

HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.24027 of 2019

ORDER:

This writ petition is filed seeking *Mandamus* to declare the action of respondent No.3 in passing the impugned order dt.20.09.2019 vide Rc.No.B/1725/2019 basing on the report of respondent No.4, whereby respondent No.3 by invoking the provision under Section 145 of Cr.P.C. had directed the parties to the dispute, viz., the petitioners and unofficial respondent Nos.6 and 7 to maintain Law and Order.

Heard Sri M. Ajay Kumar, learned counsel for the petitioners, and the learned Government Pleader for Revenue appearing for respondent Nos.1 to 3.

Learned counsel for the petitioners submits that the petitioners had earlier filed a suit being O.S.No.726 of 2010 on the file of the II Additional Senior Civil Judge, Warangal, which has been decreed on 17.04.2012 in their favour and for enforcement of the said decree dt.17.04.2012, the petitioners filed E.P.No.191 of 2019 in O.S.No.726 of 2010 and the same is pending. Learned counsel would further submit that since already proceedings are pending before the learned II Additional Senior Civil Judge, Warangal, respondent No.3 ought not to have passed the impugned order by invoking the provision under Section 145 of Cr.P.C., as the same would amount to initiation of parallel proceedings with regard to the same property.

Learned counsel for the petitioners placed reliance on a judgment in B. MADAN MOHAN REDDY vs. S.D.M. (KHAMMAM)¹, wherein a Division Bench of this Hon'ble Court was pleased to observe as under:

“..... Thus, parallel proceedings with regard to the same property i.e. before the Civil Court and before the Sub-Divisional Magistrate under Section 145 of Cr.P.C. would not be justified. This is moreso, when in the civil proceedings which were initiated prior to the initiation of the proceedings under Section 145 Cr.P.C. ad-interim injunction has been granted in favour of one of the parties to these proceedings by a Civil Court restraining the opposite party from disturbing the possession and enjoyment. In such a situation, a duty is cast on the Magistrate under Section 145 Cr.P.C. to see that the parties who have a civil dispute pending, do not take the law into their own hands and commit a breach of peace and he may resort to initiate proceedings under Section 107 Cr.P.C.

In the light of the above discussion, we are of the opinion that the impugned order of the first respondent, namely Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Paloncha, in Rc.No.E/2559/96, dated 28.06.1996 are liable to be quashed. Accordingly, the said proceedings are quashed and the petition is allowed.”

Having regard to the ratio laid down by a Division Bench of this Court in the above said judgment, which is not disputed by the learned Government Pleader for Revenue, the impugned order dt.20.09.2019 passed by respondent No.3 is unsustainable and the same is liable to be set aside.

¹ 1998 (2) ALT (Gr.) 283 (D.B.) (A.P.)

Accordingly, this writ petition is allowed setting aside the impugned order dt.20.09.2019 passed by respondent No.3. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE T. VINOD KUMAR

26.12.2019.
Msr



HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.24027 of 2019



26.12.2019
Msr