

**THE HON'BLE SRI JUSTICE A.V. SESA SAI**

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**WRIT PETITION No.12334 OF 2012**

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**ORDER:**

This writ petition filed under Article 226 of the Constitution of India challenges the order passed by the 1<sup>st</sup> respondent/Special Deputy Collector (Tribal Welfare) in Case No.TW A2/54/2008, dated 28.02.2012. By virtue of the said order, the 1<sup>st</sup> respondent directed ejectment of the respondents in the Appeal from the land admeasuring Acres 8.25 Guntas situated in Survey No.228, Thosham Village, Gudihathnoor Mandal, Adilabad District and to restore the land to the respondents 4 and 6.

2. Heard Sri S.Chandrasekhar, learned Counsel, appearing for the petitioner, learned Government Pleader for Social Welfare, appearing for the respondents 1 to 3 and Sri S.Surendar Reddy, learned counsel, appearing for the respondents 4 and 5.

3. The Special Deputy Collector (Tribal Welfare), Adilabad, pressed into service the provisions of Land Transfer Regulations and passed an order in Case No.TWA2/3875/78, dated 24.11.1983, dropping further action in the matter, holding absence of any contravention of sub-section 1 of Section 3 of the Land Transfer Regulations. Against the said order passed by the Special Deputy Collector, the 4<sup>th</sup> respondent herein filed an appeal before the 2<sup>nd</sup> respondent/Agent to the Government. The 2<sup>nd</sup> respondent passed an order on 06.12.2007, remanding the matter to the Special Deputy Collector/1<sup>st</sup> respondent herein. The 1<sup>st</sup> respondent/Special Deputy Collector, by virtue of an order in Case No.TW A2/54/2008, dated 28.02.2012, ordered ejectment of the respondents in the Appeal from the schedule land and restoration of the land to the respondents 4 and 6 herein.

4. Calling in question the validity and the legal sustainability of the said order passed by the 1<sup>st</sup> respondent, the present writ petition came to be filed.

5. Both the official respondents as well as the unofficial respondents have filed

vacate applications supported by counter affidavits and with the consent of the parties, this Court is inclined to dispose of the writ petition at this Stage.

6. It is contended by the learned counsel for the petitioner that impugned order passed by the 1<sup>st</sup> respondent is erroneous and is highly illegal, arbitrary, unreasonable and erroneous and is in contravention of the provisions of Land Transfer Regulations. It is the further submission of the learned counsel that the Special Deputy Collector has no jurisdiction to pass the impugned order. It is also vehemently contended by the learned counsel for the petitioner that the 1<sup>st</sup> respondent passed impugned orders without taking into consideration the material available on record from proper perspective.

7. On the contrary, it is submitted by the learned Government Pleader as well as learned counsel for the respondents 4 and 6 that there is no illegality nor there is any procedural infirmity in the impugned action and in the absence of the same, the present writ petition is not maintainable and the petitioners herein are not entitled for any relief from this Court under Article 226 of the Constitution of India. It is also the emphatic contention of the learned Government Pleader as well as learned counsel for the unofficial respondents that in view of the availability of alternative remedy of Statutory Appeal to petitioners herein under the Land Transfer Regulations, the present writ petition is not maintainable before this Court under Article 226 of the Constitution of India.

8. The material available before this Court manifestly discloses that in the year 1983, the Special Deputy Collector, *Suo-motu* had taken up the matter under the provisions of Land Transfer Regulations and recorded absence of any contravention of the provisions of Land Transfer Regulations and dropped further proceedings in the matter. In the year 2007, the Appellate Authority/Project Officer - 2<sup>nd</sup> respondent herein, passed an order and pursuant to which the 1<sup>st</sup> respondent herein now passed the impugned order dated 28.02.2012, directing ejectment of the petitioners herein from the schedule property. There is absolutely no dispute with regard to the aspect that as against the orders of Special Deputy Collector (Tribal Welfare), the Land Transfer Regulations provide for an Appeal. Without availing the said alternative remedy of appeal, the present writ petition has obviously been filed.

9. This Court finds sufficient force in the contention of the learned Government

Pleader so also the learned counsel for the respondents 4 and 6 that the present writ petition is not maintainable before this Court in view of the availability of alternative remedy of appeal before the 2<sup>nd</sup> respondent/Agent to Government.

10. Therefore, this Court is inclined to relegate the petitioner herein to avail such an alternative remedy of Appeal, while keeping it open for the petitioner to agitate all the points before the Appellate Authority including jurisdiction of the 1<sup>st</sup> respondent to pass the impugned order. Since this Court is relegating the petitioner to avail alternative remedy, this Court does not propose to go into the other aspects of the matter.

11. For the aforesaid reasons, writ petition stands disposed of, keeping it open for the petitioners herein to file an Appeal before the 2<sup>nd</sup> respondent/Agent to Government against the order impugned in this writ petition, within a period of one month from the date of receipt of a copy of this order. If any such appeal is filed, the same be considered and appropriate orders be passed after giving notice and opportunity of being heard to all the stake holders within two months thereafter. Till such exercise attains finality, *Status-quo* with regard to the subject property shall be maintained by all the stake holders.

12. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

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**A.V.SESHA SAI, J**

30<sup>th</sup> November, 2015

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