

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.26405 OF 2006

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order made in G.O.Ms.No.35, dated 16.05.2006 on the file of the first respondent – the Principal Secretary to Government (T.W.) Social Welfare (LTR-2) Department, Government of Andhra Pradesh, Hyderabad, wherein the revision filed under Section 6 of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short 'Regulation 1 of 1959'), is dismissed confirming the proceedings LTRP No.484/77, dated 17.12.1990 of the Special Deputy Collector, Tribal Welfare, Rampachodavaram, East Godavari District and set aside the same as being illegal, arbitrary and contrary to the provisions of the Regulation 1 of 1959.

2. The agricultural land admeasuring Ac.4.15 cents in R.S.No.76/2 of Rajavaram Village, Gokavaram Mandal, East Godavari District is a tribal land situated in agency area. The transfer of the said land from tribal to non-tribal took place in the year 1923, which is contrary to the provisions of the Agency Tracts Interest and Land Transfer Act, 1917 (for short 'Act 1 of 1917').

3. The brief facts narrated in the writ petition are that the Special Deputy Tahsildar, Tribal Welfare, Pidathamamidi filed a complaint under Section 3 of the Regulation 1 of 1959 as amended by Regulation 2 of 1970 on behalf of one Murram Chellana Dora (tribal) for restoration of the scheduled land. The Special Deputy Collector, Tribal Welfare, Rampachodavaram, after due enquiry, allowed the petition on 17.12.1990 holding that the transfer of immovable property in the scheduled area by a tribal to a non-tribal after 14.08.1917 without prior permission of the Agent to Government or other authorized officer is null and void under the regulations and decreed ejectment against the petitioner Badiganti Veera Raju, who was in possession of the property and directed that the petition schedule property be restored to the tribal. Aggrieved by the same, the petitioner filed appeal vide C.M.A.No.20 of 1990 before the Agent to Government, East Godavari, Kakinada stating that he is a small farmer cultivating small extent of agricultural land admeasuring Ac.4.15 cents in R.S.No.76/2 at Rajavaram Village having purchased the said property under a registered Sale deed dated 16.02.1961 from one Pentapalli Nookanna, who purchased it from a tribal Murram Rajanna Dora by a registered Sale deed dated 12.10.1923 long prior to the Regulation 1 of 1959 and Regulation 11 of 1963 as amended by Regulation 2 of 1970 came into force.

It is further stated that the transaction in question took place in the year 1923 in favour of his vendor long prior to Regulation 1 of 1959 coming into force and the said regulation has no retrospective effect. He purchased the land from a non-tribal vendor in the year 1971 and he is in continuous, uninterrupted and peaceful possession of the land as his vendor was granted permission for registration of the sale of land by proceedings in D.D.No.933/35, dated 15.06.1935 by the then Revenue Divisional Officer, Peddapuram and thereby ratifying the transaction as valid. When there was a threat of dispossession, the petitioner filed Writ Petition No.17541 of 1990 before this Court to declare the proceedings under Section 3 of the Regulation 1 of 1959 initiated against him in respect of the land as illegal. This Court, by order dated 29.12.1995, directed the respondents not to dispossess the petitioner from the land pending disposal of the C.M.A.No.20 of 1990 and further directed the first respondent/Agent to Government, Collector, East Godavari, Kakinada to dispose of the C.M.A. expeditiously preferably within a period of two months from the date of receipt of a copy of the order. The first respondent dismissed the C.M.A. by order dated 09.08.1996. Against which, the petitioner filed Writ Petition No.19010 of 1996. The said writ petition was disposed of stating that the remedy under Section 6 of Regulation 1 of 1959 is not availed and also several factual aspects are involved in the matter. The

petitioner was given liberty to approach the Government. Accordingly, the petitioner filed a revision before the Government against the order passed in C.M.A.No.20 of 1990 dated 09.08.1996. The said revision was dismissed by the Principal Secretary to Government (Tribal Welfare) through impugned G.O.Ms.No.35, Social Welfare (LTR-2) Department, dated 16.05.2006, stating that the transfer of immovable property in scheduled area after 14.08.1917 by a tribal to non-tribal without prior permission of Agent to Government or authorised officer is null and void under the provisions of Act 1 of 1917. The same could not be validated by the orders of the Revenue Divisional Officer, Peddapuram, dated 15.06.1935, permitting the Registry to record the petition schedule land in the name of Pentapalli Nookanna. It is only a permission to register the transaction. It is further stated that Regulation 1 of 1959 has no retrospective effect, but that is not an issue here.

The transfer of land from a tribal has taken place in the year 1923 by which time the Act 1 of 1917 was in force. According to the Act, for transfer of land from a tribal to non-tribal, the prior written consent of the Agent or authorised officer is necessary. The written consent should be obtained before the transfer is made, but in the instant case the alleged permission granted by the Revenue Divisional Officer was in the year 1935, which is not valid. Moreover, the permission of the Revenue Divisional Officer is only for

registration but not to sale the land, as the original transaction is void and the subsequent transaction also not valid. Thereafter, the transfer of land between the non-tribal to non-tribal does not hit by Regulation 1 of 1959 as amended by Regulation 2 of 1970 has no legal force as the original transaction is void as it is between the tribal to non-tribal and hit by Act 1 of 1917.

4. Sri Muqbool Ahmed, learned counsel for the petitioner mainly contended that the petitioner purchased the land under a registered Sale deed dated 16.02.1961 from Pentapalli Nukanna, non-tribal, who purchased it from a tribal, Murram Rajanna Dora by a registered Sale deed dated 12.10.1923. The Revenue Divisional Officer vide Proceedings in D.D.No.933/35, dated 15.06.1935 passed orders permitting the Registry to record the name of Pentapalli Nukanna long prior to Regulation 1 of 1959, Regulation 11 of 1963 as amended by Regulation 2 of 1970 and the regulations have no retrospective effect. There is no provision as to granting of permission to tribal to transfer immovable property to a non-tribal contemplated in Regulation 1 of 1959. In support of his contention that the regulations have no retrospective effect and only prospective, the counsel relied on a decision of the Hon'ble Supreme Court in *Deputy Collector and another Vs. S.Venkata Ramanaiah and another*¹ and also a decision of this Court in *Kalagara Vighneswararao*

¹ AIR 1996 S.C. 224

*Vs. Government of A.P. and others*² to the effect that the regulations are not applicable to the transaction. Hence, prayed to set aside the impugned order and allow the writ petition.

5. Per contra, while reiterating the averments in the counter filed by the third respondent on behalf of the other respondents, the learned Government Pleader argued that the land admeasuring Ac.4.15 cents in R.S.No.76/2 of Rajavaram Village, Gokavaram Mandal, East Godavari District situated in tribal area governed by the provisions of Agency Laws. Originally, the land belonged to Murram Rajanna Dora (Koya) in the year 1923 and sold the said land to Pentapalli Nookanna without prior approval from the Agent to Government as required under Act 1 of 1917. Thereafter, in the year 1961, the petitioner purchased the land from Pentapalli Appa Rao S/o.Nookanna, the same is void transaction. On mere permission of the Revenue Divisional Officer, Peddapuram, permitting the Registry to record the name of Pentapalli Nookanna could not cure the defect. The original void transaction under Act 1 of 1917, by subsequent transactions from non-tribal to non-tribal could not be cured and same could not be validated under subsequent Regulation 1 of 1959 as amended by Regulation 2 of 1970. Hence, it cannot be said that there is no prohibition of transfer between two non-tribals. Before repealing the Act 1

² 200692) ALD 683

of 1917 by subsequent Regulation 1959, past transaction after coming into force of Act 1 of 1917 and before commencement of the Regulation 1959 are not deemed to be regularised or validated and still they continue to be illegal and void transaction under the provisions of Act 1 of 1917, for which he relied on the following provisions:

Section 4(1) and (2) of the Act 1 of 1917 reads thus:

“4. Transfer of immovable property by a member of a hill tribe:-

(1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.

(2) Where a transfer of property is made in contravention of subsection (1), the Agent or any other prescribed officer may, on application by anyone interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.”

Sections 9 and 10 of the Regulation 1 of 1959 read thus:

“9. Repeal:-

The Agency Tract Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917) is hereby repealed to the extent to which any of the provisions contained therein correspond or are repugnant, to any of the provisions contained in this Regulation.

10. Savings:-

(1) The provisions contained in this Regulation shall not affect –

(a) any transfer made or sale effected in execution of a decree of before the commencement of the Agency Tracts Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917); or

(b) any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act.

(2) Nothing in this Regulation shall affect a landholder's right to proceed against a ryot in accordance with the provisions of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (Act 1 of 1908) or the first charge declared by section 5 of the Act or the provisions of that Act regarding relinquishment of the holding by a ryot or the provisions of the Central Provincial Tenancy Act, 1998 (Central Act IX of 1898);

Provided that no relinquishment of a holding by a ryot who is a member of a Scheduled Tribe shall be valid unless the previous sanction of the State Government, or subject to the rules made in this behalf the previous consent in writing of the Agent or the prescribed Officer, has been obtained thereto."

Section 9 says that the Agency Tract Interest and Land Transfer Act, 1917 is repealed to the extent to which any of the provisions contained therein corresponds or repugnant to any of the provisions contained in Regulation 1 of 1959. But, Section 10 Savings clause states that the provisions contained in Regulation 1 of 1959 shall not affect any transfer

made or sale effected in execution of a decree before or after commencement of Act 1 of 1917 and before commencement of Regulation 1 of 1959, if such transfer or sale was valid under the provisions of the Act 1 of 1917.

6. While considering the provisions of Sections 9 and 10 of the Regulation 1 of 1959 and Sections 3(1)(a), 3(1)(b) and 3(2)(A) of Regulation of 1970, the Hon'ble Supreme Court also held in the aforesaid case (1 supra) as follows:

“Mrs. Amareshwari, learned senior counsel in the alternative contended that even assuming that all these Regulations do not adversely affect past transactions even then, after the coming into force of these Regulations in the concerned Agency Tracts, the possession of erstwhile transferees would become illegal and get hit by Section 3(1) of the Regulation. It is not possible to agree with this contention for the simple reason that before the continued possession is found fault with, it must be shown that the initial entry of the transferee was violative of any provision of law or that by any subsequent statute such continuance of possession under an originally valid transaction would get adversely affected. Section 3(1) nowhere whispers about such an eventuality. On the contrary, employment of terminology to the effect, ‘transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person who is a member of a scheduled tribe’ clearly indicates that Section 3(1)(a) seeks to hit only those transfers which take place after the coming into force of that provision and when such transfers are found to be absolutely null and void then only the question of continued illegal possession of such transferee and of evicting such transferee from the land and restoration of such land to the transferor would arise under Section 3(2)(a).”

7. In the facts and circumstances of the case and in consideration of the rival contentions, and also in the considered view of this Court, the past transactions of purchase of small extent of agricultural land admeasuring Ac.4.15 cents in R.S.No.76/2 at Rajavaram Village having purchased the said property under a registered Sale deed dated 16.02.1961 from one Pentapalli Nookanna, who purchased it from a tribal Murram Rajanna Dora by a registered Sale deed dated 12.10.1923 long prior to the Regulation 1 of 1959 and Regulation 11 of 1963 as amended by Regulation 2 of 1970 came into force and in view of the decision of the Hon'ble Supreme Court in *Deputy Collector's case* (1 supra) held that section 3(1)(a) is only prospective in nature and even by necessary intendment it could not be posited that the framer of the Regulation wanted to give it any retrospective effect. The Regulation I of 1959 originally applied only to scheduled areas of East Godavari, West Godavari, Visakhapatnam and Srikakulam districts. By amending Regulation II of 1963, it was extended to Khammam and Mahbubnagar districts in Telangana area with effect from 1-12-1963. This section nowhere indicates either expressly or even impliedly that it is meant to adversely affect completed transactions of transfer which might have taken place prior to the coming into force of Section 3(1)(a) of the Regulation. It is obvious that if Section 3(1)(a) was to apply retrospective even to the past transfers it could have

mentioned with reference to transfer of immovable properties whether effected before or after coming into operation of this regulation, it could not be said that the present transfer of immovable property and purchase of immovable property by the petitioner could be hit by the provisions of Regulation 1 of 1959 and Regulation 2 of 1970. For the reasons stated supra, the contentions of the learned Government Pleader are untenable. Hence, the impugned G.O. is liable to be set aside and accordingly set aside.

8. The writ petition is accordingly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.



JUSTICE M.GANGA RAO

06-04-2018
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