

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.345 OF 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed with the following prayer:

“to issue a writ, order or direction more in the nature of Mandamus declaring the action of the First Respondent initiating and passing orders in L.T.R. Case No. 4/2002/ENK dt. 21-2-2005 for ejection of the petitioner from the lands to an extent of Acres 9-33 situated in Sy.No. 456 situated at Burada Raghavapuram Village, Enukuru Mandal, Khammam District, and the consequential orders passed by the 2nd in CMA No. 102 of 2005 dated 18-11-2006 as arbitrary, illegal, and without having any power and jurisdiction and contrary to the law laid down by the Full Bench of the Hon'ble High Court of Andhra Pradesh reported in AIR 1982 Andhra Pradesh (F.B)-1 and also the Judgment of the Hon'ble Apex Court reported in 1995(6)SCC-545 and consequentially declare that the writ petitioner is entitled to continue in possession and enjoyment as per succession and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the Circumstances of the case.”

2. The facts of the case in brief are that the petitioner is daughter of one Late Y.Ramaiah, who died 10 years ago. The said Ramaiah had two daughters namely Smt Yashoda and the petitioner herein. He has no male issues. Ramaiah had 46 acres of patta land in different survey numbers. After death of her father, the petitioner and her sister succeeded to the subject property. The issue in the present writ petition relates to the land admeasuring Ac.9-53 cents in survey No.456, which falls in favour of the petitioner after death of her father. Accordingly, the petitioner is in possession and enjoyment of the said extent. The sister of the petitioner also got certain extent of land towards her

share. The petitioner and her sister succeeded their father property during his lifetime from the year 1967 onwards and their names were also shown as enjoyer of their father's property. While so, a suo moto case was taken up by the Special Deputy Collector (TW), Bhadrachalam in Case No.4/2002/ENK showing the father of the petitioner and the petitioner as respondents to L.T.R. case basing on the report, dated 10.02.2002, of the Special Deputy Tahsildar (TW), Bhadrachalam. In the said case, the petitioner appeared on 13.02.2004 and deposed that she got the said land from her father, who have no male issues. She also filed pahanies for the years 1967-1968 to show her possession and enjoyment over the subject property. She also filed pahanies for the years 2001-2002, 2002-2003. But, without considering the same, ejection order was passed on 21.02.2005. Against the said order, the petitioner filed appeal before the 2nd respondent, wherein she categorically stated that she succeeded the subject property from her father. She also filed all the original documents at the time of filing of appeal. But without considering the same, the 2nd respondent dismissed the appeal. Challenging the sme, the present Writ Petition is filed.

3. Though writ petition was admitted on 04.01.2007 and underwent several adjournments, no counter was filed.

4. It is not in dispute that the petitioner has entered into the lands after the enforcement of the provisions of the A.P. Scheduled Area Land Transfer Regulation 1 of 1970. The petitioner appeared before the Special Deputy Collector on 13.02.2004 and clearly deposed that her father is no more and after his death she

succeeded the property. She filed copies of pahanies from the years 1967-1969. But, ejection order came to be passed stating that she has not produced the original pahani extracts. But, the 1st respondent did not dispute the relationship of the petitioner with her father. When once the relationship is not disputed, the provisions of Regulation 3, has no application since there is no transfer. The petitioner succeeded the property from her father and the impugned order was passed without application of mind. The petitioner pleaded in the writ petition that she filed the original document i.e., certificate issued by the Panchayat Secretary and no counter affidavit is filed denying the same.

5. Sub-section (4) of Regulation 3 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 as amended by 1 of 1970, reads as follows:

“for the purpose of this section, the expression ‘transfer’ includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in favour of any other member of a Scheduled Tribe benami for the benefit of a person who is **not** a member of a Scheduled Tribe; but does not include a partition or a devolution by succession.”

6. In this case the petitioner claiming the subject property by way of succession, as such it does not amount to transfer as per regulation 3 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959

7. It is stated at the time of filing of the appeal, the petitioner filed all original documents before the appellate authority. But, the appeal was dismissed holding that she has not produced the original pattadar pass books and title deeds and appellant has not bothered to get her name recorded in pattadar pass books and

revenue records. In the original order itself, it is recorded that the petitioner deposed that her father died ten years back. Hence, the order passed by the authority is without application of mind and accordingly, the same is liable to be set aside.

8. Accordingly, the Writ Petition is allowed setting aside the order, dated 18.11.2006, in C.M.A.No.102 of 2005 passed by the 2nd respondent. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

JULY 11, 2017
YVL



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



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Date: 11.07.2017

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