

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 19031 of 2014

ORDER :

Petitioners seek a *mandamus* to declare the action of the respondent – police in not providing them the police protection to safeguard the land admeasuring Acs. 1.33 guntas in Survey No. 763 situated at Badameedhipally Village, Mahabubnagar Mandal and District pursuant to the judgment in O.S.No. 200 of 2007 on the file of the Senior Civil Judge's Court at Mahabubnagar, as illegal and arbitrary.

The facts are not in dispute.

The 1st petitioner (died) claimed to be in possession and enjoyment of the subject land having purchased the same from the original pattadar. While so, Respondents 3 to 10, it is stated, had been interfering with his peaceful possession which resulted in filing O.S.No. 200 of 2007 on the file of the Senior Civil Judge's Court at Mahabubnagar, but however, they had been causing nuisance at the site. The Revenue Divisional Officer, Mahabubnagar had promulgated orders under Section 145 of the Code of Criminal Procedure and subsequently, the said suit was decreed on 28.07.2010 and the land was handed over to him on 16.03.2013. Respondents 3 to 10 got filed O.S. No. 42 of 2008 on the file of the Andhra Pradesh Waqf Tribunal, Hyderabad claiming Ac.0.24 guntas from out of the land of the petitioner for Muslim grave yard and to buy peace, the petitioner had voluntarily given Ac.0.37 guntas. It is also stated that whenever the 1st petitioner intended to clean the bushes, Respondents 3 to 10 had caused obstruction and threatened him with dire consequences, in which context, he filed a complaint before the 2nd respondent in Crime

No. 165 of 2013 on 12.08.2013 and the said crime is under investigation. He further requested, on 10.05.2014, the 1st respondent to provide police protection, but the latter had not taken any action thereon.

In the counter-affidavit filed by the 2nd respondent on 22.08.2014, on behalf of Respondents 1 and 2, it is stated that the petitioners had suppressed the factum of the orders in Writ Petition No. 25893 of 2013 and Writ Appeal No. 3 of 2014. It is further stated that Respondents 3 to 10 had filed the above Writ Petition, wherein the petitioner was a party respondent. It is also stated that on the complaint received on behalf of the 1st petitioner, from Sri MA. Hameed, S/o Rehman Khan, FIR No. 165 of 2013 was registered on the file of I Town Police Station, Mahabubnagar, and the said crime is under investigation. It is further stated that there were number of cases registered in connection with the disputed land, details of which were given below:

S.No.	Crime No.	Section of Law	Stage of case
1.	Cr.No. 98 of 2003	447,427,295 r/w 34 IPC	The case ended in acquittal u/sec. 255(1) CrPC vide CC No. 12/2004 on 29.01.2005.
2.	Cr.No.126/2005	452,427 r/w 34 IPC	The case ended in conviction vide CC No. 168/2007 on 04.04.2007 in which the writ petitioner is the accused.
3.	Cr.No.112/2007	447,153(A),297 IPC	The case ended in conviction vide CC NO. 535/2007 on 8.12.2010, in which the petitioner is the accused.
4.	Cr.No.164/2013	297,427 r/w 34 IPC.	The case is under investigation.
5.	Cr.No. 165/2013	447, 427, 341 r/w 34 IPC.	The case is under investigation

Thereafter, additional counter was filed on 02.01.2020 by the Station House Officer, setting the details of various cases registered in Mahabubnagar I Town Police Station. It is also stated that as per the Memo of the Sub-Divisional Police Officer,

Mahabubnagar, dated 06.08.2014, police picket was posted at Muslim grave yard and the disputed site to avoid breach of peace and encroachment in the said disputed site. The said picket was maintained for about eight months, however, the parties went on quarrelling with each other, in those circumstances, the cases mentioned in para 4 were registered.

Heard learned counsel for the petitioners.

Learned Government Pleader for Home, on instructions, would submit that as on date, C.C.Nos. 526 of 2015 and 648 of 2016 are pending trial before the Judicial Magistrate of I Class Court, Mahabubnagar.

Learned counsel for Respondents 3 to 10, making reference to the counter-affidavit, would submit that the 1st petitioner is only an agreement holder and he has no right on the subject land, hence, the Writ Petition is not maintainable at his instance. The learned counsel would submit that as per the information, two of the executants of the power of attorney are no more and as such, the document itself is void and invalid. According to him, as the suit decreed against Respondents 3 to 10 was only an injunction suit simplicitor and the same is also *ex parte*, no right vests with the petitioner. Likewise, O.S.No. 42 of 2008 before the Waqf Tribunal also does not bind them. In sum and substance, the learned counsel would submit that the 1st petitioner has no manner of right over this property and thus his claim that he was the absolute owner of the property is incorrect. Even without prejudice to the same, the learned counsel would submit that pursuant to the Order of this Court in Writ Petition No. 25893 of 2013 as modified by the judgment in Writ Appeal No. 3 of 2014,

the Tribunal had initiated proceedings for acquisition of the property for creating a Muslim grave yard. The learned counsel would submit that the land is contiguous to the one which is already being used as a Muslim grave yard. In those circumstances, the learned counsel would pray for dismissal of the Writ Petition as the land is proposed to be acquired by the State to be used for the purpose of Muslim grave yard.

Having considered the respective submissions, onething clear is that Respondents 3 to 10 are fair enough not to claim any right over the subject property except disputing the right of the petitioners. Whether the petitioners have absolute right or they have only interest in the property is a matter to be considered only when the original owners challenge the right of the petitioners. For the purpose of disposal of the Writ Petition, even assuming for argument sake, the 1st petitioner is only an agreement of sale holder, it cannot be denied that he has some beneficial interest and he is entitled to protect his interest however small it may be. There is no dispute that Respondents 3 to 10 suffered an injunction, which order had become final. Though the learned counsel for Respondents 3 to 10 would assert that the 1st petitioner would be entitled to execute civil court judgment and decree, in the light of the prayer which the 1st petitioner sought, essentially, against the authorities to protect his right over the property, when viewed from the stand taken by Respondents 3 to 10, it is clear that the allegation of the 1st petitioner that the unofficial respondents have been interfering with the subject property is evident. The evidence placed by Respondents 3 to 10 to the effect that the State proposed to acquire this particular land

would also further support the case of the petitioners rather than that of Respondents 3 to 10. Whether the State is entitled to acquire the property for creation of a grave yard is a question which may require to be considered at an appropriate time. Now, in the facts of the present case, it cannot be said that the petitioners are not entitled to enjoy the property uninterruptedly. The fact that proceedings under Section 145 Cr.P.C. had to be initiated would itself indicate that the same is a proof positive that the situation requires the State's interference in protecting the individual's property. At the same time, the State cannot continue to provide picketing to protect the physical encroachment from various people. However, when the petitioners seek to give protection for a limited period, to enable them either construct compound wall or fence the property and thereafter, to make arrangements for securing the property, the same cannot be denied.

In those circumstances, the Writ Petition is, allowed directing the official respondents to provide protection, for a limited period, to enable the petitioners to erect the compound wall/fencing. If necessary, charges are to be paid by the petitioners, as ordered by the respondent - police. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

13th February 2020

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