

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25415 OF 2007

ORDER:

This writ petition is filed questioning the impugned order dated 28.07.2007 passed by the first respondent in C.M.A.No.80 of 2003 and action of the second respondent in trying to evict the petitioners from the agricultural land admeasuring Ac.2.12 gts. situated in Survey No.37 of Sangam Village of Paloncha Mandal, Khammam District, as arbitrary, illegal and violative of principles of natural justice and deprivation of right to life and liberty.

2. The brief facts of the case are that originally the petitioners' father late Sesham Venkata Gopala Charyulu was the pattadar and possessor of the agricultural land admeasuring Ac.3.19 gts. in Survey No.37 of Sangam Village, Paloncha Mandal, Khammam District, apart from other agricultural lands. The lands are the ancestral/joint family properties. The third respondent is the natural brother of the petitioners and he filed a suit in O.S.No.201 of 1989 on the file of the learned Senior Civil Judge's Court at Kothagudem against the petitioners and Sri S.V.Gopala Charyulu – father of the petitioners and third respondent, for partition and separate possession of their joint family properties including the land in Survey No.37 of Sangam Village. One Gangula Venkata Narasimha Reddy filed implead petition in the said

suit claiming interest in some portion of the land. The sister of the petitioners by name Smt. V.Seeta Mahalaxmi was also added as one of the defendants in the said partition suit after the death of their father being one of the legal heirs. On 08.11.1990, the learned Senior Civil Judge, Kothagudem appointed a Receiver in I.A.No.1295 of 1989 in respect of the suit schedule properties including the land in Survey No.37 of Sangam Village. Accordingly, the Receiver took possession of the suit schedule properties cited in O.S.No.201 of 1989. On 03.12.1997, a compromise decree was passed in O.S.No.201 of 1989 dividing the suit schedule properties between the petitioners and the third respondent. A copy of the compromise decree was filed as Ex.P.1. As per the terms of the compromise, the third respondent got land of an extent of Ac.1.07 gts., first petitioner got Ac.1.06 gts. and the second petitioner got Ac.1.06 gts. in Survey No.37 of Sangam Village. In view of the orders in E.P.No.2 of 1998 in O.S.No.201 of 1989, the Court Bailiff delivered possession of the suit schedule properties in O.S.No.201 of 1989 on 31.01.1998 as per the terms of compromise decree dated 02.12.1997 and the same is filed as Ex.P.2. When one Gangula Satyanarayana Reddy – father of the 4th respondent tried to interfere with the possession of the petitioners and the third respondent in respect of the land in Survey No.37 of Sangam Village, they filed a suit in O.S.No.509 of 1998 on the file of the learned Principal Junior Civil Judge at Kothagudem for

perpetual injunction restraining the said Gangula Satyanarayana Reddy, his men and all others claiming through him from interfering with their peaceful possession and enjoyment. The said suit was decreed on 19.11.2001 in favour of the petitioners and the third respondent and the copy of the decree is filed as Ex.P.3. The said Satyanarayana Reddy also filed a suit in O.S.No.825 of 1999 for declaration of title and recovery of possession in respect of the land admeasuring Ac.3.19 gts. in Survey No.37 of Sangam Village and the said suit was dismissed on 16.12.2003, and the same is filed as Ex.P.4. In the said suit, Gangula Satyanarayana Reddy filed an unregistered document dated 10.03.1968, but the learned Principal Junior Civil Judge, Kothagudem disbelieved the said document. All the above suits became final. The petitioners and the third respondent are in possession and enjoyment of their respective shares in Survey No.37 of Sangam Village.

3. The Special Deputy Collector (Tribal Welfare), Bhadrachalam initiated proceedings under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short 'Regulation, 1959') vide LTR Case No.59/2001/PVC basing on the report of the Special Deputy Tahsildar (Tribal Welfare), Bhadrachalam dated 19.02.2001 in the name of the petitioners' deceased father late Sesham Venkata Gopala Charyulu, third respondent and sixth respondent against the respondents 4 and 5 herein in respect

of the agricultural land admeasuring Ac.3.19 gts. in Survey No.37 of Sangam Village. In the said proceedings, the second petitioner appeared before the Special Deputy Collector (Tribal Welfare), Bhadrachalam and put forth his contention that his father had expired and the land in Survey No.37 admeasuring Ac.3.19 gts. was their joint family property, and thereafter, it was partitioned as per the compromise decree dated 03.12.1997 passed in O.S.No.201 of 1989 and that the Court Bailiff delivered physical possession of the suit schedule property on 31.01.1998 as per the direction in E.P.No.2 of 1998 in O.S.No.201 of 1989. Thereafter, the Special Deputy Collector (Tribal Welfare), Bhadrachalam dropped the proceedings. However, the Special Deputy Collector (Tribal Welfare), Bhadrachalam, while dropping the proceedings, held that the father of the 4th respondent purchased the land in Survey No.37 admeasuring Ac.3.19 gts. under a sada sale deed dated 10.03.1968 from the petitioners and since then the father of the 4th respondent was in possession of the said property, and he in turn gave the said property to the 4th respondent towards Pasupukumkuma and since then, the 4th respondent has been in possession of the property, contrary to the court decrees. A copy of the order of the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.59/2001/PVC dated 20.07.2001 is filed as Ex.P.5. The third respondent filed C.M.A.No.80 of 2003 before the first respondent, the Additional Agent to the

Government, Bhadrachalam, Khammam District, against the proceedings of the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.59/2001/PVC, dated 20.07.2001, being aggrieved by the observations made regarding possession of the land while dropping the proceedings. On 28.07.2007, the first respondent passed an order directing the second respondent to take over the possession of the entire land in Survey No.37 admeasuring Ac.3.19 gts. of Sangam Village, Paloncha Mandal, Khammam District on irrelevant consideration of the matter. Basing on the orders of the first respondent dated 28.07.2007 passed in C.M.A.No.80 of 2003, the second respondent and his subordinates on 24.11.2007 came to the land in Survey No.37 of Sangam Village and tried to conduct the survey and when enquired, they were told that as per the instructions of the second respondent, they were coming to the land and demarcating the same to dispossess the petitioners and third respondent, as per the proceedings of the first respondent dated 28.07.2007 passed in C.M.A.No.80 of 2003. Against which, the present writ petition is came to be filed before this Court.

4. Sri Hari Sridhar, learned counsel for the petitioners would contend that the land admeasuring Ac.3.19 gts. situated in Survey No.37 of Sangam Village, Paloncha Mandal, Khammam District is the ancestral property/joint family property of the petitioners' father late Sesham Venkata

Gopala Charyulu who was the pattadar and possessor of the land. The third respondent filed a suit in O.S.No.201 of 1989 for partition before the learned Senior Civil Judge, Kothagudem and the same was compromised and the compromise decree was passed on 03.12.1997, thereby the petitioners and the third respondent were put in possession of their respective shares by the Bailiff as per the orders in E.P.No.2 of 1998 in O.S.No.201 of 1989 dated 31.01.1998. The Court Bailiff delivered physical possession of the suit schedule property in O.S.No.201 of 1989 on 31.01.1998 as per the compromise decree dated 03.12.1997 and the same is filed as Ex.P.2 herein. The Special Deputy Collector (Tribal Welfare), Bhadrachalam, basing on the report of the second respondent dated 19.02.2001, initiated the proceedings under the Regulation, 1959 vide LTR Case No.59/2001/PVC in respect of the land of an extent of Ac.3.19 gts. situated in Survey No.37 of Sangam Village. The second petitioner appeared before the Special Deputy Collector (Tribal Welfare), Bhadrachalam and submitted the detailed facts stated supra and on such representation, the Special Deputy Collector (Tribal Welfare), Bhadrachalam, dropped the proceedings. However, the third respondent herein preferred C.M.A.No.80 of 2003 before the first respondent against the observation of the Special Deputy Collector (Tribal Welfare) in LRT Case No.59/2001/PVC dated 20.07.2001, by holding that the father of the 4th respondent purchased land in Survey No.37

admeasuring Ac.3.19 gts. under sada sale deed dated 10.03.1968 from the petitioners and the father of the 4th respondent, and since then the father of the 4th respondent was in possession of the property and in turn the same was given to the 4th respondent towards Pasupukumkuma, and since then the 4th respondent has been in possession of the property contrary to the court decrees.

He further contended that the third respondent filed appeal under Section 3(3)(a) of the Regulation, 1959 before the first respondent against the orders of the Special Deputy Collector (Tribal Welfare), Paloncha dated 20.07.2001 in LTR Case No.54/2001/PVC that dropping of the proceedings under section 3(2) of the Regulation, 1959, itself is not maintainable. It is further contended that the petitioners are not the parties in the appeal and no notice was issued by the first respondent to the petitioners before passing the eviction order in C.M.A.No.80 of 2003. He further contended that the first respondent has no jurisdiction to pass suo motu eviction order in the appeal that has been filed against the observation made by the Special Deputy Collector (Tribal Welfare), Paloncha while dropping the proceedings. The first respondent has no suo motu power to revise the orders of the Special Deputy Collector (Tribal Welfare), Paloncha. It is settled proposition of law that the appellate Court cannot grant lesser relief than what was granted by the lower Court in the appeal. He placed reliance in the case of *Bhagubhai*

*Dhanabhai Khalasi and another Vs. State of Gujarat and others*¹. The appellant could not have been put in a worst condition than before the order appealed against. He further contended that the appeal is not maintainable against the findings as per Section 96 of the Code of Civil Procedure. In support of his contention, he relied on the judgment of the Division Bench of this Court passed in *Jadav Bin P.Patel (died) per L.R. and others represented by G.P.A. Holder Vs. G.Srinivasa Reddy (died) per L.Rs. and another*², wherein it is held that the appeal under Section 96 of C.P.C. questioning the findings is not maintainable.

5. Per contra, the learned Assistant Government Pleader while reiterating the averments of the first respondent held in C.M.A.No.80 of 2003, made his submissions to sustain the said order. However, he could not made any sustainable submission with regard to the observations made by the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.59/2001/PVC dated 20.07.2001 and the order passed by the first respondent – Additional Agent to the Government, Bhadrachalam, Khammam District in C.M.A.No.80 of 2003 dated 28.07.2007. Hence, the learned Assistant Government Pleader could not able to be pursued this Court to sustain the observations made in the impugned orders.

¹ (2007) 4 S.C.C. 241

² 2008(3) ALT 388 (D.B.)

6. For the reasons stated above and in the facts and circumstances of the case and in considered view of this Court, it is found that the observations of the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.59/2001/PVC dated 20.07.2001 that the father of the 4th respondent purchased the land in Survey No.37 admeasuring Ac.3.19 gts. under sada sale deed dated 10.03.1968 from the petitioners and since then the father of the 4th respondent was in possession of the said property and he in turn gave the said property to the 4th respondent towards Pasupukumkuma and the 4th respondent has been in possession of the property is contrary to the evidence available on record and uncalled for. The 1st respondent by order dated 28.07.2007, while dismissing the appeal in C.M.A.No.80 of 2003 filed under Section 3(3) of the Regulation, 1959, erroneously directed the 2nd respondent to take over the possession of the suit schedule land into Government custody and assign it to the eligible tribals as per rules in force, which is contrary to the evidence available on record and judgments and decrees passed in O.S.No.201 of 1989, O.S.No.509 of 1998 and O.S.No.825 of 1999. The petitioners and the third respondent were put in possession of the scheduled land as per the proceedings in E.P.No.2 of 1998 in O.S.No.201 of 1989 and they have been in continuous peaceful possession of the land. The appeal in C.M.A.No.80 of 2003 itself it is not maintainable against the

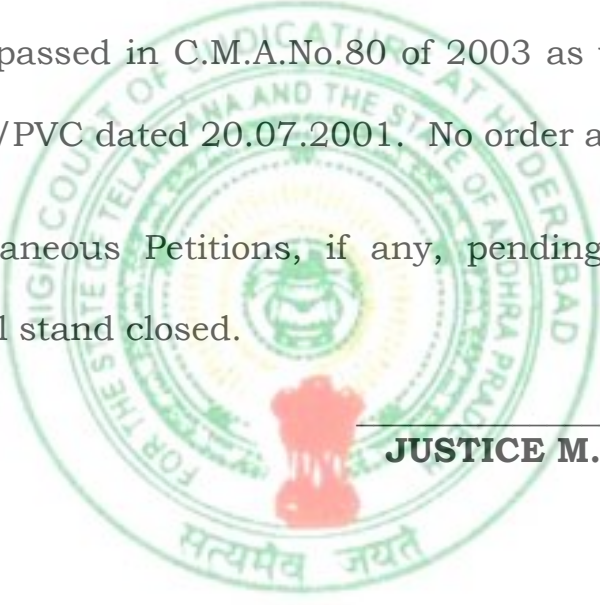
observations of the Special Deputy Collector (Tribal Welfare), Bhadrachalam as per Section 96 of C.P.C. as no appeal lies against the findings of the lower authority as held by the Division Bench of this Court in *Jadav Bin P. Patel (died)*'s case (2 supra). The petitioners who are in possession of the land were not given any notice before passing of the award under appeal evicting the petitioners from the land. Then, the petitioners could not be deprived of their property vested in them under Article 300-A of the Constitution of India without due process of law. The first respondent ought not to have made an observation that the petitioners shall be evicted from the land which is beyond the scope of the appeal itself. The appellants thus could not have been placed in worst position than before impugned order as held by the Hon'ble Supreme Court in *Bhagubhai Dhanabhai Khalasi's case* (1 supra).

7. When the initiation of proceedings under Section 3(3)(a) of the Regulation, 1959 while dropping the proceedings by the Special Deputy Collector (Tribal Welfare), Bhadrachalam and appeal before the first respondent – Additional Agent to the Government in C.M.A.No.80 of 2003, itself is bad in law and contrary to the judgments and decrees in O.S.No.201 of 1989, O.S.No.509 of 1998 and O.S.No.825 of 1999, wherein it is specifically held that the petitioners and the third respondent were put in possession of the land by the Court Bailiff as per the orders in E.P.No.2 of 1998 in O.S.No.201 of 1989. When

there is no rhyme or reason to hold that the petitioners and the third respondent were not in possession of the said land. As the orders passed by the authorities in LTR Case No.59/2001/PVC dated 20.07.2001 and C.M.A.No.80 of 2003 dated 28.07.2007 are bad in law and contrary to the provisions of Regulation, 1959. Hence, the impugned proceedings are liable to be set aside.

8. Accordingly, for the reasons stated above, the writ petition is allowed, setting aside the impugned order dated 28.07.2007 passed in C.M.A.No.80 of 2003 as well LTR Case No.59/2001/PVC dated 20.07.2001. No order as to costs.

9. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.



JUSTICE M.GANGA RAO

15-06-2018
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