

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.24590 of 2015

ORDER :

Heard Sri N. Krishna Rao, counsel for petitioners, and Sri M. Sudhir, learned Standing Counsel for 2nd respondent-Corporation.

2. The petitioners belong to Scheduled Caste community and for their benefit an extent of Acs.64.04 cents in Sy.Nos.1741, 1742, 1746, 1747, 1748 and 1749 of Kolanupaka Village, Aleru Mandal, Nalgonda District was acquired by the then State of Andhra Pradesh in 1998 and then allotted to petitioners by subdividing the lands into small holdings, the details of which are mentioned in the affidavit filed in support of the writ petition. They contend that sale deeds were executed in their favour by the State Government by collecting the market value from them from out of loans granted to petitioners by respondent nos.2 and 3 on a mortgage of the title deeds of lands which are in the custody of 3rd respondent. Thus, all the petitioners are owners of land. There was a mortgage in respect of the land in favour of respondent nos.2 and 3 entitling respondent nos.2 and 3 to retain the title deeds till the loan is cleared by petitioners.
3. On account of drought, and other events causing hardship to farmers like the petitioners prior to 2010, the Government of Andhra Pradesh waived the loan taken by farmers such as petitioners up to Rs.1,00,000/- payable to respondent nos.1 and 2. This was communicated to each of the petitioners by a letter sent through Certificate of Posting on 31.12.2010.

4. Notwithstanding the fact that there are no subsisting loan dues in respect of each of the petitioners warranting retention of the mortgage deeds/title deeds by respondent nos.2 and 3, the respondent nos.2 and 3 continued to retain the same depriving petitioners of opportunity to take any fresh loans on the lands allotted to them or to transfer the same. This action of the respondents is impugned in the Writ Petition.
5. The petitioners contended that inaction on the part of respondents in not issuing clearance certificates in spite of the loans of petitioners having been waived with interest, is illegal, arbitrary and unjust and violative of principles of natural justice; the respondents are estopped by the letters sent through Certificate of Posting on 31.12.2010, waiving the loans of petitioners; and therefore, they seek a direction to 3rd respondent to forthwith release the mortgage deeds/bonds of their loans in the above survey numbers by issuing clearance certificates to 4th respondent.
6. The counsel for petitioners reiterated the above submissions.
7. The learned Standing Counsel for respondent nos.2 and 3 has filed a counter-affidavit stating that they are entitled to retain the mortgage deeds/bonds notwithstanding the waiver of loans of petitioners having regard to the scheme of allotment to them, since the purpose of the scheme would be defeated if the beneficiaries of the scheme such as the petitioners sell the lands and again become landless agricultural labourers. Reference is made to a letter dt.04.05.2010 of the Vice-Chairman and Managing Director of 2nd respondent-Corporation which

acknowledges that the waiver of loan makes the beneficiaries of the scheme, such as the petitioners, loan-free from the District Societies, but states that the lands cannot be made available for sale by petitioners since they are members of the District Societies under the land purchase scheme, and are governed by the instructions issued by 2nd respondent by a circular dt.01.08.2005. The Vice-Chairman and Managing Director of 2nd respondent directed not to release the lands from the mortgage of District Societies and keep the mortgage deeds in the safe custody of 3rd respondent. Relying on this communication, the respondents contended that even though the documents of title in respect of the lands are in the names of petitioners and even though their loans have been waived under the loan waiver scheme, the respondents are entitled to retain the mortgage deeds/bonds.

8. The learned Standing Counsel for 2nd respondent-Corporation reiterated the above submissions.
9. I have noted the submissions of both sides.
10. There is no dispute that by a letter dt.04.05.2010 the Vice-Chairman and Managing Director of 2nd respondent-Corporation instructed all the Executive Directors that on account of loan waiver by the State Government the mortgage of the persons, such as the petitioners who are allotted lands under the land purchase scheme, would end and the beneficiaries such as the petitioners would become loan-free, and the land registered in their names would become their own land.
11. One can understand the conduct of the respondents in retaining

the mortgage deeds/bonds, if there are subsisting loans due by the petitioners. But once the loans of petitioners have been waived by the State, under Law, the respondents are not entitled to retain the mortgage deeds/bonds and such action, whatever be its laudable objective, violates Article 14 and 300-A of the Constitution of India. Since it is not disputed that petitioners are owners of the plots allotted to them, any restraint on petitioners to sell the said lands would violate Section 11 of the Transfer of Property Act, 1882, and the petitioners are entitled to ignore any restraint on their right to alienate or encumber the land imposed by respondents. The respondents are also not entitled to retain the mortgage bonds/deed executed by petitioners, since admittedly the loans of all petitioners have been waived by the State Government.

12. Therefore, the Writ Petition is allowed and it is declared that the 3rd respondent is not entitled to withhold the mortgage deeds/bonds of petitioners' properties after the loans of petitioners have been waived by 1st respondent. Consequently, the 3rd respondent is directed to forthwith release the mortgage deeds/bonds to petitioners by issuing clearance certificates to 4th respondent.
13. Accordingly, the Writ Petition is allowed. No order as to costs.
14. As a sequel, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13.11.2015

Ndr/*

Note : Issue C.C. in a week.

B/o.

Kvr/Ndr.