

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.7193 of 2008

ORDER:

The petitioner seeks a writ of Mandamus declaring the action of the first respondent in taking up the appeal in C.M.A.No.245 of 2005 by exercising *suo motu* appellate powers and issuing notice dated 29.02.2008 under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 (hereinafter referred to as, Regulation 1 of 1959) as amended by Regulation 1 of 1970 against the order of the second respondent dated 29.06.2004 in LTR Case No.229/2004/PNB in respect of the lands of the petitioner admeasuring an extent of Ac.1.10 guntas and Ac.0.35 guntas in Survey Nos.226 and 13 respectively totally admeasuring Ac.1.35 guntas situated in Penuballi Village and Mandal, as illegal, arbitrary and without jurisdiction.

2. The petitioner's case is that he is the absolute owner and possessor of agricultural land admeasuring Ac.1.10 guntas and Ac.0.35 guntas in Survey Nos.226 and 13 respectively totally admeasuring Ac.1.35 guntas situated in Penuballi Village and Mandal in Khammam District, which is situated within the scheduled area. The subject property originally belonged to one Sri Bejawada Bixam and Sri Singisali Venkataswamy, who are non-tribals and the petitioner is also a non-tribe. The petitioner acquired the said property in his name and in the name of his

wife through simple sale deeds dated 10.03.1965 and 09.07.1968 and ever since they have been in continuous possession and enjoyment of the same. There was no involvement of Government interest or the interest of tribals in respect of the said property. Further, since they acquired the property prior to Regulation 1 of 1959 as amended by Regulation 1 of 1970, the provisions of the said Regulation have no application. The further case of the petitioner is that the second respondent initiated the *suo motu* action against the petitioner under Section 3(2)(a) of Regulation 1 of 1959 as amended by Regulation 1 of 1970 in LTR Case No.229/2004/PNB and having found that the present petitioner purchased the land under simple sale deeds dated 10.03.1965 and 09.07.1968 and enjoying the same, which is evident from land revenue receipts and *pahanies*, and also finding that parties to the sale transactions were non-tribals and no tribal interest was involved therein, held that the provisions of Regulation 1 of 1959 as amended by Regulation 1 of 1970 have no application and, accordingly, dropped the proceedings. The further case of the petitioner is that, however, the first respondent initiated *suo motu* appeal proceedings in C.M.A.No.245 of 2005, dated 29.02.2008, and issued notice to the petitioner to appear before him on 15.03.2008.

Hence, the Writ Petition.

3. The respondents filed a counter affidavit and opposed the Writ Petition.

4. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader appearing for the respondents.

5. The submission of the learned counsel for the petitioner is that under Section 3(2)(a) of Regulation 1 of 1959 as amended by Regulation 1 of 1970, *suo motu* power is conferred only on the primary/original authority to pass the decree of ejectment at the initial stage but no such *suo motu* power is conferred on the officers to take up the appeal proceedings without there being an appeal filed by the aggrieved party. Therefore, the first respondent under law has no jurisdiction to take up the appeal *suo motu* against the order in LTR Case No.229/2004/PNB, which already attained finality. To buttress his contention that the appellate authority has no power to initiate *suo motu* appeal, learned counsel relied upon the order of this Court in W.P.No.7063 of 2008, dated 05.09.2018. He, thus, prayed to allow the Writ Petition.

6. Per contra, learned Assistant Government Pleader for Social Welfare would argue that the land is situated in agency tract and the petitioner obtained the said land through simple sale deeds and, therefore, they do not confer any valid and legal title on them and this aspect was not properly appreciated by

the second respondent. Therefore, the appeal was taken up *suo motu* by the first respondent and the same is maintainable.

7. In the light of the above respective contentions, a perusal of the order in W.P.No.7063 of 2008, dated 05.09.2018, shows that in the said Writ Petition also the same question was involved to the effect that, whether the first respondent – Additional Agent to the Government & Project Officer, I.T.D.A., Bhadrachalam, Khammam District, has *suo motu* power to take up the appeal as per Section 3(2)(a) of Regulation 1 of 1959 as amended by Regulation 1 of 1970. This Court having perused the relevant case law and the provisions of Sections 3(2)(a) and 3(3)(a) of Regulation 1 of 1959 as amended by Regulation 1 of 1970, has ultimately held that the crucial word “*suo motu*” that appeared in Section 3(2)(a) is conspicuously absent in Section 3(3)(a) indicating that the legislature in its wisdom has not accoutred the appellate authority with the *suo motu* appeal power under Section 3(3)(a). The said Writ Petition was disposed of declaring that the first respondent had no *suo motu* appeal power. Needless to emphasize that the order in W.P.No.7063 of 2008 applies in all its fours to the case on hand.

8. Following the aforesaid covered judgment, this Writ Petition can be ordered.

9. Accordingly, this Writ Petition is disposed of declaring the action of the first respondent in entertaining the appeal *suo motu* as without jurisdiction. However, it will not preclude the

primary/original authority to initiate proceedings against the petitioner on a complaint or *suo motu* under Section 3(2)(a) of the Regulations, on discovery of new fact or evidence, after giving notice and opportunity of hearing to the petitioner. No costs.

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

U.DURGA PRASAD RAO, J

01.10.2018
vs

