

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.5818 OF 2007

ORDER:

The petitioner seeks a writ in the nature of Mandamus holding that the orders passed by the respondent No.1 in Case No.A4/LTRA/01/99, dated 31.01.2007 and common order passed by the respondent No.2 in Case Nos.TWA2/470/96, TWA2/472/96 and TWA2/473/96, dated 31.10.1998 is without jurisdiction and against the provisions of A.P. Schedule Area Land Transfer Regulation, 1959 (for short, 'A.P.S.A.L.T.R.,1959') r/w Regulation 1 of 1970 and the action of the respondent No.1 in directing respondent No.2 to take the land in Survey No.46 admeasuring Acres 12.23 Guntas situated in Gudihathnoor Village and Mandal in Adilabad District to the Government custody and to assign the said land to landless poor tribals is arbitrary, without jurisdiction and contrary to the provisions of Section 3(2) (a)&(b) of A.P.S.A.L.T.R., 1959 and also violative of Articles 14, 19, 21 and 300-A of the Constitution of India and consequently direct the respondent Nos.1 and 3 to restore the possession of the land to the petitioner.

2. The brief facts of the case are that the 2nd respondent initiated case Nos.TWA2/470/96, TWA2/472/96 and TWA2/473/96 on the basis of entries made in the Pahanies for the year 1995-96 wherein the name of the father of the

writ petitioner was shown as pattedar against Survey No.46 in an extent of Acres 12.23 Guntas situated in Gudihathnoor Village and Mandal, Adilabad District and the names of respondents 4 to 6 were shown as cultivators to different extents. The Primary Authority found that the property was in schedule village of Gudihathnoor Village and the transaction is in contravention of A.P.S.A.L.T.R., 1959 r/w Regulation 1 of 1970. During the course of enquiry, the father of the writ petitioner stated before the 2nd respondent that he has not sold the land, whereas, the respondents 4 to 6 stated that they are cultivating the land and not produced any document. However, on 22.03.1969, Pahanies for the year 1993-1994 and 1994-1995 were produced by the respondents 4 to 6. Again in the subsequent stage of enquiry, the respondents 4 to 6 took a different plea as if the land was purchased by 4th respondent for consideration of Rs.1,01,241/- on 22.03.1969 from the father of the writ petitioner and he has delivered possession of the land by receiving the sale consideration. The 4th respondent further stated that after purchase, he partitioned said land into three shares between himself and his two sons i.e., respondents 5 and 6 and thus, they have been cultivating their individual extents. The 2nd respondent perused the Pahanies produced by respondents 4 to 6 which related to 1992-1993, 1994-1995, showing that the respondents 4 to 6 were cultivating the lands from the year 1993-1994. However, the

2nd respondent observed that no other records were produced by them to show that they have been in possession prior to 1969. Therefore, the 2nd respondent did not believe the submission of respondents 4 to 6 that they have purchased the land from the father of the writ petitioner on 22.03.1969 i.e., prior to the Regulation 1 of 1970. Hence, it observed that the so-called sale deed was a nominal one and not worthy to consider the claim of respondents 4 to 6. Ultimately, the 2nd respondent held that the transaction was a clear contravention of Section 3(1) of A.P.S.A.L.T.R., 1959 r/w Regulation 1 of 1970. The 2nd respondent further held that the parties are non-tribals. Thus, ultimately, it was observed that the land in Survey No.46 admeasuring an extent of Acres 12.23 Guntas shall be restored to the Government custody.

3. Aggrieved by the said order, the respondents 4 to 6 in the writ petition have filed an appeal in case No.A4/LTRA/01/99 before the 1st respondent. The father of the writ petitioner was shown as 1st respondent in the said appeal. During the pendency of the appeal, the 1st respondent died and his son who is the present writ petitioner was *suo motu* added as his L.R. The appellate authority observed that the appellants only produced pahanies for the year 1993-1994 onwards, wherein, their names were recorded as enjoyers for the year 1993-1994, which would clearly show that the appellants made a

transaction with the 1st respondent and obtained possession of the schedule land in the year 1993-1994 i.e., after 03.02.1970 and therefore, the transaction was in contravention of the A.P.S.A.L.T.R., 1959 and its amended Regulation 1 of 1970. Thus the appellate authority confirmed the order of the primary authority.

Hence, the instant writ petition by the writ petitioner.

4. Heard arguments of both sides.

5. The submission of the learned counsel for petitioner is that though the primary authority and appellate authority were right in ordering eviction of the respondents 4 to 6 in the writ petition on the ground that they have not shown any documents that they have purchased land prior to 1970, but, the further order resuming the land to the Government is not correct as the authorities ought to have restored the land to the writ petitioner's father as he was admittedly, the pattedar of the disputed land. Learned counsel, in order to prove the title and possession of the petitioner's father prior to 1970, sought to produce certain cultivation adangals.

6. At this juncture, learned Government Pleader for Social Welfare objected the genuineness of the documents. On that the petitioner's counsel requested the Court to remand the matter to the primary authority so as to examine the veracity of the documents sought to be produced by the petitioner herein.

7. In view of the above submission of the counsel for both parties, the matter is remanded to the 2nd respondent for considering the aspect, under law, as to whether the disputed land could be ordered to be returned to the writ petitioner instead of directing the same to be resumed to the Government. The 2nd respondent shall conduct an enquiry in this regard and both parties are at liberty to produce the documents before the said authority, which shall be taken into consideration by the 2nd respondent for passing the order. The entire exercise shall be completed and an order on merits shall be passed by the 2nd respondent within three months from the date of receipt of copy of this order.

8. Accordingly, the writ petition is disposed of with the above direction.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

U.DURGA PRASAD RAO, J

31.08.2018

*Note: issue C.C. in one week.
B/o.SS*