

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2021 OF 2017

ORDER:

The petitioner herein requests to exercise inherent power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') for quashing the First Information Report (FIR) bearing No.27 of 2017 of Balanagar Police Station, Cyberabad.

2. In fact, the FIR describes the accused persons as "Narendra Surana and others" which was registered on the basis of complaint, dated 22.01.2017, lodged by the General Manager, District Industries Center, Medchal - Malkajgiri. Though, the name of the petitioner is not specifically shown in the FIR, but the Inspector of Police, Balanagar Police Station, Cyberabad, being the Investigating Officer, has issued a notice under Section 41-A (1) of the Code, dated 25.02.2017, to him and the same was received by him on 27.02.2017 (Of course, he has mentioned the year as '2016') at 12:30 p.m. The offences alleged against the petitioner and others are punishable under Sections 447, 427 and 188 read with 34 IPC.

3. The General Manager, District Industries Center (DIC), Medchal - Malkajgiri, alleges in the complaint that the erstwhile Government have allotted the land by issue of G.O.Ms.42 of Industries Department, dated 10.01.1963, and letter No.1228/S4/64, dated 05.11.1964, to the Co-Operative Industrial Estate (for short

‘CIE’) for a period of 51 (fifty one) years by mentioning the conditions therein, which are thus:

- “i. That the land shall be used for the construction of the factory building and for the establishment of Small Scale Industries & other approved ancillary buildings, such as administrative building raw - materials, godowns and watch and ward quarters.
- ii. No portion of land shall be sold, transferred, leased or otherwise disposed of by the society and the ownership of the land shall continue to vest with the government.
- iii. The factory buildings constructed on the Estate be let out on rent or sold on hire purchase only to the members of the society and they shall not be used for any purpose other than running and approved Small Scale Industries.
- iv. Some of the plots should be received for industrial Co-Operative Societies.
- v. That the individual member allottees of plots should not alienate the within 10 years and even after there can be alienation only with the permission of Government and subject to such conditions as Government may impose.”

i) On completion of lease period on 31.12.2015, the present Government through Memo No.521/FP & MSME/A2/1995, dated 13.02.2016, issued an order stating that the Commissioner of Industries, General Manager, DIC, Ranga Reddy - I and Mandal Revenue Officer, Balanagar Mandal, to take possession of Ac.47-00

of land from person - In Charge of CIE, Balanagar; in pursuance thereof, possession of the said extent was taken on 13.12.2016 under a *panchanama* conducted by the Tahsildar, Balanagar. The Commissioner of Industries through his proceedings No.21315/17(2)/(2016), dated 23.02.2016, has issued an order constituting three teams to conduct survey of A, B, C plots and turnkey complex sheds in the Industrial Estate to ascertain present status. Pursuant thereto, survey was conducted and status report was submitted to the Commissioner of Industries in the month of May, 2016.

ii) Touching the subject property in the present case, it is alleged that the then General Manager, DIC, Medchal on 23.12.2016, reported that in Plot Nos.A11 and A-12, some encroachers, at the behest of Sri Narendra Surana, were clearing the bushes and were taking up the repair work to dilapidated old shed with an intention to starting an economic activity without taking permission from the government. It is alleged that workers were warned not to take up any activity as the land was resumed by the Government and a report along with the photographs was submitted to the Commissioner of Industries on 24.12.2016.

iii) The General Manager alleges that as per the conditions mentioned in G.O.Ms.No.42, available records and the survey report, Mr. Narendra Surana has no legal right over plot Nos.A11 and A12 of

CIE and he is not the government approved occupant of the said plots. The exact status as per the records available with respondent No.2 - *de facto* complainant's office, was mentioned in the table, which is thus:

S.No.	Plot No.	Original Allottee	Present Occupier as the records	Whether legally Transferred	Status of plot as per survey report
1.	A11	Sri. Gummadi Ram Chandra Reddy	M/s. Shah Sons Pvt. Ltd.	NO	No Unit open space available
2.	A12	Bharath Auto Engineering Works	M/s. Shah Sons Pvt. Ltd.	NO	No Unit open space available

iv) Respondent No.2 alleges that even thereafter, without the order from the Government, though, Tahsildar, Balanagar and General Manager, DIC opposed them, still, the workers have resumed the work on 27.12.2016 and situation warrants use of force to withhold the encroachers in taking up the illegal works in the government land.

v) That has been the sum and substance of the complaint requesting the Investigating Officer to take action against the encroachers and to protect the government land from encroachments.

4. Heard Sri S. Ravi, learned Senior Counsel, representing Sri Ch. Pushyam Kiran, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Telangana.

5. Certain facts projected in the present petition filed by the petitioner invariably require advertence.

i) The petitioner is the Director of M/s. Shahsons Private Limited (for short 'Company') registered under the Companies Act, 1956 with its office at Surya Towers, Sardar Patel Road, Secunderabad. The CIE was registered in the year 1963 under Andhra Pradesh (Telangana Area) Co-Operative Societies Act, 1952 on the recommendation of the All India Small Scale Industries Board and the Government of India to organize Industrial Estates by Private Agencies including Co-Operative Societies of Entrepreneurs. The State Government had allotted Acs.30.00 of land to the CIE, Balanagar, through G.O.Ms.No.42 of Industrial Department, dated 10.01.1963, for a lease period of 51 years. The said land was allotted to CIE in August, 1964. Yet another extent of Acs.17.00 was allotted to CIE on 12.11.1964. Though, the land was allotted on lease basis to CIE, it was always understood that the plots allotted to CIE would subsequently be allotted to its members on lease - cum - sale basis. The total extent of Acs.47.00 allotted was developed by the CIE into 60 plots with amenities; such as roads, water supply, drainage, electricity etc. and allotted to the members of the CIE from 1964 onwards. Having taken possession, the members constructed factory buildings and small scale industrial units were set up and over the last 50 years, activity of industrial units has grown and expanded substantially and they continued to provide economic activity, industrial production and employment to several persons.

ii) The petitioner claims that the Company is a Member of CIE and it was allotted Plot Nos.A11 and A12, admeasuring 8659.11 square meters, and the Company has been in possession of the said plots since 1964-65. The Company was originally engaged in the business of bus body building and has been running its industry since beginning except for a few years in between due to adverse market conditions, and it has also written a letter to the Minister for IT & Panchayat on 29.09.2015 stating that its current business was not profitable and it would like to manufacture Solar Modules and, thereafter, it commenced its business of manufacturing solar modules and solar products by investing huge amounts towards purchase and setting up the plant and machinery.

iii) The petitioner also mentions that the lease of Company expired on 31.10.2015 and it has addressed letters to respondent No.2, dated 29.02.2016, 21.03.2016 and 13.12.2016, requesting to either extend its lease or, in the alternative, transfer the plots to it, but respondent No.2 neither extended the lease, nor replied. However, the Company has paid lease charges up to date and it has no outstanding dues. The petitioner states that respondent No.2 along with its officials visited the factory premises of the Company on 27.12.2016 and directed it to stop production at the factory without giving any reasons as to why it was being asked to do so.

iv) The petitioner states that though, all other industries in the CIE stand in the same position as the Company, the lease terms of all the industries having expired at the same time, but it was alone singled out and asked to stop production while rest of the industries are continuing operations in their respective premises on the Industrial Estate and, thereafter, on 28.12.2016, the Assistant Sub-Inspector of Police, Balanagar Police Station visited the Company's factory and demanded that production be stopped. The Company, therefore, addressed letters on 28.12.2016 and 29.12.2016, making representations before the Chief Minister, Minister for MAUD & IT, Chief Secretary to the Government, the District Collector, the Mandal Revenue Officer and respondent No.2 stating therein the events that have taken place on 27.12.2016 and 28.12.2016, requesting them to direct the concerned authorities to refrain from interfering with the production at its premises.

v) It is stated that despite its persistent requests to renew the lease, respondent No.2 failed to heed to it and the Company now being targeted for the reasons unknown to it and in an arbitrary manner, which is contrary to law and respondent No.2 cannot interrupt the Company's business for no fault on it. It is also stated that the Company cannot be refrained from conducting operations on its premises without following the procedure established under law, in an arbitrary and highhanded manner.

vi) The petitioner, therefore, raised the following grounds for quashment of the FIR.

- a) The present complaint is a counter-blast to W.P. No.672 of 2017 filed by the petitioner seeking a *Mandamus* to declare the actions of respondents in interrupting and disturbing its operations at its premises as illegal, arbitrary and unlawful, and consequently, restrain the respondents from interrupting or disturbing its operations; and the fact that the writ petition was filed on 04.01.2017, while the complaint was filed on 22.01.2017 is sufficient to view that the present complaint is counter-blast to the writ petition, hence, sought to quash the proceedings;
- b) The complaint is a civil dispute which has been disguised as a criminal complaint;
- c) The petitioner is a Director of Shahsons Private Limited and it was allotted Plot No.A11 on 28.07.1969 and M/s. Bharat Auto Engineering Company was allotted Plot No.A12, and on 27.06.1986, plot No.A12 was merged into Plot No.A11 by the CIE, which has stated that both the above plots were treated in the name and address of Shahsons Private Limited;
- d) The petitioner has been in occupation of both the plots since the date of allocation and, therefore, cannot be considered to have committed the offences punishable under Sections 447, 427 and 188 of IPC;
- e) The allegation in the complaint that the petitioner is an encroacher is false, as it is a Company - Shahsons Private Limited, which has been in occupation of the plots from the time of their allotment and it has filed

documents before this Court showing that the Company is not an encroacher or a trespasser contrary to the claims of the complainant and it has been in occupation and has been running business in the said plots.

6. Sri S. Ravi, learned Senior Counsel appearing for Sri Ch. Pushyam Kiran, learned counsel for the petitioner, places reliance on the decisions of the Hon'ble Supreme Court in **Madhu Limaye v. Sub-Divisional Magistrate, Monghyr¹** and **R.V. Bhupal Prasad v. State of A.P.²**

7. The learned senior counsel would submit that the petitioner is allotted Plot No.A-11 originally in the year 1969, deed of agreement - cum - lease was executed in favour of the petitioner representing M/s. Shahsons Private Limited precisely on 28-07-1969 by the then Administrative Officer by the order of the Board of Directors of the Cooperative Industrial Estate Limited (CIE). His submission is that M/s. Bharat Auto Engineering Company Limited was allotted Plot No.A-12, and, on 27.06.1986, Plot No.A-12 was merged into Plot No.A-11 by the CIE. It is stated that both the said plots were treated in the name of M/s. Shahsons Private Limited.

8. The learned Senior Counsel would further submit that when repeated requests were made for extension of lease, they stood unanswered by the CIE and the petitioner was thereby constrained to file Writ Petition No.672 of 2017 seeking a Writ of *Mandamus* to

¹. (1970) 3 SCC 746

². (1995) 5 SCC 698

declare the action of the respondents in interrupting and disturbing operations of the petitioner at its premises bearing Plot Nos.A-11 and A-12, as illegal, arbitrary and unlawful, and as counter blast, eighteen (18) days thereafter, the present complaint was lodged.

9. The learned Senior Counsel also would submit that the complaint is a civil dispute and has been disguised as a criminal complaint. His main submission is that since the petitioner was originally inducted into possession of both the plots, by virtue of the agreement referred to in the above executed by the CIE, the question of criminal trespass being committed by the petitioner does not arise, much less, mischief, an offence punishable under Section 427 of IPC.

10. One of the submissions made by the learned senior counsel has been that even on determination of lease, since the petitioner was inducted into possession by lawful means and has been paying rents, his possession is that of a tenant by holding over and at the most, it may be a tenant at sufferance, but cannot be equated to a trespasser and in such an event, none of the offences alleged in the complaint would attract and, therefore, sought to quash the F.I.R.

11. The learned senior counsel would submit that due to adverse conditions, the bus body building unit could not be carried on for sometime, but the petitioner has been running the current business of manufacturing solar modules and the same was intimated to the Minister for Information Technology and Panchayat on 29.09.2015

and, thus, the said industry is being run. The learned senior counsel would submit that the alleged *panchanama* taking over possession referred to in the complaint did not actually take place and it was only on paper.

12. The learned Public Prosecutor for the State of Telangana, *inter alia*, would contend that the petitioner was not at all the original allottee and the bus body building unit was not carried on and, in fact, when possession was taken on determination of lease, by the Commissioner of Industries, the General Manager, DIC, Ranga Reddy - I, and the Mandal Revenue Officer, Balanagar Mandal, on 13.12.2016 and thereafter, even the Commissioner of Industries on 23.02.2016, issued an order constituting three (3) teams to conduct survey of A, B, C plots and turnkey complex sheds in the Industrial Estate to ascertain present status, and having conducted survey, a status report was submitted in the month of May, 2016 and so far as commission of offences are concerned, the General Manager, DIC, Medchal on 23.12.2016, reported that at the behest of the petitioner, Mr. Narendra Surana, some encroachers were clearing bushes and were taking up repairing work to dilapidated old shed in Plot Nos.A-11 and A-12 with an intention to start economic activity without taking permission from the Government.

13. It is true, it is his submission that when once possession was taken in accordance with the procedure, and thereafter, with some

oblique motive entering into Plot Nos.A-11 and A-12, clearing the bushes and taking up repairing work to dilapidated old sheds finds support from material place on record, then and then alone it can be viewed that the acts attributed to the petitioner are nothing but constituting commission of criminal trespass and mischief and cannot be said that the allegations in the complaint do not make out *prima facie* case against the petitioner for the offences alleged thereunder.

14. In the light of the aforesaid submissions, the allegations in the complaint require an examination in assessing whether they do constitute commission of offences alleged against the petitioner.

15. Now, turning to the first submission that the petitioner is allottee of Plot No.A-11 originally and thereafter, Plot No.A-12 was also merged into and utilised for carrying on bus building unit activity, it is to be stated that except photostat copy of deed of agreement of lease - cum - sale referred to in the above, no other documents have been filed showing that the bus body building activity was being carried on till 29.09.2015. The first document that comes into fore being a letter addressed to The Minister for Information Technology and Panchayat on 29.09.2015, stating therein that current business was not profitable and that it would like to resort to manufacture of solar modules.

16. The case of the respondents is that the lease was determined on 31.12.2015. Now looking at the picture projected by the respondents, it is according to the respondents, more particularly, respondent No.2, the General Manager, District Industries Center, Medchal - Malkajgiri, represented by its Managing Director, the original allottee's name is shown as Sri Gummadi Ramachandra Reddy so far as plot No.A-11 is concerned and Bharat Auto Engineering Works so far as Plot No.A-12 is concerned as the original allottees and the present occupier is shown as per the records, M/s. Shasons Private Limited. Whether the original allottees did really legally transfer the plots to M/s. Shasons Private Limited is concerned, no documentary proof is forthcoming except the alleged agreement of lease - cum - sale dated 20.07.1969 which requires a probe into whether such an agreement did really enter into by the CIE or executed by the CIE in favour of the petitioner, if so, in regard to which of the plots and whether the original allottee of that plot was available or whether that lease was cancelled or otherwise.

17. These are the questions that arise based on the material placed on record which do not have answers. In fact, the petitioner is seeking quashment of FIR. For the relief of quashment of FIR, an obligation is cast on the petitioner to clear or clarify the said questions.

18. Turning to the second submission made by the learned senior counsel that the present complaint is counter blast to the writ petition filed by the petitioner in W.P. No.672 of 2017, the Writ petition was filed on 04.01.2017 as could be seen from the date mentioned under the verification statement of the affidavit. The complaint was dated 22.1.2017. Thus, it is no doubt true, eighteen days after the writ petition was filed, the present complaint was lodged, but, merely because the complaint was lodged by the General Manager, DIC, Medchal, after the writ petition was filed, is no ground to view that as a counter blast, the complaint has been filed to see that the petitioner cow down to the dictates of the complainant.

19. What is required to examine is whether the allegations in the complaint do make out a *prima facie* case as to the commission of alleged offences by the petitioner. In that direction, some more material presented by the both sides require advertence.

20. The learned senior counsel though, referred to filing of writ petition and certain miscellaneous petitions therein and an interim direction is also sought for in the writ petition, it appears, no such direction was given by this Court for the reason, copy of the order, if any, is not presented at any time, before or at the time of tendering arguments.

21. As could be seen from the material placed in the present petition, the petitioner has placed a copy of the writ petition and list of

documents mentioned as annexures therein. As already mentioned, the petitioner has placed the letter dated 29.09.2015, addressed to the Minister for Information Technology and Panchayat referred to in the above and the letters dated 29.12.2016, 21.03.2016 and 13.12.2016, requesting to either extend its lease or in the alternative transfer the plots to it. Through, W.P.M.P. No.1842 of 2017, the petitioner sought the Court to receive certain documents. They relate to copy of the electricity bill dated 06.01.2017; copies of the invoices dated 29.12.2016, 02.01.2017, 05.01.2017 and 23.12.2016, copies of the purchases/job work bills dated 28.11.2016, 06.12.2016 and 07.12.2016; copies of the sales / job work bills dated 01.12.2016, 03.12.2016, 06.12.2016, 08.12.2016, 09.12.2016, 10.12.2016, 12.12.2016, 14.12.2016 and 16.12.2016; copies of the photographs evidencing the business activity in the subject premises, copies of the bank payment vouchers evidencing payment of labour wages dated 18.12.2016 and 03.01.2017 and copy of the letter addressed to the Minister for Information Technology and Panchayat dated 29.09.2015.

22. What is significant to observe from the above documents is, none of these documents except the letter addressed to the Minister for Information and Technology and Panchayat do relate to the period prior to 31.12.2015, on which date the lease was determined.

23. Therefore, to prove possession on the date of determination of lease, no documents are forthcoming except the letter dated 29.09.2015, to show that the bus body building unit was really in existence and it was in running condition or whether there was at least any activity. In this direction, the learned senior counsel would draw the attention to the photostat copies of the photographs filed in the material papers showing certain documents in the direction of projecting that the activities were really going on. In this context, it is pertinent to note the stand taken by the respondent No.2. The learned Public Prosecutor has drawn attention to the positive photographs. The stand taken by respondent No.2 is that some of the encroachers were found in the last week of December, 2016. When survey was conducted a status report was filed. It was found that some encroachers set up by the petitioner, started cleaning the bushes and taking up repairing work to the dilapidated shed. The positive colour photographs contained in the remand case diary - II, would clearly show that certain portions were white-washed and the bushes were just cleared. The said photographs are subject to substantiate the stand put-forth by respondent No.2, indicating in definite terms that there was an attempt to white-wash and start repairing works to the old walls and old sheds and clearance of the wild growth. Even the stand taken by respondent No.2, that the petitioner in an attempt to give colour of reality said to have resorted to manufacturing of small solar panels in the shed by getting old machines from their Fashion

Company situated elsewhere and keeping them in the unit and everyday the workers are being brought in vans on shift basis under the instructions of their management with the apprehension that the Government would take away the land allotted to the company.

24. The statements of some of the workers who were brought in van recorded under Section 161 (3) of the Code, by the investigating officer would clearly show that the petitioner temporarily brought certain machines and mobilized the workers having kept the machines in the old sheds where there was no economic activity at all prior to 31.12.2015.

25. Thus, it is clear that the possession that was taken under *panchanama* was just not on paper, but *panchanama* was really conducted and actual physical possession was taken, which cannot be ruled out and, therefore, it cannot be viewed that *panchanama* was conducted as an empty formality as sought to be projected by the learned counsel.

26. Now turning to whether the submission of the learned counsel that though, the complaint is civil dispute, which has been disguised as a criminal complaint, when once lease was terminated and actual possession was taken by conducting *panchanama*, sending some persons for clearing the wild growth and taking up repairs work to the shed is nothing but not a mere trespass but a criminal trespass as it is associated with dishonest intention of claiming some right over

the property, perhaps to claim absolute right over the property, in view of the letters addressed by the petitioner for renewal or to sell.

27. In **R.V. Bhupal Prasad**¹ relied on by the learned senior counsel, the Hon'ble Supreme Court made out distinction between the tenant holding-over or at will and tenant at sufferance. The fact-situation therein would reflect that the lessee continued in possession after the lease was determined by efflux of time in contravention of the terms of the lease despite absence of acquiescence by the lessor and in such fact-situation, it was held that such possession was neither legal nor lawful, but only tenant at sufferance. The said ruling would not render any assistance to the petitioner for the reason, the present case after determination of lease by efflux of time, actual physical possession was taken over by the respondent No.2.

28. Though, certain documents are filed to show payment of electricity charges, taxes to the commercial department, they all relate to subsequent to 31.12.2015 and even these bills require a thorough probe into in assessing whether they do relate to the subject plots which all can only be done, including the agreement of lease referred to in the above of the year 1969, when the evidences are collected by the Investigating Officer and in case, a charge is laid during trial.

29. Therefore, it cannot be said tat the complaint even if read, as a whole, does not make out *prima facie* case as to commission of

offences alleged against the petitioner to entitle him to the relief of quashment of FIR sought for by him.

Therefore, the Criminal Petition is dismissed.

A. SHANKAR NARAYANA, J

July 18, 2017.

MGR/PV

