

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.37820 of 2017

ORDER:

Heard Mr D.Suresh Kumar, counsel for petitioners and Assistant Government Pleader (Home) for respondents 1 to 3.

The petitioners pray for mandamus declaring the action of respondents in not taking action on the complaints dated 07.05.2017 to 31.08.2017 in spite of petitioners appending to the complaints and the injunction order granted in their favour, as illegal, arbitrary and unconstitutional.

The petitioners pray for a consequential direction to receive two complaints filed against cutting and looting the paddy of petitioners and again ploughing the field on 14.06.2017, investigate and arrest, etc.

The petitioners claim to be in possession and enjoyment of Ac.3-13gts in Sy.No.525 of Nagulapalli Village, Dhammapet Mandal, Bhadrachalam District. The petitioners filed O.S.No.70 of 2017 for perpetual injunction restraining respondents 5 and 6 from interfering with cutting and carrying away the crop raised by petitioners.

Ex.P1 is the order dated 21.03.2017 in I.A.No.78 of 2017 in O.S.No.70 of 2017 in the Court of Special Assistant Agent and Sub Divisional Magistrate (Mobile Court), Bhadrachalam. The undisputed fact is that interim injunction granted by the Special Assistant Agent is subsisting as on date. The petitioners raised standing crop and there is imminent threat and interference with the petitioners' enjoyment using the force, cutting and carrying away the standing crop. Hence, the instant writ petition for the instant reliefs referred to above.

Mr D.Suresh Kumar vehemently contends that petitioners have no option except to invoke jurisdiction of this Court against the deliberate inaction of respondents 2 and 3 and if the police protection as prayed for is not granted, petitioners will suffer irreparable loss, injury and hardship. According to him, the writ prayer is substantially one in the nature of ancillary or incidental to the injunction granted in I.A.No.78 of 2017 and prays for issuing appropriate directions.

The Assistant Government Pleader for Home firstly contends that the suit is pending and injunction is granted by the Special Assistant Agent in I.A.No.78 of 2017, the petitioner firstly can pray for police protection before the

Sub Divisional Magistrate and the police protection, if is given by the competent Court, the 2nd and 3rd respondents are under obligation to immediately take up the orders and implement. According to him, at this stage, this Court considering, issuing direction would result in two Courts monitoring the same issue and opposes the admission as well.

This Court, in its jurisdiction under writ of mandamus, considers among other aspects, the following:

- (a) In the case on hand, the prayer of petitioners, it appears to this Court, is made as of right. If the right of a citizen is affected or there is inaction by some authority or other, which is infringing the right of the petitioner, then discretionary remedy of writ of mandamus is entertained.
- (b) In the case on hand, the *lis* is substantially been in Sub Divisional Magistrate's Court (Mobile Court), the petitioners, thus far successful in obtaining interim injunction from the Mobile Court, there ought not to be a valid reason for not invoking the very same jurisdiction for any relief ancillary or incidental thereto and see that the injunction granted by Sub Divisional Magistrate is properly implemented.
- (c) In case where injunction is granted, possession is one of the *sine qua non* conditions considered

by the Court in the case on hand by the Sub Divisional Magistrate.

As these are all the facts in issue that fall for consideration, this Court is not inclined to exercise jurisdiction under Article 226 of Constitution of India but liberty is granted to approach the Sub-Divisional Magistrate. This Court has no reason to doubt that Sub Divisional Magistrate will pass orders, in accordance with law.

Writ petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 10.11.2017
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S. V. BHATT, J



