

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

W.P.NO.23876 OF 2007

AND

W.P.No.2088 OF 2010

COMMON ORDER:

W.P.No.23876 of 2007 came to be filed by one M.A.Raheem seeking issuance of Writ of Mandamus declaring the order dated 30.06.2007 passed by the Joint Collector, Ranga Reddy District in File No.F1/7880/2003 as illegal, improper and incorrect.

2. W.P.No.2088 of 2010 is came to be filed by T.Chandraiah against M.A.Raheem and others to set aside the proceedings dated 15.11.2002 in file No.L/8504/1980 and also to declare the order dated 28.01.2006 in file No. F2/7395/2002 passed by the 1st respondent-Joint Collector as illegal, improper and incorrect.

3. Since the issues involved in both the writ petitions are interconnected, they are being disposed of by this common order.

4. During pendency of the writ petitions, Smt Ruqia Fatima and 20 others got themselves impleaded in W.P.No.23876 of 2007 and the very same parties i.e Ruqia Fatima and others also got impleaded themselves as respondents 16 to 26 in W.P.No.2088 of 2010.

5. The facts which lead to file these writ petitions are as under:

The petitioner and his legal heirs in W.P.No.23876 of 2007 claimed themselves to be in possession of agricultural land in Survey No.277 admeasuring Ac.6.20 guntas, in Survey No.279 admeasuring 0.12 guntas and admeasuring Ac.03.33 guntas, in Survey No.278 situated at Pedda Amberpet, Hayathnagar Tahsil, Ranga Reddy District, as protected tenants. The land is said to have been recorded as Dastagarden Inam belonging to late Hazrat Syed Shah Sabit Hussaini. During the life time of Hazrat Syed Shah Sabit Hussaini, the land was in occupation of the petitioner-M.A.Raheem through his father late Mohd. Abdul Kareem.

After the demise of the successor of Hazrat Syed Shah Sabit Hussaini one of his son by name Syed Shah Qutbuddin Hussaini is said to have executing a lease deed in favour of the petitioner, who is in possession of Ac.10.26 guntas of land. While so, a dispute was raised by one of the successor, Syed Fareeduddin Hussaini against the petitioner and the 3rd respondent herein. They were dispossessed forcibly by Syed Fareeduddin Hussaini, forcing the 3rd respondent and the petitioner herein to make an application before the Tahsildar, Hyderabad East, under Section 32(1) of Hyderabad Tenancy and Agricultural Lands Act, 1950 against Qutbuddin Hussaini and Fareeduddin Hussaini. It is stated that after a detailed enquiry, the Thasildar delivered possession vide order dated 26.09.1964. The matter was carried in appeal before the Joint Collector and the same was dismissed. Against which, a civil revision petition was preferred before this Court, wherein this Court held that the tenant has a right to recover the possession, thereafter, the physical possession of the petitioner was not disturbed. When the matter was carried against grant of protected tenancy certificate, the same was rejected by the Assistant Collector, which was also confirmed by the Joint Collector.

6. C.R.P.No.2322 of 1980 came to be preferred before this Court wherein this Court while setting aside the order of Assistant Collector and also the Joint Collector, remanded the matter back to RDO permitting the petitioner herein to adduce evidence along with the 3rd respondent. Incidental civil proceedings were also initiated. The RDO took up the case vide file No.B/8504 of 1980 and after conducting a detailed enquiry, passed an order on 15.11.2002, rejecting the claim of the writ petitioner and declaring that the 3rd respondent as a protected tenant. Against the said order, the petitioner preferred an appeal before

the Joint Collector, which was dismissed on 28.02.2016 confirming the orders of the RDO.

7. It is said that while the matter was pending before the RDO and in view of the dispute raised by one Pratap Reddy, a suit in O.S.No.48 of 1967 was filed before the Munsiff Magistrate, Hyderabad East and North, Hyderabad District by the petitioners, which was however dismissed. Challenging the same, A.S.No.111 of 1974 was filed, which was allowed on 22.08.1980. In the Second Appeal No.108 of 1978, this Court remanded the matter back to be disposed of, after considering the entire evidence.

8. The averments in the affidavit refers to filing of O.S.No.625 of 1992 by the 3rd respondent and also filing of O.S.No.36 of 1996 by the petitioner. The record also refers to filing of O.S.No.143 of 2003 on the file of Principal Junior Civil Judge, Hyderabad East and North by the petitioner wherein injunction was said to have been granted, against which C.M.A.No.128 of 2003 came to be filed before the Court of III Additional District and Sessions Judge, Ranga Reddy District, who confirmed the order of injunction **granted** in favour of the petitioner. In I.A.No.315 of 2003 in O.S.No.143 of 2003, it was held that until the Joint Collector restores possession of the suit property in favour of the 3rd respondent herein, the possession shall not be disturbed. As stated earlier, the tenancy appeal preferred by the petitioner before the Joint Collector was rejected on 28.01.2006.

9. During pendency of the appeal before the Joint Collector, the petitioner filed an application stating that the subject lands are Inam lands and accordingly sought for grant of ORC. It is stated that the Inam Tribunal granted ORC to the extent of half area in favour of the petitioner herein. Against the orders of the Inams Tribunal, the 3rd respondent herein preferred an appeal before the 1st respondent-Joint Collector,

which was disposed of on 30.06.2007 vide proceedings No.F1/7880 of 2003, directing the parties to approach the civil Court and get their rights to adjudicate. Challenging the same, the present writ petitions are filed.

10. Counters came to be filed disputing the averments made in support of the writ petitions. It is urged that the petitioner being unsuccessful to claim the land as protected tenant, approached the Inams Tribunal claiming to be the Inamdar, which was not his case at any point of time. It is stated that since the claim of the 3rd respondent is that he is protected tenant, he will not come under any of the classifications of Sections 4 to 8 of the Inams Abolition Act. It is further stated that since the 3rd respondent is declared as a protected tenant and is in possession of the subject land, the question of granting ORC to the extent of half share in favour of the petitioner is incorrect and bad in law.

11. It is further stated by the learned Senior Counsel appearing for the 3rd respondent that the Joint Collector being appellate authority could not have directed the parties to approach the civil Court since he being a statutory appellate authority should have decided the matter on merits instead of referring the matter to civil Court. It is his case that the civil Court has no jurisdiction to decide the matter since the statute itself prescribe a mode to deal with the matter.

12. The implead petitioners filed their counter claiming themselves to be the legal heirs of Syed Shah Sabir Hussaini, who is said to be the original owner. It is their case that the common ancestors of respondents 14 to 34 viz. Syed Mohammed Asghar Hussaini was pattadar of agricultural land admeasuring Ac.402.20 guntas comprised in Survey Nos.250 to 265, 267, 272 to 279, 281, 293 to 295, 322, 323, 325 to 328 and 346, including the subject lands in the writ petition, having purchased the same under a registered sale deed. Subsequently,

the said land was transferred in the name of his son viz Syed Shah Mohammed Saber Hussaini by way of gift vide document bearing No.1244, dated 2nd Dai, 1338 Fasli (27.07.1928). Since then Sabir Hussain has been in possession and enjoyment of the land and after his death, these respondents, who are the legal heirs, are in possession of the property. It is stated that against the grant of ORC, in respect of the land in Survey No.250 to 260, these respondents have preferred W.P.No.1441 of 2004, which was disposed of at the admission stage giving liberty to the petitioners to approach the Joint Collector by way of an appeal under Section 24 of the Inams Abolition Act. When an appeal was preferred before the Joint Collector under Section 24 of the Act, the same was dismissed on the ground that the appeal was not filed within time. Aggrieved by the same, W.P.No.7142 of 2007 was filed, which was also dismissed. Thereafter, these respondents preferred W.A.No.24 of 2008, which was allowed vide judgment dated 08.12.2008, setting aside the order of the Joint Collector.

13. Aggrieved by the orders passed in W.A.No.24 of 2008, the matter was carried in appeal before the Apex Court in S.L.P.No.(Civil) C.C.No.131 of 2010, which was dismissed on 11.01.2010, on the ground of delay. Thereafter, the Joint Collector took the case on file, clubbed all the appeals together conducted enquiry and allowed the appeals whereunder the grant of ORC was set aside, and matter was remanded back to the 2nd respondent-RDO, with a direction to conduct denovo enquiry and dispose of the case afresh after serving notice on all concerned.

14. Having regard to the above, learned Senior Counsel appearing for the respondents/implead parties, would submit that since the issue involved herein is identical to one, which was remanded back to the RDO it would be appropriate if the same is also sent back to the RDO to

conduct an enquiry along with other cases, which are subject matter of dispute in these writ petitions.

15. On the other hand, learned Senior Counsel would submit that it would be appropriate to remand the matter to the appellate authority. But, it is to be noted without giving any notice to the 3rd respondent or to the interested persons, the imams Tribunal is said to have passed the order granting ORC certificate to the extent of half area in favour of the petitioner. Therefore, it was pleaded an opportunity shall be given to the 3rd respondent or to the legal heirs of the 3rd respondent to adduce evidence with regard to their rights before the primary authority.

16. Having regard to the contentions advanced by the learned counsel, the matter need to be remanded back. Accordingly, that orders under challenge are set aside and the matters are remanded back to the Inams Tribunal (primary authority) to deal with the same and pass appropriate orders in accordance with law after giving opportunity to all the parties, to adduce fresh evidence, if required and decide the same, as early as possible, preferably, within a period of three to six months. However, having regard to the facts and circumstances of the case, *status quo* obtained as on today in all respects shall be maintained by both parties till the matters are decided by the Revenue Divisional Officer or till appropriate interim orders, if any, are passed by RDO.

17. With the above directions, both the writ petitions are disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the petition, shall stand closed.

C. PRAVEEN KUMAR,J

Date: 21.08.2017
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