

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.9488 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“...to issue a writ, order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the proceedings of respondent No. 2 in File No: Rev-FSEC/1/2018-DT(F)-VSKPCO 14/02/2018 dated 14.02.2018 thereby rejecting the appeal filed by the petitioners without any valid reason at preliminary stage, as illegal, irregular, irrational, contrary to A.P. Scheduled Areas Land Transfer Regulation, 1959 and rules framed thereunder and violative of Articles 14 and 21 of Constitution of India, and consequently direct respondent Nos. 3 and 4 not to interfere with petitioner's peaceful possession of lands in survey Nos. 7/3, 41/2, 101/5, 12/3 and 68/1 in total admeasuring Ac.12.53 cents situated at Nimmagadda Revenue Village, Dumbriguda Mandal, Visakhapatnam District and to pass such other order or orders as this Hon'ble Court may deems fit, just and proper in the circumstances of the case.”

Heard the submissions of Sri Solomon Raju Manchala, learned counsel for the petitioners.

Earlier, this Court, by order dated 22.03.2018, disposed of the writ petition after hearing the submissions of the learned counsel appearing for the writ petitioners, of the learned Government Pleader for Social Welfare appearing for the 1st respondent; and of the learned Government Pleader for Revenue appearing for the respondents 2 to 4. However, as per the orders passed today in I.A.No.3 of 2018, the said order is recalled. In that view of the matter, further submissions are heard and the writ petition is now being disposed of by this fresh order.

Learned counsel for the petitioners, while reiterating the pleadings in the writ petition, would submit as follows:

The petitioners brought AOS.No.7 of 2012 on the file of the Court of the Agency Subordinate Judge, Paderu, against respondents 6 & 7 herein. The petitioners appeared therein for some adjournments; and, on one such adjournment, they were informed by the learned Agency Subordinate Judge that they need not come until they receive notices in the suit. Subsequently, the suit was disposed of behind the back of the petitioners. The petitioners, being under the impression that the suit was disposed of for default, filed an interlocutory application under Order IX Rule 13 of CPC. Subsequently, the petitioners came to know that by playing fraud on the petitioners the suit was partly decreed and a decree for partition was passed though the relief of declaration was sought in the suit. Therefore, they preferred appeal (unnumbered) before the 2nd respondent-Agent to the Government-cum-District Collector, Visakhapatnam, assailing the judgment of the Agency Subordinate Judge, Paderu. The judgment impugned in the appeal before the 2nd respondent was one obtained by playing fraud; and, the said judgment was passed by the 3rd respondent-Agency Subordinate Judge at the instance of the 4th respondent-Tahasildar by gross abuse of process of Court. The said judgment is unsustainable under facts and in law. As a copy of the judgment is not served on the petitioners and only a copy was served upon the petitioners when a request was made under the provisions of the Right to Information Act in the month of January, 2018, no application was filed for condonation of delay as such an application was

un-necessary. The 2nd respondent is supposed to pass an order in the form as required under law. However, the 2nd respondent-Agent to Government-cum-District Collector, Visakhapatnam, by means of a letter, dated 14.02.2018, even without registering the appeal and assigning it a SR number rejected the appeal by crisply stating in the order as follows: - 'As verified from the documents filed, the order which is being challenged as per the grounds of appeal is passed on 09.09.2016, and the appeal is proposed now after a lapse of more than 18 months and also the original order on which the appeal is proposed to file is not produced.' The said order is passed by the 2nd respondent only to protect the 3rd respondent who abused his power and indulged in fraud in passing the judgment, which is impugned in the appeal before the 2nd respondent. The 2nd respondent, who was supposed to pass an order in the form as required under law, only communicated his decision by way of a letter. Therefore, on that ground alone and for not assigning reasons much less valid reasons, the impugned order/letter of the 2nd respondent is unsustainable both under facts and in law. Pursuant to the judgment of the Agency Subordinate Judge, proceedings are now being sought to be initiated for partition of the properties by conducting a survey and by dispossessing the petitioners from the subject property, which is a valuable cultivable land even though respondents 6 & 7 have nothing to do with the property and have no right in the property. The Tahasildar placed on record a document said to be containing the thumb impression of the 2nd petitioner to fraudulently create an impression that the 2nd petitioner is agreeable for partition. The 2nd petitioner never

affixed her thumb impression on any such document. In view of the fraud played by the officers particularly respondents 3 & 4 in collusion with the respondents 6 & 7, the petitioners are constrained to file the present writ petition challenging the order of the 2nd respondent.

Learned Government Pleader for Revenue, on the earlier occasion, submitted that as per the Agency Rules, 1924, an efficacious alternative remedy is available to the petitioners and that a revision would lie to the Government and, therefore, the writ petition is not maintainable.

In view of the said submission, this Court disposed of the writ petition reserving liberty to the writ petitioners to file a revision. However, today, the correct legal position is brought to the notice of this Court and it is stated that a revision would not lie to the Government; but, only an appeal lies to the High Court and the Forum of the appeal is the High Court. In support of the said submission, attention is invited to Rule 48 of the Agency Rules, 1924, which reads as under:

“From every decree passed by the Agent to State Government in appeal from an original decree passed by any Court subordinate to him on appeal shall lie to the High Court on the grounds specified in Sec.100, Civil Procedure Code.

Decrees passed by the Agent to the State Government in second appeal from original decree passed by Agency Munsifs shall be final but the High Court may for special reasons require him to review his judgment as they may direct.”

Having regard to the undisputed legal position, the writ petition is disposed of reserving liberty to the petitioners to file an appeal before the appropriate Forum as contemplated under the Agency Rules, 1924,

within three weeks from the date of receipt of a copy of this order. Having regard to the facts and submissions, there shall be stay of execution of the judgment of the learned Agency Subordinate Judge, Paderu, which attained executable status by virtue of the impugned order/letter. Further, there shall also be an injunction in favour of the petitioners restraining the respondents 6 & 7 from in any way interfering with the possession of the petitioners over the subject property till the petitioners institute an appeal and obtain appropriate orders in the appeal that may be filed pursuant to the instant order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 21.12.2018
v v

M. SEETHARAMA MURTI, J

