

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NOs.21111 AND 22683 OF 2006

COMMON ORDER:

Since both the writ petitions arise out of common proceedings and the issue involved is one and the same, they are being disposed of by this common order.

2. **W.P.No.21111 OF 2006:-** This writ petition is filed, seeking to declare the order passed by the second respondent in Case No.J/3046/04, dated 16-06-2005 and consequential order of the first respondent in file No.F1/4773/2005, dated 15-07-2006, as illegal.

3. It is the case of the petitioners that they are legal heirs of Late Mr.Cherukuri Narayana Reddy and he purchased the lands admeasuring Ac.6.19 guntas in Sy.Nos.480, 481 and 482, situated at Thurkayamjal Village, Hayatnagar Mandal, Ranga Reddy District, under an unregistered agreement of sale dated 24-05-1973 for a consideration from the Inamdars Mr.Syed Jaimal Abedien and others. Since then, the said Narayana Reddy and after his death, the petitioners are in possession and enjoyment of the said lands. The third respondent who claimed to have purchased the said lands from the Inamdars on 28-7-1985, tried to interfere with the possession of said Narayana Reddy and that said Narayana Reddy filed a suit in O.S.No.250 of 1987 on the file of the Court of District Munsif, Hyderabad East & North for perpetual injunction against the third respondent and one Syed Basheeruddin and the said suit was decreed on 06-09-1995 as prayed for. Aggrieved by the said judgment, respondent No.3 filed an appeal in A.S.No.4 of 1996 on the file of the Court of Principal District Judge, Ranga Reddy District and the said appeal was dismissed on 30-06-1999.

4. It is further stated that the third respondent filed an application under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 before the second respondent on 3-12-1987 for grant of Occupancy Rights Certificate on the basis of

the alleged agreement of sale dated 28-07-1985 and also his possession over the said land from 1973, including the date of vesting i.e., 1-11-1973. Late Narayana Reddy also filed an application for grant of Occupancy Rights Certificate in his favour in view of his purchase of the said land on 24-05-1973. The second respondent by order dated 9-10-1989 in file No.C/11285/85, has granted Occupancy Rights Certificate in favour of the third respondent and that on the appeal filed by said Narayana Reddy, the first respondent allowed the appeal by setting aside the order passed by the 2nd respondent and remanded the matter to the second respondent for denovo enquiry. The second respondent by his order dated 16-6-2005 in file No.J/3046/04, again granted Occupancy Rights Certificate in favour of the third respondent. The legal heirs of said Narayana Reddy i.e., petitioners herein filed an appeal before the first respondent and the first respondent passed orders in Case No.F1/4773/2005, dated 15.07.2006 stating that the sales in favour of Late Ch.Narayana Reddy as well as 3rd respondent herein are not valid in law in view of vesting of the lands in the State in the year 1973-74 as “PADAVA” i.e., uncultivated, it would be deemed that the said lands were not under cultivation during the relevant year and as such neither of the parties are entitled for grant of Occupancy Rights Certificate. Aggrieved by the said order, the present writ petition is filed.

5. **W.P.No.22683 OF 2006:-** The petitioner in this writ petition who is the 3rd respondent in W.P.No.21111 of 2006, filed the present writ petition seeking to set aside the order passed by the first respondent in Case No.F1/4773/2005, dated 15-07-2006 and consequently uphold the order passed by the second respondent in Case No.J/3046/04, dated 16.06.2005 in granting Occupancy Rights Certificate in favour of the petitioner herein in respect of the land admeasuring Ac.6.19 guntas in Sy.Nos.480, 481 and 482, situated at Turkayamjal Village, Hayatnagar Mandal, Ranga Reddy District.

6. It is stated that the petitioner is in possession of the above land and cultivating the same and subsequently, he obtained agreement on 28-07-1985 from the Inamdars Mr.Syed Jaimal Abedien and others. Since then, the petitioner is in possession and enjoyment of the same. On the other hand, the respondents 3 to 7, who are the legal heirs of Late Narayana Reddy and petitioners in W.P.No.21111 of 2006, claimed that they are in possession of said land in pursuance of an agreement of sale dated 24-3-1973 with the above Inamdars. The respondent No.2 has granted occupancy rights certificate in file No.C/11285/85, dated 9-10-1989 as the petitioner claimed to be in long standing possession and the vendors have deposed before the authorities about the said transaction and entitlement of the petitioner to obtain Occupancy Rights Certificate.

7. The petitioner admitted in his affidavit about the civil cases filed by Late Narayana Reddy and himself and also filing their applications before the respondents 1 and 2 for grant of Occupancy Rights Certificates and he stated that ultimately the first respondent held that none of them are entitled to grant Occupancy Rights Certificate in respect of the subject land and that a purchaser from Inamdar is not entitled to grant of Occupancy Rights Certificate and the said transaction is contrary to Section 2(d) read with Rule 5 of the Act, 1995. Aggrieved by the order passed by the first respondent, the present writ petition is filed.

8. During the pendency of W.P.No.22683 of 2006, one Bokka Chenna Reddy filed W.P.M.P.No.41983 of 2013 to implead him as petitioner No.2 in the said writ petition on the ground that he purchased the subject land from the first petitioner. Thereafter, the petitioner died and his son by name A.Sathishlal filed W.P.M.P.No.33042 of 2017 to bring him as his legal representative on record as petitioner No.2 in the said writ petition. This Court, by order dated 23.04.2018, ordered both the applications.

9. For the sake of convenience, the parties herein are referred to as they are arrayed in W.P.No.21111 of 2006.

10. Heard.

11. The claim and counter claim of both sides upon the subject land is based on the unregistered sale agreements for obtaining Occupancy Rights Certificate. It is necessary that the applicant should be in possession of the land as on 01-11-1973 and the same should be under the personal cultivation. It is not known as to the vendors had the alienable right and title upon the subject land and the land is under personal cultivation. Since the first respondent has observed that the subject land was not under cultivation (Padava), it indicates that the land was not put to use for the purpose of cultivation. Personal cultivation necessarily need not be the occupant/owner cultivating the land in person by himself. It could be by family members or through engaging agricultural labour. There is no pleading to effect of drought affected area to say lands were not in cultivation. Hence, they are "Padava" (uncultivated). Even if the lands are not under cultivation for any exigencies for a year, it cannot be said "Padava". In the absence of any evidence not being filed by the parties in support of their arguments, they cannot take any defence against the finding of the first respondent in this regard.

12. The validity of the sale agreements relied on by both the parties is another issue, which falls for consideration to decide the factum of entitlement for grant of Occupancy Rights Certificate. The vendors who were not having any title by themselves, obviously, cannot transfer a better title to the claimants. The

petitioners approached the Civil Court by filing O.S.No.250 of 1987 on the file of the Court of District Munsif, Hyderabad East & North for perpetual injunction and the said suit was decreed on 06-09-1995, aggrieved by the said judgment, the third respondent filed an appeal in A.S.No.4 of 1996 on the file of the Court of Principal District Judge, Ranga Reddy District and the same was dismissed on 30-06-1999, the parties ought to have approached the competent Civil Court, seeking a decree, basing on the sale agreements and their entitlement for obtaining Occupancy Rights Certificate from the competent authority.

13. The learned counsel for the third respondent relied on the judgment reported in **S.Veera Reddy Vs. Chatlapalli Chandraiah**¹, wherein a Division Bench of this Court held that notwithstanding abolition of inams, an inamdar can transfer his rights in favour of any third person and the transferee would be entitled to all those rights and that such transfer is not prohibited by the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955. This Court accepts the view of the Division Bench of this Court with regard to the authority of the Inamdar to transfer his right to the purchaser. But in the present case, there are rival claims in respect of the subject land and certain factual issues involved in this case, therefore, this Court cannot decide the disputed questions of fact and the rival claims in its extraordinary jurisdiction under Article 226 of the Constitution of India.

14. For the reasons stated above, both the writ petitioners are liable to be dismissed and are accordingly dismissed. No order as

¹ 1995 ALT 172 DB

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

Date: 15-06-2018
Shr

T.AMARNATH GOUD,J

