

**\* HON'BLE SRI JUSTICE C.V. BHASKAR REDDY**

**+ WRIT PETITION No.7683 of 2022**

**% Date: 22.01.2024**

**Between:**

Khatighar Shankar Rao

and others.

... Petitioners

AND

The State of Telangana

Rep by Home Secretary, Secretariat Hyderabad

and others.

... Respondents

**! Counsel for the Petitioners** : Sri D.V.Sitarama Murthy,  
learned Senior Counsel for  
Sri Aruva Raghuram Mahadev

**^ Counsel for Respondent Nos.1 to 4** : Govt. Pleader for Home

**^ Counsel for Respondent Nos.5,6,7,9,11 & 13** : Sri C. Raghu,  
learned Senior Counsel for  
Sri Lingampally Ravinder

**^ Counsel for Respondent No.8:** ----

**^ Counsel for Respondent No.10:** Sri Manoj Kumar Akula

**^ Counsel for Respondent No.12:** -----

**^ Counsel for Respondent No.14:** Sri Sreenivasa Rao Velivela

**> HEAD NOTE:**

**? Cases referred**

- 1) AIR 1954 SC 415
- 2) (2003) 6 SCC 230
- 3) (1992) 4 SCC 61

**THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY**

**WRIT PETITION No.7683 of 2022**

**ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking the following reliefs:

*“to issue a Writ of Mandamus or any other appropriate Writ, order, or direction*

*i. Declaring the action of the Respondent no 2 to 4 and more particularly Respondent No.4 in dispossessing the Petitioners by use of force from land admeasuring 1 Acres 38 guntas in Survey No.773, situated at Kandi Village, Sangareddy Mandal, Medak District, Telangana and aiding non-official Respondents to enter into the property pending the civil dispute as illegal, arbitrary and in violation of Article 14, 21 and 300A of the constitution and*

*ii. Consequently, direct the Respondents 1 to 4 to restore the possession of land admeasuring 1 Acres 38 Guntas in Survey No.773, situated at Kandi Village, Sangareddy Mandal, Medak District, Telangana to the Petitioners by removing the encroachers and unsocial elements and*

*iii. Direct the Respondents not to interfere with the Petitioner's peaceful possession of the subject property and to pass such other order or orders which this Hon'ble court may deem fit and proper in the circumstances of the case.*

*iv. Direct an independent enquiry be conducted by a District Judge against the illegal and high-handed action of the Respondent no.4.”*

**2.** The brief facts of the case that are necessary for disposal of the writ petition are stated hereunder:

The petitioners and the respondent Nos.5 and 6 claim to be Directors of M/s. Silamkot Finance Private Limited, Begumbazar, Hyderabad, a company incorporated under the provisions of Companies Act. The said company also owns land admeasuring Ac.1-38gs in Sy.No.773, situated at Kandi Village, Sangareddy

Mandal, Medak District, having purchased the same under registered sale deed dated 13.08.1999 bearing document No.3190/1999. It is the case of petitioners that respondent Nos.5 and 6 without consent of remaining Directors, on a fabricated Board Resolution dated 14.07.2004, sold the subject land in favour of family members of respondent Nos.5 and 6 by executing a document dated 29.11.2004 bearing No.13104/2004, who in turn sold the subject property in favour of some of their relatives under registered sale deed dated 09.03.2005 bearing document No.2654/2005. It is further case of the petitioners that having come to know about the fraudulent activity and illegal sale of land belonging to the Company, petitioners filed a complaint on the file of II Addl. Chief Metropolitan Magistrate, Hyderabad. On being referred, the said complaint was registered as a crime and after completion of investigation, charge sheet was filed for the offences punishable under Sections 408, 420, 423, 424, 468, 471, 201 r/w 34 of IPC vide C.C.No.100 of 2011. It is further case of the petitioners that the said C.C. was dismissed vide judgment dated 26.06.2018. Aggrieved by the same, Criminal Appeal No.368/2020 was preferred on the file of this Court and the same is pending for adjudication. In the meanwhile, representing the company, petitioner No.5 filed a suit vide O.S.No.337/2006 on the file of Senior Civil Judge, at Sangareddy against Respondent Nos.5, 6, 10,

11, 12 and 13 and others, seeking to declare the sale deeds and the partition deed executed by the respondents on the company property as null and void and the same is not binding on the petitioners. It is stated by the petitioners that the said suit was dismissed vide Judgment and decree dated 02.06.2016. Aggrieved by the same, A.S.No.81/2018 was filed on the file of Principal District Judge, Medak at Sangareddy and the same is pending. It is further case of the petitioners that notwithstanding the execution of sale deeds by the respondent Nos.5 and 6 in favour of respondent No.10, 13, 14 and Nagari Indumathi (wife of respondent No.12) and dismissal of the suit, they are in continuous possession of the subject property as evidenced by the Advocate Commissioner's report dated 25.01.2021 in I.A.No.2091 of 2020 in I.A No.1708 of 2020 in O.S.No.584 of 2020 on the file of Principal Junior Civil Judge, Sangareddy. It is further case of the petitioners that they are in continuous and exclusive possession of the subject land having constructed two rooms and one hut and they also employed a watchman for protecting the property. Taking advantage of Covid pandemic, respondents Nos.5 to 9 started interfering with the peaceful possession of the petitioners. On 29.08.2020 the respondent Nos.5 to 9 along with some unsocial elements visited the suit property and tried to manhandle the Watchman/Supervisor of the petitioners and tried to demolish the structures. The petitioners

with great difficulty, resisted the illegal interference and got lodged a complaint through their supervisor against the respondent No.5, 6, 9 to 13 and their other family members and acting on the said complaint, a case in Crime No.216/2020 was registered for the offences under Sections 341, 447, 323, 504, 506 r/w 34 of IPC on 30.08.2020 and after completion of investigation, charge sheet was filed on the file of II Class Executive Magistrate at Sangareddy and the same is pending. It is further case of the petitioners that as a counterblast to their complaint, Respondent No.10 also filed a false complaint against the petitioners and the same was registered as a case in Crime No.222 of 2020 for the offences under Sections 447 and 506 r/w 149 IPC. It is also further case of the petitioners that respondents filed a suit for injunction vide O.S.No.584/2020 on the file of Principal Junior Civil Judge, Sangareddy, against the petitioners and in the said suit, I.A.No.2091/2020 was filed for appointment of advocate Commissioner to note down the physical features of the schedule property and the same was allowed vide order dated 09.12.2020 and an Advocate Commissioner was appointed to note down the physical features of the property. Questioning the same, the unofficial respondents herein filed a Civil Revision Petition No.1378 of 2020 on the file of this Court and the same was dismissed vide order dated 07.01.2021. It is the specific case of the petitioners that the Advocate Commissioner, who visited

the suit schedule property, has filed a report on 25.01.2021 stating that petitioners are in possession of the suit schedule property by constructing a room, compound wall and also got electricity connection. It is further case of the petitioners that the report filed by the Advocate Commissioner and documents annexed to the report viz., property tax receipts, electricity bills, permission granted by the Gram Panchayat and internet connection reveals their possession over the subject property. However, the respondent Nos.5 to 9, who are not in possession of the property, in highhanded manner, with the aid and assistance of respondent Nos.1 to 4 are making efforts to dispossess the petitioners from the subject property. Questioning the said action, the petitioners were constrained to file Writ Petition No.14850 of 2020 on the file of this Court and this Court vide order dated 07.09.2020 disposed of the said writ petition recording the statement of the police that they are not interfering with the civil disputes between the *inter se* parties. The grievance of the petitioners is that respondent No.4 in active collusion with respondent Nos.5 to 9 is interfering with the possession of the petitioners and aiding the respondent Nos.5 to 9 to dispossess the petitioners from the subject property. Hence the writ petition.

**3.** A counter affidavit has been filed by the respondent No.9 deposing on behalf of himself and also on behalf of respondent

Nos.5, 6, 7, 11 and 13. It is stated that M/s. Silamkot Finance Private Limited company was struck off from register of companies. The said company does not exist as on date. The petitioners herein do not have any right to maintain the present writ petition alleging that the subject property belongs to the said company. It is the case of the respondents that the property admeasuring Ac.1-38 gts in Sy.No.773/A of Kandi Village and Mandal was sold by M/s. Silamkot Finance Company under registered Sale Deed Document No.13104/2004 dated 29.11.2004 in favour of Nagari Suryaprakash & two others, who in turn, sold the same to respondent No.10 and others under a registered Sale Deed dated 09.03.2005 bearing document No.2654/2005. It is further stated that a Partition Deed dated 08.11.2006 vide document No.25990/2006 was executed between the vendees under the said Document No.2654/2005 dividing the property admeasuring Ac.1-38 gts by metes and bounds into four equal shares allotting each share of Ac.0-19.5 guntas to each of the parties therein. Thereafter Smt. Indumathi executed a Gift Deed dated 24.09.2015 in respect of her share of Ac.0-19.5 guntas in favour of respondent No.9 vide document No.17325/2015. It is further stated that the said company has instituted a suit vide OS No.337/2006 on the file of Senior Civil Judge, Sangareddy, against the Respondent Nos.5, 6, 10, 11, 12 and 13 and others, seeking to declare the partition deed dated

08.11.2006 bearing Document No.25990/2006, as null and void and for setting aside the Sale Deed dated 29.11.2004 bearing Document No.13104/2004, and also the Sale Deed dated 09.03.2005 bearing document No.2654/2005. The said suit was dismissed vide Judgment and decree dated 02.06.2016. Challenging the same, an appeal was filed vide AS No.81/2018 on the file of District Court, Sangareddy and the same is pending. It is stated that no interim orders were granted in the said appeal. It is further stated that while the things stood thus, though the company is struck off from the register of Companies, the petitioners have been sending antisocial elements to disturb the peaceful possession and enjoyment of respondents over the subject property. It is further stated that in the process of grabbing the property, the petitioners approached the electricity department and applied for electricity connection. Questioning the granting of power supply connection, the respondent Nos.9, 10, 13 and 14 filed Writ Petition No.2164 of 2021 on the file of this Court and this Court vide order dated 04.03.2022 disposed of the said writ petition directing the electricity department to pass necessary orders for disconnecting the power supply connection obtained by the petitioners illegally. It is the specific case of the respondents that petitioners with a malafide intention on one pretext or other, are frequently interfering with the peaceful possession of the respondents and keeping the said motive



have filed the present writ petition. The present writ petition filed by the petitioners is devoid of merits and the same is liable to be dismissed in *limine*.

**4.** The respondent No.14 filed implead petition claiming to be purchaser of part of subject property under registered sale deed dated 09.03.2005 vide document No.2654/2005. She also claims to be co-sharer of the land admeasuring Ac.0-19.5gts in Sy.No.773/A, under partition deed dated 08.11.2006 vide document No.25990/2006. As such she is impleaded in this writ petition as respondent No.14 vide order dated 06.06.2022 passed by this Court in I.A.No.2 of 2022. The respondent No.14 also filed her counter with the similar averments that are made in the counter affidavit filed by the respondent No.9.

**5.** The respondent No.10, who is also one of the purchasers under registered sale deed dated 09.03.2005 bearing document No.2654/2005 and claiming to be co-sharer of the land admeasuring Ac.0-19.5 gts in Sy.No.773/A, under partition deed dated 08.11.2006 vide document No.25990/2006, also filed his counter with the similar averments that are made in the counter affidavit filed by the respondent No.9.

**6.** The respondent No.4 filed counter affidavit on behalf of himself and also on behalf of respondent Nos.1 to 3 stating that

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basing on the complaint lodged by Mohammed Afroz, Supervisor, working under the control of petitioner No.1, registered a case in Crime No.216/2020 for the offences under Sections 447, 323, 504, 506 r/w 34 IPC and after completion of investigation, he filed charge sheet on the file of II Class Executive Magistrate, at Sangareddy against the respondent No.5 for the offence under Section 323 IPC and the same is pending for trial. It is further stated by the respondent No.4 that basing on the complaint lodged by respondent No.10, he registered a case in Crime No.222/2020 for the offences under Sections 447, 506, 504 r/w 149 IPC and after conducting investigation, filed final report on the file of Additional Judicial Magistrate of First Class, at Sangareddy, as "lack of evidence". It is further stated that respondent No.5 has also lodged a complaint dated 31.01.2022 on the file of respondent No.5 and acting on the said complaint, a case in Crime No.37/2022 was registered for the offences under Sections 447, 427, 504, 506 r/w 149 IPC and the same is pending for investigation. It is further stated that except registration of the criminal cases and proceeding with the investigation, in accordance with law, the police never interfered with the civil disputes and ultimately prayed to dismiss the writ petition.

**7.** Considered the submissions of the learned counsel for the respective parties and perused the record.

**8.** Sri D.V.Sitarama Murthy, learned Senior Counsel representing Sri Aruva Raghuram Mahadev, learned counsel for the petitioners has submitted that respondent Nos.5 to 9 by playing fraud and creating fraudulent documents i.e, Sale Deed dated 29.11.2004 bearing Document No.13104/2004; and the Sale Deed dated 09.03.2005 bearing document No.2654/2005; and partition deed dated 08.11.2006 bearing document No.25990/2006 and the gift deed dated 24.09.2015 bearing document No.17325/2015, are trying to dispossess the petitioners from the subject property. It is further submitted that even though the suit vide O.S.No.337/2006 instituted by the petitioners was dismissed vide judgment and decree dated 02.06.2016 and challenging the same, an appeal suit vide A.S.No.81/2018 has been filed and pending, the petitioners are continuing in possession of the subject property and they cannot be dispossessed without following due process of law. It is also submitted by the learned Senior Counsel that in the suit vide O.S.No.584/2020 instituted by the respondents, the petitioner No.1 filed I.A.No.2091/2020 seeking to appoint advocate Commissioner to note down the physical features of the schedule property therein and the same was allowed vide order dated 09.12.2020 and the Advocate Commissioner filed his report, stating that the petitioners are in possession of the subject property. It is further submitted that even if the petitioners had no right to remain in the property,

they cannot be dispossessed except by following due process of law. The learned Senior Counsel has placed much reliance on the report of the Advocate Commissioner filed in I.A.No.2091 of 2020 in I.A No.1708 of 2020 in O.S.No.584 of 2020 on the file of Principal Junior Civil Judge, Sangareddy and the documents enclosed to the said report. It is contended by the learned Senior Counsel that respondent Nos.1 to 4 are not having any power or authority to provide aid and assistance to the respondent Nos.5 to 9 in taking possession as the respondents dispossessed the petitioners illegally. The petitioners are entitled for restoration of the possession. In support of his submissions, the learned Senior Counsel relied upon the decision in **Wazir Chand vs. State of Himachal Pradesh and the District Magistrate, Chamba**<sup>1</sup> and ultimately prayed to allow the Writ Petition as prayed for.

9. On the other hand, Sri C.Raghu, learned Senior Counsel appearing for Sri Lingampally Ravinder, learned counsel for the respondent Nos.5, 6, 7, 9, 11 and 13 has vehemently contended that petitioners are not having any right to maintain the present writ petition alleging that the subject property belongs to the M/s.Silamkot Finance Private Limited, Begum Bazar, Hyderabad, as the said company was struck off from the register of companies. It is further argued that the respondent Nos.10, 13, 14 and Smt. Nagari

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<sup>1</sup> AIR 1954 SC 415

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Indumathi, wife of respondent No.12 purchased the property admeasuring Ac.1-38gts in Sy.No.773/A, situated at Kandi Village, Sangareddy Mandal, from the authorised persons of M/s.Silamkot Finance Private Limited, Begum Bazar, Hyderabad, under registered sale deed dated 09.03.2005 bearing document No.2654/2005. The respondent Nos.10, 13, 14 and Smt. Nagari Indumathi, wife of respondent No.12 have executed Partition Deed dated 08.11.2006 bearing document No.25990/2006 dividing the property admeasuring Ac.1-38 gts by metes and bounds into four equal shares allotting each Ac.0-19.5 guntas. Thereafter said Smt. Indumathi executed a registered Gift Deed dated 24.09.2015 bearing document No.17325/2015 in respect of her share of land admeasuring Ac.0-19.5 guntas in favour of respondent No.9. Thus the respondent Nos.9, 10, 13 and 14 have become absolute owners of the total land admeasuring Ac.1-38gts in Sy.No.773/A, situated at Kandi Village, Sangareddy. The learned Senior Counsel strenuously argued that the petitioners claiming right, title and possession in respect of the very same property, have instituted suit vide O.S.No.337/2006 on the file of Senior Civil Judge, Sangareddy, against the Respondent Nos.5, 6, 10, 11, 12 and 13 and others, to declare the partition deed dated 08.11.2006 bearing Document No.25990/2006, as null and void and for setting aside the Sale Deed dated 29.11.2004 bearing Document No.13104/2004, and

also the Sale Deed dated 09.03.2005 bearing document No.2654/2005 and after contest, the said suit was dismissed vide Judgment and decree dated 02.06.2016. Aggrieved by the same, the petitioners preferred an appeal vide AS No.81/2018 on the file of District Court, Sangareddy District and no interim orders were passed in the said appeal. It is argued that in the absence of staying the operation of the judgment and decree dated 02.06.2016 passed in O.S.No.337 of 2006, the petitioners are not entitled to claim any right, title and possession over the suit schedule property. The learned Senior Counsel further argued that suppressing the said fact, the petitioners have approached electricity department and obtained electricity connection to the suit schedule property and questioning the granting of power supply, the respondent Nos.9, 10, 13 and 14 filed Writ Petition No.2164/2021 on the file of this Court and this Court vide order dated 04.03.2022 directed the electricity department to pass necessary orders for disconnecting the power supply to the suit schedule property. The learned Senior Counsel relied upon the decision of the Hon'ble Supreme Court in **Dwarka Prasad Agarwal v. B.D. Agarwal**<sup>2</sup> and submitted that the High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority and the remedy

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<sup>2</sup> (2003) 6 SCC 230

under Article 226 of the Constitution of India cannot be invoked for resolution of a private disputes. The petitioners are seeking to redeliver possession of the property, for which rights of the parties have already been declared and therefore, the present writ petition is misconceived and liable to be dismissed.

**10.** Sri Manor Kumar Akula, learned counsel appearing for the respondent No.10 and Sri Sreenivasa Rao Velivela, learned counsel appearing for the respondent No.14, adopted the arguments advanced by Sri C.Raghu, learned Senior Counsel and prayed this Court to dismiss the writ petition.

**11.** The learned Assistant Government Pleader for Home appearing for the respondent Nos.1 to 4 has submitted that case and counter cases were registered against the petitioners as well as unofficial respondents on the complaints lodged by them and the respondents-police except registering the cases and conducting investigation, in accordance with law, have not interfered with the civil disputes between the petitioners and the unofficial respondents and ultimately prayed this Court to dismiss the writ petition.

**12.** This Court has carefully examined the rival submissions of the parties. The petitioners and the unofficial respondents are claiming rights in respect of the land admeasuring Ac.1-38gts in Sy.No.773, situated at Kandi Village, Sangareddy Mandal, Medak

District, and inviting this Court to decide the question relating to right, title and possession of the said property. In view of the serious disputes between the petitioners and unofficial respondents with regard to right, title and possession of the subject property, the writ petition is not the remedy to resolve the *inter se* disputes between the parties, in the absence of examining the documents relating to title and possession of the respective parties. The questions as to, who is the owner of the land in question; whether the petitioners are in possession of the subject property and, if so, from which date, how and in what circumstances, they claim to be in possession; whether their possession could be regarded as legal or not qua its real owner, etc., are some of the material questions which arose for consideration in this writ petition. These questions, in my view, are pure questions of fact, which could be answered one way or the other only by the civil court in a properly constituted civil suit and on the basis of the evidence adduced by the parties but not in a writ petition filed under Article 226 of the Constitution of India. It has been consistently held by this Court and the Hon'ble Supreme Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons.



13. In **Mohan Pandey vs. Usha Rani Rajgaria**<sup>3</sup> the Hon'ble Supreme Court observed as follows:

*“6: xxx..... It has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. And in such a case, the Court will issue appropriate direction to the authority concerned. If the real grievance of the respondent is against the initiation of criminal proceedings, and the orders passed and steps taken thereon, she must avail of the remedy under the general law including the Criminal Procedure Code. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly.” (emphasis supplied).*

14. In **Dwarka Prasad Agarwal v. B.D. Agarwal**, (supra), the Hon'ble Supreme Court observed as follows:

*“The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available for resolution of a property or a title dispute.”*

It is well settled law that this Court is not having jurisdiction to delve into the disputes and come to a conclusion with regard to

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<sup>3</sup> (1992) 4 SCC 61

right, title and possession of the parties in the absence of determining the validity or otherwise of their entitlement being decided at the first instance.

**15.** In the case of ***Wazir Chand vs. State of Himachal Pradesh and the District Magistrate, Chamba*** (supra), relied upon by the petitioners, the Hon'ble Supreme Court was dealing with the power of Judicial Commissioner in withholding the goods, which have been seized and the Hon'ble Supreme Court had issued a writ directing the restoration of goods seized by the police to the petitioners therein. The facts in the present case are totally different and the same are distinguishable. In the instant case, respondent No.4 has filed a counter affidavit stating that except registration of the criminal cases and conducting investigation and inspecting the scene of offence, the police never interfered with the peaceful possession of either of the parties. Therefore, the aforesaid decision is not applicable to the facts and circumstances of the present case. Further, it is not the case of the petitioners that what was infringed by their unlawful eviction/dispossession, was a fundamental right guaranteed under Article 21 of the Constitution of India and what is allegedly infringed is a right guaranteed under Article 300A of the Constitution of India. While exercising the jurisdiction under Article 226 of the Constitution of India, in cases of illegal dispossession, the Court has to examine whether any of the rights of the

petitioners guaranteed under Article 21 of the Constitution of India are infringed or the rights relating to property for which remedies are available before the Civil Court are infringed by not following due process of law.

**16.** In view of the above discussion, this Court is not inclined to exercise its discretion under Article 226 of the Constitution of India, for granting relief as sought for and the Writ Petition filed by the petitioners is devoid of merits and the same is liable to be dismissed.

**17.** Accordingly, this Writ Petition is dismissed.

Miscellaneous petitions, if any pending in this writ petition shall stand closed. No order as to costs.

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**C.V. BHASKAR REDDY, J**

Date: 22.01.2024

**Note:** L.R Copy to be marked: YES/ NO

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