

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.7067 of 2008

ORDER:

The writ petitioner seeks a writ of Mandamus declaring the action of the 1st respondent in taking up the appeal in CMA No.242/2005 by exercising *suo motu* appellate powers and issuing notice dt. nil.02.2008 under the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1/1959 (for short "Regulation 1/1959") as amended by Regulation 1/1970 against the order of the 2nd respondent dt.29.06.2004 in LTR Case No.233/2004/PNB as illegal and arbitrary and without jurisdiction and to pass consequential orders thereon.

2) The brief facts of the petition are that:

a) The petitioner is the absolute owner and possessor of agricultural lands admeasuring Ac.1-10 gts and Ac.0-30gts in Sy.Nos.69 and 70 in Penuballi village of Penuballi Revenue Mandal, which is situated within the scheduled area of Khammam District. The subject property originally belonged to one Konda Narayana, who is a non-tribe and the petitioner is also a non-tribe. Petitioner acquired the subject property in his name through simple sale deed dated 12.05.1968 and ever since he has been in possession and enjoyment of the same. The provisions of Regulation 1/1959 as amended by 1/1970 have no application to the said land. While-so, the 2nd respondent, who is the primary authority initiated *suo motu* action by exercising powers under Sections 3(2)(a) of Regulation 1/1959 for ejecting the petitioner under the wrong notion

that the possession of the petitioner was subsequent to the commencement of the Regulation 1/1970 and took up enquiry in LTR Case No.233/2004/PNB against the petitioner and conducted enquiry and passed an order dated 29.06.2004 holding that the possession of the petitioner in respect of the subject land was not hit by the Regulation 1/1959 as amended by 1/1970 and accordingly dropped the proceedings. The said order attained finality since no appeal was preferred by anyone.

b) While-so, the 1st respondent, who is the Agent to the Government has, *suo motu* taken up CMA No.242/2005 and issued notice dt.nil.02.2008. Under Regulation 1/1959, there was no conferment of *suo motu* appeal powers or *suo motu* revision powers on the Agent to the Government. Therefore, the 1st respondent, who is exercising the powers of Agent to the Government with designation as Additional Agent to the Government as per G.O.Ms.No.193 Revenue (Ser-I) Department dated 17.04.2002 cannot exercise any *suo motu* appeal powers to take up the CMA No.242/2005 against the order in LTR Case No.233/2004/PNB.

Hence the writ petition.

3) The 2nd respondent filed counter opposing the writ petition contending that admittedly the disputed land is situated in scheduled area, to which Regulation 1/1959 is applicable and the petitioner is said to have acquired the disputed land through simple sale deed dated 12.05.1968 from one Konda Narayana and such simple sale deed will not confer any right over the scheduled land as the sale deed

compulsorily requires registration and without registration no title will pass to the purchaser. The petitioner has not filed pahani copies for the years of alleged purchase to show that his possession was prior to Regulation 1/1970. Hence the petitioner will not get any title over the scheduled land. Therefore, the 2nd respondent is empowered to take up *suo motu* enquiry as per Section 3(2)(a) of Regulation. The petitioner is at liberty to raise all the objections before the 1st respondent and without availing the said opportunity, the petitioner directly filed the writ petition which is not maintainable. He thus sought for dismissal of the writ petition.

4) Heard arguments of Sri Kowturu Vinay Kumar, learned counsel for petitioner and learned Assistant Government Pleader for Social Welfare.

5) Severely fulminating the notice issued by the 1st respondent in CMA No.242/2005, learned counsel for petitioner would argue that under Section 3(2)(a) of Regulation 1/1959 as amended by Regulation 1/1970, *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 aforesaid officers to take up the appeal proceedings without there being an appeal filed by the aggrieved party. Therefore, the 1st respondent has no jurisdiction to take up the appeal *suo motu* against the order in LTR Case No.233/2004/PNB, which attained finality. He thus prayed to allow the petition.

6) Per contra, learned Asst. Government Pleader for Social Welfare would argue that admittedly the disputed land is situated in agency tract and the petitioner obtained the said land through simple sale deed dated 12.05.1968 and since the sale deed was unregistered document, it do not confer any valid and legal title on him and this aspect was not properly appreciated by the 2nd respondent—Special Deputy Collector (Tribal Welfare), Bhadrachalam, during the earlier enquiry in LTR Case No.233/2004/PNB and he passed a wrong order. Therefore, the 1st respondent assuming *suo motu* power conferred under Section 3(2)(a) of Regulation 1/1959 as amended by 1/1970 took up CMA No.242/2005 and issued summons and therefore, the action of the 1st respondent is well within in his power and the same cannot be challenged by the petitioner. Instead of pleading his case before the 1st respondent, the petitioner rushed to invoke writ jurisdiction of this court by leaving the alternative and efficacious remedy. Therefore, the writ petition is not maintainable.

7) In the light of above respective arguments, the points for determination are:

- i) *Whether the 1st 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 the Andhra Pradesh Scheduled Areas Land Transfer Regulation 1/1959 as amended by 1/1970?*
- ii) *To what relief?*

8) **POINT No.1:** The disputed lands admeasuring Ac.1-10 gts and Ac.0-30gts in Sy.Nos.69 and 70 respectively is situated in Penuballi village of Penuballi Revenue Mandal which is a scheduled area of Khammam District. A perusal of the copy of order in LTR Case No.233/2004/PNB would show that on the report given by the Special Deputy Tahsildar (Tribal Welfare), Bhadrachalam dated 10.03.2004, the 2nd respondent initiated those proceedings under Regulation 1/1959 by issuing show cause notice to Konda Narayana and the writ petitioner, pointing out that the immovable property described in the schedule was under his possession and why he should not be ejected from the said land. In the said enquiry, it appears the writ petitioner, who was arrayed as respondent therein contended that he purchased the schedule land from Konda Narayana, who was shown as petitioner, through simple sale deed dated 12.05.1968 and ever since he has been in possession of the said land even prior to the Regulation 1/1970 and therefore, provisions of Regulation 1/1959 as amended by Regulation 1/1970 have no application.

a) Having heard both sides, the 2nd respondent—Special Deputy Collector held that both parties were non-tribals and no tribal interest was involved in the said case and the transfer involved in the case had taken place between the non-tribals prior to 03.02.1970 and hence the Regulation 1/1959 as amended by 1/1970 would not attract in the case and thus there was no reason to interfere with the peaceful possession and enjoyment of the suit land by the respondent/writ petitioner. Thus

the 2nd respondent dropped the proceedings. No appeal was preferred by anybody. However, the 1st respondent has taken up CMA No.242/2005 by assuming *suo motu* powers under Section 3(2)(a) of the Regulation 1/1959.

b) The contention in vehemence of the counsel for petitioner is that such a power to initiate proceedings *suo motu* is vested in the primary/original authority but not in the appellate authority. Drawing the distinction between Section 3(2)(a) and Section 3(3)(a) of Regulation 1/1959 as amended by 1/1970, learned counsel would argue that the word “*suo motu*” is employed only in Section 3(2)(a) but not in Section 3(3)(a), which manifests that the appellate authority cannot exercise *suo motu* power to initiate an appeal by its own without the appeal being filed by an aggrieved party. To buttress his argument, learned counsel placed reliance on the unreported judgment of this Court in *Ankatha Pullaiah and others v. The Addl. Agent to the Government and Project Officer, I.T.D.A, Bhadrachalam, Khammam District and another*¹. He would thus argue that the 1st respondent committed a grave jurisdictional error in taking up the CMA No.242/2005 *suo motu* and issuing summons to the petitioner.

c) To appreciate the contention that the appellate authority has no *suo motu* power, it is expedient to refer Section 3(2)(a) and (3)(a) of Regulation 1/1959 as amended by 1/1970.

¹ Unreported judgment dated 04.01.2015 in Writ Petition No.6386/2008

Section 3(2)(a) reads thus:

*“(2)(a): Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or **suo motu** (emphasis supplied) decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.”*

It lays down that where an immovable property was transferred in contravention of sub-Section (1), the Agent, the Agency Divisional Officer or any other prescribed officer may,

- (i) on application by any one interested or
- (ii) on information given in writing by a public servant or
- (iii) *suo motu*

can pass a decree of ejectment against any person in possession of the property claiming under the transfer by giving due notice to him and may restore the immovable property to the transferor or his heirs. Thus as per this provision, by above three modes, the Agent or Agency Divisional Officer or any other prescribed officer may initiate proceedings against the transfer of immovable property in contravention of sub-Section (1). Thus, *suo motu* exercise of power is one of the three modes for passing the decree of ejectment.

Then Section 3(3)(a) reads thus:

“(3)(a): Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such time as may be prescribed ---

(i) if the decree or order was passed by the Agent, to the State Government;

(ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and

(iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.”

(b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.

(4) x x x x”

In the above provision, the recourse of appeal is provided to the party, who is aggrieved by the decree passed by original authority under sub-Section (2). Power to condone delay in filing the appeal on showing sufficient cause is also vested with the appellate authority as per Section 3(3)(b).

9) Thus when Section 3(2)(a) and Section 3(3)(a) are placed in juxtaposition and scrutinised, it would appear, as rightly contended by the counsel for petitioner, 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 reason for legislative conferment of *suo motu* power on primary/original authority but negating on the appellate authority, in my considered view, is probably that the primary authority upon complaint or *suo motu* enquiry can prevent the contravention of provision under Section 3(1) and see that the object of the Regulation is sub-served. In such an instance, the necessity to file appeal arises only if any party is aggrieved by the order

and prefers an appeal under Section 3(3)(a) and hence there would be no necessity for the appellate authority to take up the appeal *suo motu* since already the designated primary authority has passed an order against the contravention. This might be the reason which prompted the legislature to confer *suo motu* powers on the primary/original authority alone but not on the appellate authority. It is a trite rule of Interpretation of Statutes that when the language of statute is clear, plain and unambiguous and susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. In ***State of Uttar Pradesh vs. Vijay Anand Maharaj***², the Apex Court observed that when a language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the act speaks for itself.

a) In ***British India General Insurance Co. Ltd. v. Captain Itbar Singh***³, the Apex Court while holding that Section 96(2) of Motor Vehicles Act, 1939, is exhaustive of defences open to an insurer, refused to add word “also” after the words ‘on any of the following grounds’ and observed as follows:

“Thus, the rules of interpretation, do not permit us to do unless the section as it stands is meaningless or of doubtful meaning”.

In that view of the matter, the word “*suo motu*” cannot be imported in Section 3(3)(a) of Regulation 1/1959 as amended by Regulation 1/1970 to confer *suo motu* power on the appellate authority, which I am afraid, would amount to judicial legislation.

² AIR 1963 SC 946

³ AIR 1959 SC 1331

b) My view gets fortified as in the case of **Ankatha Pullaiah** (1 supra), a learned Judge of this Court, in similar circumstances, while referring to Section 3(2)(a) of the Regulation, held thus:

“Para 8: The learned Government Pleader while referring to the above provision of law seeks to justify the impugned action. A reading of the above provisions of law makes it abundantly clear that under the provisions of the Land Transfer Regulations, the first respondent-agent to the Government cannot entertain the appeal suo motu but is competent to initiate action under section 3(2)(a) of the Regulations.

Para 9: In view of the above provision of law, this writ petition is disposed of, declaring the action of the first respondent in entertaining the appeal suo motu as without jurisdiction. However, it is open to the first respondent herein to initiate action as per section 3(2)(a) of the Land Transfer Regulations after giving notice and opportunity of hearing to the petitioners. No costs.”

c) It must be noted, in **Kola Mahalaxmi v. Agent to the Government, Khammam and others**⁴, another learned Judge of this Court however, expressed a different opinion. It was argued before him by the respondents that the appellate authority could set aside the impugned order by exercising *suo motu* powers, whereas the counsel for petitioner contended that the *suo motu* powers, if any, could be exercised only by the original authority but not by the appellate authority for reversing the earlier order. In that context, referring Section 3(2)(a), the learned Judge opined that from the said provision, it was clear that *suo motu* powers could be exercised either on application or on any information to the Agent, Agency Divisional Officer or any other officer

⁴ 1999(6) ALD 718 = 1999(6)ALT 174

prescribed. It was held, the appellate authority being the Agent to the Government could exercise *suo motu* powers to initiate proceedings where transfer of immovable property is made in contravention of the Regulations. With due respect, it must be mentioned, *suo motu* power referred in Section 3(2)(a) was in respect of the primary/original authority and such a *suo motu* power is not conferred on the appellate authority under Section 3(3)(a). The provision under Section 3(3)(a) was unfortunately not placed before the learned Judge. Therefore, the recent judgment in *Ankatha Pullaiah*'s case (1 supra), is only followed in the present instance.

10) Accordingly, this Writ Petition is disposed of declaring the action of the 1st 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

Date: 05.09.2018
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