

HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NO.22585 of 2008

ORDER:

Heard the learned counsel appearing for the petitioner as well as the learned Government Pleader appearing for the respondents.

The present writ petition came to be filed questioning the action of the first respondent in proceeding with the case in SR.No.8 of 2008 for lack of power under the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation 1 of 1959 as amended 1/70 (hereinafter will be referred as "Regulation") and set aside the same.

The case of the petitioner is that he is the owner and possessor of the land admeasuring Ac.5.72 cents in R.S.No.23/1 of Laxmipuram village, Buttaigudem mandal, West Godavari District. The said land was purchased through a registered document dated 03.06.1941 from Vadisala Veeranna son of veerabadrudu. The said transaction was between two non-tribals and as such, there was no restriction for alienation. After commencement of the Regulation, one Vadisala Veerabadrudu filed a complaint before the Special Deputy Collector, Tribal Welfare, Euru in S.R.No.113 of 1977 against the petitioner stating that the transaction under which he purchased the land is hit by the provisions of the Regulation. On such complaint, the first respondent conducted an enquiry in S.R.No.113 of 1977 and dismissed the same holding that at the time of transaction i.e. 03.06.1941 Nayakas are non-tribes. It is also observed that Nayakas caste was included in the schedule tribe

order by virtue of the Presidential Order with effect from 01.11.1956. Against the said orders, no appeal has been filed. Therefore, it has become final. The Government of Andhra Pradesh with an intention to provide irrigation facilities in the agency area acquired petitioner's land in an extent of Ac.1.09 cents in Sy.No.23 and paid compensation in the year 1995. It is also stated that the first respondent without filing any appeal against the orders in SR.No.113 of 1977, again filed a complaint before the Special Deputy Collector questioning the same transaction which was the subject matter of SR.No.113 of 1977. On the said complaint, the first respondent registered a case in SR.No.8 of 2008 and issued notice in the name of her mother who died on 03.05.2004. In the affidavit, it is also stated that in similar circumstances, this Court allowed the writ petitions and set aside the notice issued by the Special Deputy Collector for conducting a second enquiry. Therefore, the writ petition is filed questioning the action of the first respondent in conducting second enquiry.

Though the writ petition is filed in the year 2008, no counter affidavit has been filed on behalf of the respondents. The learned counsel after contending the facts as stated supra, relied on the judgment of this Court in W.P.No.22238 of 2008, dated 20.08.2018 and the relevant paras are extracted as under:

“The order further shows that the 1st respondent perused the oral and documentary evidence and found that the lands in R.S.No.5/1 of Ac.6-25 cts, R.S.No.10 of Ac.9-50 cts and R.S.No.11/2 of Ac.3-00 cts of Jainavarigudem village stood registered in the name of Koppula Narayana Swamy as pattadar in the 1933 R.S.R. The 1st respondent accepted the oral and documentary evidence and held that Narayana Swamy had gifted the petition schedule lands to Somalamma at her

marriage with Venkata Swamy as 'Pasupu Kunkuma' and due to her ill-health, she executed registered settlement deed in favour of her husband and after his demise, the petitioner succeeded the lands and got possession. The 1st respondent in his order observed, the EC shows that no transactions were made in the lands and they were never held by Tribals. Basing on such findings, 1st respondent held that there was no violation of Section 3(1) (a) of A.P.S.A.L.T. Regulation I of 1959 as amended by Regulation I of 1970. When the said order is perused in the context of the Act, 1917 and the Regulation I of 1959 as amended by Regulation I of 1970, it is clear that the findings in the order are perfectly valid. Since the petitioners grandfather had been enjoying the petition schedule properties, even prior to Agency Tracts Interest and Land Transfer Act, 1917 and EC produced before the 1st respondent showed that no transactions were made on those lands and the lands were not held by Tribals from 1916 onwards, the provisions of the Act, 1917, Regulation I of 1959 as amended by Regulation I of 1970 have no application. Further, the provisions of Regulation I of 1970 also do not have any application because the settlement deed executed by the mother of the petitioner in favour of his father by virtue of settlement deed No.840/55 i.e, even long prior to Regulation I of 1959 and subsequently there were no transactions much less transactions involving the Scheduled Tribes. As already noted supra, Act, 1917 and Regulation I of 1959 as amended by Regulation I of 1970 are prospective in operation and therefore, they have no application in respect of the properties held by petitioner's grandfather even prior to 1917. Therefore, the order in S.R.No.209/1996 is a valid one and since no appeal is filed against the said order, it attained finality. Then copy of the order in S.R.No.58/2005 would show that one Thati Durga Rao, a Scheduled Tribe filed complaint against the petitioner herein and during the course of enquiry, the petitioner herein produced the copy of order in S.R.No.209/1996 and in view of the said order, the petitioner in S.R.No.58/2005 had withdrawn the said petition. It appears, one Thati Muthyalu, a Scheduled Tribe also filed a complaint S.R.No.64/2005 against the petitioner herein and the same was also dismissed in view of the order in S.R.No.209/1996. All these proceedings would show that the 1st respondent has time and again upheld the title and possession of the petitioner in respect of petition schedule lands. In spite of the same, again the instant complaints i.e, S.R.Nos.3 and 10/2008 were filed more or less with the same allegations. Though the learned Government Pleader argued that in view of exhuming the fresh evidence, the complaints are very much maintainable, he miserably failed to produce the alleged fresh evidence. Therefore, the two complaints are nothing but abuse of process of the Court. The previous orders attained finality and the principle of *res judicata* would apply to the instant complaints. In

*Gangula Kondala Rao*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 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.”

The learned counsel for the petitioner relied on the judgment of this Court in CHINTALAPATI RAMALINGA RAJU v. DISTRICT COLLECTOR, ELURU, W.G. DISTRICT AND ANOTHER¹. The relevant para is extracted as under:

“The matter arises under the provisions of the A.P. Scheduled Areas Land Transfer Regulations, 1959 (for short 'The Regulations'). The Learned single Judge has dismissed the writ petition on the ground that the apprehension of the petitioner may not be real. But, it is evident from the proceedings dated 4-11-1998 in Re. No.230 of 1997 (Supt.) of the Mandal Revenue Officer, Buttaigudem mandal addressed to the Special Deputy Tahsildar, Tribal Welfare, K.R. Puram that action was sought to be taken against the petitioner on the ground that the judgment rendered by the Special Deputy Collector, Tribal Welfare hitherto dated 5-9-1981 is doubtful. But, it is a well settled law that when a judgment is rendered under the Regulations, it becomes final and there is no review of the same. It is not disputed that the order dated 5-9-1981 rejecting the application for eviction of the petitioner-appellant herein on the ground that unauthorised possession was rejected and the said order had become final. It is also not disputed by the learned Government Pleader, Social Welfare that there is no review provision in the A.P. Scheduled Areas Land Transfer Regulations, 1959. In fact, that legal position is well settled by series of judgments of this Court.”

Having heard both the learned counsel and from the perusal of the material on record, it is an admitted fact that on an earlier occasion in respect of the subject land, the proceedings were initiated vide S.R.No.113 of 1977 under the provisions of the Regulation. However, the Special Deputy Collector (Tribal Welfare),

¹ 2000 (4) ALD 443 (DB)

K.R. Puram, West Godavari District, after conducting an enquiry, dismissed the complaint on the ground that at the time of transaction i.e. 03.06.1941, Nayakas were non-tribals and only by virtue of Presidential Order, it was included in the schedule tribe order with effect from 19.11.1956. Though the orders were passed, no appeal was filed by the first respondent and the same has become final. That apart, when a proceeding was allowed to become final under the Regulation, there is no provision for review and it operates as *res judicata*. Further, in the case on hand, it is not disputed by the respondents that any appeal is filed against the orders passed in SR.No.113 of 1977. Therefore, this Court is of the opinion that the writ petition is liable to be allowed.

Accordingly, the writ petition is allowed in setting aside the proceedings in SR.No.8 of 2008 dated 01.09.2008, on the file of the first respondent. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

P.KESHA VA RAO,J

Date:31.10.2018
ccm

THE HONOURABLE SRI JUSTICE P.KESHA VA RAO



WRIT PETITION NO.22585 of 2018

Date:31.10.2018

ccm