

THE HON'BLE SRI JUSTICE P.KESHAVA RAO

WRIT PETITION No.21761 OF 2009

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents 1 to 3.

The prayer sought for in the writ petition is as under:

“to issue a writ, direction, order or orders more particularly one in the nature of writ of Certiorari calling for the records pertaining to the impugned proceedings in RC. No. MC/34/09 dated 02.10.2009 issued by the 3rd respondent herein prohibiting the petitioner from entering into the land in Sy.No.280 of Kumara Venkatapuram Village of B.N.Kandriga Mandal and quash the same as illegal, arbitrary, mala fide, contrary to the injunction, without jurisdiction & power and violation of principles of natural justice and consequentially direct the respondents not to interfere with the petitioner's quarry operations in the lands in an extent of Acres 9-10 cents and Acres 2-90 cents in Sy.No.280 and 289/1 of Kumaravenkatapuram Village, Buchinaidu Kandrika Mandal, Chittoor District respectively in the interest of justice.”

The facts of the case are that on the application submitted by the petitioner, he was granted a quarry lease in Sy.No.280 and 289 of Kumaravenkata puram Village, Buchinaidu Kandrika Mandal in an extent of Ac.9.10 cents and Ac.2.94 cents respectively, for a period of 10 years vide registered lease deed dated 15.07.2009 executed by the Deputy Director of Mines and Geology, Kadapa. Pursuant thereto, the Assistant Director of Mines and Geology, Chittoor accorded permission to work for road metal and building stone over an extent of 4.700 hectares in Sy.No.280 and 289 of Kumaravenkata puram village. While the petitioner was carrying on the quarry operations, respondent No.6 herein tried to interfere

with his quarry activities, leading to filing of a suit in O.S.No.281 of 2009 on the file of the Court of Senior Civil Judge, Sikalahasthi. It is relevant to mention herein that originally, the above said suit was filed before this Court by way of receive and transit. After transit, the suit was made over to the Court of Senior Civil Judge, Sikalahasthi. During the pendency of the suit, the petitioner obtained a temporary injunction. While the suit proceedings were pending, respondent No.3 issued the impugned proceedings by invoking the provisions under Section 145 of Cr.P.C. The said proceedings came to be questioned in the present writ petition on the ground that when the matter is already ceased of by a competent civil Court, respondent No.3 has no jurisdiction to initiate the proceedings under Section 145 of Cr.P.C.

During the course of hearing, the learned counsel appearing for the petitioner placed on record a Photocopy of the decree obtained in O.S.No.281 of 2009, dated 07.03.2016. A perusal of the same would indicate that the petitioner obtained permanent injunction against seven respondents, which include the 6th respondent herein described as defendant No.3 therein.

As far as initiation of proceedings under Section 145 of Cr.P.C. is concerned, While dealing with the similar issue in Vaddu Rama Pulla Reddy v. State of Andhra Pradesh and others¹, this Court held as under:

“7) *Point:* As can be seen, in the impugned order itself, learned Executive Magistrate mentioned that issue was pending before the Junior Civil Judge Court,

¹ (2018 (1) (CrL.) 940)

Nandyal. When the competent civil court is already in *seisen* of the dispute touching subject property, the Executive Magistrate will have no jurisdiction to pass any order under Section 145 Cr.P.C. This has been held by the Honourable Apex Court successively.

8) In *Ram Sumer Puri Mahant v. State of U.P.*² the Apex Court observed thus:

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us.”

9) The principle laid down in *Ram Sumer Puri Mahant’s* case (2 supra) was upheld by the Apex Court in its another decision reported in *Amresh Tiwari v. Lalta Prasad Dubey*³. It was observed thus:

“Para 13: We are unable to accept the submission that the principles laid down in Ram Sumers’ case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumers’ case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be Wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue.” (Emphasis supplied)

10) So, from the above rulings of the Supreme Court, when the dispute touching the same subject property is already pending in Civil Court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before an Executive Magistrate. Since in the instant case, the Civil Court has already seized the matter and passed an injunction order, the impugned order passed by the Executive Magistrate is not sustainable and its continuance will be nothing but abuse of process of Court, in my considered view. The parties concerned shall vindicate their rights before the Civil Court only.”

² AIR 1985 SC 472

³ AIR 2000 SC 1504

Time and again, this Court and the Apex Court dealt with this issue and held that when the dispute touching the same subject property is already pending consideration in a Civil Court, parallel proceedings under Section 145 Cr.P.C. are not maintainable before an Executive Magistrate. In the case on hand, admittedly, the proceedings are ceased before the competent civil Court in O.S.No.281 of 2009. In these circumstances, this Court is of the opinion that the impugned proceedings initiated by respondent No.3 are liable to be set aside.

Accordingly, the Writ Petition is allowed setting aside the proceedings of respondent No.3 in RC. No. MC/34/09 dated 02.10.2009. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

P.KESHA VA RAO,J

15th NOVEMBER 2018.

Tsr

