
(1982) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : With Appeal No. 380 of 1982

Satyanarayana Tiwari

APPELLANT

Vs

S.H.O.P.S. Santhoshanagar, Hyderabad and Others

RESPONDENT

Date of Decision : 14-06-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(3), 151
Constitution of India, 1950 — Article 226

Citation : AIR 1982 AP 394 : (1982) 2 APLJ 163

Hon'ble Judges : K. Madhava Reddy, Acting C.J.;K. Punneyya, J

Bench : Division Bench

Advocate : A. Pulla Reddy, for the Appellant; Govt. Pleader for Home and V. Jagannadha Rao, for the Respondent

Judgement

K. MF V. adhava Reddy, A.C.J.

1. This writ appeal is directed against the dismissal of W. P. No. 1935/82. In that writ petition the appellant herein sought for a writ of mandamus or other appropriate direction against respondents 1 to 3 Police Officers to render police help to him in maintaining his possession of the suit land bearing S.No. 45 of Kandikal Village, Charminar Taluk, Hyderabad District, which formed the subject matter of O.S. No. 3770 of 1980 on the file of the Third Assistant judge, City Civil Court, Hyderabad, as per the directions issued in I. A. 3510/81 on 29th September 1981. That order was confirmed by the Chief Judge, City Civil Court in C. M. A. 189/81. C. R. P. No. 3258 of 1981 filed against the judgement therein was dismissed by this Court. In the result, there is a temporary injunction order pending disposal of the suit in favour of the appellant herein restraining respondents 4 and 5 from interfering with his possession by themselves or through their servants or agents. It is the case of the appellant that upon his application seeking police help to protect his possession, the Court directed police help to be given to him. That order was not varied by the High Court which dismissed the Civil Revision Petition. In the result, there is not only a temporary

injunction order in favour of the appellant but also a direction by the Civil Court to render all police help to protect his possession, so that the temporary injunction order may be effectively enforced. Notwithstanding such an order, it is the complaint of the appellant that the police is not rendering any help and the respondents 4 and 5 are likely to dispossess him. He, therefore, sought the issuance of a writ of mandamus or an appropriate direction. That writ petition was dismissed by our learned brother Jeevan Reddy. J. While dismissing the Writ Petition the learned single Judge observed:

"There can be little doubt about the position in law that it is the orders of the Civil Court that prevail on the question of possession. Even if the police has found, on verification that the defendants are in possession, that finding or report is of no consequence so long as the order of the temporary injunction issued by the court stands."

The learned single Judge further observed: The police shall however not support either party shall however not support either party to the dispute and allow them to fight out the dispute in a civil court unless any fresh or further orders are issued by the court to the police in this behalf. Of course, police can also take necessary steps to maintain law and order, if any such situation arises. But even while doing so, they should act consistent with the orders of the Court, if any, in force at the relevant time.

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 of 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.

4. Mr. Jagannadha Rao, learned counsel for respondents 4 and 5 vehemently contended that a temporary injunction order issued by this court is not capable of implementation and the only remedy of the person in whose favour there is a temporary injunction order and who complains of its contravention and who complains of its contravention is to move the court for taking proceedings in contempt against the persons who are contravening the injunction. We can not

envisage a situation where the High Court, which has confirmed the injunction order issued by the trial court, is powerless to enforce its orders and be a silent spectator to its being violated with impunity and leave the parties to seek their remedy by way of contempt alone.

5. This very question was raised and answered against Mr. Jagannadha Rao's contention by an earlier Division Bench of this court in *Rayapati Audemma Vs. Pothineni Narasimham*, . Our learned brother Ramachandra Rao, J. while referring to the unreported judgement of a single Judge of this Court in C. R. P. No. 67 of 1959 dated 22-7-1960 which held that an order of injunction is capable of enforcement only by punishing its disobedience in the manner provided by Order 39, Rule 2 (3) CPC and that it is not open to the Civil Courts to enforce the same with the aid of the police, held:

"Order 39. Rule 2 (3) provides only for punishment by attachment of the property or by detention in civil prison of the person who committed breach. But it does not further provide for implementation of the order of injunction itself. Order 39, Rule 2 (3) cannot be said to be an express provision with respect to implementation of the order of injunction, but is only a provision which provides penalty for disobedience of the order. In such a case there being no other express provision in the code for enforcement of the order, it is not only proper but also necessary that the courts should render all aid to the aggrieved party to derive full benefits of the order. Though an order of injunction under Order 39 C. P. C. is only interim in nature, still it clothes the person who obtained order with certain rights and he is entitled to enforce the aforesaid right against the party who is bound by the order. No doubt in such a case, the aggrieved party himself could approach the police authorities to prevent obstruction to the enforcement of the order or to the exercise of the Court. But we do not see why when the same person brings to the notice of court that enforcement of the order is sought to be prevented or obstructed, the court should not exercise its inherent power u/s 151 C. P. C. and direct the police authorities to render all aid to the aggrieved party in the implementation of court's order.

In our opinion, the exercise of such power is necessary for the ends of justice or to prevent abuse of the process and the civil court has ample jurisdiction to pass such orders u/s 151 C. P. C."

The court further held that the police are bound to obey such directions. We find ourselves in full agreement with the view expressed above. It is the duty of all the authorities in the State to see that the orders of the civil court and that of the High Court are not only enforced faithfully but all persons seeking enforcement of such orders are given full help and protection in furtherance thereof. In the aforesaid judgement the learned Judges further observed (at p.57 of AIR):

"We are clearly of the opinion that in order to do justice between the parties or to prevent the abuse of process of the Court, the Civil Courts have ample

jurisdiction to give directions to the police authorities to render aid to the aggrieved parties with regard to the implementation of the orders of the court or the exercise of the rights created under the orders of the Court. That the police authorities owe a legal duty to the public to enforce the law is clear from a decision of the Court of Appeal, resorted in R. v. Metropolitan Police Commr. (1968) 1 All ER 763 xx xx xx xx xx xx xx

If the police authorities are under a legal duty to enforce the law and the public or the citizens are entitled to seek directions under Article 226 of the Constitution for discharge of such duties by the police authorities, we feel that the civil courts also can give appropriate directions u/s 151 CPC to render aid to the aggrieved parties for the due and proper implementation of the orders of Court."

We feel it unnecessary to add anything further to these observations except to record our full agreement with those views.

6. 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 u/s 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. Article 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 *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, "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. As observed by the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, the High Court, in issuing directions, orders and writs under Art. 226 can travel beyond the contents of the writs which are normally issued as writs of habeas corpus, Mandamus, prohibition, quo warranto and certiorari, provided the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English Law, are not transgressed. The Supreme Court also observed that the very language of Art 226 makes it clear that in the exercise of power under Article 226, our High Courts need not feel oppressed by the procedural technicalities of the English Writ. The article empowers the High Court to grant appropriate relief and also to modify the form of relief according to the exigencies of each case without being obsessed by the limitation of the prerogative writs.

7. In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa*

Tirumale, the Supreme Court reiterated this principle and went a step further that for doing justice between the parties, the High Court has absolute jurisdiction to issue such directions and orders as it may deem fit to do justice between the parties and enforce the law of the land. The only limitations on the wide powers conferred on the High Court and exercisable by it in the matter of issuing writs are (1) that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction and (2) that the person or authority to whom the writ is issued, is within the territories over which the respective High Court exercise jurisdiction. None of these limitations come in the way of the High Court issuing appropriate direction to further secure the right determined and recognised by the civil Court. The power which a civil court has u/s 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 pit 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.

8. We, therefore, allow the writ appeal, set aside the order of the learned single Judge and issue the direction as referred to above. We further direct the 3rd Assistant Judge, City Civil Court, to dispose of the suit O. S. 3770/80 itself expeditiously, as far as possible within six months from the date of receipt of this order. There will, however, be no order as to costs. Advocate's fee Rs.250/-.

Appeal allowed.