

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.3952 of 2011

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents 1 to 3.

The prayer sought in the writ petition is as under:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Court may be pleased to issue an appropriate writ order or direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the respondents 1 and 2 in initiating proceedings in A.D.O. L.T.R. No 62/2011 dated 28.01.2011 under the provisions of the Regulation 1 of 1959 as amended by Regulation 1 of 1970 to evict the petitioner from the residential house bearing No. 2-243 owned and possessed by the petitioner to an extent of Ac.0.04 cents situated in S.No. 25 Part of Rampachodavaram Village Rampachodavaram Mandal East Godavari District as highly illegal arbitrary unjust improper and in violation of the principles of natural justice and consequently set aside the same and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The case of the petitioner is that he is a resident of Rampachodavaram village and mandal of East Godavari District. He is the absolute owner and possessor of house site of Ac.0.40 cents in Sy.No.25/part in Rampachodavaram village and mandal, East Godavari District. In fact, his father by name Gannavarapu Potha Raju encroached the above piece of land in the year 1951 and erected a thatched house. Since then, he was in peaceful possession and enjoyment of the said house site till his death, and the petitioner inherited the said property by succession. In fact, Mandal Revenue Officer, Rampachodavaram issued possession

certificate No.8/93 dated 17.04.1993 stating that the petitioner has been in possession of the land and he has no objection to construct a house in the above said site under weaker sections housing programme in view of the orders of the M.R.O. Rampachodavaram and the District Collector, East Godavari issued in Ref.D/1638/92, dated 8.7.1992. It is also stated that the petitioner has been paying the tax to the Gram Panchayat, Rampachodavaram regularly. The house was also allotted house No.2-156 and subsequently it is changed to 2-243. However, in the recent rains i.e. at the time of filing of the writ petition, the thatched house was totally damaged and collapsed. When the petitioner changed the roof with RCC on 18.01.2011, the Revenue Divisional Officer, Rampachodavaram came to the house of the petitioner and tried to demolish the structures and directed him to vacate the premises, since the petitioner is a non-tribal and the acquisition of the said house site is contrary to the provisions of A.P. Scheduled Areas Land Transfer Regulation 1/59 as amended by Regulation 1/70 (hereinafter called as 'Regulation'). Questioning the said action, the petitioner filed W.P.No.1174 of 2011 in this Court and obtained interim directions on 28.1.2011 directing the respondents therein not to interfere with his peaceful possession and enjoyment of the subject property, except in accordance with due process of law. Subsequently, the first respondent issued notice in form 'E' to the petitioner stating that transfer of the subject property is made in contravention of provisions under Section 3 of Regulation and directed to show cause as to why he should not be ejected from the scheduled property and restore the same to the State.

The learned Senior Counsel appearing for the petitioner contended that the first respondent has no jurisdiction to issue the impugned proceedings, since the acquisition of the subject property by the petitioner from his father will not amount to transfer, thereby attracting the provisions of Regulation. He also brought to the notice of this Court the definition of transfer as defined under Section 2(g) of Regulation. Though the impugned proceedings are only in the form of a show cause notice, since it is without jurisdiction, the present writ petition has been filed.

Per contra, the first respondent filed a counter affidavit denying the material allegations made in the affidavit filed in support of the writ petition and contended *inter alia* that possession of subject property by the petitioner is in contravention of the provisions of the Regulation since Rampachodavaram village and mandal comes within the area of agency tracts. Since the petitioner is a non-tribal, the burden lies on him to prove that the subject property belongs to him and is not in violation of the provisions of the Regulation.

Having heard both the counsel and from the perusal of the material on record, it is revealed that the petitioner has been in possession and enjoyment of the subject property for the last about seven decades. In fact, in the year 1951 his father has encroached a portion of the government poramboke land and after his death, the petitioner has been inherited the same. Admittedly, the petitioner was given possession certificate under the weaker sections housing programme in view of the orders of the Revenue

Divisional Officer, Rampachodavaram and District Collector, East Godavari vide Ref. D/1638/92, dated 8.7.1992. Thereafter, the subject property was assessed to tax by assigning door number 2-156, subsequently changed as 2-243 by the Gram Panchayat.

In the backdrop of the above said factual matrix, the point that arises for consideration is whether the provisions of Regulation are applicable to the property in question and if so, whether the petitioner is liable to be evicted therefrom?

To appreciate the above said aspect, some of the provisions of the Regulation are important to deal with the issue and the same are as under:

Section 2(g) - 'Transfer' means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract.

3(1)(a) - 'Transfer of immovable property by a member of a Scheduled Tribe:- Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer or immovable property situated in the Agency tracts by Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

As per the above said provisions, transfer means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property. As per Section 3(1)(a) transfer of immovable property is interpreted as unless such transfer is made in

favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

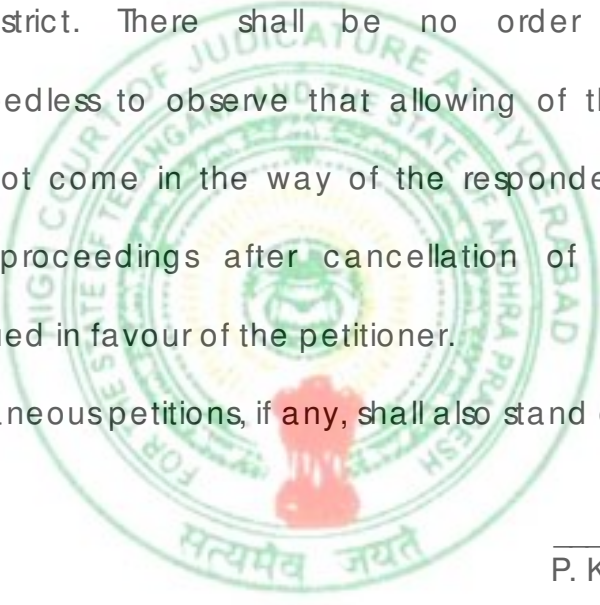
However, in the case on hand, the specific case of the petitioner is that they are in occupation of the government poramboke land from the year 1951 onwards. Their possession has been accepted and regularized by the respondents by issuing a possession certificate No.8/93, dated 17.04.1993 under the weaker sections housing programme. It cannot be said that the petitioner is in unauthorized possession of government poramboke land or is holding land in contravention of the provisions of the Regulation. Though, the first respondent filed a detailed counter affidavit not adverted to anything with regard to the possession certificate and regularization of the subject property in favour of the petitioner under the weaker sections housing programme. Merely because the subject property falls within the scheduled area, it does not mean that the possession of the petitioner is in contravention of the provisions of the Regulation. On the other hand, the learned Government Pleader, on the query raised by the Court, was not able to answer as to whether the possession certificate issued under the weaker sections housing programme has been cancelled enabling the respondents to initiate proceedings under the provisions of the Regulation. Therefore, the possession certificate issued in favour of the petitioner is in force till date. Therefore, this Court is of the opinion that the impugned notice issued by the first respondent is arbitrary and illegal. Under these circumstances, this

Court is inclined to interfere in the matter and set aside the impugned proceedings.

Accordingly, the writ petition is allowed setting aside the impugned proceedings in A.D.O. L.T.R. No 62/2011 dated 28.01.2011 under the provisions of the Regulation 1 of 1959 as amended by Regulation 1 of 1970 to evict the petitioner from the residential house bearing No. 2-243 owned and possessed by the petitioner to an extent of Ac.0.04 cents situated in S.No. 25 Part of Rampachodavaram Village Rampachodavaram Mandal East Godavari District. There shall be no order as to costs.

It is needless to observe that allowing of the present writ petition will not come in the way of the respondents in initiating appropriate proceedings after cancellation of the possession certificate issued in favour of the petitioner.

Miscellaneous petitions, if any, shall also stand closed.

P. KESHA VA RAO, J

Date:19.11.2018
ccm

HON'BLE SRI JUSTICE P. KESHA VA RAO



WRIT PETITION No. 3952 of 2011

Date:19.11.2018

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