

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.7970 OF 2007

ORDER

This writ petition is filed for a writ of Mandamus declaring the proceedings of the 4th respondent – Additional Agent to Government and Project Officer, ITDA, in Case No.A4/LTR/06/2005 dated 06.03.2007, in confirming the order of the 3rd respondent – Special Deputy Collector (Tribal Welfare), Utnoor, in TWA1/40/2004 dated 29.12.2004, as illegal, arbitrary and against G.O.Ms.No.129 Social Welfare Department dated 1.08.1979.

The case of the petitioner, as per the averments made in the writ affidavit, is that he purchased the land in an extent of Acs.2.33 guntas situate at Sy.No.204, Nelki Venkatapur village on 10.12.1962 from the 1st respondent for a consideration of Rs.2,825/- at the rate of Rs.1,000/- per acre. On the said date, he made part payment of Rs.1,825/- and the possession was delivered to him and since then he has been in possession and enjoyment of the subject land. Subsequently, on 7.7.1977, on payment of balance amount, the 1st respondent executed a registered sale deed bearing No.903/77. After the purchase, he invested huge amounts and developed the land. While so, based on a list said to have been furnished by the Deputy Tahsildar, about the transaction took place in respect of the subject land, the 3rd respondent issued notices dated 27.2.2004, 17.03.2004 and 25.06.2004 asking the petitioner to show cause why he shall not be evicted from the subject land, as the transaction is in contravention of Regulation 3(1) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation No.I of 1959), as amended by Regulation No.1 of

1970. The petitioner appeared before the 3rd respondent and produced photo copies of sale deed and the pahanies. The case of the petitioner is that he is a poor, rustic and uneducated villager and without verifying the entries in the revenue records, *bona fidely* purchased the subject land. The 3rd respondent without appreciating the factual aspects, by proceedings dated 29.12.2004, held that the transaction took place between one non-tribal to another non-tribal in the notified village and the same is in contravention of 1959 Regulations and accordingly ordered for eviction of the petitioner. Challenging the same, the petitioner preferred appeal before the 4th respondent – Additional Agent to Government and Project Director, who by proceedings dated 6.3.2007, confirmed the order of the 3rd respondent dated 29.12.2004. Aggrieved by the same, the present writ petition came to be filed.

The learned counsel for the petitioner while reiterating the writ averments, submitted that the petitioner purchased the subject land on 10.12.1962 and on the said date, made part payment and possession was delivered to him and since then he has been in possession and enjoyment of the subject land. Subsequently on 7.7.1977 sale deed was executed in his favour. The learned counsel submits that since the possession of the petitioner over the subject land was much prior to coming into force of amended Regulation 1 of 1970 and the petitioner being a landless poor person, the official respondents ought not have ordered for his eviction. She further submits that the Government issued G.O.Ms.No.129 dated 1.08.1979, wherein, the Government directed that non-tribal landless poor persons in occupation of land in scheduled areas up to Acs.5.00 of wet land or Acs.10.00 of, shall not be evicted. The primary as well as

appellate authorities have not taken into consideration the said G.O. of the Government before passing the impugned orders. With these contentions, the learned counsel sought to set aside the impugned order.

On the other hand, the learned Assistant Government Pleader for Social Welfare, based on the averments made in the counter affidavit, submitted that the petitioner and the alleged vendor of the subject land, are non-tribals and the subject land is situated in a notified agency area. The petitioner has not produced any document to show that he was in possession of the subject land since 10.12.1962 and as per the copy of the registered sale deed produced by him, he came into possession after 7.7.1977 i.e., after 3.2.1970, which is in contravention of Section 3(1) of 1959 Regulations read with Amended Regulation 1 of 1970. Therefore, both the authorities concurrently ordered for eviction of the petitioner and the same cannot be inferred with by this court. Hence, he sought for dismissal of the writ petition.

From the above averments, it could be seen that though the petitioner has claimed that he purchased the subject land on 10.12.1962 and was in possession and enjoyment of the same since then, failed to produce any tangible evidence viz., pahanies, land revenue receipts etc in his favour. The sale deed produced by him is of the year 1977. Therefore, in the absence of any evidence to show that he has purchased the property in the year 1962 and has been in possession since then, both the primary as well as appellate authorities, found that the transaction is a clear violation of Regulations of 1959, as amended by Regulation 1 of 1970. The learned counsel for the petitioner could not demonstrate how the said finding is perverse or erroneous. This court cannot re-appreciate the

evidence by exercising power of judicial review under Article 226 of the Constitution of India.

The petitioner relied on G.O.Ms.No.129 dated 1.8.1979. The same is extracted as under:

**“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Tribal Welfare Scheduled Areas Non-Tribal Landless - Poor in occupation of lands in Scheduled areas not to be evicted – Orders – Issued.

SOCIAL WELFARE DEPARTMENT

G.O.MS.No.129

Date:1st August, 1979

1. G.O.Ms.No.91 Revenue, dt:02-10-69
2. G.O.Ms.No.41 Revenue, Dt:12-01-71
3. G.O.Ms.No.951 E & SE, dt:4-12-74.

ORDERS

It has been represented that landless poor non-tribals or small farmers who have been in occupation of lands in the Scheduled areas of the State in general and in Khammam District in particulars are being evicted or threatened with eviction. The Government, have reviewed the matter. Pending further examination Government directed that in partial modification of the order issued in Government orders read above, all non-Tribal landless poor in occupation of land in the scheduled areas up to 5 acres of wet land or 10 acres of dry land, should not be evicted for the present under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

The Commissioner of land Revenue and the agency collectors are directed to take action accordingly.

(BY ORDER AND IN THE NAME OF GOVERNOR OF ANDHRA PRADESH)

Sd/-D.N.RAMAN
PRINCIPAL SECRETARY TO GOVERNMENT.”

As per the above G.O., Government directed that non-tribal landless poor in occupation of lands in scheduled areas, shall not be evicted. The same is not disputed in the counter affidavit filed by the official respondents.

In view of above facts and circumstances, without expressing any opinion on merits, petitioner is given liberty to make representation to the District Collector, Adilabad in terms of G.O.Ms.No.129 dated 1.8.1979 within a period of

three months from today. The District Collector, Adilabad, is directed to consider the same and take appropriate action in accordance with law and till disposal of representation *status quo* regarding possession shall be maintained.

The writ petition is disposed of accordingly. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

DATE:11—07—2017

AVS

