

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.25680 of 2017

Dated:16.08.2017

Between:

Killo Gasyani W/o late Appalaswamy,
Hindu, aged about 56 years, S.T.,
Occ: Housewife, Arakuvalley Mandal,
Visakhapatnam District.

...Petitioner

AND

The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue Department, Velagapudi,
Amaravathi, Guntur District and others.

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION No.25680 of 2017****ORDER:**

The petitioner claims that her husband was owner and possessor of Manavari land to an extent of Ac.0.53 cents in survey No.43/2 situated at Kothaballuguda Village, Arkuvalley Mandal, Visakhapatnam District. After death of her husband, she succeeded to the subject property and her name was mutated in the revenue records. While so, the petitioner alleges that respondents 3 and 4 sought to interfere with her possession over the said property. At that stage, the petitioner filed A.O.S.No.17 of 2017 in the Court of Agency Sub Judge (Revenue Divisional Officer), Paderu, Visakhapatnam and also filed I.A.No.5 of 2017 seeking temporary injunction. By an order, dated 22.04.2017, the Agency Sub Judge, granted order of temporary injunction in favour of the petitioner restraining respondents 3 and 4 from interfering with her peaceful possession and enjoyment of the property. While so, the Agency Sub Judge, by order, dated 24.06.2017 discharged the interim injunction order, dated 22.04.2017 and granted *status quo* until further orders. Aggrieved thereby, this Writ Petition is filed.

2. It is the first and foremost contention of learned counsel for the petitioner that the modified order was passed behind back of the petitioner without prior notice and opportunity, therefore, the order is liable to be set aside on that ground alone. He would further submit that though against the order of Agency Sub Judge, an appeal shall lie to Agent to Government, since the order is vitiated on the ground of violation of principles of natural justice, the petitioner cannot be compelled to avail the remedy of appeal.

3. Sri Ram Gopal, learned counsel appearing for respondents 3 and 4 submits that the contention of learned counsel for the petitioner that the petitioner was not present when the impugned order was passed modifying the earlier order is not true. The order itself reflects that the said order was passed in the presence of both parties and on the same day counter was served on the petitioner and petitioner received the counter. He would further submit that against the order of the Agency Sub Judge, an appeal shall lie under Rule 47 of the Andhra Pradesh Agency Rules, 1924 to Agent to Government and without availing the remedy of appeal, the writ petition is not maintainable.

4. Though Sri Ram Gopal, learned counsel for respondents 3 and 4, contended that the petitioner was also present and the remedy of appeal is available to petitioner, in the peculiar facts of the case, this Court is not inclined to go into these issues at this stage for the reasons recorded hereunder.

5. Learned Government Pleader produced the record, particularly the docket orders of the Agency Sub Judge. The docket order would disclose that when the case was taken up by the Agency Sub Judge on 24.05.2017, he recorded that both counsel were present. The said docket order discloses that interim injunction granted was discharged and *status quo* order was passed. As seen from the docket, the order was signed on 24.06.2017. When it comes to the communication of decision, the same was signed on 01.07.2017 and the contents of the order communicated are also different from the order as recorded in the docket. In judicial proceedings, the officer ought to have been careful in noting the

dates correctly and communication of order should be same as recorded in the docket.

6. Having regard to the fact that the earlier interim injunction was vacated and *status quo* order was passed and having regard to the fact that the docket order would show different dates i.e., signing of the order is dated 24.06.2017, whereas the communication of the order is dated 01.07.2017 and contents of the order made as communicated is also different, I deem it appropriate to remit the matter to the Agency Sub Judge to consider the application for vacation of the earlier interim order, after according due opportunity to the petitioner and respondents 3 and 4, who are parties before Agency Sub Judge.

7. The Agency Sub Judge shall fix date of hearing and communicate in advance to both parties. The Advocates or parties shall appear and make their submissions and on consideration of the same, the Agency Sub Judge shall pass a reasoned order either to continue injunction order granted on 22.04.2017 or otherwise as he deems appropriate in the facts of the case.

8. Till orders are passed as ordered above, *status quo* made on 24.06.2017 shall continue. It is made clear that *status quo* order granted on 24.05.2017 is continued for a limited period till a decision is made on the application of respondents 3 and 4 for vacation of earlier injunction order. However, it is open to the Agency Sub Judge, if he is satisfied, for further continuation of the order passed on 22.04.2017. The decision with regard to fixing of date of hearing shall be communicated to the parties within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, the Writ Petition is allowed and matter is remanded to Agency Sub Judge, Paderu. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date:16.08.2017
YVL



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