

**IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA
AND ANDHRA PRADESH AT HYDERABAD**

THURSDAY THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T

HONOURABLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION NO. 13498 OF 2010

Between:

Penkey Rambabu & Ors. ... Petitioners/A-1 to A-5

 $V/s.$

The State of Andhra Pradesh
Represented by its Public Prosecutor,
High Court of Judicature for the State of
Telangana & Andhra Pradesh,
Hyderabad. ...

Respondents/Respondents

Counsel for Petitioner : Sri P. Durga Prasad

Counsel for Respondents : Public Prosecutor [AP] for R-1
R-2 un-served returned cover
Memo filed vide USR.No.2990/14

The court made the following : [order follows]

HONOURABLE SRI JUSTICE P. KESHA RAO

CRIMINAL PETITION NO. 13498 OF 2010

ORDER:

Heard the counsel for the petitioners as well as the learned Public Prosecutor for the respondent No.1.

2. The present Criminal Petition is filed to quash the proceedings initiated in CC.No. 206 of 2009 on the file of the Court of Magistrate Mobile Court, Kakinada, East Godavari district, registered for the offences punishable under section 353 read with section 34 of IPC.

3. The facts of the case are that the second respondent, who is the Village Administrative Officer along with the Tahsildar and the subordinate staff, went to the lands in survey Nos. 276/B, 276/23 and 278/1/3 of the Government belonging to Bhudana Yazna Board, situated at Ramanayyapeta village of Kakinada to erect a Board to the effect that the said land belongs to the Government. Where upon, the petitioners have obstructed them to erect the said Board. Therefore, he lodged a complaint with the Station House Officer, Narsapuram and requested to take action against the petitioners/A-1 to A-5 as per law.

4. In pursuance of the said complaint, the first respondent through Station House Officer, Narsapuram, registered a crime vide FIR.No. 130 of 2007 for the offences punishable under section 353 read with section 34 of IPC.

5. After investigation, a charge sheet is filed. The court below after taking cognizance, numbered the case as C.C.No. 677 of 2007 for the offences punishable under section 353 read with section 34 of IPC. Aggrieved by the same, the present Criminal Petition is filed.

6. The counsel appearing for the petitioners would submit that they are the permanent residents of Gaigolupadu village of Kakinada Rural Mandal, East Godavari district. In fact, the first and second petitioners are the sons and third petitioner is the wife of one Mr.P. Subhash, who filed WP.No.10286 of 2007, the fourth petitioner is the wife of Raidu Sarojini, who filed WP.No. 10306 of 2007 and the fifth petitioner is the wife of Kambala Seshratnam, who filed WP.No. 10291 of 2007. In the above said writ petitions, they challenged the notice issued by the Mandal Revenue Officer, Rural Mandal, Kakinada, with

regard to subject property. The petitioners challenged the Proceedings No.B/42507, dated 23/04/2007 in Form No.II being arbitrary without jurisdiction and violative of Article 14 and 300-A of the Constitution of India. This Court in WP.No. 10286 of 2007 and batch, considered the said issue and allowed the writ petitions by holding that :

“ Petitioners in these cases do not claim that they were assigned lands either under BSO or Bhoodan Act, but they claim that they have been in occupation of land allegedly for over five decades and that they claim possessory right to the land. In such case, resort to the Assigned Lands Act is not permissible but it is always open to revenue authorities to initiate action under Andhra Pradesh Land Encroachment Act, 1905 and evict petitioners in accordance with law. In that view of the matter, impugned notices in Form-II, which are generally issued to transferees/alienees/purchasers of assigned lands, are without jurisdiction and illegal.”

“ It is no doubt true that ordinarily a writ petition would not lie against show cause notice [see State of U.P. V/s. Shri Brahma Datta Sharma-1, Spl.Officer, ULC V/s. M. Vijaya Lakshmi-2 and K.Veerabhadhrudu V/s. Spl. Dy.Collector, Tribunal Welfare-3] . It is always settled law that even when question of jurisdiction arises, such question has to be raised before notice issuing authority {see Special Director V/s. Mohd. Ghulam Ghouse-4}. But in these cases petitioners or their ancestors are allegedly in possession of land for over more than fifty years and in such case as mentioned supra, action initiated under Assigned Lands Act is not warranted. This Court, however, hastens to add that there is a dispute with regard to possession of land. This matter has to be sorted out between petitioners, respondents and other parties, who filed implead application, which has now been dismissed, as they are not directly concerned with the lis in this case.”

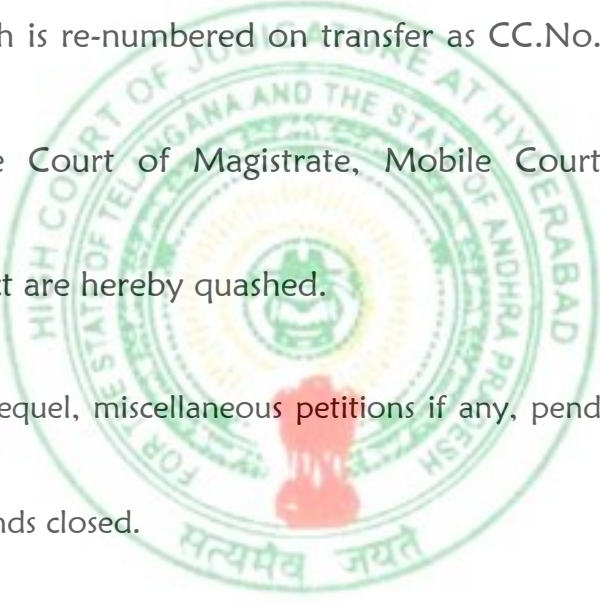
7. It appears that in spite of the orders passed by this Court, the second respondent Tahsildar attempted to erect a board in the subject land stating that the land belongs to Andhra Pradesh Bhoodan Yagna

Board situated in Ramanyyapeta village of Kakinada Rural Mandal, East Godavari district. At this stage, it is necessary to look into the orders passed by this court in WP.No. 10284 of 2007 and batch. In the said batch of writ petitions, this Court was pleased to hold that it is settled law that when the question of jurisdiction arises, such question has to be raised before notice issuing authority. However, initiation of proceedings under the impugned proceedings under the Assigned Lands Act is not warranted, however, the same has to be sorted out by issuing notice under the provisions of the Andhra Pradesh Land Encroachment Act. If that being the position, the second respondent cannot attempt to erect any board in the subject land, in the light of the orders passed by this Court and the same would not amount to an act obstructing a Public Officer in discharging the official duties. Therefore, the proceedings initiated against the petitioners on the complaint lodged by the second respondent vide CC.No. 677 of 2007 on the file of the Court of IV-Additional Judicial Magistrate of First Class, Kakinada, which is re-numbered on transfer as C.C.No. 206 of 2009 on the file of the

Court of Magistrate, Mobile Court, Kakinada, East Godavari district are not maintainable. The continuation of the proceedings would amount to abuse of process of Court.

9. Therefore, the Criminal Petition is allowed and the proceedings initiated against the petitioners in CC.No. 677 of 2007 on the file of the Court of IV-Additional Judicial Magistrate of First Class, Kakinada, which is re-numbered on transfer as CC.No. 206 of 2009 on the file of the Court of Magistrate, Mobile Court, Kakinada, East Godavari district are hereby quashed.

10. As a sequel, miscellaneous petitions if any, pending in this criminal petition shall stand closed.


JUSTICE P. KESHAVA RAO.

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION NO. 13498 OF 2010
{ ALLOWED }



Date: 30/11/2017
Circulation No. 1 5 9
Court Master: I s L
Computer No. 43