

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.25437 OF 2007

ORDER:

This Writ Petition is filed challenging the order of the first respondent in G.O.Ms.No.28, Social Welfare (LTR.2) Department, dated 09.05.2007, dispossessing the petitioners from the lands in an extent of Ac.53-00 cents in Sub-division Nos.3/3, 6/2, 7/1, 8/1, 8/3, 4/3, 6/3, 7/3, 8/1, 9/1, 9/2, 9/3, 10/3, 12 and 3/2 part of Katchuluru Village, R.Chodavaram Mandal, East Godavari District.

2. It is the case of the petitioners that originally the subject lands belong to them and they have been in possession and enjoyment of the same from their forefathers since 1904. The subject lands were part of Veeravaram-B-Jameen Estate which is joint property under the possession and enjoyment of landholder K.Peeraju and his shareholder N.Neeladri Raju between 1904-1949. The said shareholders obtained a partition decree dated 04.02.1948 in O.S.No.67 of 1947 on the file of the Court of Additional Subordinate Judge, Rajahmundry. The then Agent to the Government, East Godavari District, authorized the Sub-Collector, Rajahmundry under Section 54 of CPC by giving prior permission to effect the partition of said estate lands. By order dated 04.02.1949, the said estate was divided into two shares as per the compromise partition dated 09.08.1948. The pattas so far assigned by the landholders for their respective shares were recognized and the share of K.Peeraju was formed the Manthura Estate Lands. Subsequently, K.Peeraju put his wife Smt.K.Mahalakshamma in

possession of the said pattas in the said estate and she continued to be in possession of the said lands. While so, in the year 1965, the father of the first petitioner along with his six brothers jointly purchased the subject lands under a registered sale deed dated 31.08.1965. It is the specific case of the petitioners that their sale transaction would not hit by the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short, Regulation 1 of 1959) as amended by Regulation I of 1970 (for short, Regulation 1 to 1970).

3. Subsequently, the father of the first petitioner and his six brothers approached the Settlement Officer, Rajahmundry, for grant of ryothwari pattas. While the Settlement Officer was conducting enquiry, Neram Challayya and others approached him and claimed that the subject lands belong to them. The Settlement Officer, after enquiry, by order dated 30.06.1978 allowed the claim of father of the first petitioner and his brothers and rejected the claim of Neram Challayya and others. The said order was carried in appeal before the Commissioner of Survey and Settlement, who by order dated 20.09.1983, dismissed the same. In the meantime, Neram Challayya and others filed LTR.PI.Nos.365/1976 and batch before the Deputy Collector (Tribal Welfare), East Godavari District at Kakinada under the provisions of the Regulation 1 of 1959 and the Deputy Collector, by order dated 17.04.1979, directed the Special Deputy Tahsildar, Tribal Welfare, to put the subject lands in possession of Neram Challayya and others by removing any other person in occupation of the same. Pursuant to the said

order, the father of the first petitioner and others were evicted from the subject lands. Challenging the said order, the father of the first petitioner and others filed CMA.Nos.65 to 72 and 125 to 131 of 1979 before the Agent to Government, East Godavari District at Kakinada, who dismissed the same by order dated 20.04.1981. Challenging the same, a revision was preferred before the first respondent on 18.07.1996. In the meantime, Neram Challayya and others filed an appeal before the Director of Settlements, Hyderabad, as against the order of the Commissioner of Survey and Settlement dated 20.09.1983. The Director of Settlements, Hyderabad, by order dated 21.11.1981, dismissed the said appeal. Aggrieved by the same, Neram Challayya and others filed W.P.No.12257 of 1984 and this Court, by order dated 08.10.1986, dismissed the same. Aggrieved by the same, they filed W.A.No.133 of 1987 and a Division Bench of this Court, by order dated 02.04.1993, remanded the matter to the Government with a direction that if the claim of the father of the first petitioner and his brothers that the transfer of subject lands is not hit by Section 3 of Regulation 1 of 1959 and they are entitled to grant of patta, consider the same along with their revision petition pending before it. Pursuant to the same, the Government vide G.O.Ms.No.28, Social Welfare (LTR.2) Department, dated 09.05.2007, dismissed the revision filed by the father of the first petitioner and his brothers and confirmed the order of the Agent to the Government dated 20.04.1981.

4. Respondent No.4 filed a counter-affidavit stating that grant of pattas for the lands in the agency areas is hit by Section 3 of the Regulation 1 of 1959 and that the Ryotwari Patta under Section 11 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948, can only be granted by the Government, but in the instant case, the Settlement Officer granted the same in favour of the petitioners and hence the Government set aside the Ryotwari pattas and also the subsequent orders of the Director of Settlements and Commissioner of Settlements and Land Records dated 21.11.1981 and 20.09.1983 respectively, and sought to dismiss the Writ Petition.

5. During the pendency of the Writ Petition, respondent Nos.5 and 6 filed WPMP.No.55599 of 2015 seeking to implead them as parties to the Writ Petition and this Court, by order dated 16.02.2016, allowed the same. They filed counter-affidavit stating that the transfer of subject lands to the petitioners is hit under the provisions of the Act of 1917 and the Regulation 1 of 1970 and that either the zamindar or his family members were never in possession of the subject lands or cultivated the same. They further stated that as the petitioners failed to adduce evidence to show that the transfer is not hit by Section 3 of the Regulation 1 of 1959, the Government disallowed the claim of the petitioners and passed the impugned order and sought to dismiss the Writ Petition.

6. Sri K.V.N.Bhoopal, learned counsel for the petitioners, argued that the transfer of the subject lands in favour of the predecessors

of the petitioners is not hit by the provisions of Section 3(1)(a) of the Regulation 1 of 1970 as they were put in possession of the subject lands pursuant to the sale deed dated 31.08.1965 and the Regulation 1 of 1970 came into force with effect from 03.02.1970. As the sale transaction took place before the Regulation 1 of 1970 came into force and as it has only prospective effect, the transfer is legal and valid. He further submitted that the Settlement Officer or the appellate authority, the Director of Settlements, is obligated to record a satisfaction that the claim for ryotwari patta is not void under any law applicable to the scheduled areas and hence granting of patta by the Settlement Officer in favour of the petitioners is valid. He further submitted that the order of the first respondent dated 09.05.2007 rejecting the petitioners' revision petition is contrary to the order of the Division Bench of this Court dated 02.04.1993 in W.A.No.133 of 1987 and hence sought to set aside the same. He relied upon a decision of this Court in **Javvadi Samba Murthy Vs. Agent to the Govt.**¹ and also an unreported judgment of this Court in W.P.No.1005 of 1994 dated 13.06.2003.

7. Learned Government Pleader for Social Welfare (Andhra Pradesh) submitted that subject lands belong to the Tribunals and the transfer made in favour of the petitioners hit by provisions of the Regulation 1 of 1959. He further submitted that the impugned order dated 09.05.2007 is a well considered one and sought to dismiss the Writ Petition.

¹ 1983 (2) (HC) 96

8. Sri Badana Bhaskar Rao, learned Senior Counsel appearing for Sri Simhachalam Barapa Reddy, learned counsel for respondent Nos.5 and 6, submitted that when Smt.K.Mahalakshamma, the very vendor of the petitioners, had no title over the subject lands, transferring the same in the favour of the petitioners does not arise. Therefore, the sale in the year 1965 squarely falls within 'transfer of immovable property' as defined in the Andhra Pradesh Tracts Interest and Land Transfer Act, 1917 (for short, Act of 1917) and the Regulation I of 1959. He further submitted that the petitioners have not approached this Court with clean hands and that the writ petition is liable to be dismissed for non-joinder of necessary parties.

9. Insofar as the contention of the learned Senior Counsel for respondent Nos.5 and 6 that the petitioners have approached this Court with unclean hands is concerned, he could not establish the same and coupled with the other ground of non-joinder of proper parties by the petitioners. In this regard, he relied upon the decisions of the Apex Court in **J.S.Yadav Vs. State of U.P²** and **Poonam Vs. State of U.P³**. In the aforesaid judgments, it has been categorically held that adverse orders cannot be passed against a person who is not a party and the same are violative of principles of natural justice. In the present case, respondent Nos.5 and 6 were impleaded by an order of this Court. Therefore, the citations relied upon by the learned counsel for respondent Nos.5 and 6 on this issue are not applicable to the present facts of the case.

² (2011) 6 SCC 570

³ (2016) 2 SCC 779

10. With regard to the contention that when the very vendor of the petitioners i.e., Smt.K.Mahalakshamma had no title, transferring subject lands in favour of the petitioners is not valid under law is concerned, in pursuance of the Memorandum No.1982/J1/77-1, dated 16.01.1978, of the Government delegating the power to cause enquiry and grant pattas in favour of the eligible persons, the Settlement Officer has granted pattas to the vendor of the petitioners, as she accrued title from her husband, the original owner. In the light of the above, the argument of the learned counsel for respondent Nos.5 and 6 that since the vendor of the petitioners had no pattas, she cannot execute the sale deed in favour of the petitioners, is negatived. The effect of word 'transfer' as defined under the Regulation 1 of 1959 would have no bearing on the present facts of the case, as the said transfer is between the non-tribals and the subject lands are under the category of estate. Hence, transfer of estate lands between the non-tribals does not hit by the provisions of the Regulation 1 of 1970. Moreover the transfer is made by way of a registered sale deed dated 31.08.1965 i.e., prior to coming into force of Regulation 1 of 1970.

11. On the point of transfer of tribal lands, learned Senior Counsel for respondent Nos.5 and 6 relied upon the decisions of this Court in **Gadde Nagabushanamma Vs. Government of A.P⁴, Kantheti Rama Krishna Vs. Agent to Government, East Godavari⁵** and **V.V.Venkata Raju Vs. Spl. Dy.Tahsildar, Tribal**

⁴ 1999 (5) ALD 430

⁵ 2007 (6) ALD 69

Welfare, Gangavaram (V&M)⁶. In the light of the aforestated facts, these judgments are not applicable to the facts of the present case, as the transfer of the immovable property is between the non-tribals and the subject lands are estate lands as stated from the flow of title, which is not disputed. Moreover, Respondent Nos.5 and 6 did not state anything in their counter or filed any evidence to show that they are in possession of subject lands with specific boundaries. Once a person is in possession of the lands, he shall specify the extent, their boundaries and survey numbers and also the crop and the yield deriving therefrom, if the lands are agricultural lands. Nothing has been stated in this regard by respondent Nos.5 and 6 and hence it cannot be said that they are in possession of the subject lands by cultivating the same. Respondent Nos.5 and 6, taking advantage of the provisions of the Regulation 1 of 1959, on the point of dispossession of tribals by non-tribals, are claiming the subject lands. In this regard, learned Senior Counsel relied upon a decision of this Court in **M.Suresh Bhargava Vs. State of A.P.**⁷. The facts of the said case are distinguishable to the facts of the present case and hence the said judgment is not applicable to the present case and the disputed question of fact that who is in possession of the subject lands cannot be gone into under Article 226 of the Constitution of India. Moreover, when the tribals have not established their right over the subject lands, the question of claiming right upon them cannot be appreciated.

⁶ 2007 (6) ALD 292

⁷ 1989 (2) ALT 516

12. Insofar as the direction in the order dated 02.04.1993 in W.A.No.133 of 1987 is concerned, the Division Bench of this Court did not give any conclusive finding and it has left open the issue before the revisional authority to decide the same. It was not brought to the notice of the Division Bench regarding the delegation of powers on the Settlement Officer of passing orders to grant pattas vide Memorandum No.1982/J1/77-1, dated 16.01.1978. Insofar as the issue of filing of representation before the Government in the year 1996 by the petitioners is concerned, the Government having treated the representation as the revision proceeded with the case and dismissed the same, challenging which the present writ petition is filed.

13. For the first time, Sri Badana Bhaskar Rao, the learned Senior Counsel, has advanced argument that as on the date of disposal of the Writ Appeal, no revision was pending and that the so called revision was only a representation filed in the year 1996, after disposal of the Writ Appeal in the year 1993. It is not for this Court to go into the issue as to what transpired before the Division Bench of this Court and why the counsel has represented that the revision is pending and why other side counsel did not object for the same. If the contention of the learned Senior Counsel appearing for respondent Nos.5 and 6 that the representation is not a revision and that the orders passed on the representation cannot be entertained is accepted, this Court is left with no option, but to set aside the said order, as the revision is not maintainable before the Government and the representation which is termed as revision

has to be rejected. The learned Senior Counsel appearing for respondent Nos.5 and 6 submitted that representation filed before the Government though not in accordance with law can be treated as revision. This argument cannot be appreciated. Admittedly the order in revision is in favour of respondent Nos.5 and 6 herein. If it is to be held that the proceedings before the authority are incorrect, obviously it is to the effect of giving a go-by to the result of the same holding the entire proceedings as illegal.

14. The petitioners, to show how they derived the title, has narrated as follows.

1827: The Gutala Estate was sold by Rajah of Nuzvid to Sri Manyam China Kanakayya.

1853: Sale of Dandangi, Veeravarma and Toyyeru referring as Dandangi Estate, by Manyam cousins to Sri Dasari Tammayya, Sri Sadireddy Appanna and Sri Nallapa Raju Venkata Neeladri Raju.

In a subsequent legal petition, Veeravaram Estate fell into the share of Sri Venkata Neeladri Raju.

1889: Sri Venkata Neeladri Raju sold a portion of Veeravaram Estate to Maharaja of Pithapuram, which was named as Veeravaram Estate (A).

The other part retained by Sri Neeladri Raju was known as Veeravaram Estate (B) which was also called as Toyyeru Estate and this consisting of Toyyeru, Manthuru, Madipalli and other hamlets.

1904: Half share of Veeravaram Estate (B) belonging to Neeladri Raju was mortgaged by him to Sri K.Perraju Pantulu of Kakinada (Grandfather of Capt.K.Perraju).

1921: Suit filed by K.Perraju for recovery of money against Neeladri Raju. This case went upto Privy Council and Capt.Perraju has succeeded in the said suit.

Appeal 4 of 1954 was preferred against the above decree before the Agent to the Government, Kakinada. In the course of said suits and appeals, the validity of pattas

issued by Perraju in favour of his wife viz., K.Mahalaxmamma was considered and decided in her favour.

1954 to 1964: K.Mahalaxmamma leased out her lands of Katchuluru (now in dispute) to Sathi Gani Reddy, Sathi Venkata Reddy of Palugurtha, Machavaram, Rampachodavaram Taluk, East Godavari District.

1965: The said lands of Katchuluru leased out by K.Mahalaxmamma in favour of Sunkavalli and his 6 brothers (now petitioners).

01.09.1965: The landholder K.Maha,axmamma sold the said lands to Sunkavalli brothers through registered sale deed.”

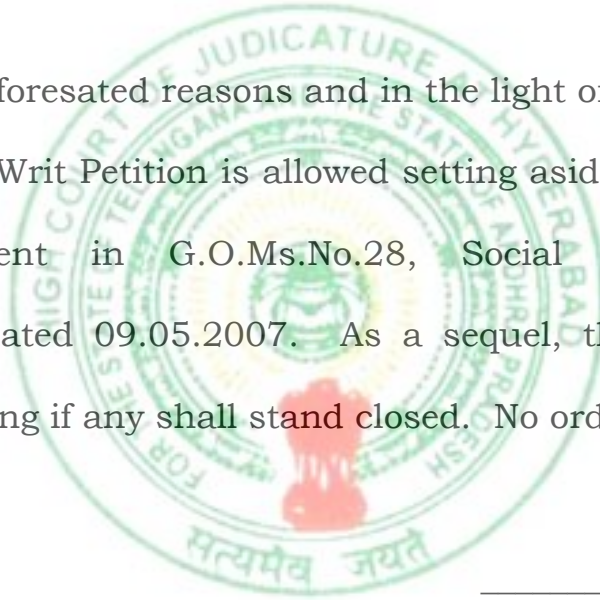
Respondent Nos.5 and 6 did not rebut the same except saying that their forefathers and they have been in possession of the land since 1904.

15. In **Javvadi Samba Murthy**'s case (1 supra), this Court held that once the patta is granted and it has become final, the authorities cannot reopen the same under the provisions of the Regulation 1 of 1959. This Court, in W.P.No.1005 of 1994, dated 13.06.2003, held that when once the order passed by the Director of Settlement granting patta in favour of a person has become final, in view of over riding effect given to the provisions of Regulation 2 of 1970 *qua* certain specified regulations and other extent of law, custom, usage or agreement or any other decree or order of a Court, Tribunal or any authority, the enquiry initiated under Regulation 1 of 1970 would become null and void and that the authority under Regulation 1 of 1959 cannot go into the validity or otherwise of the patta granted under Regulations 1 and 2 of 1970, which will nothing, but amounts to reopening of the matter by the

authorities which is not only illegal but also ultra vires and without jurisdiction.

16. Since the subject lands are estate lands which were already partitioned by virtue of order dated 09.08.1948 passed by the Court of Additional Subordinate Judge, Rajahmundry, in O.S.No.67 of 1947 and since the registered sale deed dated 31.08.1965 was executed by a non-tribal in favour of the petitioners much prior to the Regulation 1 of 1959 and Regulations 1 and 2 of 1970 came into force, which cannot have the retrospective effect, the transfer of lands does not hit by the said Regulations.

17. For the aforesated reasons and in the light of the law declared as above, this Writ Petition is allowed setting aside the order of the first respondent in G.O.Ms.No.28, Social Welfare (LTR.2) Department, dated 09.05.2007. As a sequel, the miscellaneous petitions pending if any shall stand closed. No order as to costs.



T.AMARNATH GOUD, J

Date: 26-12-2018
TJMR