

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

**+ WRIT PETITION No.3975 of 2023**

**% Date: 03.01.2024**

**Between:**

Bonakurthi Sanjay.

... Petitioner

AND

State of Telangana,  
Rep by its Prl Secretary to Government,  
Home Department, Secretariat Hyderabad  
and others.

... Respondents

**! Counsel for the Petitioner** : Sri S. Rama Mohan Rao

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

**^ Counsel for Respondent Nos.5 to 8** : ---

**> HEAD NOTE:**

**? Cases referred**

- 1) (2012) 4 SCC 307
- 2) (2017) 15 SCC 659
- 3) (1991) 4 SCC 379
- 4) AIR 2021 SC 5309

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

**WRIT PETITION No.3975 of 2023**

**ORDER:**

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

*“....to issue a Writ of Mandamus or any other appropriate writ, order or direction, declaring the action of the respondents 1 to 4 herein not providing Police protection to safeguard our possession over the land bearing Sy.No.771/E2 admeasuring an extent of Ac.0.31 gts situated at Kandi village and Gram Panchayat, Kandi Mandal, Sangareddy district, for which our vendor filed a Suit bearing O.S.No.55/2017 on the file of the Special Judge for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980 cum V Addl. Sessions Judge, Medak at Sangareddy against the respondents 5 and 6 herein for grant of perpetual injunction and obtained decree of permanent injunction vide Judgment and decree dated 9.2.2018, which has become final, as no appeal is filed against the said order, as illegal and arbitrary and contrary to the dicta laid down by this Hon'ble Court in Satyanarayana Tiwari vs S.H.O., P.S. Santhoshanagar, dated: 14<sup>th</sup> June, 1982 reported in AIR 1982 AP 394 (Division Bench) and for a consequential direction to the respondents 1 to 4 to grant them Police protection to safeguard our possession over the land bearing Sy.No.771/E2 admeasuring an extent of Ac.0.31 gts situated at Kandi village and Gram Panchayat, Kandi Mandal, Sangareddy district pursuant to the decree granted by the Civil Court in O.S.No.55/2017, dated 9.2.2018 against the respondents 5 and 6 herein...”*

**2.** It is the case of petitioners that originally Smt.Mallepally Narsamma, was the owner and possessor of property admeasuring Ac.0-31gts in Sy.No.771/E2, situated at Kandi Village and Mandal, Sangareddy. It is further case of the petitioners that when the respondent Nos.5 and 6 herein interfered with the possession of said Mallepally Narsamma, she filed a suit *vide* O.S.No.55 of 2017 on the file of the Special Judge for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1980-cum-V Additional Sessions Judge, Medak at Sangareddy, seeking perpetual injunction and the said suit was decreed vide judgment and decree dated 09.02.2018 granting perpetual injunction restraining the respondent Nos.5 and 6 herein from interfering with the peaceful possession and enjoyment of said Mallepally Narsamma over the subject property. As the respondent Nos.5 and 6 herein did not prefer any appeal, the said judgment and decree has become final. It is further case of the petitioners that they purchased the subject property from said Smt.Mallepally Narsamma and others under registered sale deed dated 19.05.2018 bearing document No.18720/2018 and possession was also delivered to them.

**3.** The learned counsel appearing for the petitioners has vehemently contended that even after passing of the judgment and decree dated 09.02.2018 in O.S.No.55 of 2017 in favour of Smt.Mallepally Narsamma, vendor of the petitioners, the respondent Nos.5 and 6 are interfering with the possession of the petitioners over the subject property. When the petitioners approached respondent No.4 and sought police aid to safeguard their possession, the police refused the petitioners' request on the premise that there is no police protection order in their favour from the Competent Court.

4. *Per contra*, the learned Government Pleader for Home appearing for respondent Nos.1 to 4 has submitted that except approaching the police, the petitioners have not obtained any orders either from the Court of the Special Judge for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980-cum-V Additional Sessions Judge, Medak at Sangareddy, which has passed the judgment and decree dated 09.02.2018 in O.S.No.55 of 2017 or from this Court granting police protection. Since there was no specific direction from the competent civil Court, the respondents-police have not acceded the request of the petitioners.

5. In ***Kanwar Singh Saini vs. High Court of Delhi***<sup>1</sup>, the Hon'ble Apex Court observed as follows:

*“17. Application under Order 39 Rule 2A CPC lies only where disobedience/breach of an injunction granted or order complained of was one that is granted by the court under Order 39 Rules 1 and 2 CPC, which is naturally to ensure during the pendency of the suit. However, once a suit is decreed, the interim order, if any, merges into the final order. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically.*

*18. In case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order*

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<sup>1</sup> (2012) 4 SCC 307

*21 Rule 32 CPC which provides for elaborate proceedings in which the parties can adduce their evidence and can examine and cross examine the witnesses as opposed to the proceedings in contempt which are summary in nature. Application under Order 39 Rule 2-A CPC is not maintainable once the suit stood decreed. Law does not permit to skip the remedies available under Order 21 Rule 32 CPC and resort to the contempt proceedings for the reason that the court has to exercise its discretion under the 1971 Act when an effective and alternative remedy is not available to the person concerned. Thus, when the matter relates to the infringement of a decree or decretal order embodies rights, as between the parties, it is not expedient to invoke and exercise contempt jurisdiction, in essence, as a mode of executing the decree or merely because other remedies may take time or are more circumlocutory in character. Thus, the violation of permanent injunction can be set right in executing the proceedings and not the contempt proceedings. There is a complete fallacy in the argument that the provisions of Order 39 Rule 2-A CPC would also include the case of violation or breach of permanent injunction granted at the time of passing of the decree.”*

**6.** In ***Raja Venkateswarlu and another vs. Mada Venkata Subbaiah and another***<sup>2</sup>, the Hon’ble Apex Court while dealing with the similar issue, upheld the orders passed by the Executing Court granting police protection under Section 151 of C.P.C for implementation of injunction decree stating that it is not necessary that the person seeking police protection must file an application only under Order XXI Rule 32 of CPC.

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<sup>2</sup> (2017) 15 Supreme Court Cases 659

7. In the case of **Ghan Shyam Das v. Anant Kumar Sinha**<sup>3</sup>, while dealing with the provisions of the CPC relating to execution of decrees and orders, the Hon'ble Apex Court observed as under:

*“So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of order XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Civil Procedure Code is of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better.”*

In the instant case, the petitioners have purchased the subject property from the decree holder in O.S.No.55 of 2017 under a registered sale deed and the possession of the subject property was also delivered to them. It is settled law that subject to satisfying the requirements under Order XXI Rule 16 CPC, any person claiming property from the Decree Holder is entitled to file an application seeking to execute the decree. A person who is neither a decree-holder nor has a right to execute a decree, cannot apply for execution of decree. A specific procedure has been prescribed under the CPC for enforcement or giving effect to a judgment or order of Court. Execution is the enforcement of decrees and orders by the process of the Court, so as to enable the decree-holder to realise the fruits of the decree. In the instant case, the petitioners

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<sup>3</sup> (1991) 4 SCC 379

have filed the present writ petition seeking to direct the respondent Nos.1 to 4 to provide police protection to safeguard their possession over the subject property by implementing the judgment and decree, dated 09.02.2018 passed in O.S.No.55 of 2017 by the learned Special Judge for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980-cum-V Additional Sessions Judge, Medak at Sangareddy. In the affidavit filed accompanying the writ petition, the petitioners have stated that the respondent Nos.5 and 6 are interfering with their possession over the subject property. Since the petitioners herein are claiming that they have purchased the property from the decree holder, subject to fulfilling the conditions laid down in Order XXI of CPC, they are entitled to seek execution of the decree granted in favour of their vendor by filing an appropriate application before the concerned Court.

**8.** It is pertinent to state that if the competent Civil Court fails to grant police aid, then the Writ Petition filed under Article 226 of the Constitution of India would remain effective in appropriate situations. The relief of police protection may be granted in a situation where an application is filed by the person obtaining injunction alleging that there is a threat of breach, disobedience or violation of order of injunction, subject to proof. When a petition is filed seeking police protection, such order cannot be passed in a

routine manner and a high degree of proof is necessary. A party, who obtained temporary injunction order or perpetual injunction decree, and is complaining of violation of such orders, may file not only an application under Order XXXIX Rule 2A CPC seeking attachment and/or arrest of the violator for Contempt of Court or an execution petition under Order XXI Rule 32 CPC, as the case may be, but also an application seeking Police protection under Section 151 CPC from the competent Civil Court. In the present case, since there is a specific remedy available under Order XXI Rules 16 and 32 of CPC, the petitioners have to avail such remedy, if they feel that unofficial respondents are interfering with their possession or if there is any disobedience or breach of the judgment and decree. The issue with regard to maintainability of the Execution Petition by the subsequent purchaser from the Decree Holder is no longer *res integra*. As the said issue was already decided by the Hon'ble Supreme Court in ***Vaishno Devi Construction and others vs. Union of India (UOI) and others***<sup>4</sup>.

9. In view of the above remedy available to the petitioners, this Court is not inclined to grant the relief sought by the petitioners seeking police aid for implementation of the judgment and decree dated 09.02.2018 passed in O.S.No.55 of 2017 by the learned Special Judge for trial of offences under the Scheduled Castes and

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<sup>4</sup> AIR 2021 SC 5309



Scheduled Tribes (Prevention of Atrocities) Act, 1980-cum-V Additional Sessions Judge, Medak at Sangareddy. However, the petitioners are at liberty to file an appropriate application before the competent Civil Court, in accordance with law. If such an application is filed, the learned Special Judge for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980-cum-V Additional Sessions Judge, Medak at Sangareddy, shall dispose of the same, in accordance with law, as expeditiously as possible, preferably, within a period of two (2) months from the date of filing of such application.

**10.** With the above observations, this Writ Petition is disposed of. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition shall stand dismissed.

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

Date: 03.01.2024

**Note:** L.R Copy to be marked: **YES/ NO**  
(b/o)  
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