

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.7037 of 2018

ORDER:

Aggrieved by the order dt:08.06.2018 in Lr.No.C/1746/2014 passed by the learned Sub-Divisional Magistrate and Revenue Divisional Officer, Keesara Division, Medchal-Malkajgiri District, the first party filed the instant petition to quash the proceedings.

2) The impugned order passed under Section 145 Cr.P.C would show that the Inspector of Police, Medipally PS, Rachakonda, Keesara Division, Medchal-Malkajgiri District, submitted a report in FIR No.768/2014 to the RDO and informed that there is a dispute over the land in respect of plot No.53 covered by Sy.Nos.91 & 93 admeasuring 200 sq.yards situated in Boduppall village, Medipally Mandal and both first party and second party have been wrangling over the same which is likely to result in breach of peace and tranquility. As per first party, he purchased Plot No.53 falling in Sy.No.91 admeasuring 200 sq.yards from P.Venu Gopal S/o. Mallaiah R/o.Boudha Nagar, Secunderabad vide document No.6319/2014 of SRO, Uppal and having obtained G.P permission on 30.09.2014, he started house construction. Inspector of Police further reported that whereas second party claimed that he purchased Plot No.53 falling in Sy.Nos.91 and 93 admeasuring 200 sq.yards vide document No.4154/2014 of SRO Uppal. Both the parties claimed right over the said plot. First party gave a complaint against the second party which was registered as crime No.690/2014 under Sections 447, 506 r/w 34 IPC. The Inspector reported

that the first party is constructing the house and requested the RDO to take action as both parties are creating nuisance in the vicinity.

3) Thereupon the RDO called for report of the Tahsildar, Ghatkesar, who submitted his report stating that he received the report of Inspector of Police, Medipally PS in FIR No.768/2014 stating that there is every possibility of occurrence of blood shed and breach of peace and public tranquility over the subject property. The Tahsildar, Ghatkesar further submitted in his report that he got enquired the matter through the field staff and as per records i.e, pahani for the year 2010-11 of Boduppall village, Sy.Nos.91(12-13) and 93(19-28) admeasuring Ac.32-01 gts is classified as dastugardham (Inam) land recorded in the name of Sardar Yar Jung and in possession column it was recorded as plots. The VRO, Boduppall has identified subject plot which is bounded by compound wall with four(4) A.C rooms which were stated to be constructed by Challa Amarender Reddy i.e, the first party and at present the tenants are in occupation. The Tahsildar further reported that on verification of another registered sale deed No.4154/2014 dated 28.05.2014. It is found that Smt.Laxmi D/o.Narsimha, has purchased plot No.53 admeasuring 200 sq.yards in Sy.Nos.91 and 93 by virtue of AGPA No.16816/2006 dt.08.11.2006 from one Pannala Krishna Reddy and 7 others. Thus the Tahsildar stated that when both the sale deeds are compared, the plot number and extent of the disputed property is same in both the sale deeds but the survey number in the sale deed of first party i.e, Amarender Reddy is mentioned as only one survey number i.e, Sy.No.91. The Tahsildar

accordingly submitted his report. Thereupon, the RDO called upon both parties to appear before him on 25.06.2018 and after hearing both sides passed an order under Section 145 Cr.P.C and directed Tahsildar, Medipally to take the physical possession of disputed land and see that no activities are taken up by either party until further orders.

Hence the instant Criminal Petition.

4) Heard.

5) Severely castigating the order passed by the RDO, learned counsel for petitioner/first party argued that the petitioner is the absolute owner and possessor of the house property bearing H.No.3-125/66 in Plot No.53 admeasuring 200 sq.yards in Sy.No.91 in Medipally Mandal. He purchased the same under registered sale deed dated 13.08.2014 vide document No.6319/2014 from one P. Venu Gopal. Originally, one Pannala Krishna Reddy and others were the pattadars and possessors of agricultural land admeasuring Ac.3-00gts in Sy.No.91 of Boduppall village, Ghatkesar Mandal in Medchal-Malkajgiri District. They executed a GPA dated 11.07.1990 vide document No.351/1990 in favour of one Siddam Ganesh and the said GPA executed registered sale deed dated 09.02.2000 vide document No.1096/2000 in favour of P. Venu Gopal and the said Venu Gopal was in possession and enjoyment of the property and he constructed a house in the year 2007 by obtaining building permission from Gram Panchayat, Boduppall vide permit No.GPB/1065/06-07. The petitioner/first party after producing the house property from P. Venu Gopal has obtained

mutation in his name in the Gram Panchayat, Boduppall, vide Lr.No.GPB/193/2014-15 dt.30.09.2014. Learned counsel further argued that when Smt. K. Lakshmi and B. Yakaiah/second party tried to interfere with possession and enjoyment of the petitioner by making a false claim that Yakaiah purchased the disputed property, the petitioner gave a report against them and the same was registered as Crime No.690/2014. He also filed O.S.No.406 of 2014 before the I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar for perpetual injunction against Smt. K. Lakshmi and B. Yakaiah and after full-fledged trial, the suit was decreed on 29.07.2016 in favour of the petitioner. Having failed in their attempts, they somehow managed the revenue authorities to issue the prohibitory orders. Learned counsel vehemently argued that when a competent civil court has already passed judgment in respect of the subject property, the executive authorities should not have exercised jurisdiction to pass the prohibitory order. He thus prayed to quash the proceedings.

6) The point for determination in this petition is:

“Whether the impugned order of the learned Sub-Divisional Magistrate & RDO is legally sustainable?”

7) **POINT:** The Executive Magistrate gets jurisdiction to act upon, when the dispute between the parties concerning land or water is likely to result in breach of peace. Section 145 Cr.P.C envisages and guides an Executive Magistrate how to react in such instances. The object of the section is mainly to maintain law and order and to prevent the breach of

peace. The business of the Magistrate is not to go into the question of title but to meet the urgency of situation by maintaining the party in possession of the dispute property. The *sine qua non* for the Magistrate to embark upon is the report of police officer and other credible information that a dispute concerning any land, water or the boundaries is likely to cause breach of peace within his local jurisdiction. Upon receiving such information, the Executive Magistrate shall make an order in writing stating the grounds being so satisfied, call upon the concerned parties to such dispute to attend his court in person or by a pleader on a specified date and time and put-forth their statements or their respective claims in respect of the disputed property. The Magistrate then, without reference to the merits or claims of any of the parties right to possess the subject property in dispute, peruse the statements, hear the parties, receive all such evidence and decide whether any and which of the parties was at the date of the order passed by him under Section 145 Cr.P.C. was in possession of the property of the dispute. Further, during the course of enquiry, if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1). Thus, after deciding the possession of a party, the Magistrate shall treat that party in such possession of the subject property and issue an order declaring such party

entitled to possession thereof until evicted there from in due course of law and forbid all disturbances of such possession until such eviction.

8) Now a perusal of the impugned order shows that, on the ground that in petitioner/first party's sale deed only one survey number is mentioned but in the second party's sale deed two survey numbers are mentioned, it appears, the Tahsildar in his report recommended action under Section 145 Cr.P.C and RDO has passed the impugned order. In this process, unfortunately two important aspects are not taken into consideration by the RDO. Firstly, there is no dispute with regard to the identity of the property. Therefore, mere omission of one survey number in petitioner's sale deed will not make much difference. Secondly and most importantly, the petitioner obtained decree in his favour in O.S.No.406 of 2014 from the Court of I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, and the same is in force. It is trite law is that when the competent Civil Court has already seized the dispute touching the subject property, the Executive Magistrate will have no jurisdiction to pass any final order under Sec.145 Cr.P.C. This legal point has been held by the Apex Court successively.

a) In the decision reported in ***Ram Sumer Puri Mahant vs. State of U.P and others***¹, 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

¹ AIR 1985 SC 472 = 1985 CriLJ 752 (1) (SC)

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.”

- b) The principle laid down in ***Ram Sumer Puri Mahant***’s case(1 supra) was upheld by the Apex Court in its another decision reported in ***Amresh Tiwari vs. Lalta Prasad Dubey***². 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)

- 9) So from the above rulings of the Apex Court, when the dispute touching the same subject property was either pending or already disposed of by a Civil Court, the proceedings under Section 145 Cr.P.C are not maintainable. In such an event, if the civil proceedings are pending, the Executive Magistrate shall direct the parties to obtain suitable orders from the concerned Civil Court. Similarly, if the Civil Court has already adjudicated upon the dispute relating to the same property, then the Sub-Divisional Magistrate shall direct the parties to scrupulously follow the

² AIR 2000 SC 1504

decree passed by the Civil Court. So in any event, the impugned order passed by the Sub-Divisional Magistrate is not sustainable under law.

10) Accordingly, this Criminal Petition is allowed and the impugned order dt:08.06.2018 in Lr.No.C/1746/2014 passed by the learned Sub-Divisional Magistrate and Revenue Divisional Officer, Keesara Division, Medchal-Malkajgiri District, is hereby set aside.

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

Date: 10.07.2018
scs

U. DURGA PRASAD RAO, J

