

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA  
PRADESH**

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**WRIT PETITION No.29790 of 2016**

Between:

1. Mr.Yerranagari Santosh Reddy and others ..... Petitioners

and

1. State of Telangana, rep. by its Principal Secretary  
Home Department and others .....Respondents

Judgment pronounced on : 26-09-2016

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

1. Whether Reporters of Local newspapers may be allowed to see the judgments? : --
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether their Lordship wish to see the fair copy of the Judgment? : --

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

**WRIT PETITION No.29790 of 2016**

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Versus

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< **GIST:**

> **HEAD NOTE:**

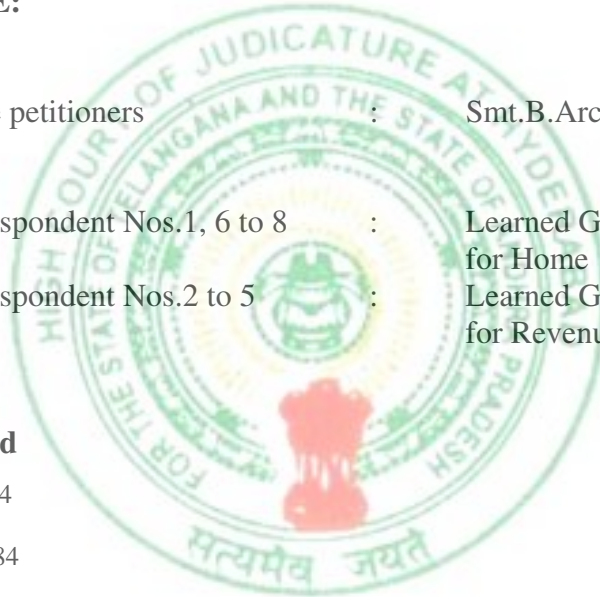
!Counsel for the petitioners : Smt.B.Archana

^ Counsel for respondent Nos.1, 6 to 8 : Learned Government Pleader  
for Home

^ Counsel for respondent Nos.2 to 5 : Learned Government Pleader  
for Revenue

**? Cases referred**

1. AIR 1961 SC 884
2. AIR 1984 SC 51
3. (2004) 4 SCC 684
4. (2012) 5 SCC 1
5. 95L Ed 295: 340 US 315(1951)



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

**W.P.No.29790 of 2016**

**ORDER :**

The petitioners are residents of Vemulaghat Village, Thoguta Mandal, Medak District.

2. Respondent no.s 1 and 2 are the Home and Revenue Departments of the State of Telangana, the 3<sup>rd</sup> respondent is the District Collector and Chairperson, District level Land Procurement Committee, Sangareddy, Medak, the 4<sup>th</sup> respondent is the Revenue Divisional Officer, Siddipet Division, Medak, the 5<sup>th</sup> respondent is the Executive Magistrate and Tahsildar, Thoguta Mandal, Siddipet, Medak district, the 6<sup>th</sup> respondent is the Superintendent of Police, Medak and respondent no.s 7 and 8 are the Circle Inspector and Sub-Inspector of Police, Thoguta Mandal, Siddipet, Medak District.

3. The petitioners have filed this Writ Petition challenging order No.A/100/2016 dt.28.07.2016 of the 5<sup>th</sup> respondent/Executive Magistrate promulgating an order under Section 144 Cr.P.C. in Vemulaghat, Pallepahad Villages of Thoguta Mandal. Under the said order, he directed that no unlawful assembly of more than three to four persons shall gather at one place carrying sticks, knives, weapons, lathis and other harmful instruments from that date.

**THE ORDER NO.A/100/2016 DT.28.07.2016 OF THE 5<sup>TH</sup> RESPONDENT**

**4.** The reasons for passing the said order under Sec.144 Cr.P.C as mentioned therein are :

*“ Whereas the Sub-Inspector of Police, Thoguta has informed that, on 24.07.2016 at morning hours the evacuees of Mallannasagar Project, viz., Vemulghat, Pallepahad Villages of Thoguta Mandal compressing with other political party members gathered as mob and taken procession by carrying sticks and weapons in their hands by violating promulgate orders of 30 Police Act of Superintendent of Police, Medak to staged a dharna on Rajiv Rahadhari road, on receipt of information from the Sub-Divisional Police Officer, Siddipet Circle Inspector of (P) Thoguta and staff rushed to the Vemulaghat & Pallepahad villages and requested them for disburse but they have not listened and attacked on the police and beaten them with the sticks and stones, due to which the police received severe injuries, due to unavoidable circumstances and saving of their lives, the Circle Inspector of Police, Siddipet-I town fired two rounds in the air due to hearing of noise the unlawful mob disbursed and later they again attacked on the Sub-Inspector of Police, Doulthabad and his staff with sticks and stones, taking into consideration and situation prevailing in Vemulaghat village there is every likelihood of breach of peace and public tranquility and expecting that the crowds of evacuees and other unlawful assemblers may cause law and order problem in Vemulaghat village and requested to promulgate order U/s 144 Cr.P.C. from 28.07.2016.*

*Therefore, it is felt necessary to promulgate the provision of Sec.144 Cr.P.C. in the villages of Vemulaghat and the places where the public peace will breached in this Mandal from 28.07.2016 and to maintain the Law & Order to prevent occurrence of untoward incidents and to avoid internal interference of the public.*

*Therefore, I Sri G. Deshya, Executive Magistrate and Tahsildar, Thoguta hereby promulgate the provisions of Sec.144 Cr.P.C. in the above said villages of this Mandal to avoid unlawful assembly of more than 3 to 4 persons gathering at one place carrying*

*sticks, knives, weapons, lathies and other harmful instruments with effect from 28.07.2016.”*

### **THE PETITIONERS' CONTENTIONS**

5. The petitioners contend that the 1<sup>st</sup> respondent intended to acquire land admeasuring Acs.20,079 in fourteen villages including the above two villages for the purpose of a proposed irrigation project by name “Mallannasagar”, that it had issued G.O.Ms.No.123 (Revenue JA & LA) Department, dt.30.07.2015 stating it will purchase by consent, lands of landowners for the said project, but that it is indulging in coercive tactics, force, threats, and intimidation to acquire the lands in the above villages without following the Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013. The petitioners allege that they are opposed to this attempt of the Government to deprive the residents of the above villages of their land by due process of law and contend that under the guise of “consent” and “willingness” (both of which, they allege are not free) and are result of coercion, intimidation and threats, the State is intending to deprive them of their land. They contend that under the guise of the said G.O., the Government machinery descended on the village along with Police and coerced the villagers to sign on agreement forms to sell their lands to the Government for the said project. Petitioners contend that under the said G.O. the 1<sup>st</sup> respondent can buy lands only from willing farmers and it cannot compel unwilling farmers to part with their land through coercion.

6. The petitioners allege that on 24.07.2016, when land owners such as the petitioners from Vemulaghat, decided to make a representation to the District Collector, they were way-laid by the Police and not allowed to go any further, that they were illegally restrained and subjected to lathi-charge and flogging making no distinction between men, women or children either. They contend that the residents of the villages suffered severe injuries and that the respondents even foisted FIR No.s 128 and 129 of 2016 at P.S. Kukunoorpally, Medak District under Section 307 I.P.C., and other provisions of law. They contend that they managed to get anticipatory bail from the VI Additional District and Sessions Judge, Siddipet in Criminal M.P.Nos.761 and 762 of 2016 on 18.08.2016.

7. The petitioners allege that after the passing of the impugned order, Vemulaghat village became a virtual fortress and strict and absolute curbs on the movement of residents of Vemulaghat were imposed and outsiders were not allowed to visit the village. They contend that every entry into the village and every exit is monitored by the Police by installing police pickets and identity proof of residents and other visitors is being insisted upon. It is stated that respondent nos.7 and 8 are threatening the residents of the village with dire consequences if the residents do not surrender and sign consent forms and register their lands under G.O.Ms.No.123 in favor of the Government and that the respondents are hounding the residents, intimidating them and threatening their families. It is alleged that the

police are even seeking information of their whereabouts if they do not get back to their village in a specified period of time. It is alleged that women and children in the village are living in a state of fear psychosis, literally dreading each day, that residents are unable to go to work or to go to their fields to carry on agriculture. They contend that the impugned order is passed only to threaten and intimidate the residents of the village and deny them an opportunity to seek help or complain and this has put their life, livelihood and liberty at risk. They therefore seek for a declaration that the said order is illegal, arbitrary, and in violation of Article 14, 19 (1) (d), 21 and 300-A of the Constitution of India and the Criminal Procedure Code, 1973. It is now 59 days since the said order was passed.

**8.** The learned counsel for petitioners reiterated these contentions and also pointed out that there is no justification for the State to keep it in force any longer as 59 days have passed by and since the situation at present is calm and peaceful particularly since the landowners have been granted interim relief by a Division bench of this Court headed by the Hon'ble acting Chief Justice restraining the State from acting upon consent letters given by farmers under the G.O.M.s 123 dt.30.7.2015 who have approached this Court alleging that their consent was not voluntary and alleging that they were coerced/intimidated to give such letters.

### **THE STAND OF THE RESPONDENTS**

**9.** Counter-affidavit has been filed by the 6<sup>th</sup> respondent supporting the impugned order and denying the allegations made by the petitioners.

**10.** It is alleged by respondent no.6 that at the instigation of a former Dy. Chief Minister, news reporters of certain TV Channels were beaten up and their cameras and cell phones damaged, that a complaint had been lodged on 01.06.2016 with the 8<sup>th</sup> respondent and it has been registered as Crime No.53 of 2016 under Sections 143, 109, 504, 323, 427 read with Section 149 I.P.C.

**11.** It is stated that on 24.07.2016, a procession was taken by the villagers of the above villages to Yerravalli village in violation of orders promulgated by the 6<sup>th</sup> respondent under Section 30 of the Police Act, and when the persons in the procession including the petitioners were requested to disperse, they attacked the police and beat them up with sticks, stones and weapons causing serious injuries. It is alleged that they even attempted to kill some of the police men and the Circle Inspector of Police, Siddipet – I Town fired two rounds in the air which dispersed the mob and saved the lives of the police. It is stated that Crime No.128 of 2016 was registered under Sections 147, 148, 353, 332, 307, 504, 506, 188 read with Section 149 of I.P.C. before the Kukunoorpally Police Station, Medak District.

**12.** It is alleged that on the same day, another similar incident took place in the morning hours near the Rajiv Rahadari Road and Crime No.129/2016 was registered under Sections 147, 148, 353, 332, 307, 504, 506, 188 read with Section 149 of I.P.C before the Kukunoorpally Police Station, Medak District.

**13.** It is contended by respondent no.6 that in view of the above three incidents, since there was every chance of creation of a serious law and order problem and keeping in view the necessity to maintain control, the 6<sup>th</sup> respondent sent a report to the 5<sup>th</sup> respondent, and on the basis of the said report, the impugned order has been passed. It is contended that the impugned order issued by the 5<sup>th</sup> respondent is in accordance with law, was justified keeping in view the larger public interest to save the lives of innocent persons from the clutches of anti-social elements. It is stated that if the said order was not passed, there was every chance of blood-shed which cannot be controlled later. The other allegations leveled by the petitioners are denied and it is stated that if the impugned order is not passed, there is every chance of some anti-social elements entering the village of Vemulaghat and spoiling the smooth atmosphere creating breach of peace and tranquility. It is alleged that the Writ Petition is politically motivated and filed with a view to damage the image of the Police before the general public. It is stated that registration of criminal cases does not mean that the police are threatening the petitioners and asking them to sell their lands to the Government.

**14.** The learned Government Pleader for Home reiterated the above contentions.

**15.** It was admitted by learned Government Pleader for Home also that the landowners in the area including the two villages in question have been granted interim relief by a Division bench of this Court and it had restrained the State from acting upon consent letters given by farmers under the G.O.M.s 123 dt.30.7.2015 who have approached this Court alleging that their consent was not voluntary and alleging that they were coerced/intimidated to give such letters.

**16.** I have noted the contentions of both sides.

#### **THE POINT FOR CONSIDERATION**

**17.** Therefore, the points for consideration is:

*“(a) whether the petitioners have made out any ground for setting aside the impugned order passed under Section 144 of Cr.P.C.?”.*

*(b) whether the acts alleged by petitioners against the respondents fall within the scope of the order passed under Sec.144 Cr.P.C by 5<sup>th</sup> respondent?”*

#### **THE CONSIDERATION BY THE COURT**

##### **Point (a):**

**18.** Section 144 of Cr.P.C. states :

*“144. Power to issue order in urgent cases of nuisance or apprehended danger. –*

(1) *In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.*

(2) *An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.*

(3) *An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.*

(4) *No order under this section shall remain in force for more than two months from the making thereof :*

*Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.*

(5) *Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office.*

(6) *The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub-section (4).*

(7) *Where an application under sub-section (5) or sub-section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.”*

**19.** A reading of the above provision indicates that in cases where a Magistrate forms an opinion that there is sufficient ground for proceeding under this Section and immediate prevention or speedy remedy is desirable, he may pass a written order stating the material facts and direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if he considers that such direction is likely to prevent, or tends to prevent obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance or the public tranquility, or a riot, or an affray. Such order can be passed ex parte in situations of emergency, but it will not be in force for more than two months from the making thereof. The State Government is empowered to extend it for a further period not exceeding six months by issuing a notification if it thinks it is necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray.

**20.** The Constitutional validity of this provision has been upheld by a Constitution Bench of the Supreme Court in **Babulal Parate v. State of Maharashtra**<sup>1</sup>. The contention that the said provision confers very wide powers upon certain Magistrates and that in exercise of those powers, the Magistrates can place very severe restrictions upon the rights of citizens to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India and the right to assemble peace of live and without arms guaranteed by Article 19(1)(b) of the Constitution of India was repelled. However, the Court held that though the power under Section 144 Cr.P.C. appears to be wide, it can be exercised only in an emergency and for the purpose of preventing obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility or a riot or an affray. It held that these factors condition the exercise of the power under that provision and it would be wrong to regard that power as being unlimited or untrammelled. It observed that no one has a right to cause “obstruction, annoyance or injury etc.” to anyone. It however observed that since the judgment has to be of a Magistrate as to whether in the particular circumstances of a given case, an order, in exercise of these powers, should be made or not, the Court is entitled to assume that the powers will be exercised legitimately and honestly. It held that the Section cannot be struck down on the ground that the Magistrate may possibly abuse his powers. It held that maintenance

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<sup>1</sup> AIR 1961 SC 884

of law and order being the duty and function of the Executive Department of the State, it is inevitable that the question of formation of the opinion as to whether there is an emergency or not must necessarily rest, in the first instance, with those persons through whom the Executive exercises its functions and discharges its duties. It held that it would be impracticable and even impossible to expect the State Government itself to exercise those duties and functions in each and every case. It observed that the decision of the Magistrate in a proceeding under Section 144 Cr.P.C. is a judicial proceeding, though in certain circumstances the said order can be passed *ex parte*, since there is power under sub-section (4) of Section 144 Cr.P.C. conferred on the Magistrate to rescind or alter any order made either on his own motion or on the application of any person aggrieved. It held that since the propriety of the order under Section 144 Cr.P.C. is open to challenge, it cannot be said that by reason of the wide amplitude of the power which it confers on certain Magistrates, it places unreasonable restrictions on certain fundamental rights. It rejected the contention that the remedy of judicial review is illusory and observed that even the High Court could be approached in Revision against the said order and the High Court can examine the propriety as well as legality of the said order.

**21.** Adverting to the temporary character of an order under Sec.144 Cr.P.C, the Supreme Court in **Jagdishwaranand Vs. Police**

**Commissioner, Calcutta**<sup>2</sup>, considered the question whether prohibitory orders under Section 144 Cr.P.C. can be repeatedly passed by the Magistrate. It held that the scheme of that Section does not contemplate repetitive orders and in case the situation so warrants, steps have to be taken under other provisions of law such as Section 107 or 145 of Cr.P.C. and it would be an abuse of power if repetitive orders are passed. It held that the postulate of Section 144 Cr.P.C. is a situation temporary in character and therefore, the duration of an order under Section 144 Cr.P.C. could never have been intended to be semi-permanent or permanent in character. It held that normally its validity is for two months from the date of its making as provided in sub-Section (4) of Section 144 Cr.P.C. and that proviso thereto authorizes the State Government to extend it for six more months, if it considers it necessary so to do for preventing danger to human life, health or safety, or for preventing a riot or any affray, by issuing a notification.

**22.** The scope of interference by the Court with an order passed under Section 144 Cr.P.C. was again considered in **State of Karnataka and another Vs. Dr.Praveen Bhai Thogadia**<sup>3</sup>. The Supreme Court held that Courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities within their special knowledge and their

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<sup>2</sup> AIR 1984 SC 51

<sup>3</sup> (2004) 4 SCC 684

decision may involve to some extent an element of subjectivity on the basis of material before them. Past conduct and antecedents of a person or a group or an organization may provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and for maintenance of law and order. It observed that the valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life - preservation of public order and rule of law. It held that a Court while reviewing an order passed under Section 144 Cr.P.C. cannot act as an appellate authority over the decision of the official concerned and that *unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimization by those in power, normally interference should be the exception and not the rule.* It held that the Court cannot in such matters substitute its view for that of the competent authority. It observed that no hard and fast guidelines can be laid down for exercise of power under Section 144 Cr.P.C. and that the scheme underlying it itself carries sufficient inbuilt safeguards and remedies are available under the Code itself as well as by way of judicial review to control and check any unwarranted exercise of abuse in a given case.

**23.** Recently, the Supreme Court revisited the issue **In Ramlila Maidan incident**<sup>4</sup>. It observed that the power under Section 144 Cr.P.C. is to be exercised by the specified authority to prevent disturbance of public order, tranquility and harmony by taking immediate steps and when desirable, to take such preventive measures. It held that when there exist freedom of rights such as those in Art.19 (1) (a) or (b) which are subject to reasonable restriction, there are contemporaneous duties cast upon the citizens also. The duty to maintain law and order lies on the administration and there is nothing unreasonable in making it the initial judge of the emergency. This is coupled with a fundamental duty upon the citizens to obey such lawful orders as well as to extend their full cooperation in maintaining public order and tranquility. It quoted the decision of the U.S. Supreme Court in **Feiner Vs. New York**<sup>5</sup> where the said Court observed:

*“ It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the State courts as to the existing situation and the imminence of greater disorder coupled with petitioner’s deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech.”*

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<sup>4</sup> (2012) 5 SCC 1

<sup>5</sup> 95L Ed 295; 340 US 315(1951)

The Supreme Court reiterated the principles in **Pravin Bhai Thogadia** (3 supra) on the parameters of the judicial review. It held that the requirements of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance and the perception of the Officer recording the desired/contemplated satisfaction has to be *reasonable, least invasive and bonafide and the restraint has to be reasonable and minimal*. It held that *such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration*. It observed that the most onerous duty that is cast upon the empowered Officer by the Legislature is that *the perception of threat to public peace and tranquillity should be real and not imaginary or a mere likely possibility*.

**24.** Keeping in mind the above principles, let us examine the present case.

**25.** I have already extracted the reasons given by the 5<sup>th</sup> respondent in the earlier part of the judgment. The 5<sup>th</sup> respondent has relied upon the events set out therein as the basis to come to the conclusion that there is a necessity to issue prohibitory orders under Section 144 Cr.P.C. prohibiting unlawful assembly of more than 3 to 4 persons gathering at one place carrying sticks, knives, weapons, lathies and other harmful instruments from 28-07-2016. Though the period for which this order would be in operation is not specified therein, it is not disputed that it would not remain in force for more than 2 months

from its making i.e. it would not be in force after 27-09-2016. Of course the 1<sup>st</sup> respondent may consider extending it by notification by 6 months if it felt that there is such a necessity, by invoking proviso to clause (4) of Sec.144 Cr.P.C.

**26.** As stated by me earlier, both sides agree that the landowners have been granted interim relief by a Division bench of this Court headed by the Hon'ble acting Chief Justice restraining the State from acting upon consent letters given by farmers (under the G.O.M.s 123 dt.30.7.2015) who have approached this Court alleging that their consent was not voluntary and alleging that they were coerced/intimidated to give such letters. In view of this development, to some extent succor and relief to the residents of the area has eased their stress and distress. This cannot be lost sight of by the Court or by the respondents. This important subsequent event also has a bearing on the case.

**27.** Though the petitioners contended that the facts mentioned in the impugned order are not true and that peaceful processions of land owners of Vemulaghat and other neighboring villages were attacked by the police on 24-07-2016 without provocation causing serious injuries and false cases were foisted on them, this disputed question of fact cannot be gone into in this Writ Petition. This Court is therefore not expressing any opinion on the correctness or otherwise of the facts recited in the impugned order on the basis of which the 5<sup>th</sup> respondent has felt it necessary to invoke Section 144 Cr.P.C. If the facts stated

therein by 5<sup>th</sup> respondent are, for the sake of argument, accepted to be correct, it is not possible to take a view that there were no sufficient grounds for him to invoke Section 144 Cr.P.C. It cannot be said that the 5<sup>th</sup> respondent, on the basis of the said facts, cannot anticipate an imminent threat to public order or public tranquility, and that there was no emergent situation warranting the passing of the said order. Point (a) is therefore answered accordingly against the petitioners.

**Point (b) :**

**28.** Having said that, the Court cannot be oblivious of the pleadings of the petitioners that under the guise of the above order passed under Section 144 Cr.P.C., there are strict and absolute curbs on the movement of the residents of Vemulaghat village; no outsiders are allowed to visit the village; every entry into the village and exit therefrom is being strictly monitored by the police; and the police are insisting on identity proofs of the persons found in the village. They allege that there is intimidation by the police to give consent letters for registration by the petitioners and other villagers accepting to give their lands under G.O.Ms.No.123 dt.30-07-2015. They alleged that the police are enquiring about family members' whereabouts in case the residents of the village do not go back to the village in a specified period of time causing the families of the residents including women and children to live in a state of fear psychosis. It is alleged that the residents' movements are being interfered with and they are unable to

attend to agricultural operations also because of this atmosphere in the village.

**29.** No doubt the above allegations are denied by the respondents.

**30.** To the extent the impugned order prohibits unlawful assembly of more than 3 to 4 persons in the named villages from carrying sticks, knives, weapons, lathis and other harmful instruments in anticipation that such action may disturb public peace and tranquility, one may not find any objection.

**31.** But the question is whether, the respondents can go beyond the scope of the order passed by 5<sup>th</sup> respondent under Sec.144 Cr.P.C, and interfere with the right of the residents of the two villages or outsiders to move freely or to assemble peaceably in the said villages or of the residents to go to their fields for agriculture purposes. The obvious answer is 'no'.

**32.** The respondents cannot expand the scope of order under Section 144 Cr.P.C. and if they do so, it amounts to harassment of the residents of the villages or outsiders who wish to enter the villages bonafide. There would be an atmosphere of fear, intimidation and coercion, which cannot be allowed to exist in a democratic country like India. There should be a proper balance maintained between the duty of the State to maintain law and order and the fundamental rights of the citizens under Article 19 (1)(a), Art.19 (1)(b), Art.19(1)(d) and Art.21 of the Constitution of India and the Court has the power to see

that the restrictions are 'reasonable' in the overall circumstances of the case.

**33.** The interim orders passed by the Division Bench of this Court headed by the Hon'ble acting Chief Justice which is considering the validity of the G.O.Ms No.123 dt.30.7.2015 that the State shall not interfere with the possession and enjoyment of land owners who have approached this Court alleging coercion or intimidation by the State in obtaining consent letters to give their land under the said G.O. is *prima facie* evidence that the respondents were imposing restrictions beyond the scope of the order passed by 5<sup>th</sup> respondent under Sec.144 Cr.P.C.

**34.** It is not contended that the villages in question have a history of any extremist violence or communal violence or terrorist activity. Nor are the villages located in any restricted/secure area such as defence establishments or scientific establishments of the State warranting the residents or outsiders to prove their identity for freely moving in the village. Insisting on people revealing their movements or producing identity proof without any further justification would, in my view, interfere with their right to privacy which is guaranteed by Article 21 of the Constitution of India. There cannot be any prohibition for people entering the villages in question either, if they do not carry the arms and other weapons which may be used to disrupt the public order and tranquility in the villages. Family members or close relations or those having connection with agriculture or business or kin of

villagers may be visiting the villages in the normal course. Therefore under the guise of the impugned order, the respondents cannot curtail normal social interaction and the exercise of fundamental rights of the residents of the villages as well as outsiders guaranteed by Article 19 (1)(a), Art.19 (1)(b), Art.19(1)(d) and Art.21 of the Constitution of India.

**35.** As held by the Supreme Court in **In Re Ramlila Maidan case** ( 4 Supra) the restrictions imposed under an order under sec.144 Cr.P.C ought to be *least invasive, bonafide, reasonable and minimal*. It held that *such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration*.

**36.** Therefore while upholding the impugned order to the extent that it restricts unlawful assembly of more than 3 to 4 persons in the named villages from carrying sticks, knives, weapons, lathies and other harmful instruments in anticipation that such action may disturb public peace and tranquility, it is held that the respondents cannot act in the manner alleged by the petitioners under the guise of the impugned order under Sec.144 Cr.P.C passed by the 5<sup>th</sup> respondent. Point (b) is answered accordingly against the respondents and in favor of the petitioners.

**THE RESULT:**

**37.** For the foregoing reasons, while sustaining the impugned order passed by 5<sup>th</sup> respondent, the Writ Petition is disposed of giving

directions to the respondents on the other restraints alleging interference with the fundamental rights of the petitioners and residents of the two villages. The respondents are therefore directed -

- (i) to strictly adhere to the letter and spirit of the said order;
- (ii) not to interfere with the right of the residents of the two villages of Vemulaghat or Pallepahad villages of Thoguta Mandal or of outsiders to :
  - (a) move freely in the said villages or move goods for business purposes; or
  - (b) assemble peaceably in the said villages; or
  - (c) go to their fields for agriculture purposes;
- (iii) not to insist:
  - (a) to prove their identity for freely moving in the village; or
  - (b) on them revealing their movements; and
- (iv) not to prohibit people from entering the villages in question, if they do not carry the arms and other weapons, which may be used to disrupt the public order and tranquility in the villages. No costs.

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

**JUSTICE M.S.RAMACHANDRA RAO**

***Date: 26-09-2016***

***Ndr/Vsv\****