

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

WRIT PETITION No.16644 of 2008

ORDER:

In the present Writ Petition, challenge is to the order passed by the Additional Agent to Government, Rampachodavaram, East Godavari District, in CMA.No.46 of 2005 dated 07.06.2008.

Heard learned counsel for the petitioners and learned Government Pleader for Social Welfare for respondents 1 to 3.

Despite service of notice, none appears for respondents 4 and 5.

According to the petitioners, they are the owners and possessors of the land admeasuring Acs.12.41 cents in Survey No.14 situated at Ramadevulapuram, Gangavaram Mandal, East Godavari District, and originally, the said land belonged to their grand father, namely, Sri Kolamuri Satyam. It is pleaded that the said land was gifted to the mother of the petitioners under a gift deed dated 28.09.1957. It is further pleaded that the said land is situated in the Scheduled Area in East Godavari District and the petitioners herein are in possession and enjoyment of the said land.

Earlier, on the complaint submitted by the Special Deputy Tahsildar, Tribal Welfare, Pidatamamidi, the Special Deputy

Collector (Tribal Welfare), Rampachodavaram, East Godavari District, *vide* LTRP.No.16 of 1983 initiated proceedings against the father of the petitioners under the Land Transfer Regulation 1 of 1959 as amended by Land Transfer Regulation 1 of 1970. The Special Deputy Collector (Tribal Welfare), Rampachodavaram, by way of an order, dated 27.06.1984 dropped further proceedings. Thereafter, on a complaint submitted by the Special Deputy Tahsildar on behalf of certain individuals, the Special Deputy Collector (Tribal Welfare), Rampachodavaram, once again initiated proceedings *vide* LTRP.No.8 of 1986. The Special Deputy Collector by way of an order dated 31.12.1990 dismissed the said complaint holding that there was no prohibited transfer involved in the case. Thereafter, once again, proceedings were initiated by the Special Deputy Collector against the petitioners herein on the complaint submitted by S/Sri Kunjum Jogidora and Kunjum Abbaidora *vide* LTRP.No.54 of 2000. The Special Deputy Collector by way of an order dated 02.07.2002, while referring to the earlier orders passed in LTRP.Nos.16 of 1983 and 8 of 1986, dismissed the said LTRP.No.54 of 2000. Assailing the validity of the said order dated 02.07.2002 passed by the Special Deputy Collector in LTRP.No.54 of 2000, respondents 4 and 5 herein preferred CMA.No.46 of 2005 before the Additional Agent to Government, Rampachodavaram, the first respondent herein. The first respondent by way of an order dated 07.06.2008,

while setting aside the order passed by the Special Deputy Collector in LTRP.No.54 of 2000 dated 02.07.2002, directed the Tahsildar, Gangavaram Mandal, to evict the non-tribal respondents or any other persons bound by the order and to restore the land to the Government for onward assignment to the eligible tribals. Challenging the validity and the legal sustainability of the said order passed by the first respondent in CMA.No.46 of 2005, the present Writ Petition came to be filed.

This Court while ordering rule nisi, on 31.07.2008 in WPMP.No.21563 of 2008, granted an order of status quo with regard to the possession of the land in question.

It is the principal contention of the learned counsel for the petitioners that the action of the respondents in initiating the impugned proceedings is obviously an attempt to review the earlier orders passed in LTRP.Nos.16 of 1983 and 8 of 1986 and according to the learned counsel, the same is impermissible and in support of the said contention, learned counsel for the petitioners placed reliance upon the judgment of the Division Bench of this Court in the case of **CHINTALAPATI RAMALINGA RAJU v. DISTRICT COLLECTOR, ELURU, WEST GODAVARI DISTRICT**¹.

¹ 2000(4) ALD 243 (DB)

On the contrary, it is the submission of the learned Government Pleader appearing for respondents 1 to 3 that there is no illegality nor there exists any procedural infirmity in the impugned action and therefore, the Writ Petition filed under Article 226 of the Constitution of India is not maintainable.

While referring to the judgment referred to supra, it is the submission of the learned counsel for the petitioners that the earlier orders passed in LTRP.Nos.16 of 1983 and 8 of 1986 would operate as *res judicata* and initiation of proceedings by the second respondent is impermissible.

In fact, in the above mentioned judgment, the Division Bench of this Court in paragraphs 2 and 3 held as under:

“2. The matter arises under the provisions of the A.P. Scheduled Areas Land Transfer Regulations, 1959 (for short ‘The Regulations’). The learned single Judge has dismissed the writ petition on the ground that the apprehension of the petitioner may not be real. But, it is evident from the proceedings dated 4.11.1998 in Respondent. No.230 of 1997 (Supt.) of the Mandal Revenue Officer, Buttaigudem Mandal addressed to the Special Deputy Tahsildar, Tribal Welfare, K.R. Puram that action was sought to be taken against the petitioner on the ground that the judgment rendered by the Special Deputy Collector, Tribal Welfare hitherto dated 5.9.1981 is doubtful. But, it is a well settled law that when a judgment is rendered under the Regulations, it becomes final and there is no review of the same. It is not disputed that the order dated 5.9.1981 rejecting the application for eviction of the petitioner-appellant herein on the ground

that unauthorised possession was rejected and the said order had become final. It is also not disputed by the learned Government Pleader, Social Welfare that there is no review provision in the A.P. Scheduled Areas Land Transfer Regulations, 1959. In fact, that legal position is well settled by series of judgments of this Court.

3. In the circumstances, it is held that such of the survey numbers and equivalent R.S. numbers which are covered by the judgment dated 5.9.1981 passed by the Special Deputy Collector, Tribal Welfare, Eluru in SR Nos.32 of 1981 to 56 of 1981 shall not be subject matters for initiation of proceedings for eviction under the provisions of the Regulations.”

I am of the considered opinion that the principle laid down in the above referred judgment is squarely applicable to the facts and circumstances of the case. Therefore, this Court finds no justification on the part of the first respondent in entertaining CMA.No.46 of 2005 filed by respondents 4 and 5.

For the aforesaid reasons, the Writ Petition is allowed setting aside the order passed by the first respondent – Additional Agent to Government, Rampachodavaram, in CMA.No.46 of 2005 dated 07.06.2008.

Consequently, Miscellaneous Petitions, if any pending in this Writ Petition shall stand disposed of. No order as to costs.

A.V.SESHA SAI, J

1st DECEMBER, 2016.
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