

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRP.No.340 of 2018

ORDER.

This Civil Revision Petition under Article-227 of the Constitution of India is filed challenging the order, dated 12.01.2018, in I.A.No.386 of 2017 in I.A.No.329 of 2017 in O.S.No.46 of 2017 passed by the Telangana State Waqf Tribunal, Hyderabad (for short 'the Tribunal'), granting police aid for implementing the ad interim injunction granted by it restraining the petitioners herein from interfering and causing obstruction in the smooth running of the day-to-day affairs and management of the mosque i.e., Masjid-e-Jamel Mohammedi.

It is the case of the petitioners that respondent No.1 filed the suit-O.S.No.46 of 2017 for perpetual injunction and along with the said suit, he has filed a petition in I.A.No.329 of 2017 for grant of temporary injunction under Order-XXXIX Rules-1 and 2 C.P.C. and the Tribunal granted ad interim injunction directing the petitioners herein not to interfere with the day-to-day affairs and management of the above mosque, which was endowed under Muntakhab proceedings No.29/B1/Registration/Hyd/2006, dated 12.04.2017, notified in the gazette.

The petitioners pleaded that the Tribunal having granted an *ex parte* interim order of injunction exercising the power under Order-XXXIX Rules-1 and 2 CPC did not dispose of

I.A.No.329 of 2017 within one month as prescribed under Order-XXXIX Rule-2-A CPC and therefore, they sought for setting aside the order passed by the Tribunal granting police aid to implement the order passed by it in I.A.No.329 of 2017, while asserting that respondent No.1 herein is not competent to manage the affairs of the said mosque.

The petitioners further pleaded that they filed counter-affidavit in I.A.No.329 of 2017 on 05.10.2017 and interim injunction order was granted by the Tribunal on 16.5.2017, i.e., on the date of filing of the suit itself. But, the Tribunal did not decide the petition-I.A.No.329 of 2017, passed an order granting police aid to implement the interim injunction granted by it in I.A.No.329 of 2017 and till today, the said petition is pending for adjudication.

The petitioners further contended that when an *ex parte* injunction order is granted, the Court is bound to adhere to Order-XXXIX Rule-2-A C.P.C and placed reliance on the judgments of this Court in *Polavarapu Nagamani Vs. Panchuri Koteshwara Rao*¹, *B.Chandra Sekhar Reddy & Others Vs. K.Naga Raju Yadav & Another*² and *J.Jagannath Reddy Vs. L.Laxmi Devi*³.

On the strength of the principle laid down in the above three judgments, learned counsel for the petitioners contended

¹ 2010 (2) ALD 41

² 2013 (2) ALD 626

³ 1998 (1) ALD 453

that when the Tribunal failed to adhere to Order-XXXIX Rule-2-A CPC, grant of police aid is nothing but an abuse of process of the Court and prayed to set aside the order under challenge.

On the other hand, learned counsel for respondent No.1- Mr. Mohammed Shajauddin, contended that when ad interim injunction order is granted, it is the duty of the Court to implement the said order by granting police aid till the said interim order is set aside and in support of his contention, he placed reliance on the judgments of this Court in *Vangeti Bal Reddy and Ors Vs. Karagani Balaiah and Ors*⁴, *Gampala Anthaiah and Others Vs. Kasarla Venkat Reddy*⁵ and *Bijiga Papa Rao and Others Vs. Jonnalagadda Srinivasa Rao*⁶.

In all the above three judgments, this Court dealt with the power of the Court under Section-151 CPC to grant police aid to implement the interim injunction order granted by it.

Considering the rival contentions and perusing the material on record, the point that arises for consideration of this Court is:

“Whether grant of police aid by the Tribunal without deciding I.A.No.329 of 2017 adhering to Order-XXXIX Rule-2-A CPC is illegal ? and If not, whether the impugned order is liable to be set aside?”

⁴ 2013 (6) ALD 104

⁵ 2014 (2) ALD 281

⁶ 2015 (2) ALD 171

Point.

The afore-mentioned suit was filed by respondent No.1 for perpetual injunction, along with the said suit, an application was filed for grant of interim injunction restraining the petitioners herein, their associates and henchmen from interfering or causing obstruction in the smooth running of the day-to-day affairs and management of the Mosque, i.e., Masjid-e-Jamel Mohammedi. The Tribunal granted an *ex parte* ad interim injunction, while ordering notice to the respondents therein-petitioners herein. The said order was served on the petitioners herein and they entered appearance and filed their counter-affidavit on 05.10.2017, i.e., almost after lapse of 140 days from the date of passing of the ad interim injunction order on 16.5.2017.

When the petitioners themselves filed their counter-affidavit after more than 140 days from the date of passing of the ad interim injunction order, pointing out the lapse on the part of the Tribunal for non-disposal of the petition-I.A.No.329 of 2017 within 30 days in compliance of Order-XXXIX Rule-2-A CPC is not justifiable. Therefore, the non-compliance of Order-XXXIX Rule-2A CPC is not a ground to set aside or vary the ad interim injunction granted by the Tribunal.

The principle laid down by this Court in the afore-mentioned judgments, which were relied on by the learned

counsel for the petitioners, is not in dispute. But, in the present set of circumstances, it was impossible for the Tribunal to decide the petition-I.A.No.329 of 2017 within 30 days from the date of filing of the petition as the petitioners herein filed their counter-affidavit after lapse of more than 140 days from the date of granting of ad interim injunction order. Hence, on this ground, the impugned order passed by the Tribunal cannot be set aside or varied.

As on today, the ad interim injunction order passed by the Tribunal is in force and it is not varied or set aside or modified by any subsequent order. When the Tribunal granted an interim injunction, it is under obligation to implement the said order by invoking its jurisdiction under Section-151 CPC since Order-XXI Rule-32 CPC is applicable to enforce the permanent injunction, but not temporary injunction.

In *Vangeti Bal Reddy and Ors* (4 supra), a single Judge of this Court, relying on various judgments, held that when an ad interim order is granted, in the event of threat of ad interim injunction, when application is filed seeking police aid to avoid threat or breach or disobedience or violation of order of injunction, the Court is under obligation to provide necessary police aid to implement the injunction order passed by the Court.

In *Gampala Anthaiah and Others* (5 supra), this Court had an occasion to decide an identical issue and held that a party who obtained temporary injunction order, and is complaining of violation of such orders, may file not only an Execution Petition under Order-XXXIX Rule-32 CPC or an application under Order-XXXIX Rule-2-A CPC seeking attachment and/or arrest of the violator for contempt of Court, but also an application seeking police protection under Section-151 CPC from the civil Court.

The judgment of the Supreme Court in *Meera Chouhan Vs. Harsh Bishnoi*⁷ was also relied upon, wherein it was held that when parties violate order of injunction or stay order or act in violation of the said order, the Court can, by exercising its inherent power, give appropriate direction to the police authority to render aid to the aggrieved parties for due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

A similar view was expressed by the Supreme Court in *P.R.Muralidharan and Others Vs. Swamy Dharmananda Theertha Padar*⁸, wherein it was held that police protection may be granted in writ jurisdiction when a Court is approached for protection of rights declared by a decree or by an order passed

⁷ (2007) 12 SCC 201

⁸ (2006) 4 SCC 501

by a civil Court granting an injunction in favour of the applicant and the same was being deliberately flouted.

In *Polavarapu Nagamani and Others and Vs. Parchuri Koteswara Rao*⁹, a Division Bench of this Court had an occasion to decide an identical question and it held that the Court has power to order police protection if there is a threat of breach, disobedience or violation of interim order of injunction subject to proof and not in cases where there is actual violation of order of injunction. In *Bijiga Papa Rao and Others* (6 supra), this Court reiterated the same principle.

In the instant case, it is an undisputed fact that as on today, ad interim injunction order passed by the Tribunal is in force and in view of the principles laid down in the above judgments, it is the duty of the Tribunal to provide necessary police protection to implement the ad interim injunction order granted by it.

When respondent No.1 sought police aid alleging that the ad interim injunction order is flouted or threatened to be flouted by the petitioners herein, the Tribunal was under obligation to enquire into the same and pass appropriate order providing police protection if it was satisfied that there is an eminent threat of violation of ad interim injunction granted it. Therefore, the Tribunal rightly exercised its jurisdiction. However, keeping

⁹ 2010 (2) ALD 41 DB

the petition-I.A.No.329 of 2017 pending for a long time is a strong circumstance to suspect the *bona fides* of respondent No.1 herein. However, in view of the law declared by this Court and the Hon'ble Supreme Court in the afore-mentioned judgments, granting police aid to implement the interim injunction order cannot be faulted.

Accordingly, the Civil Revision Petition is dismissed and the order dated 12.01.2018 in I.A.No.386 of 217 in I.A.No.329 of 2017 in O.S.No.46 of 2017 passed by the Telangana State Waqf Tribunal, Hyderabad, granting police aid is affirmed. However, the Tribunal is directed to dispose of I.A.No.329 of 2017 in O.S.No.46 of 2017 within 30 days from the date of receipt of a copy of this order.

As a sequel, the Miscellaneous Petitions, if any, pending shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

06th March 2018

Note:

Issue CC by 12.3.2018.

B/o

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