

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.1051 of 2013

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in CC.No.2786 of 2012, against the petitioners, who are A1 to A3, on the file of the IX Metropolitan Magistrate, Cyberabad, Ranga Reddy District. The offences alleged are under Sections 447 and 427 of the Indian Penal Code.

2. Heard the counsel for the petitioners, the counsel for the respondent and the learned Public Prosecutor, appearing for the first respondent.

3. The complaint is filed stating that the complainant is the Manager of Narne Constructions Private Limited and that they have purchased land in Sy.No.218/6 admeasuring Ac.12.00 guntas situated at Kondapur Village, after payment of due consideration. In continuation of earlier report dated 02.03.2012 and in continuation of the complainant given on 21.09.2012, it is further stated that this Court in WP.No.33818 of 2011, vide orders dated 22.08.2012, directed the police to re-erect the name boards, which were removed by them and aggrieved by the said order, a writ appeal was filed and the same is pending consideration. In the mean time, the henchmen of the first petitioner and others, taking undue advantage of the police erecting the name boards, tried to trespass into the subject land, but their field staff and security resisted them, intimating that the orders of this Court in the writ petition was only to erect the name boards. Though the henchmen of the petitioners and others have no right, they

attempted to trespass into the land while the writ appeal is pending. On 23.09.2012 at about 10.30 AM the first petitioner along with 100 people trespassed into the land and demolished the compound wall, damaging their property, which is worth Rs.10,00,000/-.

4. This being the complaint, the counsel for the petitioners contends that the land, in fact, belonged to the petitioners and that the order in the writ petition, directing the police to erect the name boards would prove the same.

5. The counsel for the respondent submits that the writ appeal is filed against the said order and status quo was ordered. The order in the writ appeal is dated 24.09.2012.

6. The counsel for the petitioners contends that as on the date of the alleged offence, the order of this Court, made in the writ petition, holds the field and hence, the petitioners have to be held as the persons having possession of the disputed land and hence, the question of their trespassing the land does not arise, so also their demolishing the compound wall. He further contends that the land does not belong to the respondent and hence, the demolition, if any, would not amount to any offence.

7. The counsel for the respondent, on the other hand, contends that by virtue of a sale deed, which was executed in favour of the respondent by the petitioners, the respondent becomes the owner of the land and hence, the respondent has to be considered as being in possession of the said land. He filed some photographs to show that there was demolition of compound wall, but the said photographs do

not make out any case as, though they show some wall, it cannot be said that the said wall is the same, which is in issue in this case.

8. The counsel for the petitioners submits that there was no sale deed executed by the petitioners and that their contention is that the same is a fabricated document. He also draws the attention of this Court to the proceedings of the Tahsildar, Serilingampally Mandal wherein the name of the first petitioner is shown as the owner of the land.

9. A perusal of the order shows that the first petitioner filed a xerox copy of the partition deed, but it was considered by the Tahsildar that the same cannot be taken into consideration as they are only xerox copies. It is also noted therein that the second respondent has filed an objection petition on 05.07.2009 stating that petitioners and their mother have executed a GPA in their favour in pursuance of OS.No.304 of 1983 dated 27.04.1985. The contentions of the objection petition were also examined and it was found by the Tahsildar that there is no such exhaustive document filed for transfer of title to them. Hence, from the order of the Tahsildar, it can be understood that the entries were amended by recording the first petitioner as the owner to an extent of Ac.5.22 guntas and the remaining extent of Ac.5.21 guntas was mutated in the name of one Arun Lal Yadav and Munna Bai. Hence, *prima facie*, the above document would show that the title to the land is with the first petitioner.

10. The order in the writ petition is to the effect that the disputes between the parties are civil in nature and the issue of possession has

to be decided by a competent civil Court. Nowhere is it mentioned that there was a compound wall to the disputed property and that the same was constructed by the second respondent. In the judgment dated 04.10.2012 in CC.No.216 of 2011, which is filed by the second respondent, it is observed that there were only roads and fencing for the disputed land and no mention of any compound wall is made. A suit was filed in O.S.No.1697 of 2011, by the second respondent and the same is pending. A suit in O.S.No.864 of 2012 is filed by the first petitioner for perpetual injunction and the same is also pending. Hence, when the issue of possession is still not decided by the civil Court and when the parties have been going into several rounds of litigation with regard to the possession, the present complaint filed by the complaint by the second respondent only seems to be one more effort to get support to his plea of possession over the land. Hence, in view of the above, this Court opines that there may not be truth in the complaint and unless the title or possession of the second respondent in respect of the disputed land is proved, the proceedings against the petitioners would only result in abuse of process of law and wastage of Court's time.

In the light of the above, the criminal petition is allowed and the further proceedings in CC.No.2786 of 2012, against the petitioners, who are A1 to A3, on the file of the IX Metropolitan Magistrate, Cyberabad, Ranga Reddy District, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

T. RAJANI, J

August 30, 2018
DSK