for grant of police help or police assistance cannot be made unless the Court is fully convicted about the existence of grave emergency such as apprehension of violence by the persons against whom the order has been passed. It is very difficult to give exhaustive list of circumstances but to decide from the facts of each case. It also

⁶ AIR 2003 Madras 219

⁷ AIR 2004 Bombay 225

referred another expression of the Apex Court in ***P.R.Muralidharan and others vs Swamy Dharmananda Theertha Padar and others***⁸ deciding the scope of powers of the High Court under Article 226 of the Constitution of India in ordering police protection from the threat perception to his life and liberty or for protection of rights declared by any decree or order of civil Court. No doubt, it is held that disputed questions of fact cannot be gone into in a writ proceeding and that the jurisdiction of civil Court being wide and plenary, a Writ for “police protection” so-called, has only a limited scope, as, when the Court is approached for protection of rights declared by a decree or an order passed by civil Court and cannot be extended to cases where rights have not been determined either finally by the civil Court or, atleast at an interlocutory stage in an unambiguous manner to grant police aid for furtherance of its implementation or enforcement.

12) In ***Mettu Malyadri vs Meetu Sivaiah***⁹ the single Judge of this Court observed that Courts while granting police aid have to see the facts and circumstances of each case and Court is always justified in granting police aid to protect the possession of a person, who is the lawful owner of the property, if a person having no right and title wrongfully interferes with his possession. For that conclusion, it referred the expression of the Apex Court in ***Kanwar Singh Saini vs High Court of Delhi***¹⁰ apart from the Division Bench expression in Polavarapu Nagamani (supra) and single Judge

⁸ ((2006) 4 SCC 501)

⁹ 2014 (3) ALT 17

¹⁰ 2012 (4) SCC 307

expression in **B.Chandra Shekar Reddy vs K.Naga Raju Yadav**¹¹ referring to the Division Bench expression supra.

13) Another single Judge expression of this Court in **Gampala Anthaiah and others vs Kasarla Venkat Reddy and others**¹² referring to all the expressions covered by Yarlagadda Bhaskara Rao (supra) same learned Judge who dealt with the case observed that, even in cases where there is a violation of an injunction order in a suit as opposed to a situation where only a threat of violation exists, orders of police protection may be granted, if the rights of parties are determined either finally in the suit or atleast at an interlocutory stage in an unambiguous manner and there other decision referred additionally is **Neetha Chintawar and another vs Bodugam Gopi**¹³ that the very grant of an order for temporary injunction passed by the Court on contest from satisfaction of existence of prima facie possession of the plaintiff over the suit property with balance of convenience in favour of plaintiff, who suffer irreparable loss, according protection for such finding of possession, pending disposal of the suit, police aid can be granted and if at all the defendant is aggrieved, his remedy is to file an appeal against the order granting injunction and without modification of which he cannot be permitted to plead that plaintiff is not in possession.

14) The learned Single Judge of this Court in **E.Venkatarama Naidu and another vs E.Ramachandra Naidu and another**¹⁴ by referring to the entire case law reiterated the

¹¹ (3) 2013 (1) ALT 532

¹² 2014 (2) ALT 661 = (2) ALD 681

¹³ 2006 (5) ALD 95

¹⁴ 2015 (5) ALT 238

proposition saying police aid can be granted even in the event of violation of order of temporary injunction, by reiterating the observation that the Division Bench expression in Polavarapu Nagamani (supra) to that extent is *per incuriam*. Another Single Judge expression of this Court in ***Hindustan Petroleum Corporation Limited vs Government of A.P., rep. By its Principal Secretary, Home Department and others***¹⁵ observed that the Government and police are duty bound to enforce the orders or interim orders of Court and give protection and assistance to the persons, who obtained such order and when sought for such protection by making a complaint, and for that conclusion, referred the expressions approving the Division Bench expression of this Court in Satyanarayana Tiwari (supra) the Apex Court in P.R.Muralidharan by deferring to Division Bench expression in Polavarapu Nagamani's case (supra) to some extent and by approving the Single Judge expression of this Court in Gampala Anthaiah's case (supra) by quoting with approval from Satyanarayana Tiwari's case (supra) of the expression of Lord Denning in ***R. V. Metropolitan Police Commissioner***¹⁶ that the police authorities owe a legal duty to the public to enforce the law and citizens are entitled to seek directions under Article 226 of Constitution of India and under the Writ, Court can give direction to the police authorities for discharge of such duties equally by civil Court invoking Section 151 C.P.C for proper implementation of the orders of the Court.

15) Having regard to the above legal position and coming back to the facts, when affidavit clearly shows threatened interference despite the injunction order and undisputedly, the order

¹⁵ (2015) 2 ALT 59

¹⁶ (1968) 1 All ER 763

is within knowledge and even appeal filed and interim suspension sought for, there is no interim suspension order passed pending appeal and therefrom not only the order granting injunction is in force, there is no right to interfere much less by violating the order under the guise of threatened interference. When the affidavit averments clearly show threatened interference, the granting of police aid to implement the order passed by the lower Court requires support from four legal corners and no way requires interference by this Court while sitting in revision, even the order referring to the facts did not give so many reasons.

16) Having regard to the above, the revision is dismissed. No order as to costs.

17) As a sequel, miscellaneous petitions if any pending in these Civil Revision Petitions shall stand closed.

Dt.30.12.2016
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Dr. B. SIVA SANKARA RAO, J

