

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3571 of 2011

ORDER:

The petitioner/accused seeks to quash the proceedings against her in Crime No.199/2011 on the file of Madhapur PS, Cyberabad, registered for the offences under Sections 447 and 427 IPC.

2) The *defacto* complainant is the Task Force Team Incharge of Andhra Pradesh State Wakf Board. He lodged report stating that land in Sy.Nos.1 to 9 admeasuring Ac.90-17 gts is a notified Wakf attached to Masjid-e-Alamgir, Eidgah and graveyard of Guttala Begumpet and the said Wakf institution and the property are notified by the Government and published in A.P Gazette No.51 dated 29.12.1988. It is alleged that during the inspection made by the Task Force Team along with the Surveyor of Wakf Board, they found that the accused and others were constructing a boundary wall and grabbing the property of the complainant. Hence the report. The police have registered a case in Crime No.199/2011 for the offences under Sections 447 and 427 IPC and investigation is underway.

Hence the instant quash petition.

3) Though notice to 2nd respondent was served but there is no representation on his behalf. Hence heard learned counsel for petitioner and learned Addl. Public Prosecutor for the State (Telangana).

4) The main contention of the petitioner/accused is that the property does not belong to the complainant Wakf Board. Petitioner's husband—Dr. Ajay Kumar had in O.S.No.140/1981 on the file of District Munsif, West and South, Hyderabad, obtained decree of declaration from the Court on 29.06.1981 with regard to the land in Sy.No.2 part of Guttala Begumpet village and pursuant to the same, got his name mutated in the revenue records. From the year 1988 onwards his name was shown in the revenue records as pattadar as well as possessor of the property. In the year 2006, by way of a gazette publication, the Government of Andhra Pradesh had acquired a small bit of the land and had also notified the same in the newspapers and also awarded compensation to the petitioner's husband. After formation of the road, the remaining land of the petitioner's husband remained open. There were attempted encroachments from neighbouring colony residents and also since some anti-social elements were using the land in the night time and some people were dumping materials in the land, the petitioner's husband thought it fit to repair the existing wall and the room. The existing room is also assessed to Municipal Tax and has been allotted No.2-86. There is no restraint order from any Court of law against petitioner or her husband. It is the further contention of the petitioner that the alleged notification basing on which the complaint is filed, was challenged by the petitioners before the High Court in Writ Petition No.23792/1995 and the notification was struck down. Against the said order Writ Appeal No.215/2002 was filed. While-so, the *defacto* complainant also filed a Land Grabbing Case No.151/1996 against the

petitioner herein and others. The said LGC was dismissed by the Land Grabbing Court on the ground that the complainant had not proved their title. The 2nd respondent/*defacto* complainant filed an appeal against the orders of the Land Grabbing Court vide Writ Petition No.26553/2003. The said Writ Petition and Writ Appeal No.215/2002 were disposed of by a Division Bench of this Court in its common order dated 03.12.2010 and hence the *defacto* complainant cannot claim the disputed property as the Wakf property. Learned counsel would strenuously argue that the litigation between the parties is a civil dispute and therefore, continuation of the criminal proceedings against the petitioner would amount to abuse of process of the Court. He thus prayed to allow the Criminal Petition.

5) Per contra, learned Additional Public Prosecutor argued that a full-fledged investigation is essential to decide the respective claims of the parties.

6) The point for determination is:

“Whether there are merits in the petition to allow?”

7) **POINT**: As can be seen from the FIR, the Incharge of the Task Force Team appointed by the A.P State Wakf Board, would claim that the land in Sy.Nos.1 to 9 to an extent of Ac.90-17 gts was notified as Wakf property as per A.P Gazette No.51 dated 29.12.1988 and the accused and others are constructing a boundary wall therein by grabbing the said property. However, the common judgment in Writ Appeal Nos.215, 578, 625 of 2002 and Writ Petition No.26553 of 2003 and C.C.No.401 of 2008 would reveal

that a learned single Judge of this Court in his order in Writ Petition No.23792/1995 quashed the notification and in the common judgment, the quashing of notification was upheld. However, it was ultimately held that the concerned parties are at liberty to work out their remedies with regard to declaration of title to the property in an appropriate forum. It was also held that the title of either parties will be subject to declaration made by a competent Court in a properly constituted suit or other proceedings. Therefore, I find force in the submission of learned counsel for petitioner. No material is placed before this Court showing *prima facie* title of the *defacto* complainant in the disputed property. Further, the dispute between the parties is primarily a civil oriented one. Therefore, continuation of the criminal proceedings and investigation would amount to abuse of process of the Court.

8) Accordingly, this Criminal Petition is allowed and the proceedings against the petitioner in Crime No.199/2011 on the file of Madhapur PS, Cyberabad are quashed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 11.12.2018
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