

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Petition No.1443 of 2011

ORDER :

This Criminal Petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C. No.519 of 2008 on the file of the Judicial First Class Magistrate, Udayagiri.

2. The contention of petitioners is that they have not collected D-Form patta from the M.R.O., Vinjamur and have not cultivated the subject land at any time. In fact, the complainant sold the land after assignment and she was never in possession of the land. In the possessory column Thammineni Ramamma's name is mentioned in respect of the subject land. Thammineni Ramamma also filed an application before the Tahsildar requesting to assign the land to her as she has purchased from the de facto-complainant. Petitioners have not planted any eucalyptus plants in the subject land and they have nothing to do with the land of the de facto-complainant.

3. *Per contra* the 1st respondent contended that the land was assigned to her on 30.4.1989. Petitioner No.1/A1 took her D-Form patta from the M.R.O., Vinjamur saying he will hand over the same to her, but he did not hand over the same. The accused has taken possession of the land. The accused also threatened the complainant saying that she has no right over the land. On 8.9.2006 revenue officials measured the land and fixed boundary stones and handed over

the subject land to her. On 5.10.2006, the accused planted eucalyptus plants in the assigned land by removing the boundary stones. When the de facto-complainant objected them to enter into the land, the accused threatened her with dire consequences.

4. The undisputed facts spell out from the complaint and also the charge-sheet and the proceedings dated 7.5.2011 of the Joint Collector, Sri Potti Sreeramulu Nellore District, Nellore, are that an extent of Ac.4.83 cents of land was assigned in the name of the 1st respondent on 30.4.1989. Her name was entered in the revenue records as assignee, but, according to the contention of the complainant, the 1st petitioner, who is politically strong, collected D.Form patta in the name of the de facto complainant saying he will hand over to her, but he did not hand over the same and petitioners entered into possession of the said land of Ac.4.83 cents. It is also further alleged that on 5.10.2006 petitioners removed the survey stones got fixed by M.R.O. on the application of the 1st respondent/complainant dated 8.9.2006 after measuring and planted eucalyptus plants. The proceedings dated 7.5.2011 also show that it is petitioners who are in possession of Ac.4.83 cents assigned to the 1st respondent. The Tahsildar is directed by the Joint Collector to resume the assigned lands which are under possession of petitioners herein, which clearly shows that the land is assigned to the 1st respondent and she is the assignee whose name is entered in the revenue records. The allegation of petitioners is that the complainant

sold the land to one Thammineni Ramamma, who also filed application before the Tahsildar requesting to assign the subject land in her name as she has purchased the same from the complainant. The Tahsildar also issued notice on 26.5.2008 to the advocate of Thammineni Ramamma.

5. The contention of the learned counsel for the petitioners is that the Court cannot take cognizance without the previous sanction of the District Collector as per Section 7(3) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act').

6. Section 7 of the Act deals with penalty, according to which, whoever acquires any assigned land in contravention of the provisions of sub-section (2) of Section 3 shall be punished with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both. As per Section 7 (2) of the Act whoever opposes or impedes the District Collector or any person authorised, in taking possession of any assigned land under this Act shall be punished with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.

Sub-Section (2A) of Section 7 of the Act is included as per amended Act No.8 of 2007 with effect from 29.1.2007. Sub-Section (2A) of Section 7 of the Act deals with any officer, violating the provisions under sub-sections (1) and (2) of Section 5 shall be punished with simple imprisonment which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Sub-Section (3) of Section 7 of the Act contemplates that no Court shall take cognizance of an offence punishable under this Section, except with the previous sanction of the District Collector.

7. Sanction is necessary for prosecuting any officer who violate the provisions under Sub-Sections (1) and (2) of Section 5 as per amended Sub-Section (2A) of Section 7 of the Act. In this case, petitioners collected D.Form patta of the complainant and got into possession. Even after survey and fixing boundary stones by the M.R.O. on the application of the complainant, petitioners alleged to have removed the boundary stones from the subject land of the complainant and planted eucalyptus trees. Therefore, no sanction is necessary as contemplated under Section 7 (3) of the Act. More over, Section 7(3) of the Act is necessary only in respect of the public servant concerned, but not to private parties.

8. There is *prima facie* material that petitioners trespassed into the land of complainant, who is assignee of the land, and illegally planted eucalyptus plants, which *prima facie* makes out a case for the offence punishable under Sections 447, 434, 506, 509 read with Section 34 I.P.C. and Section 7 of Andhra Pradesh Assignment Lands (PoT) Act, 1977. Further, the Investigating Officer also completed the investigation and filed the charge-sheet against petitioners.

9. In view of specific allegations in the complaint, I am of the considered view that there is nothing to suggest that the

1st respondent by giving a complaint abused the process of law or any prejudice is caused to petitioners.

10. In the result, the criminal petition is dismissed, while vacating the interim stay granted in CrI.M.P. No.1431 of 2011, dated 15.2.2011.

11. Consequently, miscellaneous petitions pending, if any, shall stand closed.

06th March, 2018

Skmr

JUSTICE N.BALAYOGI

