

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**Writ Petition No.15609 of 2008**

**ORDER:**

The petitioners seek a Writ of Mandamus declaring the action of respondents in ejecting them from Ac.4-22cts. in R.S.Nos.393/5 and 393/7 of Pragadapalli Village, Polavaram Mandal, West Godavari District through proceedings in S.R.No.477/1998 dt.30.12.1998 of the Special Deputy Collector(TW), Kotaramachandrapuram, West Godavari District and confirmed by order dated 14.02.2001 in S.R.A.No.8/1999 by Agent to Government, West Godavari District, Eluru and further confirmed in the order dated 12.06.2008 in R.P.No.7025/LTR1/2001 by Government of A.P., Tribal Welfare, Secretariat, Hyderabad through G.O.Ms.No.111 dated 12.06.2008 by reviewing the earlier order dated 10.09.1990 in S.R.Nos.699/1985 and 700/1985 passed by Special Deputy Collector(TW), Kotaramachandrapuram, West Godavari District as arbitrary, illegal and without jurisdiction.

2) Petitioners' case is thus:

a) On the complaint of 1<sup>st</sup> respondent, the 2<sup>nd</sup> respondent initiated proceedings against the 1<sup>st</sup> petitioner in S.R.No.477/1998 in respect of Ac.1-10cts in Old Survey(OS) No.19 of Pragadapalli Village, Polavaram Mandal, West Godavari District for contravention of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (for short "A.P.S.A.L.T. Regulation") as amended by Regulation I of 1970.

b) S.R.No.477/1998 was initiated on the allegation that 1<sup>st</sup> petitioner is in occupation of Ac.1-10 cts. in OS No.19 in contravention of Regulation 1/1959 as amended by 1/1970. It appears during enquiry, the 1<sup>st</sup> respondent came to know that the disputed land Ac.1-10 cts. in OS No.19 fell part of either R.S.No.393/5 admeasuring Ac.2-47cts or R.S.No.393/7 admeasuring Ac.1-75 cts. totalling Ac.4-22 cts which land is also recorded in the name of 1<sup>st</sup> petitioner as per revenue records. However, the enquiry further revealed that these lands were held by Vyshnapu Subba Rao S/o.Satyanarayana and gifted those lands to his daughter—Daparathi Sumathi at the time of her marriage. Thus, it came to light that 2<sup>nd</sup> respondent therein is holding Ac.2-47 cts. in R.S.No.393/5 and Ac.1-75 cts. in R.S.No.393/7 total measuring Ac.4-22 cts. by way of gift by Vyshnapu Subba Rao of Rajampalem village. Therefore, in S.R.No.477/1998 Smt. Daparathi Sumathi was also added as 2<sup>nd</sup> respondent therein.

c) Sofaras Ac.4-22 cts. i.e., Ac.2-47 cts. in R.S.No.393/5 and Ac.1-75 cts. in R.S.No.393/7 is concerned, 1<sup>st</sup> petitioner's case is that the said land of Ac.4-22 cts. belonged to her mother—Kakarla Appayamma from whom she succeeded. Ownership of Kakarla Appayamma is concerned, her father—Vyshnapu Satyanarayana and his bothers, Gangayya and Jagganna were original owners of Ac.11-06 cts. From out of the share of Satyanarayana, Ac.1-00 cts was given to Appayamma as Pasupu Kumkuma. Thereafter Kakarla Appayamma purchased Ac.2-00cts in OS Nos.19 and 20 from the daughters of Vyshnapu Gangaiah through

registered sale deed dated 30.06.1962 and she also purchased an extent of Ac.1-00 cts in Patta No.22 from her paternal uncle—Vyshnapu Jagganna and his sons through registered sale deed dated 24.07.1968. Thus, Kakarla Appayamma was in possession of total extent of land admeasuring Ac.4-00cts (Ac.1-00cts + Ac.2-00cts + Ac.1-00cts) which was re-surveyed and numbered as R.S.Nos.393/5 and 393/7 measuring Ac.2-45cts and Ac.1-75cts respectively. Kakarla Appayamma having only one daughter i.e. 1<sup>st</sup> petitioner and hence after the death of Appayamma, the 1<sup>st</sup> petitioner succeeded to the said land of Ac.4-22 cts. According to the 1<sup>st</sup> petitioner, the aforesaid lands were under possession and enjoyment of her family members and they were never held by tribals at any time.

d) Her further is case that earlier on the complaint filed by Special Deputy Collector (TW) No.II, Kotaramachandrapuram alleging that 1<sup>st</sup> petitioner is in illegal occupation of Ac.4-22 cts, S.R.Nos.699/1985 and 700/1985 were booked against her and the 1<sup>st</sup> petitioner contested those cases and established her ownership in respect of Ac.4-22 cts. The Special Deputy Collector holding that lands were under the possession and enjoyment of 1<sup>st</sup> petitioner and her family and the lands were not held by any tribals at any time dismissed the complaint. The said finding became final and therefore re-enquiry cannot be conducted in respect of Ac.4-22cts covered by R.S.Nos.393/5 and 393/7 as the same is barred by principle of res judicata.

e) Sofaras Ac.1-10 cts. in OS No.19 is concerned, 1<sup>st</sup> petitioner's case is that she purchased the same from Vyshnapu Jagganna and his sons—Ranga Rao and Venkataratnam through sada sale agreement dated 12.11.1969 and later obtained registered sale deed dated 27.08.1971 and therefore, the proceedings in S.R.No.477/1998 are not maintainable in respects of said land also. Thus the 1<sup>st</sup> petitioner contended that neither the land in an extent of Ac.4-22 cts covered by R.S.Nos.393/5 and 393/7 nor the land in an extent of Ac.1-10 cts in OS No.19 was obtained from tribals and therefore, there was no contravention of Regulation 1/59 as amended by 1/1970. The 2<sup>nd</sup> petitioner is her daughter and she has nothing to do with the subject lands. However, the aforesaid contention of the first petitioner was not found favour with the respondent authorities.

f) In S.R.No.477/1998, the 2<sup>nd</sup> respondent did not agree with the above contention of the 1<sup>st</sup> petitioner. Sofaras Ac.4-22 cts is concerned, it was observed that since the said land was held by the 2<sup>nd</sup> petitioner and it is not clear in which R.S.Number the said land was located, the petitioners are liable to be ejected.

g) In the appeal—S.R.A.No.8/1999 carried out by the petitioners, the 3<sup>rd</sup> respondent confirmed the order of the 2<sup>nd</sup> respondent in S.R.No.477/1998. The Appellate Court observed that the 1<sup>st</sup> petitioner claims that her mother was the owner of Ac.4-22 cts and the same was given to the 1<sup>st</sup> petitioner towards Pasupu kunkuma but no recorded evidence is produced to that effect. Sofaras Ac.1-10 cts is concerned, the

1<sup>st</sup> petitioner claims to have purchased under sale agreement executed in her favour on 12.11.1969 and later obtained a registered sale deed dated 27.08.1971. Since the sale deed was subsequent to Regulation 1/1970, the same is not a valid one. Accordingly, the 3<sup>rd</sup> respondent dismissed the appeal.

h) The petitioners preferred revision—R.P.No.7025/LTR1/2001 before the 4<sup>th</sup> respondent i.e, Government of Andhra Pradesh, Tribal Welfare, Hyderabad. However, the said revision was dismissed confirming the orders of the Courts below.

Hence the writ petition.

- 3) The 2<sup>nd</sup> respondent filed counter and opposed the writ petition.
- 4) Heard arguments of Sri C.C.S. Sastry, learned counsel for petitioner and learned Government Pleader for Social Welfare (Andhra Pradesh).
- 5) Learned counsel for petitioner challenged the orders of the Courts below mainly on the two grounds:

a) Firstly, in the enquiry relating to S.R.No.477/1998 concerning Ac.1-10 cts, the respondent authorities unnecessarily conducted enquiry relating to Ac.4-22 cts (Ac.2-47 cts. in R.S.No.393/5 and Ac.1-75 cts. in R.S.No.393/7) also as the said land was already a subject matter of enquiry in S.R.Nos.699/1985 and 700/1985 and by order dated 10.09.1990, the Special Deputy Collector (TW), K.R.Puram, already held

that the 1<sup>st</sup> petitioner is the owner of Ac.4-22 cts of land and the said land was never held by tribals at any time and dismissed the complaint filed by Special Deputy Tahsildar and since no appeal was carried out against the said order, the same attained finality. Therefore, principle of *res judicata* applies to the re-enquiry in respect of Ac.4-22 cts. However, though the issue of *res judicata* was raised before all the three authorities, they have not given any finding in that regard. Therefore, the orders passed by the respondents are devoid of law.

b) Secondly, sofaras Ac.1-10 cts in OS No.19 is concerned, 1<sup>st</sup> petitioner purchased the same from her paternal uncle—Vyshnapu Jagganna and his sons—Ranga Rao and Venkata Ratnam through sada sale agreement dated 12.11.1969 and later obtained a regular registered sale deed dated 27.08.1971. Since the sale agreement was prior to the Regulation 1/1970, the transaction is legally valid and not hit by Regulation 1/1970. Learned counsel relied upon the decision reported in *Munja v. Parchaki Raju and others*<sup>1</sup> and argued that the transaction covered under sale agreement is valid under law but the respondent authorities did not consider the same and negatived her contention. He thus prayed to allow the writ petition and set aside the order in revision and consequently the orders of the Courts below.

6) Per contra, learned Government Pleader for Social Welfare (AP) supported the impugned order and also orders of the Courts below.

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<sup>1</sup> 1976(2) Andhra Pradesh Law Journal Pg. 103

7) I gave my anxious consideration to the respective contentions. Admittedly, in respect of Ac.4-22 cts covered by R.S.Nos.393/5 and 393/7, earlier on the complaint lodged by the Special Deputy Tahsildar, 2<sup>nd</sup> respondent conducted enquiry in S.R.Nos.699/1985 and 700/1985. The 1<sup>st</sup> petitioner raised the same contention as in the writ petition before the 2<sup>nd</sup> respondent. After full-fledged enquiry, the 2<sup>nd</sup> respondent passed the following order:

*“I have examined the evidence adduced and all the records made available before me. Ex.AR.1 which is a copy of rough patta issued by the settlement officer, Eluru disclosed that an extent of Ac.11-06 cents was granted in favour of V.Gangaiah, Gagganna and Satyanarayana. As per Ex.AR.3 which are copies of the sale deeds dt. 30-06-62, 24-7-68, the deponents mother-in-law got the lands from the non-tribals and since then the lands are under the possession and enjoyment of the deponents family. The lands in question are never held by the tribals at any time.*

*In view of the facts, I conclude that there is no contravention of the provisions of A.P.G.A.T Reg.1/59 as amended by Reg.1/70 read with agency tracts interest and land transfer Act 1/17.*

*In the result, the complaints filed by the Spl. Dy. Tahsildar (TW)No.II, K.R.Puram are hereby disallowed and further proceedings dropped.”*

No appeal was carried out against the above order as no record is placed before me to that effect. Hence the order in S.R.Nos.699/1985 and 700/1985 can be said to have attained finality. Therefore, under law, generally said order will operate as *res judicata* on the subsequent enquiry in respect of same property and between the same parties.

Ofcourse, on presentation of new facts and convincing evidence, the concerned authority may come to a different conclusion. Be that it may, in enquiry relating to SR No.477/1998 concerning to Ac.1-10 cts, the Special Deputy Collector, it appears, on the report furnished by the Special Deputy Tahsildar, to the effect that the said land of Ac.1-10 cts was part of Ac.4-22 cts in R.S.Nos.393/5 and 393/7, conducted re-enquiry in respect of the aforesaid Ac.4-22 cts of land in R.S.Nos.393/5 and 393/7. Quite obviously, the 1<sup>st</sup> petitioner raised issue of principle of *res judicata* in respect of the said Ac.4-22 cts. She gave an independent explanation as to how she obtained Ac.1-10cts of land. In such a scenario, the duty was cast on the 3<sup>rd</sup> respondent to give findings on the following aspects:

- i) Whether or not principle of *res judicata* apply in respect of the Ac.4-22 cts of land in R.S.Nos.393/5 and 393/7 in view of the earlier order in S.R.Nos.699/1985 and 700/1985.
- ii) Whether the agreement to sell dated 12.11.1969 pleaded by the 1<sup>st</sup> petitioner in respect of Ac.1-10 cts is legally valid so as to obviate the sale transaction from the mischief of Regulation 1/1959 as amended by 1/1970.

It is deplorable that neither the primary authority nor the appellate and revisional authorities have bestowed their attention to answer the above two aspects satisfactorily. While the issue of *res judicata* was not at all answered by any of the three authorities, the legal validity of agreement of sale dated 12.11.1969 was also not convincingly answered. Therefore,

this Court has no advantage of having the view of the three authorities on the two important issues of law. It is, therefore, considered apposite to remand the matter to the 4<sup>th</sup> respondent, who is the revisional authority for answering the aforesaid aspects.

8) In the result, this Writ Petition is allowed and the order dated 12.06.2008 in R.P.No.7025/LTR1/2001 passed by the 4<sup>th</sup> respondent through G.O.Ms.No.111 Social Welfare (LTR-1) Department dated 12.06.2008 is set aside and the matter is remanded to the 4<sup>th</sup> respondent and the said authority shall, after giving an opportunity to both parties and upon hearing them, shall decide the revision petition with reference to the following issues:

- i) Whether or not principle of *res judicata* apply in respect of the Ac.4-22 cts of land in R.S.Nos.393/5 and 393/7 in view of the earlier order in S.R.Nos.699/1985 and 700/1985.
- ii) Whether the agreement to sell dated 12.11.1969 pleaded by the 1<sup>st</sup> petitioner in respect of Ac.1-10 cts is legally valid so as to obviate the sale transaction from the mischief of Regulation 1/1959 as amended by 1/1970.

The 4<sup>th</sup> respondent shall complete the above exercise and pass an appropriate order on merits within three(3) months from the date of receipt of a copy of this order. No costs.

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

**U. DURGA PRASAD RAO, J**

Date: 17.09.2018  
Murthy/Scs