

HON'BLE SRI JUSTICE S.V.BHATT
W.P.No.1749 OF 2007

ORDER:

Heard Mr.K.Venkatesh for petitioners and the Assistant Government Pleader (Tribal Welfare) for respondents 1 to 4. In spite of service of notice, none appears for 5th respondent.

The petitioners pray for Mandamus declaring the order of 1st respondent dated 06.01.2007 in C.M.A.No.44 of 2004 directing respondents 3 and 4 to take possession of an extent of Acs.5-24 cents and Acs.9-18 cents in Sy.Nos.6 and 7 of Neladonelapadu Village, Gangavaram Mandal, East Godavari District, as arbitrary, illegal, without jurisdiction and violative of principles of natural justice.

The point for consideration arises under the A.P. Scheduled Areas Land Transfer Regulation 1/1959, as amended by Regulation 1/1970 (for short 'the Regulations').

The grievance of the petitioners is confined to the direction of 1st respondent in passing ejectment decree and consequent delivery of possession the following property to 5th respondent:

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|----|------------------------|---|------------------|
| 1. | District | : | East Godavari |
| 2. | Mandal | : | Gangavaram |
| 3. | Village | : | Neladonelapadu |
| 4. | Survey Numbers | : | 6 and 7 |
| 5. | Area | : | Ac.5.24, Ac.9.18 |
| 6. | Classification of land | : | Dry |

According to petitioners, the order of ejectment and delivery of possession of an extent of Acs.4-24 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 of Neladonlapadu Village is completely illegal and without jurisdiction.

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

The 5th respondent filed applications under Section 3 of Regulations for restoration of petition schedule land to Government after ejecting Goru Veerarraju, Goru Bhadra Rao and Bayyapu Suryanarayana from the petition schedule property. These applications were taken on file in L.T.R.P.Nos.63 and 64 of 2004.

The schedule of LTRP covers an extent of Acs.5-24 cents in R.S.No.6 and Acs.9-18 cents in R.S.No.7.

The application was filed on the ground that the possession and enjoyment of petitioners or their predecessors-in-interest herein of petition schedule property is contrary to the Regulations.

The predecessors-in-interest of petitioners contested LTRP Nos.63 and 64 of 2004. The merits pleaded by petitioners need not be gone into or a finding recorded while disposing of the writ petition for the limited challenge canvassed by petitioners. The 2nd respondent through order dated 21.11.2002 allowed the claim of 5th respondent in part and the operative portion of the order reads thus:

“Hence, unless the contrary is proved it is concluded that the transfer of Ac.2-25 cents in Sy.No.7 and Ac.1-00 in Sy.No.6 was held between non-tribal only after the commencement of regulation 1/1970 and are null and void.

Hence, I G.KRISHNA KISHORE, Special Deputy Collector, Tribal Welfare, Rampachodavaram in exercise of the powers under Section 3(2) (a) of APSALTR 1/1959 AS AMENDED BY 1/1970 do hereby order for ejection of the part of Ac.2-25 cents of Sy.No.7 and Ac.1-00 in Sy.No.6 from non-tribal respondent and restoration of the same to the Govt. for onward distribution to eligible tribals. The case of tribal petitioner will be considered for assignment of above land subject to her eligibility. The MRO, Gangavaram directed to implement the orders and to report compliance”.

In the ejectment order, the schedule is clearly delineated, between the prayer accepted and the prayer refused by the 2nd respondent. The schedule appended to order dated 21.11.2002 reads as follows:

Dist : East Godavary, Mandal: Gangavaram
Village: Neladonelapadu

LTRP No.64/2002

R.S.No.6 Extent Ac.4.24 (Respondents) ie. Petitioners herein
Ac.1.00 (Government)

LTRP No.63/2002

R.S.No.6 Extent Ac.2.25 (Government)
Ac.6.83 (Respondents) ie. Petitioners herein

Sd/-
Spl.Dy.Collector,
Tribal Welfare,
Rampachodavaram.

The 1st and 2nd petitioners filed CMA.No.44 of 2004 against the order dated 21.11.2002 against the decree of ejectment of an extent of Acs.1-00 of land in R.S.No.6 and Acs.2-25 cents in R.S.No.7. The 1st respondent through order dated 06.01.2007 dismissed the appeal but expanded the scope of subject matter of appeal and passed a decree of ejectment in respect of the entire schedule in LTRP.Nos.63 and 64 of 2002. In other words, the appeal filed by petitioners was converted as an original proceeding and ejectment decree was passed to evict petitioners from an extent of Acs.4-25 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7. Hence, the writ petition.

Mr.Venkatesh for petitioners, at the outset, has clarified that the findings of fact recorded against ejectment order insofar as Ac.1-00 in R.S.No.8 and Acs.2-25 cents in R.S.No.7 are concerned these findings can be treated as findings of fact, and ultimately the land has to be restored to Government. He challenges the ejectment decree passed for an extent of Acs.4-25 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 while dismissing the appeal. The petitioners were aggrieved by the ejectment order in LTRP Nos.63 and 64 of 2002 to the extent of Ac.1-00 in R.S.No.6 and Acs.2-25 cents in R.S.No.7 and C.M.A. No.44 of 2004 were filed against the limited grievance. The other words there was no appeal against the extent held in favour of petitioners. The 1st respondent expanded the scope of subject matter of Appeal and ordered ejectment.

According to him, the 1st respondent is deciding an appeal against the order of 2nd respondent. The appeal and the subject matter are confined to the procedure stipulated by law and the subject matter of the appeal cannot be expanded. According to him, the 1st respondent cannot expand the scope of appeal and grant relief to 5th respondent while dismissing the appeal filed by petitioners for more extent. Therefore, to the extent of ejection of petitioners to an extent of Acs.4-24 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 is completely without jurisdiction, illegal and amounts to arbitrary exercise of power by the 1st respondent. He further complains that respondents 3 and 4 without even waiting for receipt of the copy of order of 1st respondent or before the expiry of period for availing further remedy have executed the ejectment decree on 07.01.2007. He, therefore, prays for setting aside the ejectment decree to the extent indicated above and prays for restoring possession to petitioners of an extent of Acs.4-24 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 of Neladonlapadu Village.

The Assistant Government Pleader relies upon the stand taken by respondent in the counter affidavit dated 12.03.2017. The justification offered is that the 1st respondent in exercise of the powers conferred under Rule 8(1) & (3) of the A.P. Scheduled Areas Land Transfer Rules, 1969 read with Regulations passed the order.

There is no dispute between the parties that the petition land is forming part of Agency Area. The 5th respondent sought for ejection of predecessors-in-interest of petitioners from the schedule of property appended to the LTRP. Though it is repetitive, for clarity the schedule is again excepted hereunder:

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|----|------------------------|---|------------------|
| 1. | District | : | East Godavari |
| 2. | Mandal | : | Gangavaram |
| 3. | Village | : | Neladonlapadu |
| 4. | Survey Numbers | : | 6 and 7 |
| 5. | Area | : | Ac.5.24, Ac.9.18 |
| 6. | Classification of land | : | Dry |

The parties to the LTRP have adduced evidence and the 2nd respondent ordered ejectment of petitioners from an extent lesser than shown in the petition. The petitioners being aggrieved by the partial ejectment order filed CMA.No.44 of 2004. The 1st respondent is dealing with the appeal against the partial decree of ejectment passed by the 2nd respondent but not the entire petition schedule land of LTRP.Nos.63 and 64 of 2002. To put it differently, let us assume that the application filed by the 5th respondent was dismissed in its entirety. The 5th respondent is in appeal against the dismissal of an application filed for ejectment and in such an event, the subject matter of LTRP becomes the subject matter of the appeal as well. In a case where the claim for ejection is accepted in part and a party aggrieved by that portion of ejectment moves the appellate authority, then the subject matter of the appeal is limited to the extent canvassed by the appellants before the 1st

respondent. To justify the order of ejectment, the 3rd respondent relies upon Rule 8(1) & (3) of the A.P. Scheduled Areas Land Transfer Rules, 1969, which reads as follows:

8. (1) An appeal against any decree or order passed under sub-rule (4) of rule 7 by the officer referred to in sub-rule (2) of rule 3 shall lie to the Agent.

x x x x x x x x

- (3) The appellate authority to whom an appeal has been preferred under sub-section (3) of section 3 may hold or cause to be held such further enquiry, if any, as it may consider necessary and after giving the parties concerned a reasonable opportunity of being heard, may pass such orders as it thinks fit.

A perusal of Rule 8 discloses that an appeal is maintainable against any decree or order passed under sub-rule (4) of rule 7 to the Agent to Government/1st respondent. Sub-rule (2) provides for period of limitation for filing the appeal. Sub-rule (3) deals with affording reasonable opportunity of hearing and passing orders as the appellate authority thinks fit. May be in the understanding of 3rd respondent, the jurisdiction of 1st respondent to pass a comprehensive order beyond the subject matter of appeal is traced to the expression "*may pass such order as it thinks fit*". In my considered view, the reading of sub-rule (3) to show jurisdiction to pass a comprehensive order of ejection is misconceived, for under sub-rule (1) an appeal against any decree or order passed under sub-rule (4) of Rule 7 by an officer referred in sub-rule (2) of rule 3 is

maintainable. In the case on hand, the 2nd respondent has passed the decree of ejectment to the following extents:

Part of Ac.2.25 cents in S.No.7 in LTRP No.63/2002

and

Ac.1.00 in S.No.6 in LTRP No.64/2002

Therefore, the petitioners being aggrieved by such decree have filed the appeal. The 5th respondent did not challenge the order of 2nd respondent refusing to evict petitioners from Acs.4-25 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7. In my considered view, the ejectment order in CMA.No.44 of 2004 insofar as it related to an extent of Acs.4-24 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 is unsustainable, illegal and beyond the scope of CMA.No.44 of 2004. To that extent, the ejectment decree is set aside. From the chronological consideration of date and order in appeal and date of taking possession on 07.01.2007, it is clear that even before a copy is served on the petitioners, the petitioners are dispossessed from extent of Acs.4-24 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 which was not the subject matter of the appeal. Once the ejectment decree for the reasons referred to above to the extent of area shown is set aside, it is in the fitness of things and to meet the ends of justice appropriate direction is issued to respondents 1 to 4 to forthwith restore possession to petitioners of Acs.4-24 cents in R.S.No.6 and Acs.6-83 cents in R.S.No.7 of Neladonelapadu Village.

Writ petition is allowed as indicated above. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

10th April 2017

Lrkm

S.V.BHATT,J

