

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17498 OF 2008

ORDER :

It is the case of the petitioners that they are absolute owners and possessors of agricultural land admeasuring Acs.12.14 gts in Sy.Nos.286, 287 and 288, situated at Thumukunta village, Shamirpet Mandal, Ranga Reddy District. The father of the 1st petitioner Sri Guduru Ramaiah, S/o. Venkaiah and Sri Manne Ilaiah, S/o.Shivaiah are protected tenants jointly in respect of above lands and Sri Sudershan Rao S/o.Venkata Rama Rao was the landlord. That the father of the 1st petitioner and Sri Ilaiah purchased the subject property by paying sale consideration and on payment of the purchase price, the Competent Authority has issued sale certificate bearing No.166/Tenancy/55/57, dated 23.7.1957 as per the provisions of A.P (Telangana Area) Tenancy Act, 1950 (for short 'the Act of 1950'). That the petitioners have partitioned the subject lands among themselves. On the petition filed by G.Laxma Reddy and Nagi Reddy, S/o.G.Venkat Reddy, the Revenue Divisional Officer, Ranga Reddy East Division passed order allotting shares as per the entitlement of the petitioners and also issued ORCs respectively by granting an extent of Ac.6.21 gts to G.Venkat Reddy, Ac.2.12 gts to Ram Reddy and Ac.2.11 gts to Anthi Reddy. Similarly, the RDO has passed orders granting ORCs to an extent of Ac.5.22 gts to Manne Sathaiah and Yellaiah each respectively vide proceedings No. L/1485/83, dated 27.4.1991 and subsequently issued certificate in favour of the 3rd

petitioner and Nagi Reddy vide proceedings dated 12.5.1998. That Sri Manne Sathaiah has sold the land to the petitioners 5 to 7 under the sale deed dated 10.11.2003 vide document Nos.7464/2005 and 7468/2005 to the extent of Ac.3.37 and their names are also mutated in the revenue records and pattedar passbooks have also been issued. While so, the petitioners were informed in the 1st week of August by the officials of the Urban Land Ceilings that the subject land has been declared as surplus lands under the provisions of the A.P Urban Land (Ceilings and Regulations) Act, 1976 (for short 'the Act of 1976'). On verification, the petitioners came to know that one D.L.Narasimha Rao, representing the 3rd respondent, claimed No Objection Certificate in respect of the land bearing No.351 admeasuring Ac.11.23 gts claiming to have purchased the same under sale deed dated 4.5.1991 from the original owner Sri Sudarshan Rao. Subsequently, the 3rd respondent also filed declaration under Section 6(1) of the Act in respect of the land bearing Sy.Nos.351 admeasuring Ac.11.23 gts situated at Thumkunta Village, Shamirpet Mandal, Ranga Reddy District. That the 2nd respondent provisionally held that Sri Sudarshan Rao original owner holds land in Sy.Nos.286, 287, 288, 35, 351, 352 and 354 to an extent of Acs.48.07 and provisionally declared him as surplus land holder and without calling upon the original owner to file the declaration under Section 6(2) of the Act of 1976. The 2nd respondent, on the declaration of the 3rd respondent, who claims to have purchased land to an extent of Acs.11.23 gts in Sy.No.351 under sale deed, has passed orders under Section 8(4)

of the Act, 1976 vide proceedings No.G1/1215/2002, dated 8.7.2005 by accepting his declaration by computing the land held by the 3rd respondent to the holding of original owner as per G.O.Ms.No.733, dated 31.10.1988 to the extent purchased by the 3rd respondent and declared other lands as surplus. Basing on the declaration of Sri D.L.Narasimha Rao, the authorities have issued impugned proceedings No.G1/1215/2002, dated 8.7.2005 under Sections 8(4), 10 (1) and 10(3) dated 20.1.2006 published in Gazette No.202, dated 13.9.2005 and Section 10(5) dated 6.11.2006 in file No.G1/1215/2002 with effect from 27.1.2006. Aggrieved by the same, present writ petition is filed.

2. The respondents 1 and 2 filed counter and vacate petition denying the averments in the affidavit filed in support of the writ petition stating that the petitioners are neither owners of the subject lands nor filed any declaration under Section 6(1) of the Act of 1976, as such, they have no *locus standi* to file the petition. It is stated that as per pahani and Chowfasla for the year 1974-75 of Thumkunta Village, the land in Sy.Nos.286, 287 & 288 is recorded as patta in the name of Sudarshan Rao, S/o.V.Rama Rao, but there is no evidence in the pahani and Chowfasta that the father of the writ petitioners i.e., G.Ramaiah and Manne Illaiah are the protected tenants of the land in Sy.No.286 to 288 of Thumkunta Village. Occupancy right certificate (ORC) was issued by the R.D.O East Division in the year 1991 i.e., after the commencement of the Act and Section 42 of the UL (C & R) Act, 1976, has overriding effect over other Laws. The sale transaction took place vide documents in the year 2003 i.e., after the

commencement of the Act and without obtaining permission under Section 26 of the Act, which is null and void. On the application of D.L.Narsimha Rao for issuance of NOC in respect of lands situated in Sy.No.351 admeasuring Acs.11.23 gts at Tumukunta village, Shamirpet Mandal, Ranga Reddy District, the matter was enquired and it is revealed that the lands in Sy.Nos.286, 287, 288, 35, 351, 352 & 354 of Thumukunta Village were recorded in the revenue records in the name of Sri Sudharshan Rao for the year 1974-75 to an extent of Ac.48.7 gts situated at Thumukunta Village. That the original pattedar Sri Sudharshan Rao did not file any declaration under Section 6(1) of the Act and that he sold out the entire property converting the land into house site plots. When once the usage of land changed, it would become automatically vacant land within the meaning of Sub-section (2) to section 6 read with section 2(q) and 2(o) of the Act of 1976. As per the instructions contained in G.O.Ms.No.1499, dated 02.11.1983, the property was computed to the holding of Sri Sudershan Rao and accordingly, draft statement under Section 8(1) and notice under Section 8(3) of the Act of 1976 were issued to Sudershan Rao while allowing 1000 sq.mtrs under Section 4(1)(b) of the Act and he was declared as surplus land holder. In response to the draft statement issued under Section 8(1) of the Act, Sudershan Rao filed an application on 10.06.2005 stating that he has no objection to draft statement, as such, orders under Section 8(4) of the Act and final statement under Section 9 of the Act were issued on 08.07.2005 confirming the draft statement issued under Section 8(1) of the Act of 1976,

without any alterations and was got served on 07.06.2005. After completing the formalities under the Urban Land Ceiling Act, notification under Section 10(1) of the Act was issued on 12.09.2005 and got published in A.P Gazette No.202, dated 13.09.2005. After publication of notice, declaration under Section 10(3) of the Act was issued on 20.1.2006 vesting the land with the Government free from all encumbrance with effect from 27.1.2006 and got published in AP Gazette No.25, dated 28.1.2006. A notice under Section 10(5) of the Act was issued on 6.11.2006 asking the declarant to surrender the land to the E.O. Subsequently, orders under Section 10(6) of the Act were issued on 12.03.2007 authorizing the Enquiry Officer to take over possession of surplus land and hand it over to MRO concerned. On 21.11.2007, the Enquiry Officer had taken possession of the surplus land after conducting panchanama and the Government vide G.O.Ms.No.977, dated 2.8.2008 allotted the land to HUDA. Petitioners have no *locus standi* as they acquired the land after the commencement of the Act and without obtaining permission under Section 26 of the Act, as such, sought for dismissal of the writ petition.

3. Heard Sri E.Madan Mohan Rao, learned Counsel for the petitioners and learned Government Pleader for Revenue appearing for the respondents 1 and 2.

4. Learned counsel for the petitioners submits that though the names of the petitioners are found in the impugned proceedings dated 07.06.2005 in the pattedar column in respect of subject lands in the writ petition, no notice was issued before passing the

impugned proceedings. He submits that even in the impugned orders issued under Section 6(2), 8(4) of Act of 1976, the first petitioner and the predecessors in interest of other petitioners were shown as pattedars. He submits that Sri Sudershan Rao has no interest since the petitioners acquired the same by virtue of sale certificate issued under Section 38(6)(a) of the A.P (Telangana Area) Tenancy & Agricultural Lands Act, 1950 (for short 'the Act of 1950'), which is conclusive evidence of sale as against land owner and other persons interested therein. He further submits that having noticed that the 1st petitioner and predecessors in interest of other petitioners being pattedars, no notice was issued before passing the orders dated 07.06.2005 by the respondents 1 and 2. He further submits that even no notice was issued under Section 8(3) of the Act of 1976 before passing orders dated 08.07.2005 under Section 8(4) read with Section 9 of the Act of 1976. He further submits that no notice was issued under Section 10(5) of the Act of 1976, which is mandatory. He submits that notice under Section 10(3) of the Act was issued to one D.L.Narsimha Rao in respect of lands in Sy.Nos.286, 287 and 288, when he has not filed declaration in respect of the subject lands. He submits that the declaration filed by D.L.Narsimha Rao is in respect of land in Sy.No.351 and not in respect of the subject property. He further submits no procedure as envisaged under the provisions of the Act of 1976 is followed. By referring to the ORC granted in favour of the petitioners on 27.4.1991, he submits that granting of ORC relate back to the date of vesting i.e., 01.11.1973. He further submits that from 1989-90 till date,

petitioners' names are found in the revenue records and petitioners were issued pattadar passbooks and title deeds. He also submits that the subject land is also not a vacant land within the meaning of the Act of 1976, as such Act has no application to the subject lands. In support of his contentions, he relied on the judgments reported in **State of Karnataka and others v. Shankara Textiles Mills Ltd.**,¹ **Raj Kumar Surana v. Government of Andhra Pradesh**.²

5. On the other hand, learned Government Pleader for Revenue (Assignment) submits that the petitioners have no *locus standi* to file the writ petition since they have not filed any declaration and the so called purchase by the petitioners is null and void in view of Section 5(3) of the Act of 1976. He further submits that the petitioners filed the writ petition soon after the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (for short 'the Act of 1999') came into force on 27.03.2008 on 11.08.2008 to reap the benefits of the Act of 1999 and same is not *bonafide*. He submits that Section 42 of the Act of 1976 has overriding effect on all other laws, as such all the proceedings on which the petitioners are relying are irrelevant. He submits that when notification was issued under Section 10 (1) and proceedings under Section 10(3) was issued, petitioners have not made any claim, as such, the land vested in the Government free from all encumbrances under Section 10(3) of the Act of 1976. He also submits that though the subject land was allotted to HUDA, HUDA was not impleaded, which is fatal in the writ petition. In support of his contentions,

¹ (1995) 1 Supreme Court Cases 295

² 2014 (2) ALD 125

he relied on the judgments reported in **Parchuri Ratnakar Rao v. State of A.P.**³, **Sulochana Chandrakant Galande v. Pune Municipal Transport**⁴ and **State of Assam v. Bhaskar Jyoti Sarma**⁵.

6. It is relevant to note that the petitioners have purchased the subject property which is evident by virtue of proceedings of the Deputy Collector, East Division on 23.07.1957 under Sub Section 6 of Section 38 of the Act of 1950, much before, the Act of 1975 came into force.

Section 38 (6)(a) of the Act reads as follows:

On deposit or recovery of the entire amount of the reasonable price being made, the Tribunal shall issue a certificate in the prescribed form to the protected tenant declaring him to be the purchaser of the land and such certificate shall be conclusive evidence of the sale as against the landholder and all persons interested therein and the Tribunal shall also direct the reasonable price deposited or recovered shall be paid to the land-holder;

Provided that if the application of the protected tenant relates to an 'Inam', the Tribunal shall not issue such certificate unless previous sanction of Government has been obtained therefor.

As such, it cannot be said that the petitioners have no *locus standi* to file the present writ petition.

7. It is pertinent to note that even the impugned proceedings dated 07.06.2005 reflect the names of the 1st petitioner and the predecessors of other petitioners as pattedars, but no notice was issued under Section 6(2)(b) of the Act of 1976 and that the said proceedings were initiated on the application of D.L.Narsimha Rao.

Section 6(2)(b) of the Act of 1976 reads as follows:

“6 (2) If the competent authority is of opinion that-

(a)

(b) in any State which adopts this Act under clause (1) of Article 252 of the Constitution, any person holds at the commencement

³ 2006 (5) ALD 132 (DB)

⁴ (2010) 8 Supreme Court Cases 467

⁵ (2015) 5 Supreme Court Cases 321

of this Act, vacant land in excess of the ceiling limit, then, notwithstanding anything contained in sub-section (1), it may serve a notice upon such person requiring him to file, within such period as may be specified in the notice, the statement referred to in sub-section (1).

Admittedly, at the time of passing of the order dated 07.06.2005, the petitioners are in possession of the subject property and they are required to be issued notice as envisaged under Section 6(2)(b) of the Act. But no notice was issued to the petitioners though their names are reflected in revenue records in the pahanies and also in the impugned proceedings. As such, said proceedings are issued without following procedure envisaged under the Act of 1976 in violation of the principles of natural justice. Subsequent proceedings under Sections 8(4) & 9 of the Act dated 08.07.2015 are also without notice, which is in violation of Rule 5 of the Rules, which reads as follows.

“Rule 5: - Particulars to be contained in draft statement as regards vacant lands and manner of service of the same: (1) Every draft statement prepared under sub-section (1) of Section 1 shall contain the particulars specified in Form III.

(2) (a) The draft statement shall be served together with the notice referred to in sub-section (3) of Section 8 on-

(i) the holder of the vacant lands, and

(ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in the ownership, or possession, or both, of the vacant lands by sending the same by registered post addressed to the person concerned.”

In Y.Sri Rama Krishnaiah v. Special Officer and Competent

Authority, Urban Land Ceiling, Vijayawada⁶, it is held as follows:

“4. The second contention merits acceptance. Rule 5 of the Rules provides thus:

“Rule 5: - Particulars to be contained in draft statement as regards vacant lands and manner of service of the same: (1) Every draft statement prepared under sub-section (1) of Section 1 shall contain the particulars specified in Form III.

(2) (a) The draft statement shall be served together with the notice referred to in sub-section (3) of Section 8 on-

⁶ 1989 (1) ALT 48

(i) the holder of the vacant lands, and
 (ii) all other persons, so far as may be known, who have, or are likely to have any claim to, or interest in the ownership, or possession, or both, of the vacant lands by sending the same by registered post addressed to the person concerned."

6. A reading of the above Rule provides that if the competent authority has got prior knowledge that all or any other person known to him who have or are likely to have any claim to, or interest either in the ownership or possession or both of the vacant land, notice is mandatory as their interest or claim is likely to be affected. Issuance and service of notice as contemplated under sub-rule (2) of Rule 5 of the Rules is mandatory. Therefore, any statement prepared under Section 10 without following the mandatory requirement under Rule 5(2) is clearly invalid and illegal. The appellate order itself mentions that the authorities have prior knowledge that the declarant has major son. Under those circumstances, the order under Section 10(3) as well as the order under Section 8(4) of the Act are quashed. The matter is remitted to the Special Officer & Competent Authority. The Special Officer & Competent Authority is directed to issue notice to the petitioner as well as to the other son and daughter of the declarant-and consider their objections and then pass appropriate orders after following the procedure prescribed under the Act."

The Act of 1976 is confiscatory in nature, the procedure under the Act is to be followed strictly. In view of same, proceedings under Sections 8(1) and 8(4) of the Act are liable to be quashed and all further proceedings under Sections 10(1), 10(3), 10(5) & 10(6) of the Act are liable to be quashed.

8. A perusal of the impugned proceedings No.G1/1215/2002, dated 07.06.2005 goes to show that one D.L.Narsimha Rao, who is representing 3rd respondent in the writ petition has filed an application for issuance of NOC by placing reliance on the registered sale deed document No.3041/91, dated 04.05.1991 in respect of the lands situated in Sy.No.351 admeasuring Ac.11.23 gts at Tumukunta Village, Shamirpet Mandal, Ranga Reddy District. Subsequently, he filed declaration in Form-1 under Section 6(1) of the Act of 1976 for the said lands. Even in the declaration filed by said D.L.Narsimha Rao, which is relied on by the learned counsel for the petitioners shows that the 3rd

respondent filed declaration only in respect of some lands in Sy.No.351, but the authorities on verification of the village records i.e., pahanies for the year 1974-75 of Tumukunta village, Shamirpet Mandal, found that one Sudershan Rao was the pattedar and also the 1st petitioner and the ancestors of the 1st petitioner as pattedars and orders were passed stating that said Sudershan Rao was holding excess lands. Admittedly, no notice was issued to the petitioners though their names are recorded as pattadars in the pattadar column. In the counter affidavit of the respondents 1 and 2 also, it is stated that notice was issued to Sudershan Rao only but not to the petitioners. Even a perusal of the proceedings dated 08.07.2005 issued under Section 8(4) of the Act of 1976, it shows Sri Sudershan Rao was declared as surplus land holder to an extent of 1,73,723.33 sq.mtrs, which is also without notice to the petitioners. Though the petitioners asserted that no notice under Section 10(5) of the Act was issued before taking possession, the same was not denied by the respondents either in the counters nor at the time of advancing arguments, except stating that petitioners have no *locus standi* to file the present writ petition.

Section 10(5) of the Act reads as follows:

“ 10(5) Where any vacant land is vested in the State Government under sub-section (3), the competent authority may, by notice in writing, order any person who may be in possession of it to surrender or deliver possession thereof to the State Government or to any person duly authorized by the State Government in this behalf within thirty days of the service of the notice.”

In **Raj Kumar Surana v. Government of Andhra Pradesh (supra)**, this Court is held as follows:

“22. As noted above, Section 10(5) of the Act mandates service of notice to the persons in physical possession of the land. Forceful possession can be taken only if the persons in occupation of the land do not voluntarily surrender the same. As held by the Supreme Court forceful dispossession can be resorted to under Section 10(6) of the Act only after issuing notice under Section 10(5) of the Act which was held to be mandatory. Admittedly, the petitioners were not given notices. Therefore, the panchanama set up by the respondents, under which physical possession of the land was purportedly taken, has no legitimacy in law.

23. Furthermore, the very theory of taking physical possession of the subject land is contradicted by the respondents' own showing. The respondents did not dispute that the petitioners are in physical possession of the subject land. Indeed, to some of the petitioners, notices in writing were given calling upon them to apply for regularization of possession of their lands. It is not the pleaded case of the respondents that after physical possession was taken on 4.3.2008, the petitioners have illegally occupied the subject land. Thus, the very plea set up by the respondents that they have taken physical possession of the land on 4.3.2008 is self-contradictory and the same cannot be accepted. On the respondents' own showing, the petitioners are continuing in physical possession of the subject land and what was evidently taken was only a symbolic possession on paper.

Section 10(5) of the Act of 1976 postulates issuance of notice before taking possession of the land under the provisions of the Act of 1976. This Court in the aforesaid decision held that if the petitioners are continuing in physical possession of the subject land, the symbolic possession by the Government is not legally valid. In the instant case on hand also, admittedly, no such notice was issued to the petitioners. As such, the impugned proceedings in this writ petition cannot be sustained.

9. In **State of Karnataka and others v. Shankara Textiles Mills Ltd.,(supra)**, the Hon'ble supreme Court held as follows:

“B.Tenancy and Land Laws-Karnataka Land Reforms Act, 1961 (10 of 1962)-Ss.79-B(3), 79-A, 79-C, 80, 81, 15(6), 44(1), 67(3), 68, 71(3) and 79-A(5)-Date of vesting of the land in State Government under S.79-B(3), held is the date on which that provision came into operation (i.e 1-3-1974) irrespective of the date of the Deputy Commissioner's notification of the vesting-Ss.79-A, 79-B, 79-C, 80 and 81 taken into consideration to reach this conclusion and difference between the wordings of S.79-B(3) on the one hand and Ss.15(6), 44(1), 67(3), 68, 71(3) and 79(5) on the other pointed out.”

In view of the principle laid down in the aforesaid decision, application of Section 42 of the Act of 1976 would come into force only, if any transaction took place after the commencement of the Act. But in the instant case, the sale certificate in favour of the 1st petitioner and his predecessors were granted in the year 1957, which is much prior to the commencement of the Act of 1976.

10. Learned Government Pleader for Revenue has placed reliance in the judgment reported in **Parchuri Ratnakar Rao v. State of A.P(supra)** and contended that it is only original owner that can seek exemption under G.O Ms.No.733, dated 31.10.1988 but not any purchaser, whose purchase was after the commencement of the Act. In the instant case on hand, the petitioners 1 to 4 are claiming subject land based on sale certificate dated 23.07.1957 and ORC issued under the Act of 1950, which is much prior to the commencement of the Act of 1976. As such, the said decision is not applicable to the facts of the case on hand. Similarly, the judgment of Hon'ble Supreme Court in **Sulochana Chandrakant Galande v. Pune Municipal Transport (supra)** is also not applicable to the present case, since the impugned proceedings are issued without notice to the petitioners, who are actually in possession of the subject property. Moreover, the names of the petitioners and their predecessors are found in the revenue records in the pattedar columns, as such, vesting of the land with the Government does not arise. Even otherwise, notice under Section 10(1) of the Act shows the name of DL Narsimhar Rao, but not A Sudershan Rao.

11. The judgment relied on by the learned Government Pleader for Revenue in **State of Assam v. Bhaskar Jyoti Sarma (supra)** has no application to the facts of the present case. The facts in the aforesaid citation and in the present case are different. In fact, on the application of one D.L.Narsimha Rao, the impugned proceedings have been issued. The impugned proceedings are passed without application of mind and liable to be set aside. Since the Repeal Act, 1999 was made applicable to the State on 27.03.2008, the question of remanding the matter back for issuance of notice under Rule 5 of the Rules and subsequent notices under Sections 10(1), 10(3) & 10(5) of the Act of 1976 does not arise and all the proceedings stand abated by virtue of Repeal Act, 1999.

In view of above facts and circumstances, writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stands closed.

A.RAJASHEKER REDDY, J

Date: 08.11.2016
kvs

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17498 OF 2008



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