

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NO. 35205 OF 2016

ORDER:

Heard the learned counsel for the petitioner and the learned GP appearing for respondent Nos. 1 to 4 and the learned counsel appearing for respondent Nos. 5 to 7.

2. The prayer sought in the writ petition is as under:

“...to issue a writ, direction, order or orders more particularly one in the nature of writ of MANDAMUS directing the respondents 2 to 4 to provide police aid for implementing the injunction order dated 07.09.2011 passed in O. S. No. 394/2011 on the file of the I Additional Senior Civil Judge, Rajahmundry duly considering petitioner's complaint dated 02.10.2016 in the interest of justice.”

3. The case of the petitioner is that he is the absolute owner and possessor of land admeasuring Ac.2.07 cents in Sy.No.56/1A, Ac.0.01 cents in Sy.No.56/1C, Ac.0.51 cents in Sy.No.55/3, Ac.0.16 cents in Sy.No.55/5A, Ac.0.58 cents in Sy.No.55/2, Ac.0.19 cents in Sy.No.55/4A and Ac.1.82 cents in Sy.No.54/2A of Hukkumpeta village, Rajamahendravaram Rural Mandal, East Godavari district. The petitioner also became owner of purchased some other lands through registered settlement deed Nos. 4271/1970 dated 15.10.1970 and 579/2001 dated 30.3.2001. In respect of the above said lands, the name of the petitioner was mutated in the revenue records and a copy of Form-I(B) was also issued. When respondent No.5 and his father tried to interfere with his peaceful possession and enjoyment, he was constrained to file a suit in O.S.No.394 of 2011 on the file of the I Additional Senior Civil Judge, Rajahmundry seeking permanent injunction. The said suit was decreed on

7.9.2011 restraining the defendants therein and their men from interfering with the petitioner's peaceful possession and enjoyment over the subject property. In spite of having knowledge, when the respondent Nos. 5 to 7 tried to interfere with his peaceful possession with the help of unsocial elements, respondent No.4 issued proceedings dated 14.7.2016 requesting the Mandal Executive Magistrate to initiate proceedings under Section 145 Cr.P.C. Accordingly, proceedings dated 22.9.2016 were issued holding that the total extent of land admeasuring Ac.5.33 cents has been in possession and enjoyment of the petitioner. However, on 1.10.2016, respondent Nos. 5 to 7 and their men destroyed the fencing around the subject property highhandedly and threatened the petitioner. He lodged a complaint leading to registration of Cr.No.312 of 2016 against respondent Nos. 5 to 7 herein and others for the offence under Sections 188, 447, 427 and 506 read with 34 IPC. Though the petitioner is having a decree in his favour in O.S.No. 394 of 2011, respondent Nos. 5 to 7 are trying to interfere with his possession and they have already damaged his property. Therefore, the present Writ Petition is filed seeking police protection.

4. Respondent No.5 filed a counter affidavit denying the material allegations made in the affidavit filed in support of the writ petition and contended inter-alia that respondent Nos. 5 to 7 have no knowledge about the decree in O.S.No.394 of 2011 dated 7.9.2011. It is further denied that respondent No.4 was requested to initiate proceedings under Section 145 Cr.P.C. after enquiry; and proceedings dated 22.9.2016 were issued holding that the

petitioner is in possession and enjoyment of the subject land and he erected fencing around his land, apart from other aspects.

5. Having heard both the counsel and from the perusal of the material on record, it is revealed that when the 5th respondent and his father tried to interfere with the peaceful possession and enjoyment of the petitioner over the subject property, the petitioner filed O.S.No.394 of 2011 for injunction simplicitor on the file of the I Additional Senior Civil Judge, Rajahmundry. The said suit was decreed on 07.09.2011 restraining the defendants therein and their men from interfering with the peaceful possession and enjoyment of the petitioner in respect of the property in question. Thus, respondent Nos.5 to 7 had the knowledge of passing of a decree against them. In spite of suffering a decree, whereunder they were restrained, they violated the injunction orders leading to initiation of proceedings under Section 145 Cr.P.C. to maintain the law and order situation. On enquiry, the Mandal Executive Magistrate, Rajahmahendravaram Rural, issued proceedings in L.Pari.B/795/2016, dated 22.09.2016, wherein it is mentioned that the petitioner has been in possession of the subject property. However, on 01.10.2016, respondent Nos.5 to 7 and their men destroyed the fencing around the subject property highhandedly and threatened the petitioner. The petitioner lodged a complaint leading to registration of Crime No.312 of 2016 against respondent Nos.5 to 7 for the offence under Sections 188, 447, 427 and 506 read with 34 IPC. In spite of registration of crime, respondent Nos.5 to 7 are frequently attempting to take over possession of the subject

property from the petitioner. When the decree of injunction is staring at respondent Nos.5 to 7, they cannot take the law into their hands and cannot interfere with the peaceful possession and enjoyment of the petitioner. In fact, the 4th respondent pursuant to the registration of Crime No.312 of 2016 ought to have taken action by providing protection to the property.

6. In the conspectus of the facts stated supra, the issue that falls for consideration is:

Whether the petitioner is entitled for police protection to enforce the orders of injunction in the writ petition filed under Article 226 of the Constitution of India?

7. It is settled law that to enforce the orders of injunction, police protection/aid can be granted not only by the civil Court by exercising power under Section 151 Cr.P.C., but also by this Court by way of entertaining a writ petition under Article 226 of the Constitution of India.

8. Grant of police aid under Article 226 of the Constitution of India has been considered by this Court and the Apex Court in catena of judgments.

In *Satyanarayana Tiwari vs. S.H.O. P.S. Santhoshnagar, Hyderabad*¹ a Division Bench of this Court while considering the similar issue held that there is no bar for granting police aid in writ jurisdiction and observed as under:

“2. It is the grievance of the appellant that since the writ petition was dismissed and the police is not rendering any help,

¹ AIR 1982 Andhra Pradesh 394

respondents 4 and 5 are trying to take the law into their own hands and dispossess him.

3. The legal position as observed by the learned single Judge does not admit of any doubt that the orders of the Civil Court prevail on the question of possession. Any anterior or subsequent enquiry and finding of the police or any other authority cannot nullify the finding of the civil court especially when that finding has been upheld by this court by dismissing the Civil Revision Petition. The only authority that can vary that finding is the Supreme Court. None of the parties in this case have moved the Supreme Court questioning the dismissal of the Civil Revision Petition. That being the position, no authority in the State, revenue or police, can ignore the finding of the Civil Court or refuse to take steps to see that the order of the Civil Court is implemented and the party, in whose favour there is the order of the Civil Court, gets all help to maintain the law and order and not allow the other party to contravene the injunction order and create law and order problem.

...

Mr. Jagannadha Rao, learned counsel, however, contended that the said decision is an authority for the position that the civil courts can under inherent powers, grant such directions under Section 151 C.P.C. but a writ of mandamus, does not lie. We are unable to agree with this contention. Section 151 CPC reserves the inherent power of the Court. Article 226 of the Constitution goes a step further and vests extraordinary jurisdiction in the High Court of a State to issue not only a writ of mandamus but also appropriate writs, directions or orders for the enforcement of any of the right conferred by part III and for any other purpose. As held by the Supreme Court in *Calcutta Gas Company (Prop) Ltd. v. State of W.B.* MANU/SC/0063/1962 : AIR 1962 SC 1044 'any other purpose' means 'the enforcement of any legal right, of course, means any legally enforceable right. Nothing more can be a higher purpose than the enforcement of the orders of the civil court and that of the High Court which confirms or recognises the rights of a party. By any interpretation of the provisions of C. P. C. the power of the High Court under Article 226 of the Constitution of India to enforce its own orders or the orders of the Civil Court cannot be curtailed.

The power which a civil Court has under Section 151 C.P.C., the High Court has in much larger measure under Article 226 of the

Constitution. We have, therefore, no hesitation in concluding that this Court has ample jurisdiction, to issue a writ or direction to all the authorities including the police within the State to enforce the civil Court as confirmed by the High Court in a civil revision petition and maintain the rule of law. The police authorities are therefore bound to give all assistance to the appellant to enforce and see that the orders of this Court as confirmed in CRP No.3258/81 are implemented and my enquiry or report of any other authority, revenue or police cannot be put as an excuse for not rendering the required help to the appellant to maintain his possession. This order will be subject only to the orders of the civil Court in OS 3770/80." (Emphasis supplied)

In *Kotak Mahindra Bank vs. Station House Officer*² a Division Bench of this Court while dealing with the similar issue held as under:

"... There can be no higher purpose than the enforcement of orders of the High Court whereby the rights of a party are either confirmed or recognized. The power of the High Court under Article 226 of the Constitution of India, to enforce its own orders or the orders of the Civil Court, cannot be curtailed. (Satyanarayana Tiwari MANU/AP/0145/1982 : AIR 1982 AP 394; Calcutta Gas Company (Prop) Ltd. MANU/SC/0063/1962 : AIR 1962 SC 1044; T.C. Basappa v. T. Nagappa MANU/SC/0098/1954 : AIR 1954 SC 440).

48. As the police authorities owe a legal duty to enforce the law, citizens are entitled to seek directions, under Article 226 of the Constitution, for discharge of such duties by them. (Satyanarayana Tiwari MANU/AP/0145/1982 : AIR 1982 AP 394; Rayapati Audemma MANU/AP/0117/1971 : AIR 1971 AP 53; R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1) 20 (1968) 1 ALL ER 763. The High Court can be approached for issuance of a writ on the plea that a particular party has not obeyed a decree or an order of injunction passed in his favour, or that he was deliberately flouting that decree or order and, in spite of the petitioner applying for it, the police authorities were not giving him the needed protection in terms of the decree or order passed by a court of competent jurisdiction. (P.R. Murlidharan MANU/SC/1380/2006 : (2006) 4 SCC 501). In the event of the

² 2016 (1) ALD 696 (DB)

police failing or refusing to carry out their duty, the court would not be powerless to intervene, and an order of mandamus would issue. (R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)20 (1968) 1 ALL ER 763. Mandamus is a very wide remedy which is available against public officers to ensure that they discharge their public duty. Once the party, who applies for mandamus, shows that he has sufficient interest to be protected, and there is no other equally convenient remedy, the remedy of mandamus is available. (R. v. Commissioner of Police of the Metropolis Ex P. Blackburn (No.1)20 (1968) 1 ALL ER 763. (Emphasis supplied”)

The Apex Court considering the aspect of grant of police aid in a writ petition in P.R. Muralidharan and others v. Swami Dharmananda Theertha Padar and others³ held as under:

“A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court.”

(Emphasis supplied)

³ (2006) 4 SCC 501

9. In the case on hand, though respondent Nos.5 to 7 suffered an order of injunction, they not only tried to interfere with the peaceful possession and enjoyment of the petitioner in respect of the subject property, but also destroyed the fencing around the property highhandedly on 01.10.2016. Unless and until the highhanded action of respondent Nos.5 to 7 is curtailed by granting police aid, there is every possibility of violation of the injunction order.

10. This Court in *A. Bharathi and others vs. State of Telangana and others*⁴ while dealing with the issue of grant of police aid/protection pursuant to the order passed by a civil Court, discussed the case law as stated supra and held as under:

“So if the Civil Court can do so, the Writ Court exercising equitable jurisdiction under Art.226 can also do so. [See *Kotak Mahindra Bank* (5 Supra)].

In my considered opinion, it would be travesty of justice to allow respondent Nos.7 to 10 to violate the order of injunction and claim to have dispossessed the petitioners from the subject property in violation of the injunction order.

The respondent Nos.7-10 cannot be allowed to take advantage of their own wrong.

Respondent Nos.7 to 10 also cannot be allowed to take advantage of their own wrong in violating the temporary injunction granted by the Civil Court in favor of the petitioners and digging either a borewell or putting notice boards or doing any other acts.

In *Ritesh Tewari and another Vs. State of Uttar Pradesh and others*⁵, the Supreme Court held that a Court of equity must act so as to prevent perpetration of a legal fraud and promote good

⁴ 2017 (1) ALD 503

⁵ (2010) 10 SCC 677

faith and equity and the Court must advance the cause of justice and not to thwart it.”

11. In these circumstances, this court is of the opinion that the petitioner has made out a *prima facie* case for grant of police aid to protect his possession over the subject property.

12. Accordingly, the writ petition is allowed, directing respondent Nos.2 to 4 to provide police aid in implementing the decree of injunction in O.S.No.394 of 2011 dated 07.09.2011 on the file of the Additional Senior Civil Judge, Rajahmundry, restraining respondent Nos.5 to 7 from interfering with the peaceful possession and enjoyment of the petitioner in respect of the subject land.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

P. KESHAVA RAO, J

Date: 14.11.2018

KPM/ES

