

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.12606 OF 2008

ORDER:

The petitioner seeks writ of mandamus declaring the order passed by the 1st respondent in C.M.A.No.47 of 2004, dated 07.05.2008 and also the common order passed by the 2nd respondent in LTRP Nos.9, 13, 60 and 61 of 2003, dated 21.11.2003 as illegal, arbitrary and violative of principles of natural justice, besides being violative of Article 14 and 300-A of the Constitution of India and consequently, to set aside the aforesaid orders.

2. (a) Petitioner's case, briefly, is that she is the owner of an extent of Acres 1.62 cents and 0.28 cents of land in Survey Nos.32/3 and 32/1 respectively situated in Konalova Village, Addateegala Mandal of East Godavari District, as she purchased the above extent of lands from one Ake Adilakshmi, W/o. Venkata Ramana, resident of the said village, under registered sale deed dated 22.06.1971, pursuant to the earlier agreement dated 17.12.1968. Ever since the agreement, the petitioner has been in possession and enjoyment of the said property continuously and paying the revenue tax to the authorities. While so, the respondents filed batch of complaints vide LTRP Nos. 9, 13, 60 and 61 of 2003 against the 4th respondent, who is the daughter of petitioner's vendor and also against petitioner's vendor

seeking restoration of land in an extent of Acres 1.26 cents in Survey No.32/1 and Acres 1.62 cents in Survey No.32/3, situated at Konalova Village, by ejecting the respondents therein. Though the petitioner is the owner of the land in an extent of 0.28 cents in Survey No.32/1 and Acres 1.62 cents in Survey No.32/3, she was not added as a party in the LTRP proceedings. The 2nd respondent gave a finding that the present writ petitioner purchased a land from Ake Adilakshmi under registered sale deed dated 22.06.1671. In spite of such an observation, the petitioner was not added as a party respondent in the aforesaid proceedings.

(b) It is mandatory under Rule 7 of the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 (for short, 'APSALT Rules, 1969') that a notice under form 'E' has to be issued to the person in possession of the subject lands and such person should be given an opportunity to submit his case. However, in spite of the statutory obligation, the petitioner was not issued any notice nor she was added as a party respondent in the aforesaid proceedings and hence, the said proceedings were vitiated by law. However, the 2nd respondent passed a common order dated 21.11.2003, ordering ejectment of non-tribal respondent and her men (i.e., the 3rd respondent) and for restoration of the same to the Government for onward assignment to the eligible tribals.

(c) The further case of the petitioner is that aggrieved by the aforesaid common order, the 3rd respondent therein filed C.M.A.No.47 of 2004 before the 1st respondent in the writ petition. However, the said C.M.A. was rejected by the 1st respondent, in his order dated 07.05.2008, by upholding the common order in the batch of LTRPs. By virtue of the aforesaid orders, the 3rd respondent came to the land of the petitioner on 06.06.2008 and tried to take possession of the land informing about the aforesaid orders. Then only, the petitioner came to know about the passing of the orders in LTRPs and CMA behind her back.

Hence, the writ petition.

3. This Court, on 18.06.2008, in W.P.M.P.No.16244 of 2008, passed the interim order to the following effect:

“There shall be status quo with regard to the procession in respect of 0.28 cents comprising survey No.32/1 and Acres 1.62 cents in Survey No.32/3, situated at Konalova Village, Addateegala Mandal, East Godavari District and notice.”

4. The 2nd respondent filed counter and opposed the writ petition. The case of the 2nd respondent is that the writ petition is not maintainable as the petitioner got a registered sale deed dated 22.06.1971 in her favour in respect of subject land i.e., subsequent to the Andhra Pradesh Scheduled Area Land Transfer Regulation 01 of 1959, as amended by Regulation of 01 of 1970 (for short, ‘Regulation 01 of 1959, as

amended by Regulation of 01 of 1970') came into force and therefore, the said sale is vitiated by amended Regulation 01 of 1970. The alleged agreement of sale dated 17.12.1968 was not produced before the lower court. It is further contended that the Regulation 01 of 1959, as amended by Regulation 01 of 1970, was intended to safeguard the interest of the tribals and see that the land in schedule areas should be in possession of tribals only. In terms of the said Regulation, both 1st and 2nd respondent have ordered the ejectment, which is perfectly valid and therefore, the writ petition is not maintainable.

5. Heard learned counsel for petitioner and learned Government Pleader for Social Welfare.

6. Seriously fulminating the orders impugned, learned counsel for petitioner strenuously argued that the petitioner is the purchaser of Acres 1.62 cents and 0.28 cents land in Survey Nos.32/3 and 32/1 situated in Konalova Village, Addateegala Mandal, East Godavari District, from one Ake Adilakshmi of said village by virtue of registered sale deed dated 22.06.1971, preceded by an agreement to sell dated 17.12.1968 and ever since, she has been in possession and enjoyment of the subject land and paying land revenue to the authorities. It is true that the petitioner is a non-tribal and belonging to Vysya Community and also purchased the land from a non-tribal. However, since the sale agreement dated

17.12.1968 was prior to the amended Regulation 01 of 1970, the said sale transaction was not hit by the Regulation 01 of 1970. Further, the petitioner has been in continuous possession and enjoyment of the subject lands. Therefore, the petitioner has a valid case in her favour to contend. However, no notice was served on the petitioner during the enquiry of LTRPs.9, 13, 60 and 61 of 2003 launched by respondents 5 to 8 herein against respondent No.4. Referring to Rule 7 and Rule 10 of APSALT Rules, 1969 learned counsel would argue that notice to the person in possession of the disputed land is mandatory during enquiry for ejectment and in that regard form 'E' notice should be served in the manner specified in Rule 10. Though the petitioner was referred in the common order as the person in possession and enjoyment of an extent of Acres 1.62 cents and 0.28 cents in Survey Nos.32/3 and 32/1, situated in Konalova Village, still the 2nd respondent has not contemplated of affording notice to the petitioner. Hence, the common order dated 21.11.2003 was hit by the Rules 7 and 10 of APSALT Rules, 1969. Even during the hearing of appeal C.M.A.No.47 of 2004 also, this aspect was not taken into consideration by the 1st respondent and therefore, the order in C.M.A.No.47 is also vitiated by law. He, thus, prayed to allow the writ petition and set aside the impugned orders.

7. Learned Government Pleader for Social Welfare, in oppugnation, would contend that the petitioner is only a purchaser subsequent to amended Regulation 01 of 1970 came into force and therefore, her sale deed is vitiated by the said Regulation and therefore, she has no case in the writ petition to contend. He, thus, prayed to dismiss the writ petition.

8. As can be seen, it is the contention of the petitioner that she has purchased Acres 1.62 cents and 0.28 cents of land in Survey Nos.32/3 and 32/1 situated in Konalova Village, Addateegala Mandal, East Godavari District, under the registered sale deed dated 22.06.1971, vide document No.1063/91, which was preceded by sale agreement dated 17.12.1968 and it is also her case that ever since the agreement, she has in continuous possession and enjoyment of the subject land and paying tax to the revenue authorities. Be that it may, a perusal of the copy of the common order in LTRP Nos.9, 13, 60 and 61 of 2003, dated 22.11.2003, would show that respondents 5 to 8 herein have launched the above LTRPs against 4th respondent herein for her ejection from different lands, including the lands in possession of the petitioner. In the common order, the 2nd respondent mentioned as follows:

“As per sale deed 1063/71, dt 2-6-1971, Ake Adilakshmi W/o Venkata Ramana sold Ac 0-28 in

*S.No.32-1 and Ac 1-62 in S.No.32-3 to Grandhi Mutyala
Laxmi W/o.Surya Narayana.”*

9. Thus, it is clear that during the course of enquiry relating to the common order, it was brought to the notice of the 2nd respondent that by virtue of sale deed dated 22.06.1971, the petitioner has purchased Acres 0.28 cents in Survey No.32/1 and Acres 1.62 cents in Survey No.32/3 from Ake Adilakshmi W/o Venkata Ramana. It is further mentioned in the said order that the said sale transaction took place between two non-tribals, of course, after commencement of Regulation 01 of 1970 in violation of Section 3(1)(a) of the said Regulation and thus, it was observed that the said transaction was null and void.

10. Rule 7(1) of A.P. Schedule Area Land Transfer Rules, 1969, reads thus:

“7.(1) Where the Agent, the Agency Divisional Officer, or the Officer referred to in sub-rule 3 receives an application from any one interested, or information in writing by a public servant or has otherwise reason to believe that a transfer of immovable property has been made in contravention of sub-section 3, he shall give notice to any person in possession of the property claiming under the transfer, to show cause within the period specified in the notice, not being less than fifteen days from the date of its service why he should not be ejected, and property restored to the transferor or his heirs.”

11. So, Rule 7(1) is categorical to the effect that when the authority mentioned in sub-rule (3) believes that a transfer of

immovable property has been made in contravention of Section 3, he shall give notice to any person in possession of the property claiming under the transfer to show-cause within the period specified in his notice, which shall not be less than 15 days from the date of service, why he should not be ejected and property restored to the transferor or his heirs. Thus, as per Rule 7(2), such notice shall be in form 'E' and shall be served in the manner specified in Rule 10. Thus, a conjunctive reading of Rules 7 and 10 would depict that notice to the person in possession of the land, which is the subject matter of enquiry, is mandatory since the word 'shall' is employed in Rule 7(1). As stated earlier, in the common order, it was specifically mentioned that the writ petitioner, by virtue of the sale deed dated 22.06.1971, was in possession of the subject land. However, unfortunately, the 2nd respondent did not consider it mandatory to issue show-cause notice to hear the writ petitioner. Further, in the concerned enquiry, the writ petitioner was not added as a party. Therefore, as rightly contended by learned counsel for petitioner, the enquiry in LTRP Nos.9, 13, 60 and 61 of 2003 is vitiated by law. Consequently, the order in C.M.A.No.47 of 2004, by which, the common order was confirmed is also vitiated. In the counter filed by 2nd respondent, it is alleged as if the petitioner failed to produce the alleged sale deed dated 17.12.1968 before the lower court. The said allegation is preposterous as the petitioner was not added as a party

respondent in the LTRP Nos.9, 13, 60 and 61 of 2003. Therefore, the question of the petitioner producing the agreement to sell and the sale deed to submit her version does not arise.

12. In the result, the writ petition is allowed, setting aside the common order dated 22.11.2003 in LTRP Nos.9, 13, 60 and 61 of 2003 and consequently, the order dated 07.05.2008 in C.M.A.No.47 of 2004 is also set aside. The respondent authorities are, however, given liberty to take up the enquiry proceedings as contemplated under A.P. Schedule Area Land Transfer Regulation 01 of 1959 as amended by Regulation 01 of 1970, in strict compliance of the said Regulation as well as its Rules by affording an opportunity to all concerned. Till then, the status quo order passed by this Court in W.P.M.P.No.16244 of 2008 shall hold good. No costs.

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

U.DURGA PRASAD RAO, J

12.10.2018
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