

Maloth Thiripi and ors. Vs. Maloth Rukmini and ors.

Maloth Thiripi and ors. Vs. Maloth Rukmini and ors.

SooperKanoon Citation : sooperkanoon.com/444794

Court : Andhra Pradesh

Decided On : Apr-25-2005

Reported in : 2006(2)ALT650

Judge : A. Gopal Reddy, J.

Acts : Negotiable Instruments Act - Sections 138; [Scheduled Districts Act, 1874](#) - Sections 6, 6A, 6A(1A) and 6B; Andhra Pradesh Co-operative Societies Act - Sections 3 and 3(2); [Constitution of India](#) - Articles 39A, 227 and 244; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 1(2), 167(2), 374(2), 374(3), 428, 438, 468 and 482; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 561A; Andhra Pradesh Agency Rules, 1924 - Rules 2(2), 5(1), 6, 7, 47 and 49; Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 - Regulations 3 and 4; Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulations, 1970; Andhra Pradesh Scheduled Area Land Transfer (Amendment) Regulations, 1978; Code of Civil Procedure (CPC)

Appeal No. : C.R.P. No. 3052 of 2000

Appellant : Maloth Thiripi and ors.

Respondent : Maloth Rukmini and ors.

Advocate for Def. : Adv. General, ; Hari Sreedhar, ; Kowturu Vinaya Kumar, ;P.V. Ramana, ; A. Rangacharyulu, ;A.K. Narasimha Rao, ;G.V. Shivaji and ; K. Chandra Shekar, Advs., ;Nagesh Bheemapaka, Adv. for Respondent No.

Advocate for Pet/Ap. : P.V. Ramana, ;Nagesh Bheemapaka and ;Mummaneni Srinivasa Rao, Advs., ;P. Venkateswamy, Adv. in CrI. P. No. 3524 of 2003 and ;C. Padmanabha Reddy, Senior Counsel and ;M. Pratap Singh, Adv. in CrI. P. N

Disposition : Petition allowed

Judgement :

ORDER

A. Gopal Reddy, J.

C.R.P. Nos. 1396, 1397, 2915, 3189, 3520, 4597, 4615, 4877, 4948, 4949, 5013, 5696, 5697, 5698, 5699, 5700 and 6225 of 2003; C.R.P. Nos. 360, 500, 1512, 2766, 2972, 3784, 3868, 4212, 4752 and 4981 of 2004 and C.M.As. No. 4127 and 4621 of 2004, C.R.P. No. 5252 of 2002.

1. Since the issue that arises for consideration in all these Civil Revision Petitions is one and the same, they are disposed of through a common order.

2. The controversy involved in all the revision petitions turns around the true interpretation of G.O.Ms. No. 406, Home (Courts. A) Department, dated 27-6-1990. The brief facts, which necessitated to issue the said G.O., are as under:

The State Government enacted the A.P. Scheduled Areas Land Transfer Regulation, 1 of 1959 (for short 'the Regulation'), as amended by Regulation 1 of 1970, to protect the rights of the scheduled tribes in the Agency areas. The transfer of immovable properties by a member of the scheduled tribe, without the previous sanction of the competent authority, is prohibited and any such transfer is treated as null and void. The properties in the Agency tracts, owned by a member of scheduled tribe, are not liable to be sold or attached in execution of any money decrees. Regulation 3 was amended by Regulation 1 of 1970, wherein the transfer of immovable properties between the non-tribal was also prohibited. Any suit against the member of the scheduled tribe, after the commencement of the Regulation, should be instituted only in the Court having jurisdiction over the Agency tracts, as per Regulation 4.

3. Earlier to the enactment of the Regulations, the administration of civil justice in the Agency areas was conferred with the Agency Divisional Officer, who used to entertain the civil disputes under the Agency Rules, 1924 (for short 'the Rules'). The Government through G.O.Ms. No. 406, dated 27-6-1990, transferred the administration of civil justice from the Agency Divisional Officer to the Special Mobile Courts constituted, in the first instance, in each of the districts of Warangal, Medak, Karimnagar, Nizamabad, Mahabubnagar, Adilabad, Visakhapatnam, East Godavari and Khammam at its headquarters indicated therein. Insofar as Khammam district is concerned, a special Court was constituted at Bhadrachalam authorizing to administrate the civil justice in the scheduled areas of Khammam district. The G.O. reads as under:

The Government felt necessary to constitute Mobile Courts in some of the Districts to render instant and speedy justice to the people inhabiting in remote and interior areas as the present system of the Courts situated at the District or the Divisional Head Quarters, are found to be not accessible to these people and difficult for them to go to these Courts because of high expenditure involved which they cannot afford. Sanction is therefore accorded for establishing one Mobile Court in the first instance, in each of the Districts of Warangal, Karimnagar, Medak, Nizamabad, Mahabubnagar, Adilabad, Visakhapatnam, East Godavari and Khammam with head quarters indicated against each. Districts Head Quarters Warangal MulugMedak MedakKarimnagar ManthaniNizamabad KamareddyMahabubnagar NagarkurnoolAdilabad UtnoorVisakhapatnam ChintaplliEast Godavari RampochadavaramKhammam Bhadrachalam

The Government also sanction the creation of the following temporary posts for the period upto 28-2-1991 or till the need ceases whichever is earlier for each of the Mobile Courts in the districts of Warangal, Medak, Karimnagar, Nizamabad, Mahabubnagar and Adilabad.

Sl. No. Name of the posts No. of posts Scale of pay

(1) Munsif Magistrate 1 Rs. 2150-3690

(2) A.P.P. Gr.II 1 Rs. 1810-3290

(3) U.D.C. 1 Rs. 1100-2050

(4) LD.Cs. 2 (out of whom

one shall clerk-

cum-typist)

(5) Head Constable (Armed) 1 Rs. 1010-1810

(6) Police Constable (Armed) 4 Rs. 810-1420

(7) Record Assistant 1 Rs. 780-1275

(8) Attender 1 Rs. 740-1150

(9) Cook 1 Rs. 740-1150

(10) Driver 1 Rs. 810-1420

The Government also accord sanction for the creation of the following temporary posts for the period upto 28-2-1991 or till the need ceases whichever is earlier for each of the Mobile Courts in the Districts of Visakhapatnam, East Godavari and Khammam.

Sl. No. Name of the post No. of posts Scale of pay

(1) Sub-Divisional Magistrate 1 Rs. 2150-3690

(2) A.P.P. Gr.II 1 Rs. 1810-3290

(3) U.D.C. 1 Rs. 1100-2050

(4) LD.Cs. 2 (out of whom

one shall clerk-

cum-typist)

(5) Head Constable (Armed) 1 Rs. 1010-1810

(6) Police Constable (Armed) 4 Rs. 810-1420

(7) Record Assistant 1 Rs. 740-1150

(8) Attender 1 Rs. 740-1150

(9) Cook 1 Rs. 740-1150

(10) Driver 1 Rs. 740-1150

4. Since the date of the G.O., the Mobile Courts were conferred with the civil jurisdiction to entertain the suits.

5. As specified under Clause No. 14 of the said G.O., the High Court by notification in ROC. NO.1747/E1/90, dated 25-7-1990, notified the local limits of jurisdiction to be exercised over the revenue mandals by the Mobile Courts at Warangal, Karimnagar, Nizamabad, Mahabubnagar, Adilabad. As the staff for each Mobile Court was sanctioned till 28-2-1991, the Government through G.O.Rt. No. 1471, dated 25-5-1991, extended the sanction of the staff for a further period of one year i.e., from 1-3-1991 to 29-2-1992 or till the necessity ceases whichever is earlier. While drafting the said G.O., a mistake was inadvertently crept in, that the Government accorded sanction for further continuance of temporary Mobile Courts in Khammam district together with staff, which was followed by G.O.Rt. No. 667, dated 25-3-1994 extending the period for two years i.e., from 1 -3-1992 to 28-2-1994, G.O.Ms. No. 192 Home (Courts) Dept., dated 28-1 -1995 extending the period from 1 -3-1994 to 28-2-1995, G.O.Rt. No. 432, dated 20-3-2001 for the period from 1-10-1995 to 28-2-2001, G.O.Rt. No. 431, dated 4-3-2004 for a further period from 1-3-2001 to 31-3-2004. Meanwhile, several suits were filed before the Agency Divisional Officer at Kothagudem and they were disposed of by him.

6. Several proceedings were filed before the Mobile Court, Bhadrachalam, which was manned by the persons of the rank of Revenue Divisional Officer, who was conferred with exclusive jurisdiction. The said proceedings were culminated in passing the final orders by the Special Mobile Courts, as per the Rules. The said orders are under challenge in the civil revision petitions, filed under Article 227 of the [Constitution of India](#), on the ground that the Mobile Court has no jurisdiction to

entertain the cases on the relevant date. The Mobile Courts were conferred with exclusive criminal jurisdiction over the Agency area of the State of A. P. and old Cr.P.C. was made applicable to the Agency areas and the new Cr.P.C. was not made applicable. In view of the same, the Supreme Court in W.P. (Civil) No. 324 of 2003, dated 2-4-2004 directed the Government of Andhra Pradesh and the High Court of Andhra Pradesh to take the follow up action with regard to the implementation of the Code of Criminal Procedure, 1973 in tribal areas in the State. In lieu thereof, the criminal justice in Agency areas, as per the Code had to be administered by the judicial Courts replacing the Executive Magistrates, who are till now vested with the powers of trial of criminal cases under the repealed Code of Criminal Procedure, 1898. Accordingly, in exercise of the powers conferred by sub-paragraph (1) of Paragraph 5 of Schedule V of the [Constitution of India](#), 1950 and subsection (2) of Section 1 of the Code of Criminal Procedure, 1973, the Governor of A.P. issued a notification vide G.O.Ms. No. 33, Law (La & J) Home (Courts-B) Department, dated 11-3-2004 applying Sections 167(2)(a), 374(2) and (3), 428, 438 and 468 of Cr.P.C, 1973 to the tribal areas in the State with immediate effect, followed by another notification in G.O.Ms. No. 41 Law (LA & J), Home (Courts-B) Department, dated 25-3-2004 applying the entire Cr.P.C, 1973 to all the tribal areas in the State retrospectively from 11-3-2004.

7. W.P. No. 13197 of 1999 reported in Kodimi Rajamma v. Principal Secretary, Home (Courts-A) Department 2001 (1) ALT 396, was filed challenging the validity of G.O.Ms. No. 406, dated 27-6-1990. In view of efflux of time and as the said Government Orders have not extended the sanction of further continuance of temporary Mobile Courts together with the staff, after 30-9-1995, this Court felt that it is futile to quash the said G.O. as extended in G.O.Rt. No. 1611, dated 28-6-1995. It accordingly disposed of the writ petition, by observing that continuance of Mobile Courts, pursuant to the un-extended order, is illegal and without any authority in law. If for any reason, the Government is inclined for further continuance of Mobile Courts presided over by the unqualified Sub-Divisional Magistrate, the powers to administer civil and criminal jurisdiction of Agency Divisional Officers as per the Rules may be entrusted to the qualified judicial officers on deputation from the judicial Department and in view of the same this Court was not inclined to consider the legality or otherwise of the G.Os. on the

premise that the said G.Os. are not in force. Further, this Court held that the powers conferred on the Sub-Divisional Magistrate of Mobile Courts would be reverted to the Sub-Divisional Officers concerned and it would be open for them to exercise civil and criminal administration of justice hitherto exercised by them without the constitution of temporary Mobile Courts. In view of the above observation, Crl.P. Nos. 357 and 4841 of 2003 and 441 of 2004 were filed. Crl. P. No. 357 of 2003, under Section 482 Cr.P.C, was filed to quash the proceedings in C.C. No. 448 of 2003 pending on the file of the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, wherein the Magistrate took cognizance of the case for the offence under Section 138 of the Negotiable Instruments Act and issued N.B.Ws. to the petitioner. Whereas Crl.P.Nos.4841 of 2003 and 441 of 2004 were filed by I.T.C. Limited, under Section 561 -A of Cr.P.C, 1898, to quash the proceedings in C.C. No. 582 of 2003 and 1 of 2004, wherein the Sub-Divisional Magistrate, Mobile Court at Bhadrachalam took cognizance of the offence under Section 6-A(1-A) of the Regulation, on the complaint filed by two scheduled tribes alleging that the complainants acquired the land on assignment patta granted to them by the Government and the respondent without any authority ejected them and the others from the possession of the respective extents on the ground that the Government of A.P. alienated the land, as directed by the District Collector and directing to hand over the possession. Against such dispossession, the complainant in C.C. No. 1 of 2004 filed W.P. No. 10567 of 1997 before this Court. The said writ petition was disposed of on 20-4-1998 directing the complainant and other tribals to file suit for declaration and injunction. Accordingly, the complainant and others filed a suit against the Mandal Revenue Officer and the same is pending.

8. C.R.P. No. 3052 of 2000 was filed challenging the order and decree, dated 12-6-2000, passed in O.S. No. 13 of 1999 on the file of the Agency Divisional Officer, Kothagudem. C.R.P. No. 3520 of 2003 was filed under Article 227 of the [Constitution of India](#) questioning the Judgment and decree, dated 22-7-2003, passed by the Sub-Divisional Magistrate, Mobile Courts, Bhadrachalam granting injunction in favour of the plaintiff in O.S. No. 153 of 2003.

9. The learned Counsel for the petitioners, Sri P.V. Ramana, contends that the Mobile Courts will have no jurisdiction to entertain the suit and grant injunction. He further contends that conferring of civil and criminal jurisdiction to the Mobile Courts, through G.O.Ms. No. 406, dated 27-6-1990, is only for the period up to 28-2-1991 or the necessity ceases whichever is earlier and on the date when the suits were entertained, the Mobile Courts, in fact, did not have any jurisdiction to entertain the same. He submits that the jurisdiction cannot be conferred with retrospective effect by extending it through various G.Os. He placed reliance upon Rajamma' scase (1 supra), wherein this Court observed that if the Government is inclined to continue the Mobile Courts presided over by an unqualified Sub-Divisional Magistrate, the powers to administer the civil and criminal jurisdiction of Agency Divisional Officers, as per the Rules, may be entrusted to the qualified Judicial Officers, on deputation, from the Judicial department. He has drawn the attention of this Court to the orders of this Court in W.P. No. 14275 of 2001, dated 22-2-2005, C.R.P. No. 2504 of 2000, dated 2-11-2001 and C.R.P. No. 2303 dated 2-4-2002, wherein it has been held that the extension granted through various G.Os. with retrospective effect, after the period expired, is not valid. The learned Counsel submits that the orders passed by the Special Assistant Divisional Magistrates are not valid and are liable to be set aside.

10. The learned Addl. Advocate General, who appeared, contends that the petitioners did not challenge either G.O.Ms, No. 406, dated 27-6-1990, under which the Mobile Courts were constituted, or any of the subsequent G.Os. under which the sanction of staff to man the Mobile Courts was extended from time to time. He submits that this Court in W.P. No. 13197 did not propose to decide the legality or otherwise of the G.O.Ms. No. 406 or the subsequent G.Os. on the ground that when the writ petition was taken up, extension granted to the Mobile Courts has already been elapsed, He contends that the regular judicial officers from Judicial Department cannot be appointed as presiding officers of the Mobile Courts as they do not come within the definition of Agency Divisional Officers. As per Rule 2(2) of A.P. Agency Rules, 1924, the Agency Divisional Officer means an officer-in-charge of a revenue sub-division which is wholly or partly Agency. The learned Advocate General submits that unless the Agency Rules, 1924 are amended suitably, it is not possible to appoint one Judicial Officer of the Judicial

Department to preside over the Agency Court. He draws the attention of this Court to Article 244 of the [Constitution of India](#), which mandates that the provisions of Schedule V applies to the administration and control of the scheduled areas and scheduled tribes and Part 11 of Schedule V, which confers executive powers on the State and contends that the contentions of the petitioners that Government cannot confer jurisdiction to Mobile Courts with retrospective effect and taking cognizance of the criminal cases by the Mobile Courts and trying the civil cases during interregnum period is illegal, cannot be accepted for the reason that G.O.Ms. No. 406 conferred the jurisdiction on the special Mobile Court, as a forum, for administration of civil and criminal justice in the scheduled areas, which is procedural in nature, He submits that since the period of creation of forum is not for a particular period, the same cannot be restricted by reading the second part of the G.O. namely the sanction of the staff for a period of one year which will not curtail the period of constitution of Mobile Court. Further, the learned Advocate General brought to the notice of this Court that W.P. No. 14275 of 2004 was filed to declare the continuation of Mobile Court at Bhadrachalam, by appointing the Revenue Divisional Officer as Sub-Divisional Magistrate, under G.O.Ms. No. 406, and extending thereafter as illegal and arbitrary and for entrustment of the administration of civil justice to a qualified judicial officer. In the said writ petition, the Government filed a counter-affidavit stating that in pursuance of the Judgment of the Apex Court in W.P. No. 324 of 2003, a notice was given to the Tribal Welfare Department and the said Department immediately initiated appropriate steps by constituting a Committee vide proceedings dated 16-3-2004 to study the implications with the application of CPC and Cr.P.C. to the scheduled areas. The said writ petition was dismissed by observing that the Government is seized of the matter and the matter is under active consideration. Meanwhile, through G.O.Rt. No. 2130, dated 9-12-2004 the Government accorded sanction for further continuance of the temporary Mobile Court at Bhadrachalam in Khammam district along with staff, for a further period from 1-10-2004 to 31-3-2005 or the date of actual requirement, whichever is earlier. In the absence of any challenge to the G.Os. conferring the said jurisdiction to the civil Courts, it will not be open for the petitioners to contend that the orders passed by the special Mobile Courts are without jurisdiction.

11. Sri Hari Sridhar, learned Counsel for the respondent in C.R.P. No. 3052 of 2000 and 3520 of 2003, contends that O.S. No. 13 of 1999 was filed before the Agency Divisional Officer, Kothagudem, who has jurisdiction to entertain the above suit, under Section 6 of the [Scheduled Districts Act, 1874](#) and under the A.P. Agency Rules, 1924. He contends that the Agency Divisional Officer will have the jurisdiction over the matters whose value is more than Rs. 500/- but less than Rs. 5,000/-. The Government through G.O.Ms. No. 192 Home (Courts) Dept., dated 28-1-1995 accorded permission for further continuance of the temporary Mobile Court in Khammam district, together with staff for a further period of one year from 1-3-1994 to 28-2-1995 and till the necessity of Courts ceases whichever is earlier. After expiry of the period sanctioned in G.O.Rt. No. 1611 dated 28-6-1995 for a period from 1 -3-1995, the same has not been extended. The respondent invoked the jurisdiction of the Agency Divisional Officer, Kothagudem, who decreed the suit in 2000, whereas G.O.Rt. No. 432 was issued on 20-3-2001 extending the period from 1-10-1995 to 28-2-2001. When the petitioners had an alternative remedy to challenge the order under Rule 47 to the Agent to the Government, the revision is not maintainable. Whereas, the respondent in C.R.P. No. 3520 of 2003 filed the suit on 21-6-2003 before the Mobile Court, which had jurisdiction to entertain the suit, which is evident from the subsequent G.Os. issued for continuation of the Mobile Court, the only forum created under G.O.Ms. No. 406 to file the suit, which is procedural in nature. The learned Counsel further submits that the petitioners will have a vested right of action but not a vested right of forum. Reliance, in this connection, is placed on the judgment of the Apex Court in *New India Insurance Co. Ltd. v. Smt. Shanti Misra* : [1976]2SCR266 .

12. Sri Vinay Kumar, appearing for the respondent in C.R.P. No. 1396 of 2003, adopted the arguments of the learned Advocate General and Sri Hari Sridhar. He further contends that under Rule 49 of the A.P. Agency Rules, 1874, an appeal against the original decree passed by the Agent to the State Government is provided to the High Court and therefore, the revision is not maintainable.

13. It is an admitted fact that prior to issuance of G.O.Ms. No. 406, under Rule 5(1), civil jurisdiction is conferred on the Agency Munsif to take cognizance of suits in respect of movable or immovable property not exceeding in value Rs. 500/-.

Under Rule 6 thereof, the Agency Divisional Officer (in the cadre of R.D.O.) is conferred with the jurisdiction to take cognizance of suits where the value is more than Rs. 500/- but less than Rs. 5,000/-. Agent to the Government (District Collector) is conferred with the jurisdiction to try the cases where the value of the suit is more than Rs. 5,000/-, under Rule 7. Rule 47 provides appeals against the original decrees from the Agency Munsifs to the Agency Divisional Officers (first appeal) and Agent to the Government (second appeal) and Agency Divisional Officer to the Agent to the Government (first appeal) and second appeal to the High Court.

14. In order to implement the directive principles enshrined under Article 39A of the [Constitution of India](#) and in order to render speedy and instant justice to the people inhabiting in remote and interior areas and who are facing difficulty to approach the Courts, the Government thought it fit to establish one Mobile Court, in the first instance, in each of the districts and accordingly issued G.O.Ms. No. 406, dated 27-6-1990. In the first paragraph of the G.O., it is nowhere mentioned that establishment of the Mobile Courts is for a limited period of one year. Since the Courts are established on experimental basis and since regular staff cannot be sanctioned to the said Courts, unless they are regular Courts, the Government created the temporary posts initially for the period of one year i.e., upto 28-2-1991. From the second paragraph of the said G.O., it cannot be understood that the establishment of the Courts is for a limited period. Such intention is not made clear in the first paragraph of the G.O. and while sanctioning the post for further period, in the subsequent G.Os., it is mentioned that continuance of the temporary Mobile Court is for the further period or till the necessity ceases whichever is earlier. It is only an inadvertence, which crept in while drafting the subsequent G.Os., but not otherwise. The fact remains that the special Mobile Courts were established not for a limited period and will continue to function until the same are rescinded by another G.O. In view of the same, the argument advanced by the learned Counsel for the petitioners that the establishment of Mobile Courts is for a limited period and is extended from time to time is only a fallacy. It is quite evident from the issuance of subsequent G.Os., the staff, who were temporarily selected for the period of one year, were extended from time to time till the necessity ceases, otherwise it is difficult to draw the expenditure and pay the salaries for them unless

the sanction of staff permission is extended for further period. Granting sanction for continuance of temporary post cannot be understood as though the establishment of the Courts is for a limited period. Both are for different purposes. In view of the same, the challenge made to the orders passed by the special Mobile Courts, cannot be sustained and the special Mobile Courts will have the jurisdiction to entertain the suit and pass appropriate orders.

15. All the C.R.Ps. and C.M.As., which are filed challenging the orders passed by Special Mobile Court, are accordingly dismissed. Since the C.R.Ps. are dismissed, the petitioners in the revision petitions are at liberty to file the appeals against the orders passed by the Mobile Courts before appropriate forum. It is, however, made clear that the appeals, if any, to be filed by the petitioners shall be treated as they are filed within the period of limitation.

C.R.P. No. 3052 of 2000:

16. Once the special Mobile Court is constituted, vested with jurisdiction to entertain the civil suits, the Agency Divisional Officer cannot have jurisdiction to entertain O.S. No. 13 of 1999 on the ground that no extension was granted. Once a forum is created to entertain the suit by establishing a Mobile Court, it is only the Mobile Court, which will have the jurisdiction to entertain the above suit.

17. The Civil Revision Petition is accordingly allowed.

Crl.P. No. 3574 of 2003:

18. For the reasons mentioned above, once the special Mobile Courts are established to administer the criminal justice, by taking cognizance of the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, no infirmity is discernible to the order taking cognizance of the offence. The Mobile Court is well within the jurisdiction in taking cognizance of the offence. The submission made by the learned Counsel for the petitioner that the Mobile Court did not have jurisdiction to try the case on the date when it took cognizance of the offence, cannot be accepted. Therefore, the criminal petition is liable to be dismissed.

19. The criminal petition is accordingly dismissed.

Crl.P. No. 4841 of 2003 and 441 of 2004:

20. The petitioners in the above petitions were allotted the land to an extent of Ac.89.08 cents by the Government of A.P. in its memo No. 78056/ASN.II (12)/94-13, dated 12-2-1997 in Survey Nos. 251, 256, 262 of Sarapaka village of Burgampahad revenue mandal. The District Collector was directed to hand over the advance possession and sell the land to the petitioners subject to the following conditions:

(i) The company has to pay the market value of the land to the Government;

(ii) The company has to deposit an amount of Rs. 10,00,000/- as a (one time payment) with the project officer, ITDA., Bhadrachalam for taking up developmental activities for the welfare of the tribals;

(iii) The company should set apart an amount of Rs. 25,00,000/- every year towards the development of the Bhadrachalam Town and areas adjacent to the plant. The Collector, Khammam may identify the works to be taken up, arranged to prepare estimates and then specify the works to M/s. ITC Bhadrachalam Paperboards Limited for execution. The works can be executed by M/s. ITC Bhadrachalam Paperboards Limited, itself;

(iv) In the event of vacancy being available, to provide employment to the displaced tribals, subject to their being otherwise competent in terms of academic qualification and skills.

21. Alleging that the first respondent and six others, who acquired the said land on assigning the patta granted by the Government, were dispossessed from the said land, the complaints were filed before the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, who took cognizance of the same and issued summons. The above criminal petitions were filed to quash the said proceedings.

22. Learned Senior Counsel, Sri Padmanabha Reddy, appearing on behalf of the petitioner contends that the Sub-Divisional Magistrate, Mobile Court,

Bhadrachalam has no jurisdiction to take cognizance of the case, as there was no extension to continue the said Court, as held by this Court in Rajamma's case (1 cited supra). He further contends that the petitioner deposited Rs. 1,00,000/- and has been depositing Rs. 25,00,000/- every year for development of Bhadrachalam town and the areas adjacent to the plant and the same was spent for the benefit of the tribals apart from undertaking to provide the jobs to the displaced tribal people whenever the vacancy is available subject to their being otherwise competent in terms of academic qualification and skills, as per the conditions in memo dated 12-2-1997. He further contends that the dispute is purely civil in nature. He ultimately contends that since the lands assigned to the complainants and others is Ac.1.00 each, which will come to only Ac. 12.00 of land approximately in both the cases, and without showing any boundaries to the extent held by each of them, the complainants resorted to file civil suits for eviction of the petitioner and unless the suits are decided in their favour ordering ejectment, the petitioners cannot be prosecuted for the offence. It is nothing but an abuse of process of law.

23. In the light of the view taken that the Mobile Courts were not established for a limited period and will continue to function till the alternative arrangements are made, the submissions made by the learned senior counsel, the Magistrate will not have any jurisdiction to entertain the complaint and taking cognizance of it cannot be accepted, as the Mobile Court, which was constituted under G.O.Ms. No. 406, has been conferred with the criminal jurisdiction to entertain the complaint for the offences alleged if any. Section 6-B of the Regulation clearly envisages that the offence under the Regulations is a cognizable offence and under Section 6-A, if any person, on or after commencement of the Regulation of A.P. Scheduled Area Land Transfer (Amendment) Regulations, 1978 acquires any immovable property in contravention of the provisions of the Regulations, he will be punished with Imprisonment for a term which may extend to one year or with fine which may extend to Rs. 2,00,000 or with both. Section 3 prohibits transfer of immovable property situated in the Agency tract and declares the same as null and void, unless such transfer is made in favour of a person, who is a member of the scheduled tribe or a society registered or due to be registered under the A.P. Co-operative Societies Act. Sub-section (2)(a) of Section 3 thereof contemplates eviction of the persons, who are in possession in contravention of the Regulation,

suo motu on an application by any one of the interested person.

24. Admittedly, the suits are filed by the complainants, which are pending adjudication. Unless (sic. If) the same are adjudicated and decided that the acquisition made by the petitioner is in contravention of the provisions of the Regulations, then only they are liable to be convicted. When the matter is already pending adjudication, before the competent Court, filing a criminal complaint for the very same purpose even before the rights of the parties are determined is nothing but an abuse of process of law and result in unnecessary harassment to the petitioner. Therefore, the proceedings in C.C. Nos. 582 of 2003 and 1 of 2004 are quashed.

25. The criminal petitions are accordingly allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com