

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2569 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed requesting to quash the order, dated 08.12.2016, in Rc.No.665/2016-A passed by respondent No.2 - Mandal Executive Magistrate – cum – Tahsildar, Bapatla, Guntur District, whereby and whereunder, respondent No.2 has passed prohibitory order under Section 145 of the Code.

2. Heard Sri Vedula Srinivas, learned counsel for the petitioner, and learned Assistant Government Pleader for the State of Andhra Pradesh.

3. Learned counsel for the petitioner would submit that on the representation of respondent No.6 – Baptist Christian Properties Protection Committee, through its President, respondent No.2 has initiated proceedings under Section 145 of the Code, now pending before respondent No.4 - Revenue Divisional Officer, Tenali, Guntur District. Learned counsel would further submit that the petitioner purchased an extent of 5442.5 Square Yards of land in D.No.668/1 of Ward No.13, Bapatla, under a registered Sale Deed, dated 10.08.2015, but, since, the extent of property was wrongly mentioned as 4840 Square Yards in the original Sale Deed, a rectification deed, dated 06.04.2016, was executed showing the extent of land as

5442.5 Square Yards, as against 4840 Square Yards mentioned earlier, and constructed a compound wall to protect the land from the grabbers and the name of the petitioner was also mutated in the municipal records of Bapatla Town.

4. While things stood thus, respondent No.6, a self-styled organization having different practical approach, contending that its object is to protect the properties belonging to the Churches and striving for upliftment of Christian Minorities, filed O.S.No.154 of 2016 on the file of Principal Junior Civil Judge, Bapatla, against the petitioner and others, pleading that the property mentioned therein belongs to American Baptist Missionary Union Society and it is protecting the same by being in possession of it. Though, an application was filed for temporary injunction, orders are not yet passed by the civil Court. The main submission of the learned counsel is that when a civil suit is pending, initiation of proceedings under Section 145 of the Code is not maintainable and in support of his submission, he would place reliance on the judgments of the Honourable Supreme Court in **Ashok Kumar v. State of Uttarakhand and others**¹, **Mahar Jahan and others v. State of Delhi and others**² and **Ranbir Singh v. Dalbir Singh and others**³.

5. In **Ashok Kumar**'s case (supra 1), the Honourable Supreme Court, while dealing with a situation akin to the one occurring in the

¹ (2013) 2 SCC 366

² (2004) 13 SCC 421

³ (2002) 3 SCC 700

present case, held that when civil suit seeking injunction restraining opposite party from interfering with possession of person who was in possession, and application for interim injunction were already pending, it would be for civil Court to decide who was in possession, since, the civil Court being already seized of the matter, and in the absence of anything to show existence of emergency, held, on facts, Magistrate erred in passing order of attachment.

6. Learned Additional Public Prosecutor for the State of Andhra Pradesh has no quarrel with the fact-situation occurring herein and the law declared by the Honourable Supreme Court. According to him also, when a civil Suit is pending for perpetual injunction, initiation of proceedings under Section 145 of the Code may not be maintainable.

7. In the present case, in the complaint and so also in the order passed by respondent No.2, nothing is expressed in the direction of showing emergent situation to make a preliminary order.

8. In view of the foregoing discussion, the proceedings initiated by respondent No.2 under Section 145 of the Code are liable to be quashed, in view of the law declared by the Honourable Supreme Court, as the civil Court seized the subject matter and the claim laid by the petitioner constitutes integral part of the subject matter of the Suit. That must be the reason why the petitioner is arrayed as one of the defendants in the said Suit.

9. Hence, the Criminal Petition is allowed quashing the order, dated 08.12.2016, in Rc.No.665/2016-A passed by the Mandal Executive Magistrate – cum – Tahsildar, Bapatla.

10. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

March 28, 2017.
MD

