HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 12869 of 2006

Date : 2.8.2016

Between :

Lanka Appa Rao S/o Peda Appanna
R/o Molleru village, Gangavaram mandal,
E G District and others

Petitioners

And

The Govt of A P
Rep by Secretary, Social Welfare (LTR-2) Department
Secretariat buildings, Secretariat, Hyderabad and others

Respondents

The Court made the following:

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ORAL ORDER:

Petitioner is a non tribal. Petitioner claims to have purchased land to an extent of Ac.3 in Survey No. 123/1, Molleru village, Gangavaram mandal, East Godavari district from another non tribal on 16.12.1968. According to petitioner, his vendor purchased the said land on 25.10.1943. It is not in dispute that this piece of land is in tribal area. The Special Deputy Tahsildar (TW) Gangavaram initiated suo-motto proceedings under the A.P. Schedule Area Land Transfer Regulations of 1959 (hereinafter referred to as Regulations) and a case was registered as LTRP No. 282 of 1997. The Special Deputy Tahsildar alleged that petitioner is in possession of the subject land in clear violation of Regulation 1 of Regulations 1959/ amended Regulation 3 (1) of Regulations 1970. Petitioner contended before the Primary Authority that he has purchased the land by way of sale deed dated 16.12.1968 and as a consequence to the said purchase, possession was also vested in him and he is in possession before Regulation 1 of 1970 was notified. The stand of the petitioner on alleged purchase and possession is not accepted by the Primary Authority. According to the Primary Authority, the unregistered document of sale cannot be taken into consideration. He further held that no material is shown in support of the contention of possession by the time Regulation 1 of 1970 was notified. The Primary Authority also doubted the genuineness of the claim of the petitioner on possession, on the ground that he failed to produce evidence i.e., land revenue receipts from 16.12.1968.

2. Aggrieved thereby, petitioner filed C.M.A. No. 16 of 1999. The Agent to the Government, taking due note of the contentions of the petitioner, concurred with the view of the Primary Authority. The Appellate Authority also noticed that Adangal extract filed by him, shows possession by the petitioner only from 1403 Fasli and disbelieved the stand of the petitioner of the alleged sale prior to coming into force of Regulation 1 of 1970. Aggrieved thereby, petitioner filed Revision. The stand of the petitioner on possession

was not accepted and Revisional Authority concurred with the view of the Primary Authority and Appellate Authority. In addition, Revisional Authority also noticed that the so called tax receipts filed by the petitioner for the Fasli 1403 and Fasli 1404 would show extent of land as Ac.2 whereas land in dispute is Ac.3. Aggrieved thereby, petitioner filed this writ petition.

3. Learned counsel for petitioner submits that a valid sale transaction took place prior to coming into force of Regulation 1 of 1970 and it is immaterial whether sale deed was registered and it is not the concern of the Primary Authority under Regulation 1 of 1959 to go into the correctness of the sale deed. The sale deed also deals with vesting of the possession in the petitioner and accordingly possession was vested in him on the day when the sale deed was executed. Thus, this factum alone is relevant for the purpose of determining the validity of the possession vested in the petitioner. He would further submit that in the agency areas, there was no procedure of maintaining the receipts of payment of land revenue and, therefore, petitioner could not produce any evidence. He further submitted that revenue records of Gangavaram mandal were burnt in the year 1995 and, therefore, no information of tax payment is available. By placing reliance on the decision of the full bench of this Court in **GADDAM NARSA REDDY AND OTHERS Vs COLLECTOR, ADILABAD DISTRICT AND OTHERS**[1], learned counsel submits that the provisions of Regulation 1 of 1970 are not retrospective and are operative prospectively only and thus, the Regulations cannot go into the validity or otherwise of transactions made prior to coming into force of the Regulations. As property is validly vested in him by virtue of the sale deed, though unregistered, the provisions of Regulation 1 of 1970 cannot be invoked to throw the petitioner out of the said property.

4. By relying on the judgment of this Court in **KALAGARA VIGHNESWARARAO Vs. GOVERNMENT OF A.P.**[2], learned

counsel would submit that it is immaterial whether the sale deed was registered for the purpose of consideration of the ownership and possession in accordance with Regulations, 1959. In the said writ petition, it was a case wherein reliance was placed on an unregistered agreement of sale to contend that transaction took place prior to Regulation 1 of 1970 and possession was vested. The learned single Judge of this Court, upheld the contention of possession.

5. By relying on the decision of this Court in **A.RAMANAIAH Vs GOVERNMENT OF ANDHRA PRADESH**[3], learned counsel would submit that the order of the Appellate Authority is liable to be set aside on the sole ground that it does not assign reasons in support of the claim. Petitioner has raised several grounds in the appeal filed before the Agent to Government and none of the contentions urged by the petitioner were considered.

6. Learned Government Pleader for Social Welfare (AP) supports the decision of the Primary Authority as confirmed by the Appellate and Revisionary Authorities.

7. I have given my anxious consideration to the submission of the learned counsel for petitioner and learned Government Pleader for respondents.

8. The only issue for consideration in this writ petition is can the petitioner place reliance on unregistered sale deed which also incorporates vesting of possession in the petitioner to contend that the transaction of sale and possession took place prior to coming into Regulation 1 of 1970 and, therefore, transaction is valid and not hit by Regulations, 1959 as amended by Regulation 1 of 1970 ?

9. In accordance with Section 17 of the Registration Act, 1908, transfer of any immovable property, whose value is more than Rs.100/-, requires registration. Admittedly, sale deed dated 16.12.1968 is unregistered. Since the document relied upon by the petitioner is not registered, the Primary Authority directed the petitioner to prove possession by any other valid document. Petitioner failed to

produce any other document in support of his contention that he was in possession. Learned counsel for petitioner sought to contend that relevant records were not available with the petitioner but petitioner was actually in possession. Petitioner sought to rely on two receipts dated 5.2.1993 and 21.3.1995 alleged to have been given to him in the year 1995, but same were not accepted as valid by all the three statutory Authorities.

10. The Appellate Authority noted clearly that the copies of the tax receipts do not prove the possession of the petitioner for the crucial period. Same is reiterated by the Revisionary Authority. In fact, Revisionary Authority has gone to the extent to say that documents relied upon by the petitioner cannot be believed when extent of the land shown in the receipt is not tallying with the claim made by the petitioner.

11. The decisions of Full Bench as well as the learned single Judge on reliance on unregistered document to claim possession does not come to the rescue of the petitioner.

11.1. It is appropriate to notice the observations made by the Full Bench of this Court in **GADDAM NARSA REDDY**, in paras 30 and 31 (3), which read as under:

> "30. The question whether transfers made prior to the coming into force of the amending Regulation II of 1963 and I of 1970 are not valid either for want of registration under the Indian Registration Act or for non compliance of the provisions of Section 47 or Section 50-B of the Hyderabad Tenancy and Agricultural Lands Act and whether the transferee would be entitled to the protection of Section 53-A of the Transfer of Property Act, can only be gone into in a forum constituted for deciding such questions in respect of lands in Scheduled areas.
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> …..
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> 31 (3) The validity or otherwise to the facts of the present case, the transfers in P.P. No. 4204/77 having been made prior to the coming into force of the Regulation, they do not contravene the provisions of Section 3 (1) and therefore, the Special Deputy Collector, Tribal Welfare as the District Collector-cum Agent to the State Government had no

> jurisdiction to pass orders under Section 3 (2) of the said Regulation declaring the said transfers as null and void."

11.2. A conjoint reading of above two paras would show that ultimately it is left to the competent Authority in the schedule areas to decide the issue of valid transfer made prior to coming into force of Regulation 1 of 1970 in the given facts of a case. In the instant case, the issue is validly decided by the hierarchy of authorities under the Regulations.

11.3. Similarly, the decision in **KALAGARA VIGHNESWARARAO** do not come to the rescue of the petitioner. It is clear from reading of the judgment that there was no dispute regarding the possession and only objection appears to be that document relied upon by the concerned person therein was only on agreement of sale. As noticed by the learned single Judge, there was no requirement of registration of Agreement of Sale prior to Amendment Act 4 of 1999. In view of the said distinction, the said decision does not come to the rescue of the petitioner.

12. I am not persuaded to accept the contention of the learned counsel for petitioner that impugned order is liable to be set aside on the ground of not assigning reasons and to remit the matter to the Appellate Stage. The Appellate Authority noted the contentions urged by the petitioner, has considered the issue in right perspective and has come to the conclusion that petitioner has not proved his possession prior to coming into force of Regulation, 1970. The only issue for consideration was whether possession was vested in the petitioner, on valid purchase made, prior to coming into force of Regulation, 1970. That issue was answered by the Appellate Authority. On a revision filed, the entire issue was again considered and reasoned order was passed.

13. The orders under challenge are passed by competent

Tribunals under Regulation, 1959. Scope of judicial review on such matter is very limited. The Court cannot reappreciate the evidence on record or come to different conclusion from the conclusion arrived at by the fact finding authority. It is not the case of petitioner that the Tribunals were improperly constituted or lacked jurisdiction. The orders under challenge cannot be said as perverse.

14. There is no merit in the contentions urged in the writ petition. Writ Petition is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:2.8.2016
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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[1] AIR 1982 (AP) 1

[2] 2006(2) ALD 683

[3] 2014(1)ALD 773