

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.22238 of 2008

ORDER:

The writ petitioner seeks an order in the nature of writ of Mandamus declaring the action of 1st respondent in proceedings with the cases in S.R.No.10/2008 and S.R.No.3/2008 is illegal as he has no power to do so as per the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 (for short "A.P.S.A.L.T. Regulation") as amended by 1/1970 and consequently set aside the aforesaid proceedings.

2) The Petitioner's case is thus:

a) Petitioner is the absolute owner and possessor of the lands in an extent of Ac.9-50 cts in R.S.No.10 and Ac.3-00 cts in R.S.No.11/2 of Jaivarigudem Village, Buttaigudem Mandal, West Godavari District. Originally the said land belonged to his maternal grandfather Koppula Narayana Swamy, who acquired the same long prior to the commencement of the land transfer regulations. As per 1933 R.S.R, he was shown as pattadar. He had no children, therefore, he adopted Somalamma, the daughter of his brother—Koppula Satyanarayana and performed her marriage with Polanati Venkata Swamy and at the time of marriage, Koppula Narayana Swamy gave the land as 'Pasupu Kunkuma' to his daughter. Later Koppula Narayana Swamy begot a daughter—Subbayamma. While-so Venkata Swamy and Somalamma begot only son i.e, petitioner—Polanati Satyanarayana. Due to ill-health, petitioner's mother Somalamma executed a registered settlement deed

No.840/55 in favour of her husband Venkata Swamy and died. After her death, though Venkata Swamy again married but did not beget any children. Thus the petitioner is the only issue to his parents Venkata Swamy and Somamma and after the death of his father, the petitioner succeeded the petition schedule lands and he has been enjoying the same. Therefore, his succession of the petition schedule lands is not effected by the land transfer regulations.

b) The further case of petitioner is that the 2nd respondent filed a complaint in S.R.No.209/1996 before the 1st respondent against the petitioner under Section 3(1) (a) of A.P.S.A.L.T Regulation 1/1959 as amended by 1/1970 alleging that the schedule mentioned lands situated in agency area and the petitioner herein, who is a non-Scheduled Tribe, is in unauthorised possession and enjoyment of the same and sought for his ejectment. The 1st respondent issued notice to the petitioner herein and conducted enquiry and found that the petitioner and petitioner's family since the time of his grandfather has been in possession and enjoyment of the schedule land and held that there was no violation of land transfer regulations and dismissed the complaint. No appeal was preferred and hence the said order became final.

c) While-so, subsequently one Thati Durga Rao, who is a Scheduled Tribe filed a complaint before the 1st respondent in S.R.No.58/2005 and during enquiry it came to light that already S.R.No.209/1996 which was filed in similar lines was dismissed and as such, the counsel for Durga Rao withdrew S.R.No.58/2005 on 30.08.2005 in respect of land covered by R.S.No.10.

d) While-so again 2nd respondent filed another two complaints i.e, S.R.No.10/2008 in respect of the land covered by R.S.No.10 in an extent of Ac.9-50 cts and S.R.No.3/2008 in respect of the land covered by R.S.No.11/2 in an extent of Ac.3-00 cts and 1st respondent inspite of the fact that earlier an order was passed in S.R.No.209/1996 dismissing the complaint, issued notice to the petitioner. The petitioner pleaded that the proceedings in S.R.No.10/2008 and S.R.No.3/2008 are not maintainable under law since the order in S.R.No.209/1996 attained finality as no appeal was filed.

Hence the writ petition.

3) Notice was served on respondents and learned Government Pleader for Tribal Welfare (AP) appeared on behalf of respondents but no counter is filed.

4) Heard both sides.

5) Severely fulminating the notice issued by the 1st respondent in S.R.No.10/2008 and S.R.No.3/2008, learned counsel for petitioner would argue in vehemence that in view of the previous proceedings in S.R.No. 209/1996, which were filed in respect of the same land and with the same averments and same were dismissed after due enquiry and as no statutory appeal was carried out in those matters, the present complaints are not maintainable under law. He relied upon the judgment of this Court in ***Gangula Kondala Rao vs. The Special Deputy Collector, Tribunal Welfare, K.R.Puram, West Godavari District and another***¹.

¹ Unreported judgment of this Court dated 20.06.2007 in Writ Petition No.4485 of 2000.

6) Per contra, learned Government Pleader for Tribal Welfare (A.P) argued that the petitioner and his family members are non-Scheduled Tribes and the property is situated in agency tracts and therefore, their possession of the schedule properties is *per se* illegal and violative of land transfer regulations. The Special Deputy Tahsildar, secured fresh evidence to show that the petitioner's forefathers have acquired the property from the tribals and therefore, the two S.Rs are maintainable under law and the petitioner instead of facing the enquiry in those cases unnecessarily rushed to the High Court. He thus prayed to dismiss the petition.

7) The points for determination are:

(i) *Whether the proceedings in S.R.Nos.3 and 10 of 2008 initiated by the 1st respondent on the complaints lodged by the 2nd respondent are legally maintainable?*

(ii) *To what relief?*

8) **POINT No.1:** In order to know whether the S.R.Nos.3 and 10 of 2008 are maintainable under law in view of the previous orders in S.R.No.209/1996, a small survey on land transfer regulations has to be made.

a) In Andhra Area, prior to the formation of the State of Andhra Pradesh, there existed before the advent of the Constitution certain laws including the Agency Tracts Interest and Land Transfer Act, 1917 (Act 1 of 1917) w.e.f. 14th August, 1917. This Act was intended to regulate the rate of interest and the transfer of land in the Ganjam, Vizagapatnam and Godavari Agency tracts. In the preamble it was noted that whereas it is expedient to limit the

rate of interest and to check transfers of land in the Agency tracts of Ganjam, Vizagapatnam and Godavari Districts, the said Act was enacted. As per Section 2(a), Agency Tracts means the scheduled districts as defined in Acts XIV and XV of 1874 and included within the districts of Ganjam, Vizagapatnam and Godavari districts. Section 3 of the Act says that in any suit instituted after the commencement of the Act, notwithstanding any agreement to the contrary, interest on any debt or liability shall not as against a member of a hill tribe be allowed or decreed at a higher rate than 24% per annum nor shall any compound interest or any collateral advantage be allowed as against him. Further, the total interest allowed or decreed on any debt or liability as against a member of a hill tribe shall not exceed the principal amount. Then Section 4 which is germane for our consideration is to the effect that the transfer of land in the agency tracts areas was prohibited except in favour of members of the hill tribes, conferring certain benefits upon the person belonging to the Scheduled Tribes. Where the transfer of property is made in contravention of sub-section (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. It is pertinent to note that as per Section 4, the transfer in between two hill tribes and two non-tribes and also the transfer from non-tribe to hill tribe is not hit by this Act. What is prohibited was a transfer from a member of a hill tribe to a non-hill tribe. Thus through this Act, the Government sought to protect the possession and enjoyment of the hill tribes in respect of the immovable properties in Agency Tracts.

b) The next in the series of land transfer regulations is the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation I of 1959). After Constitution of India came into force, Article 244 of the Constitution and 5th Schedule were made applicable to the administration of the Scheduled Areas. Para 6 of the 5th Schedule empowered the President to notify the Scheduled Areas in consultation with the Governor of the State. Para 5(2) of 5th Schedule empowered the Governor of the State to make regulations for the peace and good governance of the Scheduled Areas. Thus in view of the Article 244 and 5th Schedule of the Constitution, so far as Andhra Pradesh is concerned, Governor made the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959 (Regulation I of 1959). This Regulation was intended to regulate the transfer of lands in the Scheduled Areas of East Godavari, West Godavari, Visakhapatnam and Srikakulam Districts. It came into force w.e.f. 04.03.1959. Section 3(1) of this regulation prohibited transfer of immovable properties situated in the Agency Tracts by a member of Scheduled Tribe to any person other than a member of Scheduled Tribe or a registered society and made such transfer absolutely null and void. The said Regulation further empowered the Agent to decree an ejectment against any person in possession of any immovable property, the transfer of which was made in contravention of its provisions and to restore it back to the transferor or his heirs. If the transferor or his heirs were not willing to take the property or where their whereabouts were not known, the Agent was further empowered to order assignment or sale of the property to any other member of a Scheduled Tribe or a registered Co-operative Society composed solely of members of the Scheduled Tribes or otherwise dispose of

it, as if it was a property at the disposal of the State Government. Thus a close scrutiny of Section 3 of this Regulation would show that like Act 1 of 1917, this Regulation also prohibits the transfer from a Scheduled Tribe to a non-Scheduled Tribe and held such transfer *void ab initio*. However, this Regulation has not made the transfer between two Scheduled Tribes, two non-Scheduled Tribes and non-Scheduled Tribe to Scheduled Tribe as void.

c) It is to be noted that by virtue of Amendment Regulation II of 1963, Adilabad, Warangal, Khammam and Mahaboobnagar Districts were included in the Regulation I of 1959.

d) Then came the Regulation I of 1970 which amended the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (Regulation I of 1959). Certain difficulties were experienced by the Government in implementing the ejectment procedures under Regulation I of 1959, inasmuch as it was found not always easy for the concerned authority to ascertain the origin of the right under which the non-tribe was claiming possession and whether the land now under the possession of a non-tribe was previously acquired from a tribe or not. Therefore, the said Regulation was amended by the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation 1970 with a view to remedy the said mischief and to facilitate the effective enforcement of Regulation I of 1959. The following changes were sought to be introduced:

(i) A rule of presumption was introduced to the effect that unless the contrary is proved, where a non-tribal is in possession of land in the

Scheduled areas, he or his predecessors-in-interest, shall be deemed to have acquired it through transfer from a tribal;

- (ii) Transfers of land in Scheduled Areas in favour of non-tribals shall be wholly prohibited in future;
- (iii) Non-tribal holding lands in the Scheduled Areas shall be prohibited from transferring their lands in favour of persons other than tribals. Only partitions and devolution by succession of lands held by them shall be permitted; and
- (iv) Where a tribal or non-tribal is unable to sell his land to a tribal on reasonable terms, it shall be open to him to surrender the land to Government who shall thereupon be obliged to acquire it on payment of appropriate compensation.

Section 3 of Regulation I of 1959 was amended to the effect that Section 3(1) rendered all the transfers made except those in favour of a tribal, to be null and void. Section 3(1)(b) raises a presumption that any immovable property in possession of a non-tribal would be presumed to have been acquired by such person through a tribal. Section 3(2)(a) creates a provision for the ejectment of persons who came into possession of such lands as a result of transfers and for the restoration of the land to the original transferor or his heirs. Thus Section 3 of Regulation I of 1970 brought a radical change in the erstwhile Regulation I of 1959 to the effect that all transfers except the transfer to a member of Scheduled Tribe are now held to be void. The above are precisely the Regulations governing the transfer of lands in Agency Tracts.

- 9) It is pertinent at this juncture to know whether these Regulations i.e, Regulation I of 1959 and Regulation I of 1970 are prospective in operation or

have got retrospectivity. The Hon'ble Apex Court in the decision reported in *Deputy Collector and others v. S.Venkata Ramanaiah and others*², has clarified this issue and held thus:

*“**Para 23:** x x x x Therefore, we agree with the submission of Mr. Bobde, learned Counsel for respondents, that the provisions of Section 3(1) of the Regulation are purely prospective in nature and do not affect past transactions of transfers effected between tribals and non-tribals or between non-tribals and non-tribals themselves in the Agency Tracts at a time when neither Regulation I of 1959 nor Regulation II of 1963 or Regulation I of 1970 was in force. Such past transactions remained untouched by the sweep of the aforesaid subsequently enacted Regulations.”*

Thus the Apex Court held that Regulation I of 1959 and Regulation I of 1970 are only prospective in operation. Applying the same analogy, it can be said that Section 4 of Agency Tracts Interest and Land Transfer Act, 1917 is also a prospective legislation and has no retrospective operation.

10) Since in the instant case, the fulcrum of the petitioner's argument is that his family since the time of his forefathers has been enjoying the petition schedule properties even prior to the advent of the Agency Tracts Interest and Land Transfer Act, 1917 and Regulation I of 1959 and Regulation I of 1970, his case has to be tested on the anvil of the above statutory provisions and precedential jurisprudence.

11) Admittedly, the 2nd respondent filed complaint S.R.No.209/1996 against the petitioner before the 1st respondent and the same was dismissed after due enquiry. A perusal of the copy of the order dated 06.05.1997 shows

² AIR 1996 SC 224

that the plea of the petitioner herein was that he got lands in R.S.No.5/1 in an extent of Ac.6-25 cts, R.S.No.10 in an extent of Ac.9-50 cts and R.S.No.11/2 in an extent of Ac.3-00 cts totalling Ac.18-75 cts in Jainavarigudem Village and those lands were originally belonged to his maternal grandfather Koppula Narayana Swamy, who was the pattadar as per 1933 R.S.R. Petitioner's mother Somamma was the daughter of Koppula Narayana Swamy's brother Satyanarayana and Narayana Swamy adopted her and performed her marriage with Polanati Venkata Swamy, the father of petitioner herein. At the time of marriage, Koppula Narayana Swamy gave the land as 'Pasupu Kunkuma' to her. Sometime thereafter, due to ill-health, petitioner's mother Somamma executed a registered settlement deed No.840/55 in favour of her husband Venkata Swamy and died. After her death, though Venkata Swamy again married but did not beget any children. So the petitioner is the only issue to his parents and therefore, he succeeded all the petition schedule properties after the death of his father. Before 1st respondent he produced E.C.No.151/1997 which showed the transactions from 1916 onwards in respect of the petition schedule lands. He also produced Photostat copies of registered settlement deed. They were marked as Exs.R.1 and R.2.

a) The order further shows that the 1st respondent perused the oral and documentary evidence and found that the lands in R.S.No.5/1 of Ac.6-25 cts, R.S.No.10 of Ac.9-50 cts and R.S.No.11/2 of Ac.3-00cts of Jainavarigudem village stood registered in the name of Koppula Narayana Swamy as pattadar in the 1933 R.S.R. The 1st respondent accepted the oral and documentary evidence and held that Narayana Swamy had gifted the petition schedule

lands to Somalamma at her marriage with Venkata Swamy as 'Pasupu Kunkuma' and due to her ill-health, she executed registered settlement deed in favour of her husband and after his demise, the petitioner succeeded the lands and got possession. The 1st respondent in his order observed, the E.C shows that no transactions were made in the lands and they were never held by Tribals. Basing on such findings, 1st respondent held that there was no violation of Section 3(1) (a) of A.P.S.A.L.T. Regulation I of 1959 as amended by Regulation I of 1970. When the said order is perused in the context of the Act, 1917 and the Regulation I of 1959 as amended by Regulation I of 1970, it is clear that the findings in the order are perfectly valid. Since the petitioners grandfather had been enjoying the petition schedule properties, even prior to Agency Tracts Interest and Land Transfer Act, 1917 and E.C produced before the 1st respondent showed that no transactions were made on those lands and the lands were not held by Tribals from 1916 onwards, the provisions of the Act, 1917, Regulation I of 1959 as amended by Regulation I of 1970 have no application. Further, the provisions of Regulation I of 1970 also do not have any application because the settlement deed executed by the mother of the petitioner in favour of his father by virtue of settlement deed No.840/55 i.e, even long prior to Regulation I of 1959 and subsequently there were no transactions muchless transactions involving the Scheduled Tribes. As already noted supra, Act, 1917 and Regulation I of 1959 as amended by Regulation I of 1970 are prospective in operation and therefore, they have no application in respect of the properties held by petitioner's grandfather even prior to 1917. Therefore, the order in S.R.No.209/1996 is a valid one and since no appeal is filed

against the said order, it attained finality. Then copy of the order in S.R.No.58/2005 would show that one Thati Durga Rao, a Scheduled Tribe filed complaint against the petitioner herein and during the course of enquiry, the petitioner herein produced the copy of order in S.R.No.209/1996 and in view of the said order, the petitioner in S.R.No.58/2005 had withdrawn the said petition. It appears, one Thati Muthyalu, a Scheduled Tribe also filed a complaint S.R.No.64/2005 against the petitioner herein and the same was also dismissed in view of the order in S.R.No.209/1996. All these proceedings would show that the 1st respondent has time and again upheld the title and possession of the petitioner in respect of petition schedule lands. In spite of the same, again the instant complaints i.e, S.R.Nos.3 and 10/2008 were filed more or less with the same allegations. Though the learned Government Pleader argued that in view of exhuming the fresh evidence, the complaints are very much maintainable, he miserably failed to produce the alleged fresh evidence. Therefore, the two complaints are nothing but abuse of process of the Court. The previous orders attained finality and the principle of *res judicata* would apply to the instant complaints. In ***Gangula Kondala Rao¹***, this Court observed that when once the Special Deputy Collector, has passed an order holding that there is no contravention of any of the provisions of A.P.S.A.L.T. Regulation, a regular appeal is provided for and if the respondents are so aggrieved, they should prefer an appeal against the order of the Special Deputy Collector and without preferring the appeal, the second complaint is not maintainable as the repeated initiation of the proceedings under A.P.S.A.L.T Regulation would be without jurisdiction.

12) **POINT No.2:** In the result, this Writ Petition is allowed and the proceedings in S.R.No.10 of 2008 and S.R.No.3 of 2008 on the file of the 1st respondent are hereby set aside. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 20.08.2018

scs

