

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.17423 of 2008

ORDER:

Heard the learned counsel for the petitioners as well as the learned Government Pleader appearing for the respondents.

The prayer sought in the writ petition is as under:

“... Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of Certiorari calling for the records before the 1st respondent herein in G.O.Ms.No.132, Social Welfare (LTR-I) Department, dated 04.07.2008 and quash the same.”

The facts of the case are that the deceased 1st petitioner purchased an extent of Ac.1.36 cents in R.S.No.421/4 (O.S.No.39) of Pragadapalli Village in Polavaram Mandal under an agreement of sale dated 12.06.1967 from one S. Ram Babu and he was put in possession of the same. Subsequently, the 1st petitioner got executed a registered sale deed dated 12.04.1977 in his favour in respect of the above said land and since then he has been in peaceful possession and enjoyment of the same.

While matter stood thus, the 3rd respondent initiated proceedings under the provisions of Regulation 1 of 1959 as amended by Regulation 1 of 1970 vide S.R.No.521 of 1998. However, the 3rd respondent without affording reasonable opportunity to the 1st petitioner, conducted enquiry and passed orders on 08.01.1999 holding that the purchase made by him is hit by the provisions of Regulation 1 of 1959 as amended by Regulation 1 of 1970. Aggrieved by the said orders, the 1st petitioner preferred an appeal before the 2nd respondent vide

SRA.No.10 of 1999. The said appeal came to be dismissed by orders dated 18.12.2000 against which he preferred a revision before the 1st respondent. After hearing, the said revision was also dismissed leading to issuance of G.O.Ms.No.132, Social Welfare (LRT-I) Department, dated 04.07.2008 holding that the purchase of the lands by the 1st petitioner is hit by the provisions of Regulation 1 of 1959 as amended in Regulation 1 of 1970. Aggrieved by the same, the present writ petition is filed.

Learned counsel appearing for the petitioners basically contended that the 1st petitioner was not given reasonable opportunity before the primary authority. The documentary evidence adduced on behalf of the 1st petitioner was not appreciated and at the same time there is no reference of the same.

Learned Government Pleader appearing for the respondents strenuously contended that the purchase of the subject land by the 1st petitioner is hit by the provisions of Regulation 1 of 1959 as amended by Regulation 1 of 1979. He emphasized on the aspect that since Regulation 1 of 1959 came into force with effect from 04.03.1959 and since the 1st petitioner has purchased the subject land under a possessory agreement of sale dated 12.06.1967, the same is sufficient to prove that the transaction entered into by the 1st petitioner is hit by the regulations. However, he fairly conceded that before the primary authority the 1st petitioner was not given proper opportunity to represent his case.

Having heard both the counsel and from the perusal of the material on record, particularly, the orders passed by the primary

authority in S.R.No.521 of 1998, it is revealed that originally the case was taken on file on 31.07.1998 and a notice was issued to the 1st petitioner on 21.12.1998. The 1st petitioner was present on 21.12.1998 and requested time to defend the case. The matter was posted to 30.12.1998. On 30.12.1998, the 1st petitioner and his counsel were present before the primary authority i.e., the Special Deputy Collector (Tribal Welfare), K.R. Puram, West Godavari District and the counsel filed his memo of appearance by filing vakalat. The 3rd respondent accepted the said memo of appearance on condition that the petitioner should produce a written permission from the Agent to Government or Assistant Agent to represent the case. Again the matter was posted to 08.01.1999. On 08.01.1999 itself, the 3rd respondent passed orders on the ground that the 1st petitioner and his counsel were absent by observing that the 1st petitioner has nothing to defend and in his absence decision is taken basing on the information available by orders dated 08.01.1999. Against the same, the 1st petitioner preferred an appeal in SRA.No.10 of 1999 before the 2nd respondent. In the grounds of appeal, the 1st petitioner has categorically raised that the primary authority failed to give proper opportunity to him before passing the order and thereby the principles of natural justice have been violated. It is also mentioned in the grounds that the primary authority erred in passing the orders without giving sufficient time to the counsel to obtain necessary permission from the Revenue Divisional Officer, Kovvuru. However, from the order of the appellate authority it is

revealed that except mentioning four grounds and by observing that since the 1st petitioner failed to produce the documentary evidence with regard to valid possession of the subject land, the order of the primary authority was upheld by orders dated 18.12.2000. Even in revision, the 1st respondent dismissed the revision by holding that there is no reason to interfere with the orders of both the Courts below in the impugned proceedings. This Court having perused the orders of the three authorities is of the opinion that the 1st petitioner was not given proper opportunity to defend his case by filing the documentary evidence.

From the perusal of I.A.No.6 of 2018 and the material enclosed thereto, particularly at page 54, it is evident that the petitioners filed list of documents, which are referred herein. The documents filed are agreement of sale dated 12.06.1967, sale deed dated 12.04.1977 and Photostat copy of sale deed in favour of their vendor dated 18.04.1943 and the encumbrance certificate vide E.C.No.110 of 1999 for the period between 01.01.2016 to 31.12.1970. However, there is no reference of the said documents in any of the orders.

On the other hand, it has been mentioned that the 1st petitioner failed to produce any documentary evidence with regard to the transaction in question and establish his possession.

The above said observation made by the 2nd respondent is contrary to the record. Be that as it may, without going into the merits of the case, since reasonable opportunity has not been given

to the 1st petitioner, this Court firmly opines that the petitioners deserve an opportunity to defend their case.

In these circumstances, the writ petition is allowed, setting aside the orders passed in G.O.Ms.No.132, Social Welfare (LTR-I) Department, dated 04.07.2008.

However, since the writ petition is of the year 2008 and the transaction pertains to 1967 in the form of possessory agreement of sale and registered sale deed of the year 1977, this Court is conscious of the time taken for conclusion of these proceedings. Therefore, in the facts and circumstances of the case, this Court remits the matter to the 2nd respondent to decide the matter afresh, after giving reasonable opportunity to the petitioners as per law within a period of three months from the date of receipt of a copy of this order. It is needless to observe that this Court has not expressed any opinion on the merits of the case and the 2nd respondent is directed to **pass** appropriate orders without influencing with any of the observations made in this order. No costs.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 14.11.2018.
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