

(2020) 12 TEL CK 0007
In the Telangana High Court
Case No : Writ Petition No. 21128 Of 2020

Ganji Venkatesham

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 22-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302, 341, 376, 427, 447, 504, 506
Andhra Pradesh Prevention Of Dangerous Activities Of Boot- Leggers, Dacoits, Drug-
Offenders, Goondas, Immoral Traffic Offenders And Land-Grabbers Act, 1986 —
Section 2, 2(a), 2(j), 3
Constitution Of India, 1950 — Article 21

Citation : (2020) 12 TEL CK 0007

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : Rapolu Bhaskar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Home.

2. In the writ petition, petitioner seeks to grant the following relief:

â??â??.to issue a Writ order or direction more particularly one in the nature of Writ of Mandamus by declaring the in-action of the

Respondent Nos.2 and 3 to impose PD Act against the Respondent Nos.7 to 12 basing on the representation of the petitioner dated

10/05/2020 as illegal arbitrary and against the principles of natural justice and violative of Articles of constitution of India and consequently to

direct the respondent Nos.2 and 3 to impose PD Act against the respondents Nos.4 and 5 and pass such other orders as may deem fit and

proper in the circumstances of the case.â??

3. Petitioner claims to have purchased plots in Sy.Nos.74 and 742, admeasuring 2273 Square yards, Korremula Village Shivar, Ghatkesar

Mandal, in May, 2019 from its original Owners Cherkupalli Yadaigiri, Cherkupalli Rattamma and their sons, secured possession, and

constructed a compound wall. Alleging interference in possession, attempting trespass, on the complaint lodged by the petitioner, Crime

No.350 of 2019 was registered for the offences under Sections 447 of Indian Penal Code (IPC) (house-breaking by night), 427 IPC (Mischief

causing damage to the amount of fifty rupees), 504 IPC (criminal intimidation) and (dvi) IPC (punishment for criminal intimidation). On

21.10.2019, when the respondents 7 to 12 and their henchmen attacked the petitioner, and beaten him indiscriminately, he lodged a complaint

which was registered as Crime No.533 of 2019 for the offences under Section 341 IPC (punishment for wrongful restraint), 447 IPC

(punishment for criminal trespass), 504 IPC and 506 IPC. Petitioner alleges that respondents 7 to 12 are habitual offenders. They threatened

many people and sold away their plots by creating forged documents. One Ganji Sambaiah is also a victim in this manner and on a complaint

lodged by him, Crime No.433 of 2017 was registered and the same is pending. Petitioner narrates several such instances and registration of

several crimes against respondents 7 to 12. He further alleges that unable to bear the harassment of respondents 7 to 12, many people have

attempted to commit suicide and have died. He contends that some political leaders are supporting these respondents for their illegal activities

and gains. With the said averments, petitioner seeks a direction to the State to resort to preventive detention of respondents 7 to 12 to curb

their criminal acts. It is his case that as long as they are allowed to roam around freely, they continue to create such problems to everybody

and unless they are detained, there will be serious threat to the right, liberty and personal safety of many people who are concerned with

landed properties in and around the area.

(iv) According to learned Assistant Government Pleader, the ground position do not warrant resort to preventive detention. Resorting to

preventive detention is an extreme measure. Such course is adopted only in cases of grave nature, where circumstances warrant and on due

consideration of gravity of the issue, and not as a matter of course. He further submits that as held by this Court time and again, provisions of

the Preventive Detention Act can be invoked by the police only when crimes under Sections 302 IPC (punishment for murder), 376 IPC

(punishment for rape), 380 IPC (theft in dwelling house), and under Narcotic Drugs and Psychotropic Substances Act are registered and not

in cases of this nature.

5 This Court is flooded with litigation against State resorting to preventive detention. Wherever, a challenge is made by a person against his

detention by resorting to power under the A.P. Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas,

Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1 of 1986), Court tests such decision, within a well laid down parameters

of judicial review, with stand point of right of person to life, liberty and privacy. This is a converse case. The citizen complains that the law

enforcing agency failed to invoke the powers under the Act 1 of 1986, and seeks to issue writ of mandamus to compel them to invoke the said

powers against respondents 7 to 12.

6 Issue for consideration is whether petitioner qualifies to issue writ of mandamus and whether facts of the case warrant Court to issue

mandamus compelling respondents to invoke powers under the Act 1 of 1986 ?

7 Two competing aspects throw up whenever an issue of preventive detention comes up. On the one side is the right of the individual citizen

to protect his life, liberty and privacy, which are sacrosanct. On the other extreme is the sacred duty of the Government to enforce law and

order, peace and tranquility in the society. Whenever a crime is reported, the law enforcing agency sets in motion criminal justice system on

the offences enumerated in the Indian Penal Code and various special enactments dealing with specific crimes. In the process of investigation

into the crime, the accused can be arrested, detained and can be interrogated.

8. Ordinarily, no person can be arrested/detained unless crime is reported. Act 1 of 1986 makes an exception to this solitary principle. It vests

extraordinary power in the Government or in its delegatee to detain a person even before a crime is committed by him. Perforce, this power

of detention is not to be exercised as a matter of course. As it seeks to offend

the most sacred of the rights, right to life, liberty and privacy,

there are three primary requirements need to be answered by the law enforcing agency before invoking the provisions of Section 3 of the Act,

1986. Firstly, he must be a known offender and several crimes are reported against him and can be classified as a boot-legger, a dacoit, a goonda, an immoral traffic offender or a land-grabber; secondly, the person must be acting in a manner prejudicial to the maintenance of the public order; and thirdly, there must be subjective satisfaction by the authority that there is possibility of the person indulging in such activities in future also which is likely to cause disturbance to public order. It must be a well considered decision impelled by protection of public order. Even then, it is an extreme measure to be resorted in extraordinary circumstances, as a last resort and in larger public interest. It being an exception, cannot subsume the character of routine police action. It should be resorted to only when the normal course of criminal justice system has failed to discipline the individual and actions and conduct of a person has ceased or is likely to cause disturbance to public order.

(ix) Section 2(a)1 of the Act, 1986 defines what is meant by acting in any manner prejudicial to the maintenance of public order. It means a person against whom several crimes are reported and is known as a boot legger, a dacoit, a goonda, an immoral trafficker and a land grabber and is engaged or is making preparations for engaging, in any of his activities as such, which affected adversely, or are likely to affect adversely, the maintenance of public order. Explanation appended to this clause explains that public order is deemed to have been affected adversely / likely to be affected adversely, if any of the activities of a person referred to in the clause, directly or indirectly, is causing or calculated to cause any harm, danger, or alarm or a feeling of insecurity among the general public or any section thereof or a grave of widespread danger to life or public health. Other clauses of Section 2 of the Act, 1986 defines various terms mentioned in Clause (a), including the term land grabber [clause (j)2].

(x) At this stage, it is expedient to dwell into the precedent decisions on when

preventive detention can be resorted to, what is meant by public order, and scope of judicial review.

10.1. In *Sudhir Kumar Saha vs. the Commissioner of Police, Calcutta* (1970) 1 SCC 149, the Hon'ble Supreme Court emphasized protecting the freedom of an individual citizen.

7. The freedom of the individual is of utmost importance in any civilized society. It is a human right. Under our Constitution it is a guaranteed right. It can be deprived of only by due process of law.

The power to detain is an exceptional power to be used under exceptional circumstances. It is wrong to consider the same, as the executive appears to have done in the present case, that it is a convenient substitute for the ordinary process of law. The detention of the petitioner under the circumstances of this case appears to be a gross misuse of the power conferred under the Preventive Detention Act. (emphasis supplied)

10.2. In *Khudiram Das vs. the State of West Bengal and others* (1975) 2 SCC 81, the Hon'ble Supreme Court dealt with the aspect of subjective to satisfaction of the detaining authority and also dealt with the scope of judicial review on the aspect of detention. Paragraph-8 reads as under:

8. Now it is clear on a plain reading of the language of sub-sections (1) and (2) of Section 3 that the exercise of the power of detention is made dependent on the subjective satisfaction of the detaining authority that with a view to preventing a person from acting in a prejudicial manner, as set out in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1), it is necessary to detain such person. The words used in sub-sections (1) and (2) of Section 3 are "if satisfied" and they clearly import subjective satisfaction on the part of the detaining authority before an order of detention can be made. And it is so provided for a valid reason which becomes apparent if we consider the nature of the power of detention and the conditions on which it can be exercised. The power of detention is clearly a preventive measure. It does not partake in any manner of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. Since every

preventive measure is based on the principle that a person should be prevented from doing something which, if left free and unfettered, it is

reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.

Patanjali Sastri, C.J. pointed out in *State of Madras v. V.G. Row* [AIR 1952 SC 196 : 1952 SCR 597] that preventive detention is "largely

precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in

that case with reference to the observations of Lord Finlay in *Rex v. Halliday* [1917 AC 260] namely, that "the court was the least

appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the

nature of the proceeding, it is impossible to conceive how it can possibly be regarded as capable of objective assessment. The matters which

have to be considered by the detaining authority are whether the person concerned, having regard to his past conduct judged in the light of the

surrounding circumstances and other relevant material, would be likely to act in a prejudicial manner as contemplated in any of sub-clauses (i),

(ii) and (iii) of clause (1) of sub-section (1) of Section 3, and if so, whether it is necessary to detain him with a view to preventing him from so

acting. These are not matters susceptible of objective determination and they could not be intended to be judged by objective standards. They

are essentially matters which have to be administratively determined for the purpose of taking administrative action. Their determination is,

therefore, deliberately and advisedly left by the Legislature to the subjective satisfaction of the detaining authority which by reason of its

special position, experience and expertise would be best fitted to decide them. It must in the circumstances be held that the subjective

satisfaction of the detaining authority as regards these matters constitutes the foundation for the exercise of the power of detention and the

Court cannot be invited to consider the propriety or sufficiency of the grounds on which the satisfaction of the detaining authority is

based.

(emphasis supplied)

10.3. The same principle is reiterated by this Court in *C. Neela vs. State of*

Telangana 2017 (2) ALD (Crl.) 760. Paragraph-10 reads as under:

10. Preventive detention of a person is an extreme measure resorted to by the State when ordinary criminal law is found not adequate to control his activities which cause disturbance to public order. Article 21 of the Constitution of India ordains that no citizen shall be deprived of his life or personal liberty except according to the procedure established by law. Under ordinary criminal laws, several safeguards are available to him such as, his arrest only in connection with cognizable/non-bailable offences and permitting him to apply for bail etc. The preventive detention laws have been conceived in order to control the activities of a person which tend to disturb public order as opposed to law and order and the procedural safeguards prescribed by the ordinary criminal laws are not available to the detenu under preventive detention laws.

10.4. In *Pushkar Mukherjee vs. State of West Bengal* (1969) 1 SCC 10, the Hon'ble Supreme Court held as under:

13. It is manifest that every act of assault or injury to specific persons does not read (sic lead) to public disorder. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. In this connection we must draw a line of demarcation between serious and aggravated forms of disorder which directly affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in a secondary sense public interest. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Preventive Detention Act but a disturbance which will affect public order comes within the scope of the Act.

(emphasis supplied)

10.4.1. In the concurring judgment rendered by Justice Hidayatulla in *Ram Mohan Lolia vs. State of Bihar* AIR 1966 SC 74,0 learned Judge explained what is meant by 'public order' and how it is different from law and order. Paragraphs-54 and 55 reads as under:

54. We have here a case of detention under Rule 30 of the Defence of India

Rules which permits apprehension and detention of a person

likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the

apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes

at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in

every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because

the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to

public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to

maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of

rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of

public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public

order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily

sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to

take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary

circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less

gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting

"public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle

representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but

not public order just as an act may affect public order but not security of the

State. By using the expression “maintenance of law and order” the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.”

10.5. In *Parolu Mahalakshmi vs. State of Telangana* 2019 (2) ALD (CrL.) 950 (TS), this Court dealt with the issue of when provisions of the Act can be invoked.

“12. Every violation of criminal law does cause a ripple in the society. But the ripples can be calmed down by use of normal Criminal

Justice System. It is only when an offence strikes the society, like a tsunami, that as a weapon of the last resort, the detaining authority is

justified in invoking the powers under preventive detention laws.

13 Therefore, while invoking the magical formula of preventive detention, the detaining authority is required to firstly consider whether the

offences, allegedly committed by the detenu, can be dealt with within the normal course of Criminal Justice System or not ? The detaining

authority should also examine whether the release of the detenu can be prevented by opposing his bail applications or not ? If bail were

granted, whether an application for cancellation of bail can be filed or not ? Whether his detention under judicial custody can be ensured or not

? It is only after assessing these circumstances, and after being satisfied that the answer of all these issues is in the negative, that the

detaining authority may be justified in passing the detention order.”

(11) Guided by the above enunciation of law, the issue is considered. In the case on hand, petitioner alleges that respondents 7 to 12 in the writ

petition illegally trespassed into his plot and demolished the compound wall. On the complaint, Crime No.350 of 2019 was registered under

Sections 447, 427, 504, and 506 IPC. He lodged another complaint alleging that these respondents with their henchmen, attacked the petitioner

and beaten him indiscriminately. On the said complaint, Crime No.533 of 2019 was registered under Sections 341, 447, 504 and 506 IPC. He

goes on to allege that respondents 7 to 12 are habitual offenders; they threatened many people; they created forged documents and sold away

the plots of innocent people. The victims have lodged several complaints against the respondents 7 to 12. According to the petitioner, in all 86

cases are pending against the respondents 7 to 12 in different Police Stations. He

therefore requested the Police to invoke the provisions of the Act and to detain them, so that they can be prevented from committing more crimes. It is the case of the petitioner that unless such power is exercised, petitioner and innocent persons would continue to suffer in their hands. In other words, according to the petitioner, respondents 7 to 12 are "land grabbers" and seeking to grab their lands.

(12) According to clause (j) of Section 2 of the Act, 1986, in brief, a person is called as "land grabber" if he illegally takes possession of any land or enters into or create illegal tenancies or lease and license, agreements or any other agreement in respect of such lands; or who constructs unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease etc.

(13) To assess the contentions urged by the petitioner with reference to the allegation of land grabbing, the pleadings in the writ petition are scanned. Except petitioner asserting that he owns plots in Sy.Nos.74 and 742, admeasuring 2273 square yards in Korremula village Shivar,

having purchased the same in May, 2019, he has not placed on record any material to show, prima facie, to establish that there is no dispute

about the title claim of the petitioner that it has validly passed on to him and that respondents 7 to 12 are interfering in the said possession. To

call a person as "land grabber" as per Section 2 (j) of the Act, 1986, he must have illegally taken possession of another person's

land or indulged in other illegal activities on property belonging to other persons or the Government and he continues to indulge in such

activities. No foundation is laid by the petitioner to first assert that there is no dispute regarding his title claim or title claim of others and that

unofficial respondents are not disputing the title claim of petitioner and other similarly situated persons and are grabbing their lands and,

therefore, they can be called as the "land grabbers". Crimes are pending at the stage of investigation. At this stage, it is not expedient to

this Court to express its opinion on the nature of crimes reported against respondents 7 to 12. What is observed herein above is only to assess

the claim of the petitioner.

14. Assuming that what is contended by the petitioner is true and respondents 7 to 12 can be called as "land grabbers", it does not mean

that power under Section 3 has to be exercised. Perforce, as noticed above, resorting to preventive detention is an extreme measure and not to be resorted to as a matter of course or merely because some one assumes that his property disputes can be resolved if his rival is detained by Police, when it seeks to affect the right, liberty and privacy of a person, that are sacrosanct. Thus, the competent authority has to have subjective satisfaction that unless extreme measures are taken the illegal activities by a "land grabber" may result in affecting "public order". The satisfaction of the competent authority must be based on intelligence inputs on the movements, activities and the possibility of committing further crimes, which may cause harm/danger/alarm/feeling of insecurity among the general public or any section thereof, or a grave/ widespread danger to life or public health leading to possible disturbance to "public order". In other words, it is for the authority concerned to assess the situation based on the inputs at his disposal and resort to exercise that power. Law enforcing agencies and administrative authorities at the district and state level are the best persons to assess the situation and to take all measures as required to enforce law and order more particularly public order, peace and tranquility. In the process and if so required they may resort to preventive detention.

15. One aspect to be noticed is though "land grabber" is also included in Section 2(a), compared to other categories included in Section 2(a), "a land grabber" per se does not pose a grave threat to "public order". Therefore, it must be an aggravated form of indulging in "land grabbing" to resort to this extreme measure.

16. Ordinarily, writ Court should not trench into areas which require consideration of intelligence inputs and assessment of law and order and in such matters, officers in law enforcing agencies are the best persons to make an assessment. In exercise of power of judicial review the writ Court cannot mandate the authority to exercise such power merely because the petitioner asks. Power of judicial review is available as and when power under the Act 1 of 1986 is invoked. At that stage, the writ Court may test whether such assessment of the competent authority meets the parameters to protect larger public interest so to affect an

individual's right to life, liberty and privacy.

17. At this stage, it is to be noted that on the complaint lodged by the petitioner, crimes were registered against the respondents 7 to 12 and the

Police are investigating into the said crimes. It is not the case of petitioner in this writ petition that there is delay in investigation and such delay

emboldened the respondents 7 to 12 to resort to further crimes. It may be true that there are several other crimes registered against same

respondents, but merely because several crimes were registered against the respondents 7 to 12, it cannot be assumed that they automatically

qualify to be described as "land grabbers" and/or to be declared as persons indulging in any manner prejudicial to the maintenance of

"public order".

18. It is not a case where the criminal justice system failed to discipline the respondents 7 to 12, they are indulging in repeated crimes, creating

panic situation, affecting "public order" and, therefore, the draconian law to be enforced.

19. Be that as it may, as consistently held by the constitutional Courts, it is for the competent authority to assess the situation and take a

decision. This Court can not mandate the authority to do a particular act, in a particular manner because petitioner thinks that such course has

to be adopted. It is not for the individual citizen to assess how the law enforcing agency should act but it is for that agency to come to

subjective satisfaction of the need to resort to preventive detention. That satisfaction is also conditioned by the requirement of disturbance to

"public order", not "law and order".

20. Further, this is not a pro-bono litigation. This writ petition is instituted in his individual capacity alleging that respondents 7 to 12 are

attempting to grab his land. He reported two crimes. They are registered and it appears investigation is in progress. He is not concerned with

crimes reported by others to press his objective to detain respondents 7 to 12. He is taking shelter on crimes reported by others. Therefore,

even assuming that the police have miserably failed in assessing the gravity of the situation, he does not qualify to seek mandamus from this

Court.

21. For the aforesaid reasons, I do not see any merit in the Writ Petition and is

accordingly dismissed. Pending miscellaneous petitions, if any,
shall stand closed.