

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

WRIT PETITION No.25320 of 2011

ORDER:

This writ petition is filed under Article 226 of the Constitution of India for the following relief:

"to issue writ or direction preferably writ of Mandamus, to declare the letter order of the 1st respondent dated 27.07.2011 in Letter No.8511/LTR-2/2011, the order of the 2nd respondent dated. 30.04.2011 in I.A.No.47/2011 and the order of the 3rd respondent dated 21.08.1997 in LR Case No.298/95/ASPT in respect of the land measuring extent of Acs.5-10 gts in Sy.No.18 situated at Jammigudem village, Aswaraopet Mandal, Khammam District as illegal, arbitrary and violative of principles of natural justice, ultravires the provisions of A.P. Scheduled Areas Land Transfer Regulation 1/1959 r/w Regulation 1/1970 and consequently direct the respondents herein not to dispossess the petitioner from the possession and enjoyment of the land measuring extent of Acs.5-10 Kts in Sy.No.18 situated at Jammigudem village, Aswaraopet Mandal, Khammam District in pursuant to the order of the 3rd respondent dated 21.08.1997 in LTR Case No.298/95/ASPT."

Heard, Sri Kowturu Vinaya Kumar, learned counsel for the petitioner and learned Government Pleader for Social Welfare for respondents, apart from perusing the material available before this Court.

According to the petitioner, he is in possession of an extent of Ac.5-10 gts., in Sy.No.18 of Jammugudem village of Aswaraopet Mandal, Khammam District. The Special Deputy

Collector, Tribal Welfare, Bhadrachalam – 3rd respondent initiated proceedings under the provisions of A.P. Scheduled Areas Land Transfer Rules, 1969 (for short, 'the Rules') and passed an order of ejectment vide LTR Case No.298/95/APT. Questioning the validity of the said order, the petitioner herein filed a statutory appeal before the Additional Agent to the Government, Bhadrachalam – 2nd respondent with I.A.No.47 of 2010, praying for condonation of delay of 12 years 2 months 8 days. The 2nd respondent by way of an order, dated 30-04-2011 dismissed the said delay application on the ground that the reasons stated in the affidavit filed in support of the delay condonation application were not satisfactory.

Assailing the validity of the said order passed by the 2nd respondent – appellate authority the petitioner herein preferred revision before the State Government under Section 5 of the A.P. Scheduled Areas Land Transfer Regulations. The State Government, vide letter bearing No.8511/LTR-2/2011, dated 27-07-2011, rejected the said revision filed by the petitioner on the ground that the same was not maintainable as there was delay in filing the appeal petition before Project Officer, ITDA, Bhadrachalam. Assailing the validity of the said orders passed by the revisional, appellate and primary authorities, the present writ petition came to be filed.

This Court, while admitting the writ petition on 10-10-2011, granted *status quo* order in W.P.M.P.No.31155 of 2011. Denying the averments in the affidavit filed in support of the

writ petition and in the direction of justifying the impugned action a counter-affidavit has been filed by the Additional Agent to the Government, Bhadrachalam.

It is the submission of learned counsel for the petitioner that the orders passed by the 1st and 2nd respondents are highly erroneous, contrary to law and opposed to the very spirit and object of provisions of the A.P. Scheduled Areas Land Transfer Regulations and the Rules framed thereunder. It is further submitted by learned counsel for the petitioner that without looking into the grounds of revision filed by the petitioner, the 1st respondent rejected the revision of the petitioner in a mechanical manner. According to the learned counsel for the petitioner, the impugned orders are in contravention of 1969 Rules. It is also submitted by learned counsel that under Rule 10 of the Rules it is obligatory on the part of the authorities to communicate the orders.

On the contrary, it is vehemently contended by learned Government Pleader that the 1st and 2nd respondents are perfectly justified in rejecting the request of the petitioner and there is no illegality in the impugned action and in the absence of the same, the questioned orders are not amenable for any correction under Article 226 of the Constitution of India. It is submitted by learned Government Pleader that despite service of notice the petitioner herein did not appear before the authorities, as such, the petitioner herein is not entitled for any indulgence of this Court.

There is absolutely no controversy with regard to the reality that the Special Deputy Collector by way of an order, dated 21-08-

1997 ordered ejectment of the petitioner from the scheduled land. There is also no dispute with regard to the fact that the petitioner herein filed appeal before the 2nd respondent - Additional Agent to the Government with a delay of more than 12 years.

The Additional Agent to the Government – 2nd respondent vide order, dated 30-04-2011 dismissed the said appeal on the ground that the petitioner herein failed to assign proper reasons for condonation of delay. The petitioner herein preferred revision against the said order. The State Government also by way of impugned letter bearing No.8511/LTR-2/2011, dated 27-07-2011 rejected the revision on the same ground. Along with the writ petition the memorandum of grounds of revision filed before the 1st respondent – State Government is filed as a material paper.

A perusal of the said grounds of revision clearly discloses that in ground No.4 of the said grounds, the petitioner herein pointed out the effect of Rule 10 of the Rules, 1969 and the obligation of the respondents to communicate the orders. It is also the specific case of the petitioners herein that the order of the primary authority was not communicated to the petitioner. In this context it may be appropriate to refer to the Rule 10 of the A.P. Scheduled Areas Land Transfer Rules, 1969 which reads as under:

“10. The service of every notice, order or other communication under these rules shall be effected by delivering it or tendering it to the person concerned or in his absence to his agent or to any adult male member of the family or if none of the above courses is practicable,

by affixing it on his last known place of residence or by sending it to the last known place of his residence under certificate of posting.”

It is clear from the above Rule that the said rule obligates the authorities to communicate the orders.

According to the petitioner, he obtained certified copy of the order, dated 21-08-1997 from the office of the Special Deputy Collector on 26-10-2009 and filed the appeal on the said date within the time of sixty (60) days before the appellate authority.

A perusal of the order passed by the 2nd respondent – appellate authority in I.A.No.47 of 2010 shows clearly that the appellate authority took into consideration the failure on the part of the petitioner to appear during the course of enquiry. Though the petitioner raised the ground, touching Rule 10, before the revisional authority also the same missed the attention of the 1st respondent, therefore, in the facts and circumstances of the case, this Court deems it appropriate to remand the matter for fresh consideration to the 1st respondent – State Government by setting aside the order of the 1st respondent vide letter bearing No.8511/LTR-2/2011, dated 27-07-2011.

For the aforesaid reasons, the writ petition is partly allowed, setting aside the letter bearing No.8511/LTR-2/2011, dated 27-07-2011 and the revision filed by the petitioner stands restored to file and the 1st respondent is directed to pass appropriate orders on the revision after giving notice and opportunity of being heard to

the petitioner, as expeditiously as possible, in accordance with law. Till the said exercise attains finality, the interim order granted by this Court on 10-10-2011 in W.P.M.P.No.31155 of 2011 shall remain operative. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

July 12, 2016

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