HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.16532 OF 2007

ORDER:

This writ petition is filed seeking writ of mandamus declaring the order issued by the 1st respondent in G.O.Ms.No.47, dated 29.06.2007 confirming the orders passed in C.M.A.No.45/99, dated 06.05.2001 by the 2nd respondent and order passed by the 3rd respondent in case No.171/94/PVC, dated 16.07.1998 as illegal, arbitrary and consequently to set aside the same.

2. It is the case of the petitioner that the petitioner is absolute owner in peaceful possession and enjoyment of the land admeasuring Ac.5.00 gts in Sy.No.150/16, situated at Yanambili (Village), Paloncha Mandal, Khammam District, purchased from the 5th respondent, who is Non-Tribe vide Sada sale agreement dated 22.01.1969 for valuable consideration. Since the date of purchase, the name of the petitioner is shown in revenue records. That the 5th respondent gave a complaint dated 22.11.1993 to the 3rd respondent stating that the petitioner occupied the subject property illegally. That the 3rd respondent initiated proceedings under A.P (SA)LTR 1959 r/w 1 of 1970 against the petitioner. That the petitioner could not attend the enquiry as he has was not informed about the date of hearing and that without providing an opportunity of hearing, ejection order dated 16.07.1998 was passed by the 3rd respondent. Aggrieved by the same, petitioner preferred appeal before the 2nd respondent, which was also dismissed on 06.05.2001. Against the same, the petitioner filed revision before

the 1st respondent, which was also rejected on 29.06.2007. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 4th respondent stating that the sale agreement dated 22.01.1969 relied on by the petitioner is not valid in the eye of law. The said document is not supported by entries in revenue records and that the entries in revenue records are different in ink and hand writing and same have not been produced before the primary authority. It is stated that the petitioner was issued notice and he was present on 24.03.2007 before the 1st respondent. It is stated that since petitioner violated the provisions of the Act, proceedings were initiated and same were upheld by the appellate authority and revisional authority.

4. Herd learned counsel for the petitioner and learned Assistant Government Pleader for Social Welfare. Though notice is served on 5th respondent, there is no representation.

5. Learned counsel for the petitioner submits that the very initiation of proceedings under Section 3 of the A.P. Scheduled Areas Land Transfer Regulation Rules 1969 (for short 'the Rules of 1959') is without jurisdiction, erroneous, as the allegation of the 5th respondent is that the petitioner illegally encroached the land occupied by the 5th respondent. He submits that there is no allegation of transfer of subject lands, as such, the provisions of Section 3 have no application. He submits that when there is allegation of transfer, the provisions under the Rules of 1959 can be initiated.

6. Heard learned Assistant Government Pleader for Revenue, who produced records supporting the averments in the counter affidavit.

7. A reading of the order of the primary authority dated 16.07.1998 goes to show that the 5th respondent, who is the petitioner in LTR Case No.171/94/PVC, approached the 3rd respondent by stating that he has not sold the land to the petitioner; that the petitioner herein has occupied the subject land illegally by force and cultivating the same. In view of the same, as per the Rules of 1969, proceedings have been initiated for violation of Sub-Section 1 of Section 3 of the Rules of1959 read with Regulation 1/70 and ejectment order was passed. The said proceedings dated 16.07.1998 have been confirmed in the appeal as well as in the revision. However, on the different ground that the agreement of sale relied on by the petitioner is not supported by any entries in revenue records and entry of revenue records relied on by the petitioner are fabricated, as they are found in different ink and handwriting, as such, it can be presumed that there was a sale. The very basis on which the proceedings were initiated is that there was an encroachment by the petitioner in the lands of the 5th respondent.

Section 3 (1) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 reads as follows:

> "3. Prohibition of transfer of assigned lands:- (1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house site then, notwithstanding anything to the contrary in any other law for the time being in force on in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no

> right or title in such assigned land shall vest in any person acquiring the land by such transfer."

A reading of the aforesaid provision goes to show that Act gets attracted when there is alienation. The allegation of the 5th respondent is that he has sold the land to the petitioner. Moreover, the petitioner and 5th respondent are non-tribals and the transaction is between Non-Tribals.

A learned Single Judge of this Court in the judgment reported in **Ch.Ramaiah v. District Collector, Mahaboobnagar District**[1] by interpreting the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, held that unless there is transfer, the said Act has no application and that when there is encroachment, the aggrieved person has to approach the Civil Court for possession and not the revenue authorities for restoration of possession of the subject lands. A reading of Section 3 of the A.P. Assigned Lands Act and Section 3 (1) of the Rules of 1959, goes to show that they are similar, which reads as follows:

> "3.Transfer of Immovable property by a member of a Schedule Tribe:
>
> [(1) (a) 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 person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes."

In **Ch.Ramaiah v. District Collector, Mahaboobnagar District (supra),** learned Judge of this Court held as follows:

> "4. The Act prohibits transfer of assigned land by an assignee to any third party. Such transfer - be it alienation, mortgage, gift or licence - is rendered void by reason of Section 3(1) of the Act. However, by reason of Sub-section (5) of Section 3

[1] 2005 (6) ALT 358

of the Act alienation/transfer of assigned land in favour of a landless poor person is exempted subject to the competent authority validating such transfer. When the assigned land is transferred, it is incumbent on the part of the Mandal Revenue Officer to initiate proceedings for assignment of the land, take back the possession and restore the possession to the original assignee or the legal heirs of such original assignee. On restoration, if the original assignee again transfers the land in favour of third parties, the Mandal Revenue Officer may resume the land from the transferee and it need not be assigned to the same assignee second time. That was what was laid down by the Division Bench of this Court in U. Pandaiah v. Mandal Revenue Officer, Sydapuram (supra) as under :

If the original assignee has committed the error of alienating the assigned land for the first time in his life and if the land is taken possession of by the authorities under Section 4 of the Act, then it is obligatory on the part of the authorities to restore the said land in favour of the original assignee or his legal heir as the case may be. However if the original again commits the error of alienation of the land in favour of any other person, then the said land shall not be restored to such original assignee or his legal heir and may be resumed by the Government for the purpose of assignment of the said land in favour of another landless poor person.

5. After giving anxious consideration to the facts of this case, this Court is not able to understand as to how the provisions of the Act pressed into service in the factual background of this case. Admittedly, the petitioner left the village in search of livelihood and when he came back to the village, it was found that the fourth respondent encroached upon the land in Survey Nos.778/1 and 778/2. No allegation of any transfer of such land in favour of the fourth respondent by the father of the petitioner or the petitioner himself. In such an event, the provisions of the Act are not attracted. The petitioner, admittedly, had a possessory title as well as substantive right (see Land Acquisition Officer-cum-RDO v. Mekala Pandu,). Therefore, when the possession of the owner/possessor is disturbed, it gives rise a cause of action to a suit for specific relief of permanent injunction or suit for possession simplicitor under Section 5 of Specific Relief Act, 1963. Further, as the petitioner claims to be a person belonging to Scheduled Caste and as he is allegedly, wrongfully dispossessed by a person not belonging to Scheduled Caste or Scheduled Tribe, the same would amount to cognizable offence under Section 3(1)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act). Therefore, the petitioner has to seek redressal elsewhere and the writ petition is not maintainable. It is brought to the notice of this Court that the petitioner's representations dated 6-7-2005 and 1-8-2005 have not been disposed of by the respondents 1 to 3. Therefore, without waiting for the response from them, the petitioner is given liberty to approach the Civil Court and also lodge a complaint under Section 3(1)(v) of the Act. In this writ petition, no relief can be granted."

Though the issue arises under different enactment, but Section 3 in both the enactments is similar in content.

In view of above facts and circumstances, writ petition needs to be allowed. However, this will not preclude the 5th respondent from availing remedies available to him under the law, as indicated above.

Accordingly, the writ petition is allowed to the extent indicated above. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand disposed of.

A.RAJASHEKER REDDY,J

12-06-2017
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.16532 OF 2007

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Date: 12.06.2017

kvs

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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