

K. Pavan Vs. Special Executive Magistrate, Office of the Collector and District Magistrate and ors.

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Court : Andhra Pradesh

Decided On : Dec-07-2001

Reported in : 2001(6)ALT617

Judge : B. Sudershan Reddy, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 145, 145(6) and 146(1);
[Constitution of India](#) - Article 226

Appeal No. : W.P. No. 16667 of 2001

Appellant : K. Pavan

Respondent : Special Executive Magistrate, Office of the Collector and District Magistrate and ors.

Advocate for Def. : Government Pleader for Revenue, ;M. Venkateswari and ;K. Narasimha Chari, Advs. and ;G. Jyothi Kiran, Standing Counsel for the Municipal Corporation of Hyderabad

Advocate for Pet/Ap. : S. Satyam Reddy, Adv.

Judgement :

B. Sudershan Reddy, J.

1. The petitioner in the instant writ petition prays for issuance of an appropriate writ, particularly, one in the nature of Mandamus directing the respondents to preserve the disputed property bearing No.10-2-91/87, Road No.3, West Marredpally, Secunderabad as per the proceedings of the first respondent in M.C.No.B/60/1989, dated 12-6-1995. The petitioner also prays for issuance of appropriate directions to initiate action against the persons responsible for changing the nature of the property.

2. There is any amount of dispute between the parties in respect of the property bearing No.10-2-91/87, Road No.3, West Marredpally, secunderabad (for short 'the said property'). The petitioner and respondents 6, 7 and 8 exclusively claim the proprietary rights over the said property. Even according to the averments made in the affidavit filed in support of the writ petition, the said property belongs to one late Smt. P. Anjanamma, widow of late Guru Swamy Naidu. The said Anjanamma had five sons and two daughters. The petitioner is the son of the eldest daughter - late Smt. Lalitha W/o. late K. Rama Krishna. The said Anjanamma is alleged to have executed a will in favour of her children in the year 1978 and the same was registered in the office of the Sub-Registrar, Marredpally, Secunderabad vide document No.580/1978. As per the said will, the daughter and sons are entitled to enjoy 1/7th share in the rent and income of the said house and her eldest son P. Omrao was appointed as an executor of the will deed. Anjanamma died on 4-1-1980.

3. Certain disputes had arisen between the two sets of parties. One set represented by P.Omrao and another set represented by Smt. P. Urmila, W/o. T.K. Kodandaram. Each one of them claims exclusive proprietary rights in the said property.

4. The fact remains that the Inspector of Police, Marredpally, Secunderabad submitted a report before the first respondent in M.C.No.B/16/1989. The first respondent by an order dated 12-6-1995 passed an order in purported exercise of the power under Section 146(1) of the Code of Criminal Procedure (for short 'the Code') authorising the second respondent-Mandal Revenue Officer to attach the said property by taking and keeping possession thereof, and to hold the same

under attachment until the decree or order of a competent court determining the rights of the parties or the claim to possession is obtained. The said order has been passed by the first respondent on being satisfied that a dispute likely to induce a breach of peace existed between the parties concerning the said property.

5. The said order, admittedly, is in operation even as on today. It is the case of the petitioner that inspite of the said order, the house was demolished and some constructions were going on in the said property. He immediately lodged a complaint with the third respondent on 31-7-2001. No action was taken and the constructions were not stopped.

6. It is contended that none of the parties are entitled to demolish the existing structure and make any construction while the property continues to be under the warrant of attachment issued by the first respondent-Executive Magistrate. That is the simple case of the petitioner.

7. Respondents 6 and 7 assert their exclusive rights over the said property. The claim of exclusive title is based on the proceedings dated 16-10-1999 on the file of the Chief Commissioner, Land Administration according permission for mutation and conversion of leasehold rights of the property into free hold in their favour on full payment of Rs.59,250/- towards conversion charges. It is asserted that such an order has been passed by the Commissioner, Land Administration pursuant to the policy formulated by the Government vide G.O.Ms.No.698, dated 7-12-1995 for conversion of leasehold rights into free hold. The Estate Officer executed a conveyance deed in favour of respondents 6 and 7 and the same is registered as document No.1997/1999 dated 15-11-1999. Thereafter, they have applied for and obtained permission from the Municipal Corporation of Hyderabad for demolition of the existing property and to make new construction thereon. The Joint Collector, Hyderabad issued No Objection Certificate dated 24-1-2001 based upon which the Municipal Corporation accorded sanction approving the plans submitted by respondents 6 and 7.

8. It is submitted that the petitioner herein has filed O.S.No.1161 of 2001 on the file of the XI Junior Civil Judge, City Civil Courts, Secunderabad along with one P.

Ganesh Rao claiming to be the General Power of Attorney holder of the writ petitioner and others against one Om Rao and the mother of respondents 6 and 7. He prayed for grant of an interim injunction, but the trial court refused to grant any such injunction. Suppressing the said fact, the petitioner filed the present writ petition. It is their case that the petitioner being fully aware that they have become the owners of the property failed to implead them as parties to the writ petition by misrepresenting the facts to this court. In nutshell, they claim to be the exclusive owners of the property.

9. Respondent No.8 submits that on a complaint made by the petitioner herein before the Inspector of Police, Marredpally, proceedings were initiated under Section 145 of the Code in M.C.No.B/60/1989 on the file of the Special Executive Magistrate at Hyderabad, about which a reference has already been made in this order. The said proceedings were initiated against Smt. P. Urmila W/o. T.K. Kodandaram (2) T.K. Kodandaram, (3) T.K. Narayana Murthy and (4) Deendayal to the effect that the said persons were attempting to dispossess the petitioner herein from the said property. It is required to notice that Smt. P. Urmila is the mother of respondents 6 and 7 and T.K. Kodandaram is their father. It is stated that during the course of proceedings, the mother of respondents 6 and 7 remained ex parte. In the affidavit filed by the 8th respondent, there is a reference to various proceedings including W.P.No.7016 of 1996 filed by the 6th respondent herein.

10. Suffice it to notice the nature of controversy between the parties. Each one of them is asserting their exclusive right, title and interest in the said property. It is well settled that this court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) cannot resolve such disputed questions of title in respect of an immovable property. The issues are required to be resolved elsewhere in a properly constituted proceeding. The court, in this proceeding, cannot express any opinion whatsoever about the claim of any of the parties in respect of the said property.

11. In the counter affidavit filed by the second respondent-Mandal Revenue Officer, it is conceded that the order dated 12-6-1995 passed by the Special

Executive Magistrate, Hyderabad was executed by duly conducting a panchanama on 5-7-1995. It is further stated that at the time of attaching the property on 5-7-1995 there was a school by name St. Joseph's Secondary School and none of the parties were in possession of the said property. The Mandal Revenue Officer, Secunderabad in his capacity as receiver of the property has been receiving the rents from the said St. Joseph's School and remitting the same with the bank since none of the parties have obtained an order from the competent court of law.

12. It is, however, stated that respondents 6 and 7 obtained a conveyance deed in their favour from the competent authority, that is to say, Chief Commissioner of Land Administration. Based on the same, the Estate Officer, Secunderabad executed a conveyance deed in favour of respondents 6 and 7. It is stated that the Mandal Revenue Officer took all steps to preserve the property as per the orders passed by the first respondent dated 12-6-1995. It is, however, stated that respondents 6 and 7 have now become the owners of the property.

13. The short question that falls for consideration is as to whether any of the parties could be allowed to deal with the property in any manner whatsoever during the pendency of the proceedings before the first respondent? What is the effect of the order passed by the first respondent-Executive Magistrate attaching the property and taking the same into custody in purported exercise of the power under Section 146(1) of the Code?

14. There is no dispute whatsoever that the order dated 12-6-1995 passed by the first respondent is still subsisting. No doubt, respondents 6 and 7 contend that they are not the parties to the said proceedings. But, the fact remains that their mother is one of the parties and she remained ex parte to the proceedings before the first respondent. But that fact itself may be of no consequence.

15. The Supreme Court in *Bhinka v. Charan Singh*¹ held that 'under Section 145(6) of the Code of Criminal Procedure, a Magistrate is authorised to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension

of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court.'

16. A Division Bench of this Court in Harijan Yellaiah v. State of A.P.² held that 'the pendency of a civil suit between the parties in respect of the disputed land does not take away the jurisdiction of the criminal Court to initiate proceedings under Section 145, Criminal Procedure Code, if the criminal court is satisfied that the dispute is likely to result in the breach of peace. If the civil Court has not issued any order with regard to the possession and the criminal Court is satisfied that there is apprehension of imminent breach of the peace, it can proceed with the enquiry under section 145, Criminal Procedure Code, and pass appropriate orders, despite the pendency of the civil suit.'

17. In B.Kondayya v. S.D.M., Amalapuram³ it is observed that 'the proceeding under Section 145 of the Code of Criminal Procedure is essentially aimed to prevent breach of peace and to bring to an end by summary process disputes relating to land which are in their nature likely if not suppressed, to end in breaches of peace. The object of the section is to prevent violent self-help even by the true owner. Under sub-section (6) of Section 145 only the possession is declared and the order is valid only until the actual right of one of the parties to the dispute is determined by the competent civil Court.'

18. It is well settled that when the property is in custody of a Receiver appointed by the Executive Magistrate, the property shall be deemed to be in the custody of the Magistrate himself and interference with such possession should not be encouraged. No party can acquire any title or right by coming in or over the property which is in the possession of the Receiver without leave or consent of the Receiver or sanction of the court. (For the proposition see: Sadharam v. Pulin Behari⁴).

19. The warrant of attachment passed by the Executive Magistrate directing the second respondent-Mandal Revenue Officer to take possession of the said

property and hold the same under attachment until the decree or order of a competent court determining the rights of the parties or the claim to possession is obtained, is not challenged by any of the parties. Respondents 6 and 7 cannot altogether ignore the order passed by the Executive Magistrate and enter into possession of the said property under the guise of the conveyance deed executed by the Estate Officer in their favour. The conveyance deed executed by the Estate Officer on 15-11-1999 during the pendency of the warrant of attachment would itself does not confer any right to enter into the said property. It is not as if respondents 6 and 7 have brought the factum of execution of conveyance deed and their acquiring title to the said property to the notice of the Executive Magistrate. It is not necessary in this case to express any opinion whatsoever as to what order the Executive Magistrate would have passed had respondents 6 and 7 placed the deed of conveyance executed in their favour by the Estate Officer. The property continues to be in possession of the second respondent-Mandal Revenue Officer. It is rather surprising to notice as to how the Mandal Revenue Officer could have permitted respondents 6 and 7 to interfere with such property during the subsistence of the warrant of attachment issued by the Executive Magistrate. It may be entirely a different matter that respondents 6 and 7 may be entitled to question the order passed by the Executive Magistrate in the light of the subsequent events and seek for appropriate modifications. But, they cannot be permitted to ignore the order passed by the Executive Magistrate in purported exercise of the power conferred under Section 146(1) of the Code attaching the property and taking the same into possession and entrusting the same to the Mandal Revenue Officer who holds possession under the directions of the Executive Magistrate.

20. I do not find any merit in the contention urged by the learned counsel for respondents 6 and 7 that only the parties to the proceedings are bound by the order passed by the Executive Magistrate. Not only the parties to the proceedings, but every person claiming any right to possession in respect of the property under attachment is bound by the orders of attachment. Otherwise, the very purpose of attachment ordered to avoid the breach of peace would get defeated and frustrated. It is true that the order of warrant of attachment is characterised by the Supreme Court as 'police order'. It may not confer any right, title or interest upon

any person. But such order shall continue to be in operation until the same is modified either by the Executive Magistrate or determination of rights by a competent court of civil jurisdiction.

21. In the circumstances, neither the conveyance deed executed by the Estate Officer in favour of respondents 6 and 7 nor the according of sanction by the Municipal Corporation of Hyderabad would enable respondents 6 and 7 to intrude into the said property and proceed with the construction. The property for all purposes shall continue to be with the Mandal Revenue Officer in terms of the warrant of attachment. The Mandal Revenue Officer is duty bound to protect the said property as interim custodian of the property. He shall continue to hold the property until the order of warrant of attachment is modified or annulled or vacated in accordance with law.

22. This order, however, shall not preclude respondents 6 and 7 to question the order of warrant of attachment dated 12-6-1995 in the manner known to law. But, they cannot be permitted to take the law into their own hands and ignore the order of warrant of attachment and intrude into the said property. The first respondent-Executive Magistrate and the second respondent-Mandal Revenue Officer to whom the possession is entrusted are bound by the order of attachment and they are required to take such further steps as may be necessary to implement the order of warrant of attachment.

23. It is needless to observe that this court has not expressed any opinion about the right, title or interest or claim for possession of any of the parties in respect of the said property. It is for the parties to get the issue resolved in a properly constituted proceeding. The observations, if any, made are confined only for the purpose of disposal of this writ petition and shall have no bearing upon any question relating to the right, title or interest of the parties in the said property.

24. The writ petition is accordingly disposed of. There shall be no order as to costs.