

**HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

**WRIT PETITION No.31541 of 2013**

**ORDER:**

The petitioner is undisputed Excess Land Holder of his holding covered by the proceedings of the Land Reforms Tribunal-cum-Revenue Divisional Officer, Dharmavaram Division, Anantapur District. The declaration and the finding of the excess holding impugned went up to the Supreme Court undisputedly. The RDO-cum-LRT, Dharmavaram Division issued notice to surrender the excess land as contemplated by Section 10 of the Act, 1973. The option was not initially exercised by the land holder to surrender the excess out of several of the extents and ultimately the option is exercised by the LRT through Tahsildar by selecting free from encumbrances out of it. The LRAT, Anantapur District covered by its judgment dated 10.07.2006 in L.R.A.No.1 of 2005, the operative portion which is relevant for the purpose of writ petition reads as follows:

“7. In this case, while recording this memo both parties did not take interest and the learned Government Pleader argued that the appellant did not cooperate with them to decide regarding title whereas on the other hand on behalf of the appellant, it is contended that the Government is not coming forward to take those lands.

8. In this case, even though the appellant filed appeal grounds questioning the legality, he himself filed memo offering to surrender the lands, it shows that the appellant do not want to argue regarding those appeal grounds and he has conceded all these appeal grounds. Now the point only in dispute is whether the appellant/declarant is having title and in possession of those lands, which are mentioned in his memo whether those lands are without any encumbrances. Hence, the Government should take necessary steps to examine the revenue records and satisfy themselves whether the appellant/declarant is having title to the property and he is in possession of the property as revenue records are available with the Government and it should be decided after giving sufficient opportunity to the appellant and if the appellant do not cooperate, it could take the possession of lands if it is satisfied with the title and possession

of the appellant over the properties mentioned in the memo, otherwise it could take possession of the lands which is shown by it in its order against which this appeal is filed. Hence, the order could be passed accordingly.

9. In the result, the appeal is allowed directing the respondent to give sufficient notice to the appellant/declarant and could examine the concerned records regarding the title and possession of the appellant in respect of the lands mentioned in the memo and if title and possession of the appellant over those lands mentioned in the memo is proved the Government could take possession of the same and if there is any defect in title or possession of the appellant in respect of those lands, it could take the possession of land as mentioned in its order.”

A reading of the above operative portion of the judgment of the LRAT supra is very clear that the land holder is given option to give his excess surrender showing the land for the verification by the revenue authorities whether they are free from encumbrances or not to accept if free from encumbrances and in the absence of which what are the extents already taken by the Land Reforms Tribunal through Tahsildar holds good.

The present writ petition is filed after the order of the LRAT dated 10.07.2006, in the year 2013 on 01.11.2013 with the contentions that the action of the 2<sup>nd</sup> respondent/RDO-LRT, Dharmavaram in not accepting the lands offered for surrender by the petitioner/declarant and in trying to issue assignment certificates to third parties (landless persons) over the lands retained by the petitioner in S.No.42-C/D1, S.No.93-B3/D, S.No.140-1 and S.No.8-A1 situated at Yerragunta Village and S.No.380-B1 situated at Brahmasamudram Village of Kanekal Mandal, Anantapur District as illegal and contrary to the orders of the L.R.A.No.1/2005 dated 10.07.2006 thereby issue writ of mandamus. The contentions mainly are that after the LRAT order dated 10.07.2006, there was no notice given to the petitioner by the 2<sup>nd</sup> respondent-LRT and even he made voluntary representation dated 15.04.2008 offering S.No.380-B of Ac.8-00 cents in Brahmasamudram

in place of S.No.42-CD of Ac.8-00 cents in Yerragunta and similarly S.No.143-B of Ac.4-20 cents in Yerragunta in place of S.No.8-A of Ac.1-85 cents and S.No.380-B of Ac.1-75 cents in Brahmasamudram and request the 2<sup>nd</sup> respondent to accept the same. However, there are no orders passed and without issuing notice and without accepting by passing order to the option exercised, the proceedings in allotment of the lands are perse unsustainable to landless poor persons.

The counter affidavit filed by the respondents with vacate stay petition in W.V.M.P.No.3886 of 2013 through the affidavit of Tahsildar, Kanekal Mandal, Anantapur District, in substance reads particularly from Para 5 that pursuant to the orders in L.R.A.No.1/2005 dated 10.07.2006 to give notice to the applicant and to examine concerned records regarding title and possession and if title is clear to approve and take possession. The RDO, Dharmavaram issued Section 7(1) of the Act notice in Form-VI to the applicant/declarant in C.C.No.2075/75 on 17.07.2007 and in response to the very notice, the applicant (declarant) Sri V.Ramana accepted to surrender the land mentioned above i.e., in Yerragunta S.Nos.8A1, 8A-2, 8A-3, 8B-1, 42-CD1 and 140-C respective extents and at Brahmasamudram S.Nos.378-AB, 380 A1, A3, B1 and B3 total of Ac.29-20 cents to the excess holding of 0-4506 SH classification K of the respective extents and the RDO consequently approved the surrender of the said land on 09.05.2008 and the land mentioned above are even taken possession by the Government. Now the lands are proposed to issue D-Form pattas to the land less poor persons as part of the 7<sup>th</sup> phase land distribution program announced by the State Government. It is the submission that at this stage the declarant filed another application dated 02.08.2013 before the Tahsildar, Kanekal to consider him to surrender some other lands in lieu of the above and the Tahsildar, endorsed as he is not competent so to consider and remitted to make a representation to the LRT. There is an interim order in the writ petition on 05.11.2013 directing Tahsildar, Kanekal not to assign the lands in S.No.8/A1 etc.,

of Ac.29-20 cents of Yerragunta to third parties until further orders.

Now the question involved in the writ petition is from the very wording of Section 10 of the Act, once there is option available to the declarant holding excess land beyond the ceiling limit, on such finding made final, if not to show what are the lands he is proposing to surrender to notice and the authorities under the Land Reforms Act i.e., RDO-LRT concerned through Tahsildar concerned is entitled to identify and take any of the lands, which are free from encumbrances etc and even then the petitioner approached the LRAT and a concession is provided to him to show lands free from encumbrances as he wants to surrender for the excess land and on failure for the authorities to confirm what they accepted to proceed further. That order is way back in the year 2006, and the representation of the petitioner covered by the writ petition is in 2013. Even from the very say, no prudent man can hardly believe the submission that for more than 7 years he kept quiet without any intimation from the authorities and without making any representation. Even leave it as it is, once the counter affidavit not even disputed by any reply affidavit in the writ petition as part of evidence also for not a mere pleading like in a civil suit, categorically speaks a surrender is made voluntarily pursuant to the LRAT order and the same was accepted by and made final that is end all for no further right to the petitioner open to make another representation subsequently to prefer to surrender another land and come up to accept the same.

Having regard to the above, there are no merits in the writ petition to entertain. Accordingly, the same is dismissed. No costs.

Consequently, miscellaneous petitions, if any shall stand dismissed.

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**JUSTICE Dr. B.SIVA SANKARA RAO**

Date: 27.04.2016

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