

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Writ Petition No.20813 of 2008

ORDER:

The writ petitioner seeks a writ in the nature of prohibition, prohibiting the 1st respondent from proceeding with the case in S.R.No.12 of 2008 as he has no power under the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short "A.P.S.A.L.T. Regulation") as amended by Regulation 1/1970 and consequently set aside the proceedings in S.R.No.12 of 2008 on the file of 1st respondent.

2) Petitioner's case is that he is the owner and possessor of land in an extent of Ac.5-05 cts in R.S.No.44 of Jaivarigudem Village, Buttaigudem Mandal, West Godavari District and he purchased the said land from one Polanati Venkata Swamy through a possessor agreement of sale dated 25.07.1969. Since the date of agreement, the petitioner has been in continuous possession and enjoyment of the schedule land. Thereafter he obtained registered sale deed dated 09.11.1976. As the land is situated in agency area of West Godavari, after the advent of A.P.S.A.L.T Regulation 1/1959 as amended by 1/1970, the Special Deputy Tahsildar, Tribal Welfare, Eluru filed a complaint before the Special Deputy Collector, Tribal Welfare, Eluru against the petitioner under Section 3(2)(a) of said Regulation on the allegation that the petitioner, who is a non-tribal is in possession and enjoyment of the land situated in agency area by obtaining a sale deed from Polanati Venkata Swamy and therefore, the petitioner may be ejected from the schedule mentioned land since the transaction was null and void under the

provisions of said regulations. The said complaint was registered as S.R.No.104 of 1982 and the Special Deputy Collector, conducted due enquiry and he passed an order on 25.02.1983 holding that the sale transaction between Polanati Venkata Swamy and petitioner was not hit by the provisions of the Agency Tracts Interest and Land Transfer Act, 1917 or A.P.S.A.L.T Regulation 1/1959 as amended by 1/1970 and ultimately dismissed the complaint. Thus in essence the sale deed obtained by the petitioner was held to be a valid one. The aforesaid order of the Special Deputy Collector, Tribal Welfare, Eluru became final as no appeal was carried out against the said order.

3) While-so, the Special Deputy Tahsildar, Tribal Welfare without filing any appeal against the order in S.R.No.104/1982 again filed a fresh complaint before the Special Deputy Collector, questioning the validity of the sale transaction dated 09.11.1976 between Polanati Venkata Swamy and the petitioner. On such complaint, the 1st respondent, who is the Special Deputy Collector, registered a case in S.R.No.12/2008 and issued notice to the petitioner summoning him for enquiry. The land in question was not surveyed by the date of passing order in S.R.No.104 of 1982 but later it was surveyed and sub-divided and numbered as S.No.44/3. For the said land, the petitioner was issued with pattadar pass book and title deed in his favour by the MRO and RDO, Kovvur. Be that as it may, the action of the 2nd respondent in filing fresh complaint on same set of facts in the absence of any further transaction and registration of the case and issuance of summons by

the 1st respondent is not maintainable because the 1st respondent has no power to review the earlier order passed in S.R.No.104/1982.

Hence the Writ Petition.

4) Learned Government Pleader for Tribal Welfare (Andhra Pradesh) appeared on behalf of respondents and filed counter, wherein it is contended that subsequent to the dismissal of S.R.No.104/1982 on 25.02.1983, basing on the complaint given by one Payam Kannaiah R/o. Jainavarigudem, the Special Deputy Collector, Tribal Welfare, Eluru, registered S.R.No.12/2008 and issued notice to the petitioner. The said complaint was filed basing on the fresh evidence secured by Payam Kannaiah to the effect that the petition schedule land originally belonged to one Koppula Narayana Swamy as per R.S.R.No.1993 and subsequently he alienated the schedule land to Polanati Venkata Swamy and he alienated to the petitioner and therefore, the petitioner has obtained the sale deed in violation of the law. Basing on the said fresh evidence filed by Payam Kannaiah, the Special Deputy Collector, passed ejectment order dated 19.09.2008 in S.R.No.12/2008. Hence the writ petition is not maintainable.

5) The points for determination are:

- (i) *Whether the proceedings in S.R.No.12/2008 initiated by the 1st respondent basing on the complaint said to be filed by Payam Kannaiah are legally maintainable?*
- (ii) *To what relief?*

6) **POINT No.1:** Admittedly, earlier on the complaint given by the Special Deputy Tahsildar, Tribal Welfare, Eluru, the 1st respondent registered S.R.No.104/1982 and passed an order dated 25.02.1983 and dismissed the complaint. In the said order the 1st respondent observed that the sale transaction between Polanati Venkata Swamy and petitioner has to be viewed under the provisions of Agency Tracts Interest and Land Transfer Act, 1917 and A.P.S.A.L.T Regulation 1/1959. Thus he dealt with Section 3(i) of the Regulation 1/1959 r/w Section 4(i) of Agency Tract Interest and Land Transfer Act, 1917. The 1st respondent observed that as per the respondent/petitioner herein, he purchased the land under Ex.B.2—sale agreement dt.25.07.1969 and took possession of the land and subsequently obtained Ex.B.1—registered sale deed dated 09.11.1976. He also filed land revenue receipt dated 21.09.1969 vide Ex.B.3 i.e, showing his possession of the land pursuant to the agreement to sell. The 1st respondent thus observed that the respondent/petitioner herein came into possession of the land before the introduction of A.P.S.A.L.T. Regulation 1/1970 amending Section 3(i) of A.P.S.A.L.T Regulation 1/1959 and as such, the transaction was not a null and void transaction under Section 3(1)(a) of A.P.S.A.L.T Regulation 1/1959 as amended by 1/1970. The 1st respondent then took up the issue as to whether there was any violation of provisions of the Agency Tracts Interest and Land Transfer Act, 1917 and observed that as per the current R.S.R. 1932, the land stood in the name of non-tribe as per Ex.B.4—encumbrance certificate and there was no transaction on the land even from 1916 which would indicate that the same non-tribe was in possession of the land even from 1916 onwards i.e, even prior to the enactment of Agency Tracts Interest

and Land Transfer Act, 1917. Thus the 1st respondent observed that the subsequent transfer took place only between non-tribes and as such the transaction was not hit by the provisions of A.P.S.A.L.T. Regulation 1/1970. On these observations, the 1st respondent dismissed the earlier complaint in S.R.No.104/1982.

7) A close scrutiny of the order in S.R.No.104/1982 would clearly manifest that the provisions of Agency Tracts Interest and Land Transfer Act, 1917 and A.P.S.A.L.T. Regulation 1959 as amended by 1/1970 have absolutely no application to the sale transaction between Venkata Swamy and petitioner and therefore, the order of the 1st respondent in S.R.No.104/1982 was perfectly right and impregnable. Be that it may, the contention of the 2nd respondent is that one Payam Kannaiah obtained fresh evidence and filed complaint and therefore, the 2nd respondent initiated proceedings in S.R.No.12/2008 and passed ejectment order dated 19.09.2008. It must be noted that the 1st respondent though in his counter stated as if the said Payam Kannaiah obtained fresh evidence but did not produce such evidence for verification of this Court. He has also not produced the alleged ejectment order dated 19.09.2008 said to be passed by the 1st respondent. In ***Gangula Kondala Rao vs. The Special Deputy Collector, Tribunal Welfare, K.R.Puram, West Godavari District and another***¹, this Court observed that when once the Special Deputy Collector, has passed an order holding that there is no contravention of any of the provisions of A.P.S.A.L.T. Regulation, a regular appeal is provided for and if the respondents are so aggrieved, they

¹ Unreported judgment of this Court dated 20.06.2007 in Writ Petition No.4485 of 2000.

should prefer an appeal against the order of the Special Deputy Collector and without preferring the appeal, the second complaint is not maintainable as the repeated initiation of the proceedings under A.P.S.A.L.T Regulation would be without jurisdiction. It may be noted that though the 1st respondent in his counter contended that the second complaint was filed basing on the averment that the schedule land originally belonged to Koppula Narayana Swamy as per R.S.R. 1993, who alienated to Polanati Venkata Swamy and he alienated to the petitioner herein and hence the petitioner had no right, title and possession over the scheduled property, the said contention is untenable for the reason that said Koppula Narayana Swamy is none other than the father-in-law of Polanati Venkata Swamy and he is a also non-tribe.

8) In the instant case, the order in S.R.No.104/1982 was passed on 25.02.1983. After lapse of 25 long years, a fresh complaint in S.R.No.12/2008 is initiated without any plausible material. Therefore, in the considered view of this Court, the proceedings in S.R.No.12/2008 are not legally maintainable. This point is answered accordingly.

9) **POINT No.2:** In the result, this Writ Petition is allowed and the proceedings in S.R.No.12 of 2008 on the file of the 1st respondent are hereby set aside. No costs.

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

U.DURGA PRASAD RAO, J

Date: 20.08.2018

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