
(2016) 10 AP CK 0034
In the Andhra Pradesh High Court
Case No : Writ Petition No.30736 of 2016

A. Bharathi

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 14-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ALT 149 : (2017) 1 AndhLD 503

Hon'ble Judges : Sri. M.S. Ramachandra Rao, J.

Bench : Single Bench

Advocate : Learned Government Pleader for Home, for the Respondent Nos. 1 to 6; Sri V. Venkata Ramachandra Goud, Learned Counsel, for the Respondent Nos. 7 and 8; Sri K. Lakshman, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri. M.S. Ramachandra Rao, J. - Petitioners have filed this Writ Petition challenging the inaction of respondent Nos.1 to 6 in providing police aid for implementation of an injunction order granted in their favour on 24-09-2012 in C.M.A.No.66 of 2012 of the II Additional District and Sessions Judge, Ranga Reddy at L.B. Nagar restraining respondent Nos.7 to 10 from interfering with the peaceful possession and enjoyment of petitioners in respect of their land admeasuring Ac.1.00 in Sy.No.19/AA situated at Hydershakote Village, Rajendranagar Mandal, Ranga Reddy District.

Petitioners" Contentions

2. Petitioners contend that they are the absolute owners of land admeasuring Ac.3.00 in the above village, which they inherited from the father of 4th petitioner. They contend that there was a family settlement among the family members consisting of their father and their uncles and pursuant thereto, the said land fell to the share of 4th petitioner's father and his name was also mutated in the Revenue records. The 4th petitioner's father died in 1985 and on

his death, 4th petitioner and his brother A.Bharath Reddy, father of petitioner Nos.1 to 3 succeeded to the property. They contend that they developed part of land admeasuring Ac.1.10 guntas into a residential layout in 1990 and sold plots to various third parties. They contend that Ac.0.25 guntas of land belonging to them was taken away by the 1st respondent illegally for road widening without paying any compensation to them and they were left with Ac.1.05 guntas of land.

3. They alleged that when respondent Nos.7 to 10 were trying to interfere with their possession and enjoyment of the land, they filed O.S.No.1402 of 2010 before the Principal Senior Civil Judge, Ranga Reddy District at L.B. Nagar for perpetual injunction. They also filed I.A.No.1406 of 2010 seeking temporary injunction pending disposal of the suit. The said application was dismissed on 28-03-2012.

4. Challenging the same, they filed C.M.A.No.66 of 2012 before the II Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar. The said appeal was allowed on 24-09-2012. The Court noted that the evidence on record indicated that the petitioners' names had been recorded in the Revenue records for more than 40 years from 1955-56 and proves the possession of petitioners over the subject land. It also held that the petitioners had prima facie right and title in the subject property and that respondent Nos.7 to 10 did not have any document of title and they did not file any document to prove their possession.

5. Respondent Nos.7 to 10 questioned the same in C.R.P.No.517 of 2013 before this Court. The said Revision was dismissed on 27-08-2016 confirming the findings of the II Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar in C.M.A.No.66 of 2012.

6. The petitioners filed complaints/representations dated 26-05-2016 and 30-05-2016 to the respondent Nos.1 to 6 seeking police aid to protect their possession and for implementation of the order of temporary injunction granted by the Civil Court.

7. When this did not yield any results, they filed W.P.No.17048 of 2016 questioning the inaction of respondent Nos.1 to 6 in taking action against respondent Nos.7 to 10 on the basis of the complaint by them on 26-05-2016 and 30-05-2016 complaining about illegal interference, criminal trespass etc. into their land and in not providing police protection to enforce the injunction order granted in their favour and against respondent Nos.7 to 10 in C.M.A.No.66 of 2012.

8. At the admission stage, the said Writ Petition was disposed of on 02-06-2016 relying on the judgment of the Supreme Court in Lalita Kumari v. State of Uttar Pradesh (2014) 2 SCC 1, and holding that the allegations in the complaints referred to above given by petitioners prima facie disclose commission of cognisable offences and respondent Nos.1 to 6 should follow the said judgment of the Supreme Court and take appropriate steps. As far as the relief of police protection is concerned, the Court observed that petitioners are always at liberty

to avail the remedy available under law.

9. Thus, even this Court had held that petitioners are not dis entitled to police aid, but granted liberty to petitioners to avail the remedy available under law.

10. Learned counsel for petitioners contended that having regard to the order of injunction pending disposal of the suit granted in favour of petitioners after contest by the Civil Court, and having regard to the law laid down by this Court and the Supreme Court in *Satyanarayana Tiwari v. S.H.O.P.S. Santhoshanagar*, Hyderabad AIR 1982 AP 394 and *P.R. Murlidharan v. Swami* (2006) 4 SCC 501, respondent Nos.1 to 6 cannot deny police protection to petitioners for enforcement of the said order of injunction.

Contentions Of Government Pleader For Home, For Respondents 1-6

11. Learned Government Pleader for Home appearing for respondent Nos.1 to 6 did not dispute the above legal position or the entitlement of petitioners for police aid to enforce the injunction order granted in their favour in a Writ proceeding.

Contentions Of Counsel For Respondent No.S 7-10

12. Sri V.Venkata Ramana, learned Senior Counsel appearing for Sri V.Ramachandra Goud, learned counsel for respondent Nos.7 and 8, however, opposed the said contentions of petitioners. According to him, the petitioners having failed to obtain an order of police aid in W.P.No.17408 of 2016, cannot maintain the present Writ Petition for the same relief and it should be construed that the Court had rejected petitioners' entitlement in getting such relief in the said Writ Petition. He also sought to rely on certain pleadings of the petitioners in the Writ Petition, and sought to contend that even the petitioners admitted that they have been dispossessed by respondent Nos.7 to 10. According to him, in the light of the said pleadings and the documentary evidence filed by respondent Nos.7 to 10, the petitioners ought not to be granted any relief.

13. It is not in dispute that respondent Nos.7 and 8 had filed W.P.No.18567 of 2016 and sought a direction to respondent Nos.1 to 6 not to extend police aid or assistance in respect of the subject land and this Court passed an order therein on 15-06-2016 directing respondent Nos.1 to 6 not to interfere with the subject property except in accordance with law or if there is an order granting police aid in favour of respondent Nos.7 to 11 therein/petitioners herein.

Petitioners' Reply Contentions

14. Learned counsel for petitioners, on the other hand, contended that when the findings in the C.M.A. about the possession of petitioners of the subject land have been confirmed by this Court in C.R.P.No.517 of 2013, and the injunction granted on 24-09-2012 in C.M.A.No.66 of 2012 has been subsisting since then, respondent Nos.7 to 10 are barred by the principles of *res judicata* to reopen the question of possession of petitioners of the subject land. He also contended that

respondents were emboldened to violate the injunction orders granted by the Civil Court and commit criminal trespass only because police aid order was not there in favor of petitioners and if this contention of respondent Nos.7 to 10 is accepted, it would result in a grave miscarriage of justice. He asserted that a party cannot be allowed to take advantage of his own wrong and

15. I have noted the submissions of both parties.

The Consideration By The Court

16. From the facts narrated above, it is clear that a temporary injunction pending disposal of O.S.No.1402 of 2010 was granted in favour of petitioners on 24-09-2012 in C.M.A.No.66 of 2012 by the II Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar. The Court held that the petitioners were in possession of the property and also had prima facie title and the respondents had no prima facie title and did not prove their possession. This finding was confirmed by this Court on 27-08-2016 in C.R.P.No.517 of 2013.

17. Admittedly the petitioners filed complaints/representations dated 26-05-2016, 30-05-2016, 31-08-2016 and 08-09-2016 to the respondent nos.1 to 6 seeking police aid to protect their possession and for implementation of the order of temporary injunction granted by the Civil Court.

18. When this did not yield any results, they filed W.P.No.17048 of 2016 questioning the inaction of respondent Nos.1 to 6 in taking action against respondent Nos.7 to 10 on the basis of the complaint by them on 26-05-2016 and 30-05-2016.

19. The said Writ Petition was decided on 02-06-2016 by this Court directing the police to register F.I.R. and take appropriate steps since the said complaints prima facie disclose commission of a cognisable offence by respondent Nos.7 to 10. However, this Court did not hold that the petitioners are not entitled to police aid for enforcement of the injunction order obtained by them from the Civil Court, but it granted liberty to petitioners to avail remedy available under law.

The Decision In W.P.17048 Of 2016 Does Not Bar The Filing Of This Writ Petition

20. The question is whether the decision in W.P. 17048 of 2016 bars the filing of this Writ petition.

21. Admittedly the entitlement of petitioners for police aid was not adjudicated in W.P.No.17048 of 2016 and Court granted the petitioners liberty to avail the remedy available under law. It had not refused such a relief on merits.

22. Since such relief of police protection can also be sought under Article 226 of the Constitution of India to enforce the orders of the Civil Court as explained below, the disposal of the said Writ Petition is no bar to the petitioners to file the present Writ Petition seeking the relief of police protection seeking implementation of the injunction orders granted in their favour by the Civil Court. Therefore the contention of the learned counsel for respondent Nos.7 to 10 that

the present Writ Petition is not maintainable in view of the order dated 02-06-2016 in W.P.No.17048 of 2016 is rejected.

Police Aid Can Be Granted Under Article 226

23. It is settled law that police aid to enforce the orders of injunction can be granted not only by the Civil Court in exercise of its power under Section 151 C.P.C. but also under Article 226 of Constitution of India by this Court.

24. A Division bench of this Court in *Satyanaraian Tiwari v. S.H.O., P.S.Santoshnagar* AIR 1982 AP 394 (DB) considered the same question in facts identical to the present case. There also an order of temporary injunction granted by a lower court had been confirmed in Revision by this Court. Yet, the party who suffered the injunction was alleged to have violated the said order and police aid was sought by filing a Writ Petition under Article 226 of the Constitution of India. The Single Judge dismissed the Writ Petition. The Division bench reversed the same by holding that there is no bar for granting police aid in Writ Jurisdiction. It observed:

"2. It is the grievance of the appellant that since the writ petition was dismissed and the police is not rendering any help, 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. Articles 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. 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 C.R.P. 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 final orders of the Civil Court in O.S. 3770/80."

(emphasis supplied)

25. This view was reiterated by another Division bench of this Court in *Kotak Mahindra Bank v. Station House Officer* (2016) 2 ALT 164 (DB). It reiterated:

"... 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 recognised. 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* AIR 1982 AP 394; *Calcutta Gas Company (Prop) Ltd.* AIR 1962 SC 1044; *T.C. Basappa v. T. Nagappa* 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* AIR 1982 AP 394; *Rayapati Audemma* AIR 1971 AP 53; *R. v. Commissioner of Police of the Metropolis Ex P. Blackburn* (No.1), (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* (2006) 4 SCC 501). In the event of the 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)

26. The Supreme Court of India in P.R.Muralidharan v. Swami Dharmananda Theertha Padar (2006) 4 SCC 501 also declared the law on the subject in the following manner:

"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)

27. Since in the present case, the prima facie title and possession of the petitioners has been established after contest by the Civil Court, there cannot be any dispute that they can seek the relief of police protection under Article 226 of the Constitution of India.

The Respondents 7-10 Cannot Reopen Finding Of Civil Court About Possession Of Petitioners In This Writ Petition

28. Coming to the other contention of the learned counsel for respondent Nos.7 to 10 that the petitioners themselves stated in their pleadings in the Writ Petition that they had been dispossessed by respondent Nos.7 to 10 is concerned, such admission is not unequivocal because in paras 3,5,6 and 11 of the affidavit filed in support of the Writ Petition, they assert their possession, though in paras 7 and 8 they mention of attempts to commit criminal trespass and digging of borewell and putting up notice boards by the respondents 7-10. Obviously the respondent Nos.7 to 10 got emboldened to commit such acts because the police refused to act on petitioners' representations for police aid made on 26-05-2016, 30-05-2016, 31-08-2016 and 08-09-2016.

29. In my opinion, respondent Nos.7 to 10 are bound by the findings in

C.R.P.No.517 of 2013 wherein this Court confirmed the findings in C.M.A.No.66 of 2012 of the II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar holding that petitioners were in possession of the property and had also a prima facie title. They cannot be allowed to reopen the question of possession collaterally in this Writ Petition filed by petitioners seeking implementation of the injunction orders granted in favour of petitioners. The evidence filed by them along with counter-affidavit of respondent Nos.7 to 10 of their alleged possession of the property, therefore cannot be taken into account having regard to the Civil Court's injunction order against them and findings therein that they are not in possession of the property which have also been confirmed in C.R.P.No.517 of 2013.

30. In *Meera Chauhan v. Harsh Bishnoi*, (2007) 12 SCC 201 the Supreme Court held that when parties violate order of injunction or stay order or act in violation of the said order a Civil Court can, by exercising its inherent power, give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order. It declared:

"18. At the same time, it is also well settled that when parties violate order of injunction or stay order or act in violation of the said order the court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

19. It is also well settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the court can order restoration of possession to the party wronged."

(emphasis supplied)

31. So if the Civil Court can do so, the Writ Court exercising equitable jurisdiction under Article 226 can also do so. [See *Kotak Mahindra Bank* (supra)].

32. 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 No.S 7-10 Cannot Be Allowed To Take Advantage Of Their Own Wrong

33. 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.

34. A three Judge Bench of the Supreme Court declared this in *Union of India v.*

Maj. Gen. Madan Lal Yadav (1996) 4 SCC 127 in the following terms:

"28. It is obvious that the respondent had avoided trial to see that the trial would not get commenced. Under the scheme of the Act and the Rules, presence of the accused is a precondition for commencement of trial. In his absence and until his presence was secured, it became difficult, nay impossible, to proceed with the trial of the respondent-accused. In this behalf, the maxim *nullus commodum capere potest de injuria sua propria*-meaning no man can take advantage of his own wrong-squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

"? it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim *frustra legis auxilium invocat quaerit qui in legem committit*. He relies on *Perry v. Fitzhowe*. At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

29. The Division Bench of the High Court has recorded the finding that the respondent has absconded from open military detention. From the narration of the facts it is clear that the respondent was bent upon protracting preliminary investigation. Ultimately, when the GCM was constituted, he had challenged his detention order. When he was unsuccessful and the trial was to begin he escaped the detention to frustrate the commencement of the trial and pleaded bar of limitation on and from 1-3-1987. The respondent having escaped from lawful military custody and prevented the trial from being proceeded with in accordance with law, the maxim *nullus commodum capere potest de injuria sua propria* squarely applies to the case and he having done the wrong, cannot take advantage of his own wrong and plead bar of limitation to frustrate the lawful trial by a competent GCM. Therefore, even on the narrow interpretation, we hold that continuation of trial from 2-3-1987 which commenced on 25-2-1987 is not a bar and it is a valid trial."

35. This principle was again reiterated recently in *Devendra Kumar v. State of*

Uttaranchal (2013) 9 SCC 363, in the following terms:

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. *Sublato fundamento cadit opus*-a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide *Union of India v. Major General Madan Lal Yadav* and *Lily Thomas v. Union of India* (2000) 6 SCC 224. Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)."

36. In *Ritesh Tewari v. State of Uttar Pradesh* (2010) 10 SCC 677, the Supreme Court held that a Court of equity must act so as to prevent perpetration of a legal fraud and promote good faith and equity and the Court must advance the cause of justice and not to thwart it.

37. Therefore in my considered opinion, the petitioners have made out a clear case for grant of police aid to protect their possession of the land. Though the petitioners have alleged certain acts of trespass by respondent Nos.7 to 10, they, however, insist that they are still in possession of the property in question. The other pleadings particularly in para-3,5,6 and 11 of the affidavit filed in support of the Writ Petition suggests that petitioners still continue to be in possession of the property.

38. Accordingly, the Writ Petition is allowed, and action of respondent Nos.1 to 6 in not providing police aid in implementation of the injunction order granted in favour of petitioners in C.M.A.No.66 of 2012 on 24-09-2012 by the II Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar restraining respondent Nos.7 to 10 from interfering with the peaceful possession and enjoyment of the petitioners in respect of the subject land, which was also confirmed in C.R.P.No.517 of 2013 by this Court, is declared as arbitrary and illegal and direction is given to respondent Nos.1 to 6 to provide police protection for implementation of the said orders. The respondent Nos.7 to 10 are directed to remove the notice boards put up on the subject property pending disposal of the suit. However this will be subject to the result of the suit O.S.No.1402 of 2010 pending on the file of Prl. Senior Civil Judge, Ranga Reddy District. Respondent Nos.7 to 10 are also directed to pay costs of Rs.10,000/- (Rupees Ten Thousand only) to petitioners within 4 weeks from today.

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