

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.3102 OF 2009

ORDER:

Heard Mr.Raghuveer Reddy for petitioners, the Assistant Government Pleader for respondents 1 to 3 and Mr.Sinivas Yadav holding for Mr. Rajesh Nehta.

The petitioners pray for Mandamus declaring order dated 24.01.2009 in LTR Appeal No.A4/LTR/01/2001 of 2nd respondent as illegal, suffers from failure to exercise the jurisdiction conferred on appellate authority, violative of principles of natural justice and contrary to A.P. Scheduled Areas (Land Transfer) Regulation, 1959 (for short 'the Regulation').

With the consent of learned counsel for parties, the writ petition is heard and disposed of on the ground of appellate authority failing to pass a reasoned and speaking order.

The 3rd respondent in Case No.TWA2/35/2000 dated 12.10.2000 initiated action under sub section (1) of Section 3 of the Regulation read with Regulation I of 1970 against the petitioners herein. The petitioners after receiving notice filed explanation stating that the possession and enjoyment of various extents of plots in Survey No.81 of Perkaguda Village, Utnoor Mandal, is not contravening the Regulations. The 3rd respondent after conducting enquiry and taking on record the statements of villagers recorded the following findings:

“As per the statement of respondents and village elders which reveals that actually this land was purchased for formation of village Perkaguda in the name of respondents (1 to 3) who were the village elders. After purchase of the suit land in the year 1960 all the villagers

have constructed houses in the purchased lands. The pahani copies from 1958-59 to 1998-99 furnished by the M.R.O. Utnoor have been verified which reveals that the respondents and their family members are in continuous possession of the suit land since 1958-59 onwards by constructing permanent houses.

The transaction took place between tribal to non-tribal in the notified village Perkaguda in respect of S.No.81 extent 8.17 acres in the year 1960 is much prior to the enforcement of Regulation. I of 1970 as well as 1.12.1963. Thus the purchase of land bearing S.No.81 extent 8.17 of Perkaguda of Utnoor Mandal from tribal pattadar by the non-tribal respondents (1 to 3) before the enforcement of Regulation 1 of 1970 coming into force between tribal to non. tribal i.e. from 1.12.1963 and 1 of 1970 will not attract the provisions of sub-section 1 of Section 3 of A.P.S.A.L.T.R. 1959 read with amended Regulation I of 1970.

Apart from this the Hon'ble High Court of A.P. Hyderabad in its judgment in W.P.No.13453/86 dt.5.12.89 held that expression of transfer as defined in the Regulation 1 of 1959 include even a contract relating to such transfer. Thus the transaction took place in this case between tribal to non-tribal in the year 1960 through ordinary sale deed and subsequent registered documents of 1965 could not be denied.

In view of the above facts explain in the foregoing paras this court come to the conclusion that there is no contravention of sub-section 1 of Section 3 of A.P.S.L.T.R.1959 read with Amended Regulation I of 1979. Therefore, I hereby drop the further proceedings initiated over the S.No.81 extent 8.17 situated at Perkaguda village of Utnoor Mandal in favour of the respondents (1 to 6) who are in possession of the lands by constructing the permanent houses and order for consigning the case to record under D.Dis.”

Respondent Nos.4 to 7 in the writ petition filed LRT Appeal No.A4/LTR/01/2001. Through the order impugned in the writ petition, the 2nd respondent allowed the appeal. The principal

objection of writ petitioners against the findings recorded by the 2nd respondent is that the 2nd respondent in fact, has not considered the material available on record, examined whether the conclusions recorded by the 3rd respondent are tenable or unsustainable and in a crisp manner allowed the appeal. In other words, the 2nd respondent has not assigned reasons or reversed the findings recorded by the 3rd respondent, but on solitary ground allowed the appeal. To appreciate the objection of petitioners against the order under challenge, this Court finds it convenient to excerpt the portion dealing with the same.

“During final hearings:-

The case has come-up for final hearing on 24.01.2009 the Appellants No.4,5, 6 are present and deposed about the fact of the case t4hat the Appellant No.2 has not sold the land to the Respondents as alleged but it was given to the Respondents on half crop share basis. The Respondent Nos.4,5,6 are present and deposed that the above suit land actually purchased through Ordinary Sale Deed in the year 1960 thereafter the land was executed through Registry document in the year 1965. Further they depose that soon after its purchased the construction of houses were stated and established a colony with the name and style “Perkaguda” and still residing over the land in the year 2000. Examined the records with reference to material available in the records of the lower court and this court has come to a conclusion and delivered the orders as under:-

IN RESULT, the contention of the appellant is hereby upheld and the contention of the lower court is hereby rejected. Accordingly all the points are answered.”

I have perused the orders of 2nd and 3rd respondents and *prima facie* this Court is of the view that the 2nd respondent having

regard to the nature of enjoyment of writ petitioners and also the statements made by all the villagers at the earliest point of time, ought to have considered the entire material and recorded findings on each one of the facts that are in issue under the Regulations. The Assistant Government Pleader appearing for respondents 1 to 3 admits that she is unable to sustain the order under challenge. For the reasons stated above, the order challenged in the writ petition is set aside and matter remitted to 2nd respondent for disposal in accordance with law. The interim order granted on 18.02.2009 is directed to be continued till the disposal of the appeal by the 2nd respondent.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:15.03.2017
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S.V.BHATT,J

