

**THE HON'BLE SRI JUSTICE A.V. SESA SAI**

**WRIT PETITION No.26509 OF 2015**

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**ORDER:**

The grievance in the present Writ Petition is the alleged non-implementation of the order dated 15.05.2015 passed by the second respondent – Tahsildar/Mandal Executive Magistrate, Mydukur, in M.C.No.786 of 2015.

2. Heard Sri Polisetti Radha Krishna, learned counsel, appearing for the petitioner, Sri P.Gangaiah Naidu, learned Senior Counsel, appearing on behalf of Sri N.Jayasurya, learned counsel on record for the 4<sup>th</sup> respondent and learned Government Pleader for Home.

3. Petitioner herein and the 4<sup>th</sup> respondent are own brothers and are the sons of one Late Sri Subbanna. According to the petitioner, himself and his brother are having agricultural lands of Acres 12.90 cents in Survey Nos.61, 62 and 63/1 of Adhireddipalle Village, Mydukuru Mandal, Kadapa District. It is further pleaded by the writ petitioner that out of the said extent of Acres 12.90 cents, pursuant to an oral partition, petitioner is in possession of Acres 6.45 cents and he raised turmeric crop and having two acres of Mango garden.

4. Earlier, on the complaint of the petitioner's wife, Smt.Chandravathi, in the year 2012, Mydukur police registered Crime No.147/2012 under Sections 324 and 34 of IPC. Police also filed charge sheet on 23.07.2012 and the same is numbered as C.C.No.241 of 2012 on the file of the Court of the Judicial First Class Magistrate, Mydukur. Thereafter, on the complaint of the petitioner, Mydukur Police registered Crime No.296/2013 and after filing charge sheet dated 12.08.2013 by the police, the same is numbered as C.C.No.311/2014 on the file of the Judicial First Class Magistrate,

Mydukur under sections 341, 324, 506 and 34 of IPC.

5. According to the petitioner, the interference of the 4<sup>th</sup> respondent is on the ground that the petitioner alleged to have executed an agreement of sale on 24.12.2014 in favour of the 4<sup>th</sup> respondent for Acres 4.80 cents in Survey Nos.61, 62 and 63. As per the petitioner, the said agreement of sale is a fabricated one.

6. 4<sup>th</sup> respondent, basing on the said agreement of sale, dated 24.12.2014, got issued a legal notice dated 27.03.2015, calling upon the petitioner and his wife to Register the land, admeasuring Acres 4.80 cents situated in Survey Nos.61, 62 and 63 of Adhireddipalle Village, Mydukur Mandal, Kadapa District. Petitioner herein got issued a reply on 04.04.2015 for the said legal notice.

7. On 03.03.2015, petitioner made a complaint to the police against the 4<sup>th</sup> respondent, complaining trespass and on 04.04.2015, Police, Mydukur, registered FIR No.109/2015 under Sections 143, 447, 427 and 435 read with 34 IPC against the 4<sup>th</sup> respondent and others.

8. According to the petitioner, as a counter blast to the above complaint, 4<sup>th</sup> respondent lodged a complaint with the police and the police registered Crime No.110/2015 for the alleged offences under Sections 420, 435 read with 34 of IPC. It is the allegation of the petitioner herein that the 3<sup>rd</sup> respondent – Inspector of Police, Mydukur, registered the said Crime No.110/2015 to favour the 4<sup>th</sup> respondent, though the subject matter is civil in nature. It is further stated in the affidavit filed in support of the writ petition that seeking quashment of the said Crime No.110/2015, petitioner herein filed Crl.P.No.3546 of 2015 before this Court and this Court by way of an order dated 27.04.2015, directed the police not to arrest the petitioner.

9. Basing on the information furnished by the Inspector of Police, Mydukur, the Mandal Executive Magistrate, Mydukur –

2<sup>nd</sup> respondent herein pressed into service, the provisions of Section 145 of Cr.P.C. in M.C.No.786 of 2015 and passed an order on 15.05.2015, directing both the parties and their family members not to enter into the schedule land.

10. This Court, while ordering ‘Rule Nisi’ on 31.08.2015, passed the following order in W.P.M.P.No.34456 of 2015:

*“Notice.*

*It is stated in the counter-affidavit filed by the Sub-Divisional Police Officer, Mydukur Sub Division, YSR Kadapa District that pursuant to the proceedings of the 2<sup>nd</sup> respondent under Section 145 Cr.P.C., vide M.C.No.786 of 2015, dated 15.05.2015 initiated by the Mandal Executive Magistrate/Tahsildar, Mydukur Mandal, YSR Kadapa District, the 3<sup>rd</sup> respondent authorities are not allowing anybody including the petitioner and the 4<sup>th</sup> respondent herein to enter into the subject land.*

*In view of the above, there shall be interim direction to the respondents to strictly act, in accordance with the order in vide M.C.No.786 of 2015, dated 15.05.2015 passed by the Mandal Executive Magistrate/Tahsildar, Mydukur Mandal, YSR Kadapa District, so long as it remains in force.”*

11. Thereafter, the 4<sup>th</sup> respondent herein filed W.P.M.P.No.43817 of 2015, praying for modification of the interim orders dated 31.08.2015, by restricting the same to the lands in respect of the disputed sale transaction dated 24.12.2014 and this Court, on 07.01.2016, passed the following order:

*“Heard both sides.*

*It is agreed by learned counsel for the petitioner so also learned counsel for the respondents that necessary directions may be issued to the Revenue Divisional*

*Officer, Jammalamadugu, to get the Banana and Turmeric crops lying in the lands in Survey Nos.61, 62 and 63/1 admeasuring Acres 4.80 cents harvested and sold by way of public auction and deposit the same in any Nationalised Bank pending further orders.*

*For the aforesaid reasons, there shall be direction to the Revenue Divisional Officer, Jammalamadugu, Kadapa District, to get the Banana and Turmeric crops in the above said lands in Survey Nos.61, 62 and 63/1 harvested and get the same sold by public auction and deposit the sale proceeds in any Nationalised Bank and the same be subject to further orders.*

*Revenue Divisional Officer, Jammalamadugu, Kadapa District, suo-motu impleaded as Respondent No.6 in W.P.No.26509 of 2015.”*

12. In the present Writ Petition, a counter affidavit is filed by the Sub-Divisional Police Officer, Mydukur, stating that pursuant to the impugned proceedings dated 15.05.2015, initiated by the Mandal Executive Magistrate - 3<sup>rd</sup> respondent is implementing the said proceedings and did not allow anybody including the petitioner and the 4<sup>th</sup> respondent herein to enter into the disputed land and the same cannot be construed as interference or harassment of the police. Counter affidavit further avers that if the petitioner has any grievance against the 4<sup>th</sup> respondent, he has to file a civil suit against that respondent for cancellation of the alleged agreement of sale and other remedies. It is further stated that the petitioner and his brother created nuisance, law and order problem and also lodged complaints against each other in the police station with regard to their property, which resulted in initiation of the proceedings by Mandal Executive Officer, under Section 145 Cr.P.C.

13. Number of allegations and counter allegations have been made by the petitioner and the 4<sup>th</sup> respondent. This Court, in exercise of the powers conferred under Article 226 of the Constitution of India, is not inclined to go into the same. This Court is also not inclined to go into

the plea, touching agreement of sale and its validity and it is always open for the parties to agitate their civil rights before the competent Civil Court, if they are advised to do so. At the same time, the Mandal Executive Magistrate, is required to exercise his powers, strictly, in accordance with the provisions of Section 145 of the Cr.P.C. The parameters prescribed by the said provision are required to be adhered to by the Mandal Executive Magistrate and he also cannot travel beyond the jurisdiction conferred on him by the statute.

14. Admittedly, in the present case, as evident from the impugned order, the Mandal Executive Magistrate, passed the preliminary order only but not an order, after enquiry as contemplated under Section 145 of Cr.P.C. Therefore, without going into the other aspects of the matter, this Court is of the considered opinion that the interest of justice would be met, if the 2<sup>nd</sup> respondent - Mandal Executive Magistrate, is directed to proceed with the further enquiry in the proceedings already initiated and pass final orders, by fixing some timeframe.

15. For the aforesaid reasons, Writ Petition is disposed of, directing the 2<sup>nd</sup> respondent – Mandal Executive Magistrate, to enquire into the matter in M.C.No.786 of 2015 by giving complete opportunity to all the stake holders, in accordance with the provisions of Section 145 of Cr.P.C., and pass final orders in the matter, within a period of one month from the date of receipt of a copy of this order. The amounts realised by way of sale as per the orders of this Court in W.P.M.P.No.43817 of 2015, dated 07.01.2016, shall be paid subject to the outcome of the subject proceedings in M.C.No.786 of 2015. It is also made clear that for settlement of their civil disputes, it is open for the parties to approach a competent Civil Court.

16. As a consequence of disposal of the main Writ Petition, miscellaneous petitions and contempt case pending consideration, if any, in the Writ Petition shall stand closed. No order as to costs.

14.06.2016  
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A.V.SESHA SAI, J