

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.21913 OF 2012

ORDER:

This writ petition is filed seeking to issue a writ, order or direction more particularly, one in the nature of writ of *Mandamus* to declare the action of respondent No.2 in not granting interim orders in Appeal No.E1/1631/2012 as illegal and arbitrary, and consequently, to declare the orders of respondent No.3 in No.E2/748/2011 dated 29.6.2012 as illegal and arbitrary.

2. The averments in the affidavit filed in support of the petition are as follows:

The petitioners are agriculturists and residents of Salabathpur Village, Madnur Mandal, Nizamabad District. One late Eknath Rao purchased agricultural land in Sy.No.45/A admeasuring Ac.3.00 guntas situated at Salabathpur shivar through a registered sale deed from 1) Gangaiah, S/o.Eeraiah 2) Laxmaiah, S/o.Eeraiah and 3) Drupath Bai, W/o.Eeraiah and since then, the said land is in possession of late Eknath Rao. Eknath Rao died in the year 1976 leaving the petitioners as his legal heirs. All the petitioners are cultivating the lands admeasuring Ac.3.00 guntas in Sy.No.45/A of Salabathpur Village. After purchase of land, Eknath Rao made an application for change of ownership in revenue records to the Tahsildar, Madnur and after due enquiry, the then Tahsildar issued a memo dated 12.4.1974 directing the Pathwari and Revenue Inspector to effect the name of the owner in the records. Gangaiah and Laxmaiah submitted an affidavit before the Tahsildar, Madnur on 29.5.1974 stating that they sold the land to an extent of Ac.3.00 guntas in favour of Eknath Rao and at that point of time, Bandaru laxmaiah was also a party to the affidavit dated 29.5.1974. Bandaru Laxmaiah

has submitted an application to the Tahsildar, Madnur only to harass the petitioners and to extract money from the petitioners. Basing on his application, respondent No.2 issued notice stating as to why the land cannot be resumed back for which, the petitioners gave a detailed explanation to respondent No.2. The petitioners' land was purchased even prior to commencement of the A.P. Assigned Land (Prohibition of Transfers) Act, 1977 (for short, "the Act") is not applicable, as the transfer took place on 05.08.1971 under registered sale deed executed by the owner of the land. Respondent No.5 cannot make an application stating that he is entitled for possession of the land back. After the death of Eknath Rao, the land was partitioned within the family members where the petitioners have got small extents of land. The Tahsildar, Madnur issued pattadar pass books and title deeds in favour of the petitioners. The petitioners filed O.S.No.25 of 2007 on the file of the Junior Civil Judge, Bichkunda for perpetual injunction against respondent No.5 herein and his wife and the same was decreed on 24.1.2008 and the same has become final. Only to harass the petitioners and to gain illegally from the petitioners, respondent No.5 has filed an application stating that Ac.1.20 guntas in Sy.No.46 was assigned and encroached by one Digamber Rao Patail. The petitioners are in continuous possession from 1971 till date and notice itself is illegal. Without verifying the record, respondent No.2 issued the notice and trying to evict them summarily.

After issuance of the show cause notice, the petitioners filed W.P.No.17721 of 2012 questioning the notice of respondent No.3 and the same was disposed of directing the petitioners to approach the Revenue Divisional Officer. But, without hearing the petitioners or their counsel, the R.D.O. passed an adverse order in No.E2/748/2011 dated 29.6.2012 ordering resumption of the assigned lands in Sy.No.46 to an extent of Ac.1.20 guntas situated at Salabathpur Village in favour of the Government and the Tahsildar was directed to take possession of

the said land. Aggrieved by the order of the R.D.O., Bodhan, the petitioners filed Appeal No.E1/1631/2012 before the Joint Collector, Nizamabad along with stay petition on 13.7.2012, but the Joint Collector has not passed any orders and the Tahsildar is not allowing the petitioners to enter into the land for cultivation.

3. Counter-affidavit is filed by respondent No.5 stating that the petitioners are not the legal heirs of late Eknath Rao; that there is no illegality or irregularity in passing the order of resumption by respondent No.3; that he is a landless poor and his family is totally depending upon the above said assigned lands for their livelihood and hence, prayed to dismiss the writ petition.

4. Heard the learned counsel for petitioners, learned Government Pleader for Revenue (Telangana) appearing for respondent Nos.1 to 4 and the learned counsel appearing for respondent No.5.

5. Since the appeal is pending before respondent No.2 - the Joint Collector, Nizamabad, other averments in the writ affidavit and the counter-affidavit are not relevant since this Court is not going into the merits of the case.

6. Admittedly, appeal under Section 4(A)(2) of the Act is pending before respondent No.2 and since this Court has granted interim order on 20.7.2012 and the same is continued, both parties can raise all their contentions before respondent No.2 and respondent No.2 shall decide the appeal in accordance with law, as expeditiously as possible, preferably, within a period of two (2) months from the date of receipt of a copy of this order. Till such time, there shall be stay of the impugned proceedings. There shall be no order as to costs.

7. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE A.RAJASHEKER REDDY

Date: 15.02.2016
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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