

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

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WRIT PETITION No.24394 of 2007

ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the order passed by the Agency Divisional Officer/The Special Deputy Collector, Tribal Welfare, Kothagudem, Khammam District – 1st respondent herein in LTR Case No.314/99/CHG, dated 08.05.2006.

2. Heard Sri Palivela Satyarajababu, learned counsel, appearing for the petitioner and learned Government Pleader for Social Welfare, appearing for the respondents.

3. According to the petitioner, she purchased an extent of 3 Acres of dry agricultural land in Survey No.38 (58/A/1) situated at Tungaram Village, Chandrugonda Mandal, Khammam District, on 18.12.1968, from a non tribal and ever since, she is in possession and enjoyment of the said land till date. The Special Deputy Collector Tribal Welfare, Paloncha, Khammam District, on the allegation that the petitioner purchased the said land contrary to the A.P.Scheduled Areas Land Transfer Regulations (herein after, 'the Land Transfer Regulations'), initiated proceedings and after enquiry passed an order vide LTR Case No.1284/93/CHG, dated 18.01.1994, holding that the case of the petitioner would not attract the violations under the Land Transfer Regulations. While that being the situation, the 1st respondent – Agency Divisional Officer, vide Order dated 08.05.2006, in LTR Case No.314/99/CHG, ordered eviction from the lands in Survey No.58/A/1 of Tungaram Village, Chandrugonda Mandal, Khammam District.

4. Calling in question the validity and legal sustainability of the said order passed by the 1st respondent – Agency Divisional Officer, the present Writ Petition came to be filed.

5. This Court while ordering '*Notice before admission*' on

16.11.2007, granted interim order of *Status quo* with regard to the subject property and thereafter, while ordering '*Rule Nisi*' on 03.06.2009, in W.P.M.P.No.31766 of 2007, extended the stay order.

6. No counter affidavit has been filed denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

7. It is contended by the learned counsel for petitioner that the questioned order passed by the 1st respondent – Agency Divisional officer is illegal, arbitrary, unreasonable and violative of Articles 14, 21 and 300-A of the Constitution of India, besides being opposed to the very spirit and object of the provisions of the Land Transfer Regulations. It is the further submission of learned counsel that in view of the earlier orders passed by the Special Deputy Collector in the year 1994, the order now which is impugned in the writ petition cannot be sustained in the eye of law. It is further contended that without notice to the petitioner, the 1st respondent passed the impugned order and the same is in violation of the principles of natural justice.

8. On the contrary, it is vehemently contended by the learned Government Pleader that the very writ petition filed by the writ petitioner is not maintainable in view of alternative remedy of Appeal to the Agent to the Government under the Land Transfer Regulations. It is also submitted that the 1st respondent herein, after elaborately considering the entire material on record, passed the impugned order and no case is made out by the petitioner for interference of this Court under Article 226 of the Constitution of India.

9. In the above background, now the issues that emerge for consideration of this Court are:

1. Whether the order passed by the respondent is sustainable and tenable in the eye of law? and
2. Whether the petitioner is entitled to file the present writ petition under Article 226 of the Constitution of India?

10. The material available before this Court manifestly discloses that earlier the Special Deputy Collector, Tribal Welfare, Kothagudem, Khammam District, pressed into service the provisions of the Land Transfer Regulations, on the report of the Special Deputy Tahsildar, Tribal Welfare, Paloncha and after elaborate enquiry, the Special Deputy Collector passed an order dated 18.01.1994, dropping action against the subject land holding that there is no reason to interfere with the peaceful possession and enjoyment of the land by the petitioner.

11. After lapse of nearly 12 years, once again, the 1st respondent initiated proceedings in respect of the subject land basing on the report of the Special Deputy Trahsildar, Tribal Welfare, Paloncha. It is the specific contention of the learned counsel for the petitioner that the petitioner herein was neither shown as respondent, nor shown as a party nor was given any notice of hearing before passing the impugned order by the 1st respondent.

12. A perusal of the impugned order dated 08.05.2006, candidly discloses that the petitioner herein was not shown as party to the impugned LTR proceedings. No counter affidavit is filed opposing the averments made in the affidavit filed in support of the present writ petition.

12. It is also the specific case of the petitioner herein that she never sold the property in favour of anybody and she is in possession and enjoyment of the property as on date. This fact is also not disputed by the respondent by way of filing counter. Therefore, in the considered opinion of this Court, such action on the part of the 1st respondent in passing the impugned order without putting the petitioner on notice in advance is in total violation of the principles of natural justice and opposed to the very spirit and object of the provisions of the Land Transfer Regulations. The contention of the learned Government Pleader with regard to non-maintainability of the writ petition in view of the availability of the alternative remedy cannot be sustained in view of

the findings recorded supra.

13. Having regard to the nature of controversy and in view of the above reasons, this Court is inclined to set aside the impugned order and remand the matter to the 1st respondent for fresh disposal, after giving notice and opportunity of being heard, in accordance with law.

14. For the aforesaid reasons, writ petition is allowed, setting aside the order dated 08.05.2006 passed by the Agency Divisional Officer – 1st respondent in LTR Case No.314/99/CHG and the matter is remanded to the 1st respondent for fresh disposal after giving notice and opportunity of being heard to all the stake holders including the petitioner herein, within a period of six months from the date of receipt of a copy of this order. Till such exercise attains finality, interim order granted by this Court on 16.11.2007 with regard to the subject property shall continue.

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

A.V. SETHA SAI, J

29.12.2015

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