

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

WRIT PETITION No.28028 of 2008

ORDER:

The challenge in the present writ petition is to the order of the State Government – 1st respondent herein issued vide G.O.Ms.No.212 Social Welfare (LTR-2) Department, dated 20-11-2008 dismissing the revision filed by the petitioner's father under the provisions of the A.P. Scheduled Areas Land Transfer Regulations (hereinafter called, 'the Regulations').

Heard, Sri K. Venkatesh, learned counsel for the petitioner and learned Government Pleader for Social Welfare for respondents.

The case of the petitioner in the affidavit filed in support of the writ petition, in nutshell, is as follows:

The Settlement Officer, Rajahmundry granted Ryotwari patta to the petitioner's father, Late Hanumanthu Satyanarayana vide 4215/73, dated 18-10-1975 in respect of the land, admeasuring Hec.1-97 and Hec.1.69 in Sy.Nos.32 and 40 situated in Mallavarapu Mamillu Village, Addateegala Mandal, East Godavari District under the provisions of A.P. Muttas (Abolition and Conversion into Ryotwari) Regulations. The father and mother of the petitioner died in the years 1999 and 1993 respectively and the petitioner herein is the only legal heir and the petitioner is in possession and enjoyment of

the said lands situated in the scheduled area of East Godavari District and the petitioner is a non-tribal.

During the life time of the father of the petitioner the respondent authorities initiated proceedings under the Regulations vide LTRP No.45/75 and the 3rd respondent by an order, dated 20-09-1975 in the LTRP No.45/75 directed that the land be put in possession of the 5th respondent herein. Subsequently, the 5th respondent herein filed another LTRP No.325/76 before the 3rd respondent, praying to hand over the physical possession of the houses and the said LTRP No.325/76 was dismissed by the 3rd respondent on 23-12-1976.

Aggrieved by the said order, the 5th respondent filed Civil Miscellaneous Appeal No.27/1977 before the Agent to Government, East Godavari District at Kakinada and the said appeal was allowed on 11-05-1987. Against the said orders passed by the Agent to Government, the father of the petitioner filed W.P.No.7899/1987 and the same was dismissed by this Court with a liberty to the petitioner to avail the alternative remedy of revision before the State Government by way of an order, dated 12-07-1996 and the Writ Appeal No.140/97 was also dismissed by a Division Bench of this Court on 18-02-1997, confirming the orders passed in the writ petition. Thereafter the petitioner herein

filed revision before the State Government on 10-03-1997. The State Government – 1st respondent herein vide G.O.Ms.No.212 Social Welfare (LTR-2) Department, dated 20-11-2008 dismissed the said revision.

In the above background, the present writ petition came to be filed by the petitioner herein and this Court while ordering *rule nisi* on 24-12-2008 granted interim direction in W.P.M.P.No.36729 of 2008, directing the respondents 2 to 4 not to evict the petitioner from the subject land.

According to the learned counsel for the petitioner, the very exercise undertaken by the respondents herein in seeking to evict the petitioner from the subject land is totally one without jurisdiction since the Ryotwari patta granted in favour of the father of the petitioner on 18-10-1975 became final. It is also the submission of learned counsel that the revisional authority grossly erred in holding that the order of the Joint Collector in the appeal No.5/2001 became final. In support of his submissions/contentions learned counsel for the petitioner places reliance on following judgments:

1. 2013 (3) ALD 516
2. 1998 (1) ALD 783
3. 1983 (2) APLJ 96 and
4. Order in W.P.No.1005 of 1994, dated 13-06-2003

On the contrary, it is vehemently contended by learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same the impugned action is not amenable for any judicial review under Article 226 of Constitution of India. It is further submitted by learned Government Pleader that the reasons assigned by the revisional authority/State Government in the impugned order are valid and convincing, as such, no interference under Article 226 of the Constitution of India is warranted. It is further submitted that since the orders of the authorities are inconsonance with the object and intention of the subject legislation, no interference of this Court is warranted.

In the above background, now the issue that emerges for consideration of this Court in the present writ petition is:

Whether the impugned action on the part of the respondents is sustainable and tenable and whether the same warrants any interference of this Court under Article 226 of the Constitution of India?

The information available before this Court, in vivid and clear terms, discloses that as long back as on 18-10-1975 the Settlement Officer granted Ryotwari patta in favour of the father of the petitioner in respect of the subject property under Section 5 of Regulation 2 of 1969. The validity of the said order was assailed by the Project Officer, ITDA,

Rampachodavaram by way of filing appeal No.5 of 2001 under Section 9 of Regulation 2 of 1969 before the Joint Collector and the said appeal was allowed by the Joint Collector on 24-04-2001. Challenging the said order, the petitioner herein approached this Court by way of filing W.P.No.9847 of 2002. This Court, by way of an order, dated 06-03-2009 allowed the said writ petition, setting aside the order passed by the Joint Collector following the earlier judgment of this Court in W.P.No.10318 of 2002, dated 16-10-2008. In the said W.P.No.10318 of 2002 this Court considered the maintainability of the appeal before the Joint Collector after lapse of 2½ decades and also went into the validity of the proceedings initiated under the Land Transfer Regulations and eventually had set aside the orders impugned therein.

In this context, it may be appropriate to refer to the judgment cited by learned counsel for the petitioner in case of ***Sirigana Venkateswarlu v. Agent to the Government and District Collector, East Godavari District, Kakinada and others***¹. This Court following the earlier judgments reported in ***Pandi Ramulu v. Agent to Government, E.G. District, Kakinada*** [1998 (1) ALD 783] and ***N. Appa Rao v. Agency Divisional Officer*** [1988 (2) APLJ 9], allowed the writ petition, setting aside the proceedings initiated under the provisions of Land Transfer Regulations, holding categorically that once the

¹ 2013 (3) ALD 516

patta is granted under Regulation 2 of 1970 the same has become final, the said patta cannot be set aside by resorting to the provisions of Regulation 1 of 1959 and the same cannot be disturbed.

In case of ***Javvadi Samba Murthy v. the Agent to the Government, East Godavari District at Krishna and others***², this Court while dealing with the provisions of Muttas Abolition Regulation, 1969 *vis a vis* the provisions of A.P. Scheduled Areas Land Transfers Regulations, 1959 at paragraph No.7 held thus:

“7. Now in this case patta was granted to the petitioner under Section 5 of the Muttas Abolition Regulation after due enquiry which was also confirmed in appeal. It is significant to notice that a patta can be granted under Section 5 of the Muttas Abolition Regulation only if it is proved that (a) the ryot has been in lawful possession or occupation of the land for a continuous period of not less than eight years immediately before the notified date; and (b) such possession or occupation was not void or illegal under the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 or any other law for the time being in force. In other words, before grant of patta under this Regulation, the Authorities have to enquire into and be satisfied that the possession or occupation of the ryot is not void or illegal either by virtue of the 1959 Regulation or any other law for the time being in force, which undoubtedly includes 1917 Act as well. It is true that the Authorities under both the Regulations are different.

² 1983 (2) (HC) 96

But the fact remains that the validity and lawfulness of the petitioner's possession and occupation has been gone into before granting him patta under 1969 Regulation and this has been done by the Authority competent in that behalf. In such a case it is not open to an Authority under the Scheduled Areas Land Transfer Regulation, 1959 to ignore the patta granted under the 1969 Regulation and say that he will go into the validity or otherwise of the petitioner's possession or occupation, as the case may be, afresh. In my opinion, this cannot be allowed. It is true that Sec.3 (1) of the 1959 Regulation opens with a non-obstante clause "Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts", but it must equally be remembered that the Muttas Abolition Regulation, which is a subsequent regulation has been given an express overriding power over all other laws by virtue of Section 34 of this Regulation. In such a case, it is the duty of the Court to reconcile both the provisions and the proper way of doing so, in the circumstances, is to hold that once a patta has been granted after due enquiry under section 3 of the Muttas Abolition and where such order has become final, it shall not be open to the Authorities under the Land Transfer Regulation 1959 to ignore the said patta and take proceedings under Section 3 of the 1959 Regulation or to hold that such person is liable to be evicted under the provision of the 1959 Regulation. Permitting such a course would not only defeat the efficacy of the patta granted under the 1969 Regulation, but would also undo the object and purpose of Section 34 of the 1969 Regulation. There are no reasons to do so, more particularly when the 1969 Regulation contemplates an enquiry into the validity or otherwise of the possession or occupation of the ryot claiming patta with reference to the 1959 Regulation or any other law

in that behalf. It would not be reasonable to hold that in spite of such an enquiry being held by the Authorities under the 1969 Regulation and in spite of their being satisfied that the ryots possession was not unlawful and the grant of patta by them the Authorities under the 1959 Regulation would be entitled to ignore all this and proceed under the 1959 Regulation to evict such a ryot.”

The petitioner in the instant case also stands on the same pedestal since the patta granted in favour of the petitioner's father as long back as on 18-10-1975 became final in view of the orders passed by this Court in W.P.No.9847 of 2002, dated 06-03-2009 as such there is absolutely no justification on the part of the respondent authorities in initiating the proceedings under the provisions of A.P. Scheduled Areas Land Transfer Regulations.

In W.P.No.1005 of 1994, this Court while allowing the writ petition on 13-06-2003 held that the enquiry initiated under Regulation 1 of 1970 is null and void and the authorities under Regulation 1 of 1959 cannot go into the validity or otherwise of the patta granted under Regulation 2 of 1970.

In view of the above settled proposition of law, this Court has absolutely no scintilla of hesitation to hold that the respondents in the name of initiating proceedings under the A.P. Scheduled Areas Land Transfer Regulations cannot evict

the petitioner so long as the patta granted in favour of the father of the petitioner is intact.

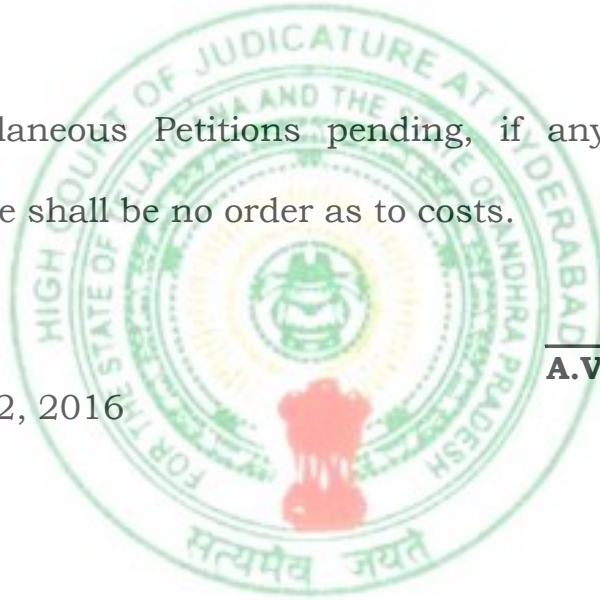
For the aforesaid reasons, the writ petition is allowed, setting aside the orders passed by the 1st respondent – State Government vide G.O.Ms.No.212 Social Welfare (LTR-2) Department, dated 20-11-2008 and consequently respondents are directed not to interfere with the possession and enjoyment of the petitioner in respect of the subject property.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

December 22, 2016

Pn

A.V. SESA SAI, J



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



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