

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.25664 of 2016

ORDER:

In this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek a writ of *mandamus*, declaring the order, dated 08.02.2016, in S.R.No.205 of 2015 of the 3rd respondent-The Special Deputy Collector, Tribal Welfare, K.R.Puram, West Godavari District, as illegal, arbitrary and violative of the principles of natural justice, the provisions of Regulation 1/59 as amended by Regulation 1/70 and Articles 14 & 21 of the Constitution of India. A consequential relief to set aside the said order is also sought.

2. I have heard the submissions of *Sri Ghanta Sridhar*, learned counsel representing *Sri V.V.N.Narasimham*, learned counsel appearing for the writ petitioners; of the learned Government Pleader for Social Welfare (AP), appearing for the 1st respondent; of the learned Government Pleader for Revenue (AP) appearing for respondents 2, 3 & 4; and, of *Sri P.R.K.Amarendra Kumar*, learned counsel appearing for the respondents 5 & 6. I have perused the material record.

3. To begin with, it is to be noted that the Special Deputy Tahasildar, Jeelugumilli Mandal, filed before the 3rd respondent, a complaint under Section 3(2)(a) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation (Regulation No.1 of 1959) ['Regulation 1/59', for brevity] as amended by Regulation 1 of 1970, stating that the lands mentioned in the schedule of the complaint, viz., land of an extent of Ac.2.90 cents in R.S.no.55/ 1; and, ii) land of an extent of Ac.5.67 cents in Sy.no.55/ 2 (total extent of Ac.8.57 cents) are in possession and enjoyment of Pallela Ramulu and Pallela Venkateswararao, that is,

respondents 5 & 6 herein, who are non-tribals, and that their possession is in contravention of Sub-Section (1) of Section 3 of Regulation 1/ 59, as amended by Regulation 1/ 70, and requesting to take possession of the said lands after ejecting the said respondents from possession of the said lands after declaration that the transactions in favour of the said respondents are null and void as per the provisions of the said Regulations and to pass an order ordering assignment of the said lands to eligible landless poor tribals. The said complaint was assigned case no, SR no.205 of 2015. By orders, dated 08.02.2016, which are impugned in this writ petition, the 3rd respondent held that possession of the respondents 5 & 6 over the above said lands is not hit by Section 3(1) of Regulation 1/ 1959 as amended by Regulation 1/ 70 and accordingly, disallowed the claim in the complaint filed by the Special Deputy Tahasildar, Jeelugumilli. Aggrieved thereof, the petitioners herein filed the present writ petition.

4. The case of the writ petitioners, as stated in the affidavit of the 7th petitioner filed in support of the writ petition and the reply affidavit, in brief, is as follows:

The petitioners are Scheduled Tribes and they are residing in a schedule area, that is, Mulagalampalli village of Jeelugumilli Mandal, West Godavari District. They are landless poor persons of Scheduled Tribe community. The petitioners 1 to 6 and the father of the 7th petitioner, namely, Jinne Arjanna were assigned agricultural lands, viz., Ac.1.67 cents in Sy.no.55-2A, Ac.1.00 cents in Sy.no.55-2E, Ac.1.45 cents in Sy.no.55-1A, Ac.1.45 cents in Sy.no.55-1B, Ac.1.00 cents in Sy.no.55-2B, Ac.1.00 cents in Sy.no.55-2B, and Ac.1.00 cents in Sy.no.55-2C respectively of Mulagalampalli village, Jeelugumilli Mandal, by granting assignment 'D' Form pattas, *vide* proceedings in

Proc.no.11/ 98/ C, dated 03.01.1998, of the 4th respondent-Tahasildar, Jeelugumilli Mandal. On the death of the father of the 7th petitioner, he succeeded to the land assigned to his father being the sole legal representative. Since the date of assignment, the petitioners 1 to 6 and the father of the seventh petitioner were and are in possession of their respective assigned lands and enjoying the same till date of institution of the writ petition and are eking out their livelihood by being in enjoyment of the respective assigned lands. The revenue records also indicate such possession and enjoyment of the said assignees. A copy of the pahani for 1424 Fasli is filed by the petitioners. While so, the 6th respondent gifted an extent of Ac.0.50 cents in favour of APEPDCL for construction of sub-station for public purpose, *vide* document, dated 10.09.2014. The said gift was given on the persuasion of the officials and village elders. The said transaction also evidences the fact of possession and enjoyment of the petitioners over the assigned lands. While so, the respondents 5 & 6 came to the subject lands, on 28.07.2016, and attempted to interfere with the possession and enjoyment of the petitioners over the said lands by stating that they have got orders from the 3rd respondent and that the 3rd respondent declared them as owners of the said lands and that they are entitled to hold the property. They sought to make the claim as if they are in possession of the subject property. The petitioners resisted the interference sought to be caused by the respondents 5 & 6. Later, with the help of village elders the petitioners secured a copy of the impugned order and came to know that the whole process leading to passing of such an order is a stage drama and that the said order was obtained by misleading the authority to deprive the petitioners of their rightful enjoyment and possession over the subject lands. When the petitioners

1 to 6 and the father of the 7th petitioner were and are in possession since the date of assignment, the question of holding that the respondents 5 & 6 are in possession does not arise. Even prior to the assignment in favour of the petitioners 1 to 6 and the father of the 7th petitioner, there were proceedings initiated against the respondents 5 & 6 which ended against them. Under the Regulations, the Tribals are entitled to assignment of the subject lands. Suppressing the assignment in favour of the petitioners 1 to 6 and the father of the 7th petitioner and the fact of enjoyment of the assigned lands by them, the proceedings were initiated as if the respondents 5 & 6 are in possession and enjoyment of the subject property. Now taking advantage of such illegal impugned order, the respondents 5 & 6 are trying to trouble the petitioners. The assignments are borne out by revenue records. However, the 3rd respondent without issuing notices disposed of the aforesaid case and passed the impugned order in gross violation of the principles of natural justice. The tribals cannot be evicted from their respective assigned lands, particularly, in view of the provision of Regulation 1/ 59 as amended by Regulation 1/ 70. There is no provision for eviction of the petitioners, who are tribals from the subject lands. The order passed against the tribals is without jurisdiction and authority. Deprivation of the tribals of their livelihood and putting non-tribals in possession of the said lands after ejection of the tribes from the lands situate in a schedule area is nothing but an abuse of process of law. Hence, the writ petition is filed.

5. On 04.08.2016, this Court having admitted the writ petition granted interim direction as prayed for by the petitioners. Respondents 5 & 6 filed W.V.M.P.No.4431 of 2016 requesting this Court to vacate the

aforesaid interim order. Respondents 1 to 4 also filed W.V.M.P.no.4882 of 2016 to vacate the interim order, dated 04.08.2016.

6. At the hearing, a request is made that instead of the vacate stay petitions, the writ petition may be disposed of on its merit.

7. The case of the respondents 1 to 4 as stated in the counter affidavit filed by the 4th respondent and as per the submissions made before this Court, in brief, is this:

The schedule land is situated in Mulagalampalli village, which is a schedule area village of Jeelugumilli Mandal in West Godavari District. A notice was issued to the writ petitioners to produce the original 'D' form pattas said to have been granted to them during the year 1998 in respect of the schedule land. In response thereto, they attended before the Tahasildar, Jeelugumilli, and gave a statement to the effect that the then Tahasildar has given 'D' form pattas for the subject land about 20 years back, that is, in the year 1998, and that since then, they are in possession and are cultivating the said land and that later, they came to know that respondents 5 & 6, namely, Pallela Ramulu and Pallela Venkateswara Rao, have purchased the land from Koppula Paddayya. In the 'D' Form patta that was issued in the name of Jinne Arjun, the father of the 7th petitioner, the date was mentioned as '3.1.1998' in the first page; and, there is a correction in survey number in the second page; and, in the second page, the date at the signature of the Mandal Revenue Officer was mentioned as '03.07.1997'. There is no record available regarding sanction of 'D' form patta to the petitioners herein. The survey numbers 55/ 1 and 55/ 2 have not been sub divided as mentioned in the writ petition. Koppula Paddayya (Svayya) is pattadar and enjoyer of Sy.nos.55/ 1 & 55/ 2 of Mulagalampalli village as per the

online adangal of the village. The Special Deputy Tahasildar filed a complaint before the 3rd respondent-Special Deputy Collector, Tribal Welfare, Polavaram, stating that Pallela Ramulu and Pallela Venkateswara Rao, who are the 5th and 6th respondents in the writ petition, are in possession of the land in Sy.nos.55/ 1 and 55/ 2 in an extent of Ac.8.57 cents of Mulagalampalli village, in contravention of sub-section (1) of Section 3 of Regulation 1/ 59 as amended by Regulation 1/ 70 and requested to evict them from the land. The Special Deputy Collector enquired into the matter, examined the RSR of Mulagalampalli village and found that the land, that is, Sy.nos.55/ 1 and 55/ 2 has been registered in the name of Koppula Narayanaswamy and Koppula Paddayya, who are the non-tribals. Subsequently, Pallela Ramulu and Venkateswararao purchased the land from the family members of Koppula Paddayya and his sons through the possessory agreement, dated 21.04.1968. The recitals of the sale agreement show that the land was given possession to the respondents 5 & 6 under the possessory sale agreement. Subsequently, sale deed was registered, on 20.08.1977. The Special Deputy Collector, Tribal Welfare, Polavaram, gave a finding that the possession and enjoyment of the land is not hit by Section 3(1) of Regulation 1/ 59 as amended by Regulation 1/ 70 and disallowed the claim filed by the Special Deputy Tahasildar, Tribal Welfare. The writ petitioners are not parties to the case in S.R.No.205/ 2015; and, no notices have been sent to them by the Special Deputy Collector, Tribal Welfare, Polavaram. The writ petitioners have not filed any documentary evidence to prove that they are in possession and enjoyment of the land at the time of enquiry conducted by the Tahasildar, Jeelugumilli, and their contentions are not correct. The petitioners are trying to trespass into the lands in possession of the

respondents 5 & 6. They have not produced before the Tahasildar, the pattas said to have been issued in their favour. Even though notice was issued, they failed to produce before the Tahasildar, the 'D' form patta granted to them. Pallela Ramulu, the 5th respondent herein, earlier filed W.P.no.909 of 2003 before this Court earlier. This Court passed orders, on 15.07.2007, holding that it is always open to the 1st respondent (the then MRO) to file a complaint before the Special Deputy Collector (Tribal Welfare) having jurisdiction of the area under Section 3(2) of the A.P. Scheduled Areas Land Transfer Regulations, 1959, and that only after obtaining orders of ejectment, the petitioner therein can be evicted from the land and that without following the procedure, he cannot straightaway be asked to vacate the land. Accordingly, a complaint was filed by the Special Deputy Tahasildar, Tribal Welfare, before the Special Deputy Collector, Tribal Welfare, Polavaram, under the provisions of Regulation 1/ 59 as amended by Regulation 1/ 70. The Special Deputy Collector, Tribal Welfare, Polavaram, passed orders stating that the possession and enjoyment of the respondents 5 & 6 over the subject lands are not hit by the provisions of Regulation 1/ 59 as amended by Regulation 1/ 70. Therefore, the Court may be pleased to vacate the orders, dated 04.08.2016, passed in W.P.M.P.no.31719 of 2016.

7.1 The case of the non-official respondents 5 & 6 as stated in the counter affidavit and also the rejoinder, in brief, is as follows:

The respondents 5 & 6 have been in possession and enjoyment of the subject land for the last 50 years having purchased the lands by way of registered sale deeds from non-tribals, even prior to the Regulation 1/ 1970. The writ petitioners have no manner of right to question the possession of these respondents over the subject lands over which these

respondents have full rights, title and interest. The writ petitioners are trying to cause disturbance to the possession of these respondents under the guise of interim orders passed by this Court in W.P.M.P.no.31719 of 2016. The writ petitioners are not tribals. They belong to 'Nayakpodu' community, which is not a recognized community in the State of Andhra Pradesh. It is neither a ST nor a SC/BC or any other such community. Mulagalampalli village, Jeelugumilli Mandal, where the subject lands are situate, is in the West Godavari District in the State of Andhra Pradesh. The surname "Kambapu" of the 1st writ petitioner does not exist among the tribals anywhere in the State of Andhra Pradesh. The pattas that are being exhibited are fake and spurious and are created artificially with the help of one Malladi Soma Sekhar Rao, the son of Ex.Karanam of Mulagalampalli, who is an expert in creating fake documents with the aid of his knowledge over the village topography and revenue records. He was arrested in this connection by the CID, vide the case in Crime no.55/2002 of Jangareddygudem Police Station, for the offences punishable under Sections 420, 463, 465 & 468 IPC. Charge sheet was laid and a C.C.223 of 2006 was taken on the file of the Court of the learned II Additional Judicial First Class Magistrate, Eluru, West Godavari District. The said Malladi Soma Sekhar Rao is A1 amongst the 63 accused. Several revenue officials are also charge sheeted. Malladi Soma Sekhar Rao is also an accused in case in Crime no.9 of 2011 of Jeelugumilli Police Station, registered for the offences punishable under Sections 307 and 326 IPC read with Section 34 IPC, and case in Crime no.11 of 2011 of Buttaigudem Police Station registered for the offences punishable under Sections 307 and 326 IPC read with 34 IPC. The said crimes have been registered for making attempts on the life of his brother's son. He also created several fake judgments and title deeds in

favour of non tribals, as well as tribals; and, several other crimes are pending against him. The said Malladi Soma Sekhar Rao and the writ petitioners, who are hand in glove in this regard, belong to the same Mulagalampalli village. In fact, they are agricultural labourers. The said Malladi Soma Sekhar Rao is projecting them as Tribals in order to grab their lands. The writ petitioners are his victims. The Village Revenue Officer, Mulagalampalli, by name, Kunja Gangaraju and other revenue officers are also named as accused as they colluded with Malladi Soma Sekhar Rao in preparing the fake documents. The staff members of the Revenue Department of Jeelugumilli, Buttaigudem and Polavaram Mandals of West Godavari District are also assisting him in creating such documents. Against the impugned order, there is a statutory right of appeal to the Agent to the Government and against his orders, there is a statutory right of revision before the Government. However, without exhausting those remedies, the writ petitioners rushed to this Court. The allegations in the writ petition are misleading and the writ petition is devoid of merit. Hence, the writ petition may be disposed of remanding the matter to the Special Deputy Collector, Tribal Welfare, Polavaram, for arriving at a decision afresh, and passing orders afresh after giving an opportunity of hearing to all the parties connected with S.R.No.205/ 2015, and vacate the interim order, dated 04.08.2016, in W.P.M.P.no.31719 of 2016 in W.P.no.25664 of 2016.

7.2 Learned counsel appearing for the writ petitioners placed reliance on the following decisions:

- (i) N.Durga Rao and another v. Special Deputy Collector (Tribal Welfare), Kota Ramachandrapuram, W.G.District and others¹

¹ 2003 (3) ALT 453 (D.B)

- (ii) Chintalapati Ramalinga Raju v. District Collector, Eluru, West Godavari District & another²
- (iii) Datla Narasimha Raju and others v. Principal Secretary to Government of Andhra Pradesh, Special Welfare Dept. and others³

7.3 Learned counsel appearing for the respondents 5 & 6 placed reliance on the decision in Mallina Venkatrao v. District Collector, West Godavari District⁴.

8. I have given detailed and thoughtful consideration to the facts & submissions.

9. The writ petitioners claiming that they are members of a Schedule Tribe are contending that they are in possession and enjoyment of the subject land and that the respondents 5 & 6, who are non-tribals, are not entitled to purchase & possess the subject land, which is in a tribal area/tribal village and that the sale transactions under the sale deeds, if any, executed in their favour by non-tribals are *void ab initio* in view of the provisions of Regulation 1 of 1959 as amended by Regulation 1/1970. They are further contending that the orders impugned which were passed by the 3rd respondent on the complaint of the Special Deputy Tahasildar are illegal and arbitrary and that the said orders are liable to be set aside as the writ petitioners are not parties to the case in S.R.no.205/ 2015 in which the said orders were passed by the 3rd respondent and that as they were not issued any notices and were not afforded any opportunity of hearing before the said orders affecting their rights were passed by the 3rd respondent in the said case. Per contra, the respondents including the non-official respondents are

² 2000 (4) ALD 443 (DB)

³ 2000 (2) ALD 365

⁴ 2006-ALT-5-450

contending that there is no sub-division of survey numbers 55/ 1 & 55/ 2 and that the writ petitioners are not in possession and enjoyment of the subject lands and that they could not produce their D Form pattas before the Tahasildar when they were asked to do so and that the only patta that was produced and which was in the name of the father of the 7th petitioner contained corrections and that there are variations in the dates mentioned in the different pages of the said patta and that the respondents 5 & 6 are in possession and enjoyment of the subject lands having purchased from non-tribals and that their sale transactions are not hit by the provisions of the Regulations and that the 3rd respondent passed orders without issuing notices to the writ petitioners in view of the orders of this Court, dated 15.07.2007, in W.P.no.909 of 2003, and that the orders impugned in the writ petition, which are reasoned orders, are sustainable under facts and in law. The non-official respondents are further contending that the subject lands were not assigned to the writ petitioners 1 to 6 and the father of the 7th petitioner at any time and that the alleged pattas being relied upon by the petitioners are forged and created with the help of the son of a former Karanam of the village, by name, Malladi Soma Sekhara Rao, who was an accused in several criminal cases, which were registered for indulging in creation of pattas and manipulation of revenue records etcetera and that the writ petitioners are not tribals as being claimed by them and that they are falsely projecting themselves as tribals and that they are the victims in the hands of the said Soma Sekhara Rao and that the title documents of the non official respondents are valid and are not hit by the provisions of the Regulations and that the impugned orders, which are reasoned orders, are valid and sustainable under facts and in law and that if the petitioners are aggrieved of the said impugned

orders, they are required to prefer an appeal as provided under the statute and that after exhausting the said remedy of appeal, they are also having a statutory right of revision to the Government and that their writ petition without exhausting the statutory remedies is liable to be dismissed.

10. Thus, in this writ petition complex issues of facts and mixed questions of fact & law are raised. The non-official respondents went to the extent of contending that the writ petitioners are not tribals and that they do not belong to any Scheduled Tribe. A question with regard to the validity of the sale deeds obtained by the non-official respondents from non-tribals in respect of the subject lands, which are in tribal area/ village, is also raised in this writ petition. The said question is also a complex question of fact besides being a mixed question of fact and law. The writ petitioners on one hand and the respondents 5 & 6 on the other, are claiming not only right, title and interest but also possession and enjoyment over the subject lands. Which one of the two versions is true has to be adjudicated only after examination of complex factual matrix, in detail, and also the evidence that may be adduced in support of the respective contentions. Moreover, on the complaint of the Special Deputy Tahasildar, Jeelugumilli Mandal, filed before the 3rd respondent, that is, Special Deputy Collector, Tribal Welfare, K.R.Puram, West Godavari District, the said officer entertained the case in S.R.no.205/ 2015 and passed the orders, which are impugned in this writ petition, by the writ petitioners on various grounds. The writ petitioners are not served with any notices and were not provided an opportunity of hearing before the impugned orders were passed in the said case.

11. In this back drop, this Court finds that the claims of the writ petitioners as well as the non-official respondents in respect of the subject land give rise to pure & complex questions of fact and that this Court need not resolve the said claims by resorting to adjudication of such complex questions of fact, as such questions which require detailed examination are to be determined by a competent authority in an appropriate proceeding, after full-fledged enquiry or trial. The same principle also extends to matters involving mixed questions of fact and law. A petition under Article 226 of the Constitution cannot be converted into a quasi judicial proceeding under the Revenue Laws or a suit under common law to resolve the instant factual controversies. In general, disputed question of fact is not investigated into in a writ petition. On the above analysis, this Court finds that the ends of justice would be met if the impugned order is set aside and the case in S.R.No.205/ 2015 is remitted to the 3rd respondent for a decision afresh, on merits, and in accordance with the procedure established by law after affording an opportunity of hearing to all the parties connected with the said case.

12. In the result, and for the aforesaid reasons, the Writ Petition is allowed and the order impugned, dated 08.02.2016, in S.R.no.205/ 2015 passed by the 3rd respondent, the Special Deputy Collector, Tribal Welfare, K.R.Puram, West Godavari District, is hereby set aside and the said case is remitted to the said authority for arriving at a decision afresh, on merits, and in accordance with the procedure established by law, however, after affording an opportunity of hearing to all concerned. The 3rd respondent shall do the needful in the matter in the above regard, as expeditiously as possible, and in any event within three (03) months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

07.09.2018
RAR

