

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.1960 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Certiorari calling for the records pertaining to G.O.Ms.No.3 Social Welfare (LTR1) Department dated 24.01.2007, wherein the Agent to Government by order dated 31.01.2005 in S.R.A.No.4 of 2002, confirmed the order of the Special Deputy Collector, Tribal Welfare, K.R.Puram, West Godavari District in S.R.No.6 of 2001 dated 04.05.2001, whereby and wherein the authorities under the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short 'Regulation 1 of 1959) as amended by Regulation 1 of 1970 passed decree of ejectment of the petitioner from the lands, and quash the same as illegal, arbitrary and contrary to the provisions of the Regulation 1 of 1959 as amended by Regulation 1 of 1970.

2. The brief facts of the case are that the petitioner is in possession and enjoyment of the land to an extent of Ac.0.36 cents in R.S.No.189/1, Ac.4.29 cents in R.S.No.189/4 and Ac.2.74 cents in R.S.No.205/3 – total an extent of Ac.7.39 cents of Ganapavaram Village, Buttaigudem Mandal, West Godavari District. The lands are situated in an agency area of Buttaigudem. The Special Deputy Tahsildar, Tribal Welfare, K.R.Puram filed a complaint against the petitioner's father and his family members in S.R.No.6 of 2001 under Section

3(2)(a) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970 in respect of the lands covered in R.S.No.214/1, 224/1, 224/2, 189/1, 205/3 and 189/4. The transfer of the lands are hit by Section 3(1)(a) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970. The Special Deputy Collector (Tribal Welfare), Kota Ramachandrapuram held that Smt. Mallabathula Somamma appeared before him and deposed that she is resident of Patennapalem Village and the scheduled land to an extent of Ac.0.36 cents in R.S.No.189/1, Ac.4.29 cents in R.S.No.189/4 and Ac.2.74 cents in R.S.No.205/3 – total measuring Ac.7.39 cents of Ganapavaram Village of Buttaigudem Mandal was purchased by her father namely Konathala Suraiah from Sri Bandaru Suraiah and others through registered a sale deed vide Document No.197/1978 dated 20.04.1978. She received the said property from her father on succession and she is in enjoyment of the same. Since the scheduled mentioned land was purchased in the year 1978 i.e. after the Regulation 1 of 1970 came into force, he passed ejectment orders as the petitioner has been in possession and enjoyment of the scheduled property in contravention of the provisions of Section 3(1)(a) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970. Being aggrieved by the orders of the Special Deputy Collector, the petitioner preferred an appeal before the Agent to Government, West Godavari District, Eluru in S.R.A.No.4 of 2004 and the Agent to Government,

West Godavari District in his order dated 31.01.2005, dismissed the appeal and confirmed the orders of the Special Deputy Collector (Tribal Welfare), Kota Ramachandrapuram. During the hearing of the appeal, the petitioner filed a registered Will No.30 of BK 3/2002 dated 11.04.2002, by which it is revealed that the property acquired by the creator of the Will – Kanathala Suraiah by virtue of the Gift deed No.1102 of 1978 dated 21.09.1978 registered in the Office of Sub-Registrar, Jangareddygudem and taking into consideration of the said Will, the appeal was dismissed. Against which, the petitioner preferred a revision under Section 6 of the Regulation 1 of 1959 against the orders of the Agent to Government, West Godavari District in S.R.A.No.4 of 2002 dated 31.01.2005. The Government rejected the revision holding that the Will deed bearing No.30 of BK3/2002 dated 11.04.2002 is generated from registered Gift deed No.1102, dated 21.09.1978, which is hit by the provisions of the Regulation 1 of 1959 as amended by Regulation 1 of 1970. Against which, the present writ petition came to be filed before this Court.

3. Sri P.R.K. Amarendra Kumar, learned counsel for the petitioner, would contend that the petitioner has been in possession and enjoyment of the land to an extent of Ac.0.36 cents in R.S.No.189/1, Ac.4.29 cents in R.S.No.189/4 and Ac.2.74 cents in R.S.No.205/3 – total an extent of Ac.7.39 cents of Ganapavaram Village, Buttaigudem Mandal, West

Godavari District. Originally, the subject land along with other lands acquired by the petitioner's father late Sri Konathala Suraiah and his family members prior to the commencement of the Land Transfer Regulation 1 of 1959 as amended by Regulation 1 of 1970. This land was allotted in favour of the petitioner's father during the family partition among the family members. Subsequently, her father insisted to execute a document to facilitate him to raise the loans, other facilities and subsidies which are being extended by the Government. Accordingly, his family members executed a family settlement deed in the year 1978. The petitioner being the only daughter succeeded to the property of her father Konathala Suraiah. As the lands are situated in agency area of Buttaigudem, the Special Deputy Tahsildar, Tribal Welfare, K.R.Puram filed a complaint against petitioner's father and his family members in S.R.No.6 of 2001 under Section 3(2)(a) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970 in respect of the lands covered in R.S.No.214/1, 224/1, 224/2, 189/1, 205/3 and 189/4, stating that the petitioner's possession is hit by the provisions of Section 3(1)(a) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970. As per Section 3(1)(a) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970, any transfer of immovable property situated in agency tracts by a person whether or not such person is a member of scheduled tribe, shall be absolutely null and void.

The learned counsel further contended that the authorities under the Act erroneously came to a conclusion without looking into the recitals of the deed executed in the year 1978. The original authority says that it is a gift deed and the appellate authority says that it is a sale deed and the revisional authority confirmed the same and rejected the revision, which is contrary to the provisions of the Regulation 1 of 1959 as amended by the Regulation 1 of 1970 when the recitals of deed states that it is a settlement deed executed confirming the oral earlier settlements made prior to the amended Regulation 1 of 1970 and the transfer took place among the family members prior to the coming into force of Regulation 1 of 1970 and it is a transaction between the non-tribals. The petitioner's father is in possession and enjoyment of the same by an oral settlement. Subsequently, the other family members settled the property in favour of the petitioner's father in the year 1978 by a registered deed which comes within the meaning of 'testamentary disposition' and excludes from the meaning of 'transfer' as enumerated in Section 2(g) of the Regulation 1 of 1959 as amended by the Regulation 1 of 1970.

Further, the learned counsel by way of reply affidavit to the counter-affidavit along with certified copy of Document No.1102 of 1978, states that the deed of immovable property executed in favour of Konatala Suraiah by the other family members as he is a niece of the executants. The property was

already given to the mother of Konatala Suraiah i.e. Durgamma towards Pasupukumkuma and the same was handed over to the mother of Konatala Suraiah and after her demise, the petitioner's father came into possession and enjoyment. Thereafter, the petitioner succeeded to the property by Will deed,

Further, the learned counsel for the petitioner emphatically contended that by any stretch of imagination, the recitals of the Document No.1102 of 1978, could not be said to be sale deed or gift deed executed in contravention of the provisions of Section 3(1)(a) of Regulation 1 of 1959 as amended by Regulation 1 of 1970 as the lands were settled long back as a Pasupukumkuma to the petitioner's mother Durgamma and thereafter, the petitioner's father succeeded to the property to enjoy the property and the family members of the petitioner's grandmother executed a settlement deed in the year 1978 confirming the earlier possession and enjoyment of the land by the petitioner's father much prior to the coming into force of Regulation 1 of 1970. Hence, the transactions are not hit by Section 3(1) of Regulation 1 of 1959 as amended by Regulation 1 of 1970. The amended Regulation 1 of 1970 prohibiting the transfer even between the non-tribals was come into force with effect from 03.02.1970. Hence, the ejectment orders passed by the original authority – Deputy Collector (Tribal Welfare) holding that the transfer effected in the year 1978 is a sale deed,

contrary to the provisions of Section 3(1) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970 and the appellate authority has rejected the appeal on the ground that the transfer deed executed in the year 1978 is a gift deed, out of which Will deed was arisen in favour of the petitioner, is contrary to the recitals of the transfer deed executed in the year 1978. The revisional authority under Section 6 of the Regulations, without adverting to the grounds of revision, merely confirmed the finding of the original and appellate authorities and rejected the revision. Hence, the revision confirming the appellate authority's order and original authority's order is illegal and contrary to the evidence available on record and it is based on an erroneous appreciation of fact and law. Hence, it is liable to be set aside.

4. Per contra, the learned Government Pleader, while reiterating the averments of the counter and order of the original, appellate and revisional authorities, would contend that the proceedings made in respect of the schedule lands through a registered Document No.197 of 1978 dated 21.09.1978 are hit by the provisions of Section 3(1) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970 as the settlement deed dated 21.09.1978 has been effected after commencement of Regulation 1 of 1970 and the possession was not established by the petitioner prior to the commencement of the Regulation 1 of 1970. Hence, there is

no illegality or irregularity in passing the ejectment order by the original authority as confirmed by the appellate and revisional authorities. Hence, the writ petition is liable to be dismissed.

5. In the facts and circumstances of the case and in considered view of this Court, this Court finds that the petitioner is in possession and enjoyment of the agricultural land to an extent of Ac.0.36 cents in R.S.No.189/1, Ac.4.29 cents in R.S.No.189/4 and Ac.2.74 cents in R.S.No.205/3 – total measuring Ac.7.39 cents of Ganapavaram Village of Buttaigudem Mandal, situated in an agency area. Originally, the schedule land was acquired by Sri Bandaru Venkayya during his lifetime prior to commencement of Land Transfer Regulations along with other lands. The said Venkayya having one daughter and one son viz., Bandaru Somaiah and Bandaru (Konathala) Durgamma. The said Durgamma married to one Konathala Gangaiah. As per the family settlement, possession of the suit schedule land was given to Durgamma. The said Durgamma has only one son by name Konathala Suraiah. The petitioner being the only daughter of Konathala Suraiah, succeeded to the property through a Will deed after his demise.

6. As the lands are situated in an agency area i.e. Ganapavaram Village of Buttaigudem Mandal, the Special Deputy Tahsildar, Tribal Welfare, K.R.Puram filed a complaint

before the Special Deputy Collector (Tribal Welfare) in S.R.No.6 of 2001. The Special Deputy Collector conducted enquiry and passed the decree of ejectment in respect of the schedule lands, stating that the petitioner's father Konathala Suraiah purchased the lands in the year 1978 through Document No.197/1978 dated 21.09.1978 after Regulation 1 of 1970 came into force and thereby the subsequent proceedings and settlements were also hit by the provisions of Section 3(1) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970, which is contrary to the recitals of the Settlement deed. The original authority stated that the said document is a sale deed, whereas the appellate authority stated that it is a gift deed. The Government, basing on the said finding of the lower and appellate authorities, has rejected the revision without properly considering the evidence on record. All the authorities have come to a different conclusion on the recitals of the documents as stated supra, without properly looking into documents placed before them.

7. When the original authority disallowed the claim of the Special Deputy Collector in respect of the land to an extent of Ac.9.31 cents in R.S.No.214/1, Ac.3.64 cents in R.S.No.224/1 and Ac.2.64 cents in R.S.No.224/2 – in total Ac.15.59 cents, whereas the land to an extent of Ac.4.29 cents in R.S.No.189/4, Ac.2.74 cents in R.S.No.205/3 and Ac.0.36 cents in Ac.189/1 – in total Ac.7.39 cents in respect

of the claim of the petitioner was allowed. The original authority, without properly considering the evidence on record including recitals of Document No.197/1978 dated 21.09.1978, came to the conclusion that it is a gift deed and the appellate authority came to a different conclusion that it is a sale deed and the recitals of the Document No.1102 of 1978 dated 21.09.1978 executed in respect of the petitioner's lands, was not properly considered in its proper perspective, and thereby the authorities committed an error of fact and law.

8. The appellate authority, while dealing with Document No.1102 of 1978 dated 21.09.1978, held that it is a gift deed. The lands, in respect of which transfer was said to have been made by a sale deed and gift deed of the year 1978 pertaining to other lands, were misapplied to petitioner's lands and held that transfers are hit by Section 3(1) of the Regulation 1 of 1959 as amended by Regulation 1 of 1970. The authorities have not properly considered the said documents and the documents were executed confirming the earlier family settlements made in favour of petitioner's father by name Konathala Suraiah and subsequent documents of the year 1978 were executed only to facilitate the land holders who are in possession of the lands to enable them to get the benefits of subsidies, loans, etc., extended by the Government and other agencies. The authorities were fallen into error by passing the impugned orders without properly appreciating

the evidence available on record. Further, the contentions of the learned Government Pleader are contra to the above facts and they are untenable and thereby do not merit consideration by this Court. This Court felt that the findings of all the authorities are perverse and not based on any reasonable conclusion.

9. Further, this Court finds that there is a grave error of fact and law in deciding the issue by the lower authority. Hence, in the interest of Justice, the matter is remanded back to the original authority.

10. For the above reasons, the Writ Petition is allowed and the impugned orders passed by the original, appellate and revisional authorities are hereby set aside and the matter is remitted back to the original authority i.e. Special Deputy Collector (Tribal Welfare), K.R.Puram, to conduct a fresh enquiry by giving opportunity to the petitioner and pass appropriate orders thereon. No order as to costs.

11. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

11-07-2018
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