

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.13452 OF 2009

ORDER:

The petitioner prays for writ of Certiorari to call for the records leading up to and inclusive of orders of respondents 1 to 3 in L.T.R.P.No.130/2003, C.M.A.No.142/2005 and G.O.Ms.No.62, Social Welfare (LRT-2) Department dated 09.06.2009 and quash the G.O.Ms.No.62, Social Welfare (LRT-2) Department dated 09.06.2009, as illegal, arbitrary and contrary to the A.P. Scheduled Area Land Transfer Regulations 1/59, as amended by Regulation 1/70 (for short 'the Regulations).

The circumstances relevant for the disposal of the writ petition are as follows:

The petitioner claims to be a scheduled tribe, resident of agency village K.Yerrampalem, Rampachodavaram Mandal, East Godavari District. The subject matter of writ petition covers an extent of Ac.61-27 cents of K.Yerrampalem Village of Rampachodavaram Mandal, East Godavari District. It is alleged that the subject matter belongs to ancestors of petitioner. The father of 4th respondent in the year 1961 purchased the subject matter and the land is under enjoyment and possession of 4th respondent and thereafter now with respondent No.5. The petitioner complained before the 3rd respondent against the transfer of subject matter in favour of 4th respondent as contravening the Regulations. The complaint of petitioner was taken on file as L.T.R.No.130/2003. The allegation is that the transfer of land by 4th respondent contravenes the Regulations.

On 24.08.2005, L.T.R.P.No.130/2003 was allowed by 3rd respondent. The 4th respondent filed C.M.A.No.142 of 2005 before respondent No.2 and on 18.11.2006, the CMA was dismissed. The petitioner claims to be in possession of subject matter of writ petition from 23.11.2006. The 4th respondent challenged the orders of eviction of 3rd and 2nd respondents under Regulation 6 before the Government/1st respondent. The Government through impugned G.O.Ms.No.62 dated 09.06.2009 allowed the revision.

The further case of 4th respondent is that transfer had taken place in the year 1961 before Regulation 1/70 came into force. There was no absolute bar for non-tribals to purchase the lands from tribals. The transfer could be lawfully effected with the consent of the Agent to Government or any officer prescribed by the Government. The case of 4th respondent is that such consent was taken from the Special Assistant Collector/Revenue Divisional Officer, Rajahmundry, who was the prescribed officer. The second ground is that the 4th respondent was granted settlement patta by the Settlement Officer under the A.P. Muttā (Abolition and Conversion into Ryotwari Settlement Regulation 2/69. The only ground that is pressed for consideration is whether the permission granted by the Special Assistant Collector/Revenue Divisional Officer, Rajahmundry is valid and legal. The basis for the above legal objection is that under LTR 1/59, particularly prior to amendment by Regulation 1/70, transfer of land by tribal to non-tribal was permitted with the consent of the Agent to Government or any officer prescribed in this regard by the

Government. The word 'prescribed' is defined as prescribed by Rules made under this Regulation. According to petitioner, the Rules were not made under LTR 1/59 till G.O.Ms.No.763, Revenue dated 11.08.1969 was issued whereunder the Agent and Agency Divisional Officer were empowered to give consent. The Rules do not have retrospective operation. The consent given for transfer of subject land in favour of 4th respondent by the Special Assistant Collector/Revenue Divisional Officer is without jurisdiction and invalid. The petitioner prays for setting aside the order of 1st respondent and allowing the writ petition.

The 3rd respondent filed counter-affidavit on the objection of competence of Agent to issue consent raised by petitioner. The reply reads as follows:

"As per sub-section (1) (ii) of Sec.3 of the APSALTR 1959 (prior to its amendment by regulation 1/1970) provided that notwithstanding anything contained in any enactment rule or law in force in the Agency Tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribe shall be absolutely null and void unless made with the previous sanction of the State Government or subject to rules made on its behalf, with the previous consent in writing of the Agent or any prescribed officer. Since no rules were made till 1969 under APSALTR 1959, the Government in Revenue Department vide Memo No.325/TWII-I/70-5, dated 26.08.1971 issued clarification that the rules made under the Agency Tracts made by a member of ST, till the coming into force of the Rules made under Regulation 1/1959, to the extent they are repugnant to the provisions of the said Regulation, by virtue of section 18 read with section 23(B) of the Andhra Pradesh General Clauses Act, 1891. The Special Assistant Agent, Rajamundry is therefore competent by virtue of the rules made under the Agency Tracts Interest and Land Transfer Act, 1917 to

accord permission for sale of land in question by tribals. Hence, the transactions held between the tribals and non-tribals in the year 1961 are thus valid and no violative of LTR 1/1959.

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In reply to Para No.8, 9 & 10, it is submitted that the contention of the writ petitioner in these paras are untenable. The lower and appellate authorities have accepted the clam of the present writ petitioner with the opinion that the permission given by the then Special Assistant Agent and Collector, Rajahmundry for purchase of the lands in question is not valid as there is no officer was prescribed in the rules framed during 1969 under the Land Transfer Regulation 1/1959 to permit such sale transactions between the tribals and non-tribals. But on further examination of the matter by the Government on a revision petition filed by Sri Medapati Buli Sathi Reddy, s/o Sathi Reddy (herein 4th respondent), the orders passed by the Appellate Court and consequently the Lower court were set aside by the Government in favour of 4th respondent in G.O.Ms.No.62, Social Welfare (LRT-2) Department Dt.09.06.2009 holding that the Special Assistant Agent and Sub-Collector, Rajahmundry is the Competent Authority by virtue of the rules made under the Agency Tracts Interest and Land Transfer Act 1 of 1917 to accord permission for sale of land in question by tribals. Hence, the transactions held between the tribals and non-tribals in the year 1961 are thus valid and not violative of LTR 1/1959.”

The 3rd respondent prays for dismissal of the writ petition.

Heard Mr.K.SMurthy for petitioner, Assistant Government Pleader for Respondents 1 to 3 and Mr.Godey Satish for respondent No.5.

Mr.K.SMurthy substantially reiterates the ground taken in the writ affidavit and contends that the 1st respondent assumed validity of transfer of land by tribal in favour of non-tribal on account of permission or consent granted by the Special Assistant Collector/ Revenue Divisional Officer, Rajahmundry. The Special Assistant Collector was authorized to grant permission under the Agency Tracts Interest and Land Transfer Act, 1917 (for short '1917 Act'). With the promulgation of Regulation 1/59, and issue of Rules through G.O.Ms.No.763, Revenue dated 11.08.1969, the authority prescribed under 1917 Act cannot and could not be treated as an authority prescribed by the Rules made under Regulation 1/1959. Therefore, the permission is without authority and the basis for allowing the revision is erroneous and GO is liable to be set aside.

On the other hand, to assist the Court, the Assistant Government Pleader places on record Memorandum No.325-TWII-1/70-5 dated 26.03.1971 issued by 1st respondent explaining the jurisdiction of Special Assistant Collector/Revenue Divisional Officer between the promulgation of Regulation 1/59 and making of Rules through G.O.Ms.No.763 dated 11.08.1969. I find it useful to reproduce the memorandum for immediate reference:

"GOVERNMENT OF ANDHRA PRADESH
REVENUE DEPARTMENT

Memorandum No.325-TWII-1/70-5 dated the 26th March, 1971.

Sub:- Agency – East Godavari District – Rampachodavaram
Taluk- Chinabhimpalli village – Permissions granted
by the Special Assistant Agent for sale of land by
Tribals to non-tribals – Revised clarification Issued.

Ref: 1.Govt. Memo No.1494-HB2/65-3 Edn.dt.17.9.65.
2.Three petitions by Sri Gudimetla Ramireddy,
Chinabhimpalli dt.5-2-1970.

3. Petition by Smt. Gudimetla Gangamma, Chinabhimpally d/5-2-1970.
4. From the Collector, East Godavari, Ref.F1-4065/70 d/26.8.1970
5. From the Collector, East Godavari, Ref.F1-4065/70 dt.8.9.1970.

The Government have carefully examined the petitions second and third cited, and the remarks thereon of the Collector of East Godavari in his references fourth and fifth cited. The instructions previously issued in the Government memo cited has also been reviewed. Under Rule II of the rules made under the Agency Tracts Interest and Land Transfer Act, 1917, if the transfer of immovable property under Sec.4(1) of the Act, to or in favour of a person not a member of a hill tribe is a mortgage without possession the District Munsiff having jurisdiction may grant the necessary written sanction and in all other cases of transfer the written permission of the Assistant Agent is necessary.

2. Further, Sub-Section (1)(ii) of Sec.3 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (prior to its amendment by Regulation 1 of 1970) provided that notwithstanding anything contained in any enactment, rule or law in force in the Agency Tracts any transfer of immovable property situated in the Agency Tracts by a member of a scheduled tribe shall be absolutely null and void unless made with the previous sanction of the State Government or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer.

3. Under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, no rules were made till 1969. The rules made under the Agency Tracts Interest and Land Transfer Act, 1917 (partly repealed by Sec.9 of the 1959, Regulation) would, therefore, continue to apply to all transfers of immovable property situated in the agency tracts made by a member of a scheduled tribe, till the coming into force of the rules, made under Regulation I of 1959, to the extent they are not repugnant to the provisions of the said Regulation, virtue of Section 18 read with Section 23(B) of the Andhra Pradesh General Clauses Act, 1891.

4. According to rule II of the rules made under the Agency Tracts Interest and Land Transfer Act, 1917, except in cases where the transfer of immovable property is a mortgage without possession, the Assistant Agent is empowered to permit such transfers and the same power is conferred by Section 3 of the

Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 on the Agent or any prescribed officer subject, however, to rules made in that behalf. The Special Assistant Agent, Rajahmundry was therefore competent by virtue of the rules made under the Agency Tracts Interest and Land Transfer Act, 1917 to accord permission for sale of land in question by tribals.

5. The petitions second and third cited are therefore remitted to the Collector and Agent to Govt. East Godavari for fresh disposal in the light of paras 1 to 3 above. The instructions issued in Govt. Memo first cited are hereby cancelled.

6. The records sent with the reference fifth cited are returned to the Collector, East Godavari and he is requested to acknowledge the receipt of them.

C.R.KRISHNASWAMY RAO SAHEB,
Secretary to Government"

The Assistant Government Pleader, therefore, submits that no exception to the order of Government can be taken and prays for dismissing the writ petition.

Mr.Godey Satish relies upon the decisions reported in BONDALA REDDIYYA V. AGENT TO GOVERNMENT/DISTRICT COLLECTOR, W.G.DISTRICT, ELURU AND OTHERS¹, THE DY. COLLECTOR & ANR V. S.VENKATA RAMANAIAH & ANR² and GOTTIPULLA VENKATA APPARAO v. SPECIAL DEPUTY COLLECTOR AND ORS³ and contends that firstly the transfer had taken place prior to introduction of Regulation 1/70 and secondly with the consent of the authority competent under the 1917 Act. According to him, Regulation 1/59 deals with Repeal and Savings and reads thus:

Repeal:-

The Agency Tract Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917) is hereby repealed to the extent to which any of the provisions contained therein correspond

¹ 2007(6) ALD 165

² 1995(3) ALD (S.C.S.N)

³ 1996(3) ALD 287

or are repugnant, to any of the provisions contained in this Regulation.

Savings:-

- (1) The provisions contained in this Regulation shall not affect-
 - (a) any transfer made or sale effected in execution of a decree of before the commencement of the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917); or
 - (b) any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act.
- (2) Nothing in this Regulation shall affect a land-holder's right to proceed against a ryot in accordance with the provisions of the Andhra Pradesh (Andhra area) Estates Land Act, 1908 (Act 1 of 1908) or the first charge declared by section 5 of the Act or the provisions of that Act regarding relinquishment of the holding by a ryot or the provisions of the Central Provincial Tenancy Act, 1898 (Central Act IX of 1898);
 Provided that no relinquishment of a holding by a ryot who is a member of a Scheduled Tribe shall be valid unless the previous sanction of the State Government, or subject to the rules made in this behalf the previous consent in writing of the Agent or the prescribed Officer, has been obtained thereto.

Therefore, the authority constituted by the Rules under the 1917 Act continues to have the authority and jurisdiction to give consent for transfer of land by tribal in favour of non-tribal. Therefore, the transfer is not effected. He prays for dismissing the writ petition.

Let me refer to the reasons given by the 1st respondent for allowing the revision and whether the same warrants interference or not?

“Government after examination of the record of lower, grounds of Revision Petition, written arguments of counsel for tribal respondent and other material available on record found that-

- i) The lower and appellate authorities have agreed that the transactions between tribal and non-tribal were held through registered sale deeds in the year 1961 with the prior permission of Special Asst.Agent but disallowed the claim of petitioner on the ground that the rules framed under Regulation 1/59 in the year 1969 vide GO.Ms.No.763, dt.11.8.1969 did not prescribe any officer to act as “prescribed officer” to permit sales between tribals and non-tribals. Hence, the permission granted by Spl.Asst.Agent Rajahmundry was without jurisdiction and the sale transactions held between tribal and non-tribal were hit by LRT 1/59. Therefore, the Ryotwari Patta granted by the Settlement Officer, Anakapalli in case No.1392, dt.31.10.1980 also did not confer any right as the LTR Act has overriding effect due to the above contrary determination.
- ii) As per sub-section (1)(ii) of Sec.3 of the APSALTR 1959 (prior to its Amendment by Regulation 1 of 1970) provided that notwithstanding anything contained in any enactment, rule or law in force in the Agency Tracts, any transfer of immovable property situated in the Agency tracts by a member of a Scheduled Tribe shall be absolutely null and void unless made with the previous sanction of the State Government or subject to rules made in this behalf, with the previous consent in writing of the Agent or of any prescribed officer. Since no rules were made till 1969 under APSALTR 1959, the Government in Revenue Dept. vide Memo.No.325/TWII-I/70-5 dated 26.3.1971 issued clarification that the rules made under the Agency Tracts Interest and Land Transfer Act, 1917 (partly repealed by Sec.9 of the 1959 Regulation) would, therefore, continue to apply to all transfers of immovable property situated in the Agency Tracts made by a member of ST, till the coming into force of the Rules made under Regulation 1 of 1959, to the extent they are repugnant to the provisions of the said

Regulation, by virtue of Section 18 read with Section 23(B) of the Andhra Pradesh General Clauses Act, 1891. The Special Asst. Agent, Rajahmundry is therefore competent by virtue of the rules made under the Agency Tracts Interest and Land Transfer Act, 1917 to accord permission for sale of land in question by tribals. Hence, the transactions held between the tribals and non-tribals in the year 1961 are thus valid and not violate of LTR 1/59.

Government therefore set aside the order of the Addl.Agent to Government & Project Officer ITDA Rampachodavaram in CMA.No.142/2005 dated 18.11.2006 and allowed the Revision Petition”.

Regulation 1/59 repealed ‘1917 Act’. Regulation 1/59 provides for making Rules by the Government. Regulation 1/59 does define who the competent authority is. The repealing section provides for repealing to the extent the provisions correspond or are repugnant to any of the provisions under Regulation 1/59. Therefore, the authority under the 1917 Act continues to have authority till Rules were framed through G.O.Ms.No.763, Revenue dated 11.08.1969. Though the legal objection appears to be attractive at the first blush, still after verifying the object of the 1917 Act, Agency Tracts Interest and Land Transfer Rules, 1969, Regulation 1/59, Rules made under G.O.Ms.No.763, Revenue dated 11.08.1969 and the amendment through Regulation 1/70, this Court is of the view that the Assistant Special Collector had authority in the interregnum. If the argument of petitioner is accepted, the same leads to an anomalous situation of vacuum. On the other hand, the competence to grant consent can fairly and legally be accepted by applying Section 23(B) of the General Clauses Act, and the authority of Special Assistant Collector as not repugnant to

Regulation 1/59. The reasoning of the 1st respondent as well as instructions through Memo dated 26.03.1971 conforms to the principles of General Clauses Act and interpretation of statutes. I am in full agreement with the findings recorded by the 1st respondent. No exception can be taken.

The writ petition fails and is accordingly dismissed. Except the above point, no other ground is urged by the petitioner. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, stand closed.

27th February, 2017

Lrkm



S.V.BHATT, J