

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.26490 of 2005

DATED : 02.08.2016

Between:

Kanneti Krishnamurthy S/o.Pitchaiah,
70 yrs, Occu : Agriculture,
R/o.Sompally Village, Burgampahad Mandal,
Khammam District.

.. Petitioner

AND

Agent to Government, Khammam & others.

.. Respondents

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The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.26490 of 2005

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ORDER:

Petitioner claims to be the owner of land to an extent of Ac. 4-05 guntas in Sy.No.56 of Sompally village, Burgampahad Mandal, Khammam District. Suo-moto proceedings were initiated against the petitioner by the Agency Divisional Officer, Paloncha, alleging that the petitioner is in illegal occupation of land belonging to tribal in tribal area. Order dated 03.12.1997 was passed directing ejectment of the petitioner and restoration of property to the tribal-petitioner therein forthwith. Aggrieved thereby petitioner preferred appeal before the Agent to Government (1st respondent) which was later transferred to Additional Agent to Government (2nd respondent) and numbered as C.M.A.No.95 of 2003. The said C.M.A, was dismissed by the order impugned in this writ petition.

2. Heard learned counsel for the petitioner and Sri M. Rajamalla Reddy, learned counsel for the implead respondents 8 to 12.

3. During the course of arguments, both the counsel submit that the Additional Agent to Government-appellate authority called report from the Mandal Revenue Officer, Burgampahad, on the question of social status of Sri Modem Pentaiah (deceased 5th respondent herein) and whether petitioner was put in possession prior to coming into force of Regulation 1 of 1970. The Tahsildar seems to hold that petitioner was vested with possession prior to 1970. He also holds that Modam Pentaiah is not a tribal. After the report was received, the appellate authority passed the order impugned in this writ petition. Both the counsel contended that copies of the report were not furnished to the petitioner as well as deceased-5th respondent or his legal representatives, whereas, the appellate authority considered the said report before passing the order rejecting the appeal filed by the petitioner. Though extensive submissions are made by both the counsel on various issues, suffice to note that on the question of validity of the claim of petitioner with

reference to taking possession and the claim of respondents opposing vesting of such possession, the report of the Tahsildar assumes significance. The petitioner as well as legal representatives of 5th respondent were entitled to contest the correctness of such report.

4. Thus, the appellate authority erred in not affording due opportunity to both parties by supplying the copies of report of Mandal Revenue Officer, which were referred to in the order impugned. On this ground alone, the order under challenge is liable to be set aside and the matter requires consideration afresh, after supplying copies of the report to both parties and affording due opportunity to contest the correctness of the said reports, if necessary, by allowing the parties to file their objections/counter objections.

5. In view of the consent of both counsel to remand the matter to appellate authority, the writ petition is allowed setting aside the order impugned in the writ petition and the 2nd respondent is directed to consider the appeal filed by the petitioner in C.M.A.No.95 of 2003 afresh by supplying all the documents relied upon by him, including the report of Mandal Revenue Officer, and afford due opportunity of hearing including opportunity to submit objections/counter objections. In view of the long pendency of the appeal, the 2nd respondent is also directed to dispose of the appeal as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order. Petitioner as well as the legal representatives of 5th respondent shall cooperate for early disposal of the CMA. In spite of furnishing of documents, if the petitioner/ the legal representatives of 5th respondent, as the case may be do not file objections/counter objections, and do not appear before the 2nd respondent on the date/dates fixed, it is open to the 2nd respondent to pass appropriate orders based on the record available. Till the orders are passed by the 2nd respondent as directed above, status quo as ordered by this Court on 30.12.2005 shall continue. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

2nd August, 2016
Rds

