

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.2598 OF 2005

ORDER:

This writ petition is filed challenging the order of the Land Reforms Tribunal, Madanapalle, second respondent herein, dated 07.01.2005 in C.C.No.1059/MPL/75, taking the possession of the lands of the petitioner under Section 10(3) of the A.P. Land Reforms (Ceiling on Agriculture Holding) Act, 1973 (for short, the Act).

2. The petitioner was the native of Thambalapalle Village of Chittoor District. She succeeded her share of agricultural lands under a registered partition deed dated 30.08.1957 from her father. The petitioner got married on 12.06.1963 and thereafter, she shifted to her in-laws house in Kadapa District. Her husband had 1/7th share of lands in Maharajapuram, Tadigotla and Budidapadu Villages of Kadapa District. She moved from place to place along with her spouse due to transfer on administrative grounds and she never stayed in Chittoor District or in Kadapa District. The siblings of her spouse filed their agricultural land declarations before the Competent Authority. The petitioner also filed her family declaration for husband, son and daughter.

3. Pursuant to the declaration filed by the petitioner, the second respondent passed an order dated 04.10.1976, holding that the family unit of the petitioner was in surplus of 2.1577 standard holdings. Aggrieved by the said order, the petitioner filed appeal No.399 of 1977 before the Land Reforms Appellate Tribunal, Chittoor (for short, the Appellate Tribunal). The Appellate Tribunal,

by order dated 13.03.1978, partly allowed the appeal by declaring that the family unit of the petitioner was holding excess of 2.1319 standard holdings in stead of 2.1577 standard holdings. In the meantime, the petitioner, by her letter dated 28.12.1976, agreed to surrender an extent of land admeasuring Ac.29-70 cents out of Ac.207-90 cents, which were held by her husband and his brothers at Tadigotla. Accordingly, the said lands were surrendered, but the possession was not taken by the respondents. The first respondent has issued Form-IX, dated 21.12.1979, and the matter has attained finality as nothing happened thereafter. After lapse of decades, the second respondent conveniently passed the impugned order dated 07.01.2005, stating that the lands of the petitioner are to be surrendered to an extent of land admeasuring Ac.6-74 cents under Section 10(3) of the Act.

4. A fair reading of the impugned order, clearly indicates that the lands mentioned therein i.e., Ac.6-74 cents out of Ac.11-00 cents are *suo motu* selected by the respondents and notice in Form-VIII under Section 7(4) of the Act calling for objections was affixed on the notice boards of Mandal Revenue Office, Tahmbalapalle and Kurabalsakota and the concerned Gram Panchayat, but no objections were received. In the impugned order, it has not been stated as to when the said notice has been duly signed and issued and when the same has been affixed on the notice boards inviting objections. It is apparent from the impugned order that the notice has not been served upon the petitioner.

5. This Court, by order dated 16.02.2005 in WPMP.No.3504 of 2005, granted *status quo*, by virtue of which, the petitioner has been in possession of the subject land.

6. The respondents filed counter-affidavit stating that as against the impugned order, the petitioner ought to have preferred an appeal before the Appellate Tribunal or to have availed the alternative remedy of filing the Civil Revision Petition before this Court under the statute in stead of filing the present writ petition and hence the writ petition is not maintainable. It is further stated that as the petitioner declared and surrendered Ac.29-50 cents out of which Ac.18-50 cents have been already taken possession by the respondents and the balance extent of Ac.11-00 cents was initially not traced and hence they did not take the said land into possession. It is further stated that the petitioner was served with a notice by way of registered post with acknowledgement due on 14.05.1999; that the notice was acknowledged by the petitioner; that the respondents did not receive any response from the petitioner and that therefore, the second respondent passed the impugned order.

7. The petitioner filed a reply affidavit categorically stating that she did not receive any notice from the respondents before passing the impugned order and that when the proceedings attained finality in the year 1979, the question of reopening the case does not arise.

8. Learned counsel for the petitioner relied upon the decisions in **Y.Lalithamma v. The Special Tahsildar (L.R.)¹**, **K.Venkatappa (dead) v. Special Tahsildar (LR)²**, **T.Bangaru Raju v. Authorised Officer, LRT³** and **Gadda Balaiah v. The Joint Collector, Ranga Reddy⁴** and contended that basing on the ratio laid down in the said cases, the impugned order should be set aside.

9. Having regard to the facts and the *lacunae* the impugned order faced, which is cited supra, I am of the opinion that the doctrine of *audi alteram partem* has been violated by the respondents in issuing the impugned order.

10. Hence, the writ petition is disposed of, setting aside the order of the second respondent dated 07.01.2005. However, it is open for the respondents to proceed with the matter in accordance with law, after giving due opportunity to the petitioner. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: -02-2018
TJMR

¹ 1995 (2) ALT 89

² 1996 (3) ALT 599 (F.B)

³ 1997 (3) ALT 398

⁴ 2013 (4) ALD 725