

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.23477 of 2014

ORDER:

There is no representation on behalf of the petitioner.

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

"...this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondent No.3 in not taking legal action against the Respondents No.4 and 5 as per the complaint dated 11-08-2014 is arbitrary and illegal and against the principles of Natural Justice and consequently issue a direction to the respondent No.3 to take legal action against the respondents No.4 and 5 as per law and to pass such other order or orders appropriate in the case."

3. The respondent No.3 filed a counter affidavit denying the averments made in the affidavit filed in support of the writ petition and contended, *inter alia*, that on 25.08.2014, the respondent No.3 received the complaint dated 11.08.2014 through post stating that he is the owner of the land in Sy.No.301 situated at Thimmapur Village. On 11.08.2014, at 11 AM, the respondent No.4 and others criminally trespassed into the said land and dismantled the cement poles by using tractors and thereby, he sustained loss of Rs.30,000/-. Earlier the respondent No.4 ploughed the land for two times, thereupon the petitioner filed WP.No.6980 of 2014 before this Court. After hearing, this Court passed an order in favour of the petitioner confirming the ownership of the petitioner and directed the Tahsildar, Mandamary for further action. However, the respondent No.4 without caring the orders of this Court trespassed into the said land. The said complaint was entered into the General Diary in page No.31/13 dated 25.08.2014 and preliminary enquiry was taken up. During the course of enquiry, it was revealed that the respondent No.4 lodged a complaint with the respondent No.3 stating that he is in possession of

the land in Sy.No.301 admeasuring Ac.3.38 guntas and the petitioner herein tried to occupy part of the land. Based on the said complaint, a case in Cr.No.109 of 2014 for the offences under Sections 290, 447, 506 read with 34 of the Indian Penal Code was registered on 12.08.2014. During the course of investigation, it was revealed that apprehending danger of arrest, one Nizamuddin filed WP.No.25695 of 2014 claiming that he purchased the land from the petitioner and the respondent No.4 and to declare the registration of Cr.No.109 of 2014 as illegal. This Court by order dated 31.10.2014 granted orders of interim stay. The said case is under investigation. However, with regard to the above said land, two crimes were registered vide Cr.No.109 of 2014 and Cr.No.119 of 2014. Therefore, the respondent No.3 issued notices on 25.08.2014 and 27.08.2014 under Section 92 of the Criminal Procedure Code to the petitioner to produce documentary evidence for the purpose of enquiry pursuant to his complaint dated 11.08.2014. Instead of producing the documents, the petitioner filed the present writ petition with baseless allegations. Therefore, the respondent No.3 has not registered a criminal case on the complaint of the petitioner. However, pursuant to the registration of Cr.No.109 of 2014, investigation was completed and a charge sheet was filed before the Judicial Magistrate of First Class, Mancheri. The same was taken on file vide CC.No.77 of 2016, which is pending trial.

4. In spite of filing of counter affidavit with specific averments, no reply affidavit is filed to rebut the averments made in the counter affidavit. Therefore, they are deemed to be admitted and binding on the petitioners. In that view of the matter, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. As a sequel thereto, pending miscellaneous petitions, if any, shall stand dismissed. There shall be no order as to costs.

December 13, 2019
DSK

P. KESHAVA RAO, J

