

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.954, 55 and 19851 of 2005

COMMON ORDER :

These Writ Petitions were filed in 2005 and had been in the cause-list under the caption 'Final Hearing' since at least February, 2017.

2. Sri P.Rajasekhar, Advocate addressed arguments for Sri Mangena Sri Rama Rao, Advocate for petitioners on 10.04.2017 and on 18.04.2017.

3. On both dates, the learned Government Pleader for Revenue, sought adjournment saying he was not prepared.

4. On 18.04.2017, I directed the matters to be listed on 20.04.2017 at 02:30 p.m.

5. On that day, the case did not reach. Ultimately it reached for hearing on 25.04.2017. The Government Pleader again requested for time stating that he had to peruse voluminous record before he can address arguments and that the Revenue Divisional Officer, Jangareddygudem had not sent the record for his perusal.

6. In spite of the fact that the Government Pleader for Revenue had 14 days from 10.04.2017 to prepare and address arguments in these matters, he had come to the Court unprepared. He ought to have

sought for record from the Revenue Divisional Officer, Jangareddygudem and obtained it since the cases were in the final hearing list since February, 2017.

7. Since the W.P.s are old matters, and since many of the petitioners were Senior Citizens, and since the Government Pleader's attitude indicated that he wanted to evade submitting arguments in spite of being given adequate time, the request of the Government Pleader for further time was rejected and the matter was reserved for orders.

8. Since common questions of fact and law arise for consideration in these Writ Petitions, they are being disposed of by this common order.

9. The petitioners in these Writ Petitions (except petitioners 4 and 5 in W.P.No. 55 of 2005) are tenants of an extent of Acs.346.25 cents in various survey numbers of Bhimole Village, West Godavari District in the State of Andhra Pradesh under two land owners by name Marreddi Jagga Rao and Mareeddi Butchiraju.

10. The 4th petitioner in WP.No.55 of 2005 is the widow of Mareddi Jagga Rao and the 5th petitioner therein is the widow of Mareddi Butchiraju.

11. However the term 'petitioners' hereinafter used will refer to all petitioners in these Writ petitions other than petitioners 4 and 5 in W.P.No.55 of 2005.

12. After the advent of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, during their lifetime, Late Jagga Rao and Late Butchiraju filed declarations of their agricultural holdings under the said Act before the Land Reforms Tribunal, Kovvur. It determined that they were holding excess agricultural land equivalent to 7.2975 SH and 4.9179 SH respectively covering the above extent of Acs.346.25 cents.

13. They were asked to surrender the excess land by the competent authority under the Act and they surrendered the same in 1975.

14. After such surrender, the State Government assigned the said land through pattas to landless poor including respondent nos.5 to 28 in WP.No.954 of 2005.

15. Respondent nos.5 to 28 in WP.No.954 of 2005 claimed that they are assignees of Acs.262.82 cents in various survey numbers of the said village under patta certificates dt.12.08.1976 issued by the State Government in their favour.

16. Having come to know of the surrender proceedings and alleged assignment, claim petitions were filed by all the petitioners before the Land Reforms Tribunal, Kovvur objecting to the surrender by the land holders and the assignment by the State Government. The Land Reforms Tribunal, Kovvur rejected the claim petitions by order dt.27.11.1975.

17. This was assailed in appeals filed by petitioners in L.R.A.No.111/81, 112/81 before the Land Reforms Appellate Tribunal, Eluru, West Godavari District.

18. It allowed the appeals on 31.05.1982 and held that the surrender proceedings initiated by the Land Reforms Tribunal, Kovvur were void and that the petitioners ought to be treated as cultivating tenants of Late Marreddi Jagga Rao and Late Marreddi Butchiraju. It recorded that the tenants were in physical possession of the lands for several years prior to the notified date and also thereafter; and there is no reliable proof that actual possession of the land was taken by the Government and assignees were put in actual possession. It held that the actual taking of possession of the land by the Government was not proved and the assignees had not been in possession of the land at any point of time. It accepted that the tenancy pleaded by the petitioners/appellants before it were true, and declared that the surrender proceedings as well as orders of the Land Reforms Tribunal were not valid as against the tenants/petitioners and held that they had been passed without considering their claims.

19. It further held that held that the lands in possession of the tenants can be included in the holdings of the both tenant as well as the landlord as per the decision of the Supreme Court in **State of A.P v. Ashrafuddin**¹ and the lands cannot be excluded from the holdings of the declarants; that the Government cannot refuse to accept the

¹ AIR 1982 SC 1

surrender of lands in possession of tenants; and the tenants cannot be disturbed from the actual possession of the lands; and their tenancies are true.

20. Aggrieved thereby, CRP.Nos.2313 of 1982 and batch were filed in this Court by the assignees. The said Revisions were dismissed on 31.01.1985 confirming the order of the Land Reforms Appellate Tribunal, Eluru.

21. The assignees as well as the State of Andhra Pradesh questioned the same in the Supreme Court of India.

22. The appeals by the assignees were numbered as Civil Appeal Nos.1252-1253 of 1986 and were dismissed on 06.03.1990. The order is reported in **G. Brahmayya and others v. Ala Venkaterao and others**².

23. The Appeals by the State Government were numbered as S.L.Ps.Nos.14530 and 14535 of 1986 and were dismissed on 08.06.1991.

24. The Supreme Court in **G. Brahmayya** (2 supra) held that the primary Tribunal erred in not issuing any notice to the tenants who were shown to be in possession of the lands from at least 1970 and that even the declarants had admitted their possession and tenancy. It held that the tenants had established their long and continuous possession and the entire drama of treating the lands as surplus lands

² (1990) 2 SCC 283

of the original landlords was a mere paper transaction. It held that the primary Tribunal had not communicated its order to the tenants and the tenants were entitled to file an appeal before the Appellate Tribunal after they came to know about the order of the primary Tribunal. It noted that the State Government had fought on behalf of the assignees also and produced documents and examined witnesses. It refused to grant any relief to assignees even though it was contended that the assignees were poor and could not produce acceptable evidence.

25. Subsequent thereto, the tenants filed I.A.No of 1992 in L.C.C.No.1518 and 1517/KVR/75 against the landlords as well as the State of Andhra Pradesh in the Land Reforms Appellate Tribunal, West Godavari, Eluru alleging that they are in possession of the lands of extent Acs.346.25 cents and they cannot be dispossessed therefrom by the State.

26. On 24.11.1992, the said Appellate Tribunal held that the issue involved is acceptance of surrender of land and delivery of possession to assignees without consulting tenants; that the Land Reforms Appellate Tribunal in L.R.A.No.112 and 111 of 1981, the High Court in the CRPs.2315 of 1982 and batch as well as the Supreme Court have held in favour of the tenants; that the Land Reforms Tribunal has no jurisdiction to interfere with the orders of the Land Reforms Appellate Tribunal, the High Court and the Supreme Court wherein the petitioners were identified as tenants. It held that the land under

possession of the tenants cannot be dispossessed by the State and their possession cannot be disturbed.

27. This order was not challenged by the respondents before any Forum. It has thus become final.

WP.No.954 of 2005 :

28. After the decision of the Supreme Court, the District Collector, West Godavari District issued proceedings L.C.C.No.1517, 1518/KVR/75 dt.22.01.2005 to the Revenue Divisional Officer, Jangareddygudem directing that there were 21 benami tenants according to the Revenue Divisional Officer, Kovvur and the latter should take possession of Acs.262.83 cents from them. He also directed the latter to give preference to present encroachers who had gone to the High Court 'for assignment of their enjoyment' and were otherwise eligible. He referred to WP.No.27078 of 2003 filed by the assignees (which was later withdrawn on 22.02.2017).

29. Assailing the proceedings L.C.C.No.1517, 1518/KVR/75 dt.22.01.2005, WP.No.954 of 2005 has been filed by the petitioners / tenants.

30. They contend that the District Collector had no jurisdiction to issue the said proceedings; that there are no benami tenants as alleged by the District Collector; that the Land Reforms Appellate Tribunal as well as the Supreme Court had held that the petitioners are cultivating tenants; no plea was raised in the said proceedings by the State that

there were any benami tenants; and therefore, the doctrine of constructive *res judicata* bars the District Collector from taking the said stand.

31. It is further contended that no rights flow to the assignees through the pattas granted in their favour by the State Government since the entire surrender proceedings were declared illegal by the Supreme Court; that the respondents failed to make corrections in the Revenue Records and continue to show the name of the Revenue Divisional Officer in the pattadar column; the respondents have no right, title or interest in the land; they are deliberately creating problems to the petitioners; and the respondents have not taken steps for re-computation of the land of the original owners.

32. On 28.01.2005, in WPMP.No.1256 of 2005, this Court directed maintenance of *status quo* as on that date with regard to possession of tenants. WPMP.No.20507 of 2005 was filed by the assignees from the State to implead themselves in the said Writ Petition. It was allowed on 10.06.2008.

33. Counter-affidavit is filed by the Revenue Divisional Officer, Jangareddygudem on behalf of the respondents admitting that the Supreme Court of India dismissed SLP.Nos.14530/1986 and 14535/1986 on 17.06.1991, but contending that possession was taken by the Government in 1976 itself and that the tenants were not in possession of the land.

34. This is contrary to the finding on 6.3.1990 of the Supreme Court in **G. Brahmayya** (2 supra) that the tenants were in possession of the land in question. So the plea of respondents that the petitioners are not in possession of the land is rejected.

35. It is also contended that only 10 out of 31 tenants are genuine as per a report of the Revenue Divisional Officer, Kovvur and there were 21 benami tenants in the land. Reference is made to representations made by Members of Legislative Assembly on 23.01.1998 to the then Hon'ble Speaker as well as representation of the assignees on 15.03.1997 to the Government about the existence of benami tenants, but copies of the same have not been filed.

36. Admittedly, no such contention that there were benami tenants was advanced at any point of time before the matter was decided finally by the Supreme Court. It is therefore not open to the respondents to take such a plea and it is clearly barred by principle of constructive *res judicata*.

37. Also neither the report of the Revenue Divisional Officer, Kovvur nor any other material has been placed before this Court by respondents in support of the said plea. So this plea of the respondents has no basis.

38. A plea is raised in the counter affidavit that the petitioners became tenants of the State. How they became tenants of the State is not explained in the Counter affidavit. In fact no such plea had been

advanced in the Supreme Court by the State and the said plea is also barred by constructive *res judicata*.

39. In fact, this contention was not mentioned in the impugned order dt.22.01.2005 of the District Collector. It is not open to the Revenue Divisional Officer, Jangareddygudem to support the impugned order by giving new reasons which are not contained in it. (See **Mohinder Singh Gill v. Chief Election Commissioner**³)

40. Though a reference is made to certain proceedings of the District Collector in 1996 and that of the Additional Revenue Divisional Officer, Land Reforms, Eluru in 1996 and 1997, and an alleged panchanama by the Mandal Revenue Inspector on 24.01.2005 taking possession of the land, no material in support of the same has been filed with the counter-affidavit by the respondents.

41. How the Mandal Revenue Inspector allegedly dispossessed the petitioners without following any due process of law is not explained. Therefore the alleged dispossession is non-est in the eye of law.

42. In fact, the alleged taking of possession on 24.01.2005 is itself an act amounting to contempt of the order of the Supreme Court.

43. Obviously, the respondents have no intention to abide by the decision of the Supreme Court in the matter and are bent upon trying to circumvent it one way or the other at the instance of the respondent nos.5 to 28 in the Writ Petitions who are assignees from the State.

³ (1978) 1 SCC 405

44. In Subrata Roy Sahara v. Union of India⁴, the Supreme court noted:

“17. There is no escape from acceptance, or obedience, or compliance with an order passed by the Supreme Court, which is the final and the highest Court in the country. Where would we find ourselves, if Parliament or a State Legislature insists, that a statutory provision struck down as unconstitutional, is valid? Or, if a decision rendered by the Supreme Court in exercise of its original jurisdiction is not accepted for compliance, by either the Government of India, and/or one or the other State Government(s) concerned? What if, the Government or instrumentality concerned, chooses not to give effect to a Court order, declaring the fundamental right of a citizen? Or, a determination rendered by a Court to give effect to a legal right, is not acceptable for compliance? Where would we be, if decisions on private disputes rendered between private individuals, are not complied with? The answer though preposterous, is not far-fetched. In view of the functional position of the Supreme Court depicted above, non-compliance with its orders would dislodge the cornerstone maintaining the equilibrium and equanimity in the country’s governance. There would be a breakdown of constitutional functioning. It would be a mayhem of sorts.”

45. In E.T. Sunup v. C.A.N.S.S. Employees Assn.⁵, the Supreme Court deprecated the tendency of the bureaucracy to circumvent Court orders. It declared :

“16. It has become a tendency with the government officers to somehow or the other circumvent the orders of court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the Court’s order cannot be countenanced. This Court time and again has emphasised that in a democracy the role of the court cannot be subservient to administrative fiat. The executive and legislature have to work within the constitutional framework and the

⁴ (2014) 8 SCC 470

⁵ (2004) 8 SCC 683

judiciary has been given the role of watchdog to keep the legislature and executive within check. In the present case, we fail to understand the counter filed by the appellant before the Court. On one hand they say that all the cases of GPF have been processed and on the other hand they are not prepared to revoke the administrative order. This only shows a deliberate attempt on the part of the bureaucracy to circumvent the order of the Court and stick to their stand. This is clear violation of the Court's order and the appellant is guilty of flouting the Court's order."

46. The present case is a classic instance of the tendency of the respondents to circumvent the orders passed by the Supreme Court in favour of the petitioners.

47. It is not the case of the respondents that the District Collector, West Godavari District who issued the impugned proceedings had any jurisdiction under the provisions of the Act to direct the 3rd respondent to dispossess any of the petitioners who have been found to be in possession of the land by this Court as well as the Supreme Court. Therefore, the impugned proceedings are wholly without jurisdiction, null and void.

48. Wayback in 1980, Justice Krishna Iyer in **State of Punjab v. Gurdial Singh**⁶ explained that malafides or legal malice is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. It is also called colourable exercise or fraud on power. He explained:

"9. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the

⁶ (1980) 2 SCC 471

entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act."

49. The only contention of the learned Government Pleader for Revenue was that the State of Andhra Pradesh was not made a party in the Writ Petition by the petitioners and so the Writ Petition should be dismissed. This plea is not tenable since the petitioners had questioned the impugned proceedings issued by the District Collector, Eluru on the ground that he had no jurisdiction to issue them. The State of Andhra Pradesh, in the circumstances, is not a necessary or a proper party, to the Writ Petition.

50. Sri C. Damodar Reddy, counsel for respondent nos.5 to 28 sought to contend that the Land Reforms Tribunal gave notice to the petitioners to file declarations under Section 8 of the Act and that respondent nos.5 to 28 filed objections thereto in their capacity as assignees / legal representatives of assignees. Admittedly, the

respondent nos.5 to 28 had filed WP.No.27078/2003 before this Court and had withdrawn the same on 22.02.2017.

51. Therefore, in my opinion, they have no *locus* to file any objections. Also, once the Supreme Court has held that the petitioners and their legal representatives, who were respondents in **G. Brahmayya** (2 supra) were in physical possession of the land and declined to grant any relief to the assignees who were strongly supported by the State Government in the Supreme Court, they cannot re-agitate their claim for assignment of the land in occupation of the petitioners.

52. However it cannot be denied that the petitioners are obliged to file declarations under the Act declaring the lands in their occupation for computation of their respective holdings as held by the Land reforms appellate tribunal in its order dt.31.5.1982 in LRA No.111 of 1981 and 112 of 1981 which was confirmed in Order dt.31.1.1985 in CRP No.1252 and 1253 of 1986 and batch and later by the Supreme court in **G.Brahmayya** (2 Supra). They are therefore granted 4 months time from date of receipt of copy of this order to file their declarations and in default, the respondents are at liberty to take penal action as permitted under the Act.

53. Accordingly, the W.P.No.954 of 2005 is allowed and the proceedings in L.C.C.No.1517 and 1518/KVR/75 dt.22.01.2005 of the District Collector, West Godavari (1st respondent) addressed to

respondent nos.3 and 4 to take possession of the land of extent Acs.262.83 cents in Bhimole Village, Gopalapuram Mandal, West Godavari District from tenants such as the petitioners and assign the same to third parties, is declared as arbitrary, illegal, without jurisdiction, violative of Article 14 and 300-A of the Constitution of India, order dt.31.05.1982 in L.R.A.No.111/81 and 112/81 of Land Reforms Appellate Tribunal, Eluru as confirmed in the order dt.31.01.1985 in CRP.Nos.2313 of 1982 and batch as well as order dt.06.03.1990 in **G. Brahmayya** (2 supra) of the Supreme Court of India; consequently the panchanama conducted by the Mandal Revenue Inspector on 24.01.2005 allegedly taking possession of the land from petitioners is declared null and void and petitioners are declared to be in possession of the above land; the respondents are directed not to interfere with the petitioners' peaceful possession and enjoyment of the said land except where the petitioners are found to be holding excess land after computation of their holdings; the petitioners are granted 4 months time from date of receipt of copy of this order to file their declarations and in default, the respondents are at liberty to take penal action as permitted under the Act.

54. The 1st respondent shall also pay costs of Rs.5,000/- to the petitioners.

WP.No.55 of 2005 :

55. W.P.No.55 of 2005 was filed by petitioner nos.1 to 3 in WP.No.954 of 2005 alleging that the Revenue Divisional Officer,

Jangareddygudem, West Godavari District and the Mandal Revenue Officer, Gopalapuram Mandal, West Godavari District were not allowing them to carry out agricultural activity, i.e., clearing of mango and cashew garden in R.S.No.246/2 of Bhimole village and R.S.No.379/1 of Kovvurpadu Village.

56. On 04.03.2005, in WPMP.No.65 of 2005, this Court directed both parties to maintain *status quo* as on that date until further orders of the Court. The said order was made absolute on 10.06.2008.

57. Counter-affidavit was filed by the Revenue Divisional Officer, Jangareddygudem on the same lines as in WP.No.954 of 2005.

58. I have already dealt with the stand taken by the respondents while dealing with W.P.No.954 of 2005 and have rejected the same.

59. For reasons alike, W.P.No.55 of 2005 is also allowed and the respondents are directed not to interfere with the clearing of mango or cashew nut trees from the above lands in any manner. No costs.

WP.No.19851 of 2005 :

60. This Writ Petition is filed by petitioner nos.4, 5, 7, 8, 22, 25 to 27, in WP.No.954 of 2005 questioning notices dt.31.08.2005 in L.C.C.No.1517, 1518/KVR/75 dt.31.08.2005 issued by the Revenue Divisional Officer, Jangareddygudem.

61. In the said notices, the Revenue Divisional Officer, Jangareddygudem, alleged that the landholder Marreddi Jagga Rao

and his family members had surrendered the land to the Government, that they had handed over possession on 14.02.1976, that the Government is the owner of the land and the petitioners are liable to pay Maktha / lease amount to the Government and asking the petitioners to appear before him on 08.09.2005 at 11:00 a.m. to fix the lease amount of the extents of land in their occupation.

62. On 15.09.2005, in WPMP.No.25238 of 2005, this Court directed the Revenue Divisional Officer to proceed with the enquiry pursuant to the impugned notices, but directed him not to pass any final orders or compel petitioners to pay lease amounts / maktha until further orders. It observed that if in the Writ Petition, it is decided that the petitioners, being tenants of declarants are liable to pay rents, they shall pay the rents as determined by the Revenue Divisional Officer. This order was made absolute on 27.06.2008.

63. Petitioners contend that the Revenue Divisional Officer, Jangareddygudem had no jurisdiction to issue the impugned notices. They contend that the land is in possession of the petitioners and is not Government land; that the petitioners had not obtained any lease from the Government for the lands in their occupation; and so they cannot be treated as cultivating tenants of the Government. They also contend that the declarants erroneously surrendered the lands in which the petitioners were tenants without notice to them; and that was why the surrender proceedings by the declarants were declared as null and

void in 1990 itself by the Supreme Court; and so the State Government cannot be treated as owner of the lands.

64. No counter-affidavit has been filed by the respondent indicating what statutory power he exercised when he issued the impugned notices to petitioners. No such power to fix maktha/ lease amount is conferred on him under the provisions of the Act. In the absence of any statute empowering the Revenue Divisional Officer, Jangareddygudem to fix maktha/ lease amount, he has no jurisdiction to issue any such notice to petitioners. Therefore any enquiry conducted by him in that regard pursuant to interim order passed by the Court is null and void.

65. Therefore, I hold that the Revenue Divisional Officer, Jangareddygudem, had no jurisdiction to issue the impugned notices proposing to fix maktha / fair rent for the lands in the occupation of the petitioners by treating them as tenants of the State Government.

66. Therefore, WP.No.19851 of 2005 is also allowed and the notices dt.31.08.2005 in L.C.C.No.1517, 1518/KVR/75 of the Revenue Divisional Officer, Jangareddygudem are set aside as without jurisdiction. No costs.

67. To sum up :

- (a) the W.P.No.954 of 2005 is allowed and the proceedings in L.C.C.No.1517 and 1518/KVR/75 dt.22.01.2005 of the District Collector, West Godavari (1st respondent) addressed to

respondent nos.3 and 4 to take possession of the land of extent Acs.262.83 cents in Bhimole Village, Gopalapuram Mandal, West Godavari District from tenants such as the petitioners and assign the same to third parties is declared as arbitrary, illegal, without jurisdiction, violative of Article 14 and 300-A of the Constitution of India, order dt.31.05.1982 in L.R.A.No.111/81 and 112/81 of Land Reforms Appellate Tribunal, Eluru as confirmed in the order dt.31.01.1985 in CRP.Nos.2313 of 1982 and batch as well as order dt.06.03.1990 in **G. Brahmayya** (1 supra) of the Supreme Court of India; consequently the panchanama conducted by the Mandal Revenue Inspector on 24.01.2005 allegedly taking possession of the land from petitioners is declared null and void and petitioners are declared to be in possession of the above land; the respondents are directed not to interfere with the petitioners' peaceful possession and enjoyment of the said land except where the petitioners are found to be holding excess land after computation of their holdings; the petitioners are granted 4 months time from date of receipt of copy of this order to file their declarations and in default, the respondents are at liberty to take penal action as permitted under the Act. The 1st respondent shall also pay costs of Rs.5,000/- to the petitioners.

(b) W.P.No.55 of 2005 is also allowed and the respondents are directed not to interfere with the clearing of mango or cashew nut trees from the above lands in any manner. No costs.

(c) WP.No.19851 of 2005 is also allowed and the notices dt.31.08.2005 in L.C.C.No.1517, 1518/KVR/75 of the Revenue Divisional Officer, Jangareddygudem are set aside as without jurisdiction. No costs.

68. As a sequel, miscellaneous petitions pending, if any, in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.06.2017

Ndr/*

