

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.36183 of 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“To issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in passing the order dated 12.8.2017 in Case No.A4/LTR/411/2016 granting injunction in favour of the 6th respondent in respect of the land admeasuring Ac.6-04 guntas in Sy.No.4/3 situated at Nandigam village, Talamadugu mandal, Adilabad district without any notice and without considering the petitioner's Appeal case dated 3.5.2017 as bad, arbitrary, illegal and violation of principles of natural justice and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner's land admeasuring Ac.6-04 gts in Sy.No.4/3 situated at Nandigam village, Talamadugu mandal, Adilabad district”.

2. The subject matter of the present writ petition is Ac.6-04 gts in Sy.No.4/3 situated at Nandigam village, Talamadugu mandal, Adilabad district. The Special Deputy Collector, Tribal Welfare, Utnoor, Adilabad district-4th respondent herein passed an order in Case No.TWA2/129/2015 dated 20.5.2016, directing resumption of the subject land to the Government for assignment in favour of Scheduled Tribes or Scheduled Tribes Registered Society. Aggrieved by the said order, both the petitioner as well as unofficial respondent herein filed appeals before the 3rd respondent-Additional Agent to Government. Earlier, petitioner herein approached this Court by way of filing W.P.No.11615 of 2017 assailing the validity of the order passed by the 4th respondent on 20.5.2016, ordering

resumption. This Court, disposed of the said writ petition by order dated 3.4.2017, giving liberty to the petitioner to file appeal before the competent authority within 30 days while directing Statusquo to be maintained in the meanwhile. The unofficial respondent herein also filed W.P.No.18153 of 2016, alleging inaction on the part of the appellate authority-2nd respondent herein in passing orders on an interlocutory application filed along with the appeal. This Court disposed of the said writ petition on 9.6.2016 and the operative portion of the said order reads as under:

“Without going into the merits of the case, respondent No.2 is directed to dispose of the I.A. filed by the petitioner along with the appeal filed against an order dated 20.5.2016 passed in TW A2/129/2016 by respondent No.3, if the same is pending and is otherwise in order, as early as possible preferably within a period of six weeks from the date of receipt of a copy of this order. Till such time, status quo as on today shall be maintained with regard to the property in question”.

3. Now the 3rd respondent-Additional Agent to the Government passed the following interlocutory order, which reads as under:

“Upon motion made into this Court by for the Appellant and considering the facts and circumstances of the case, this Court is inclined to pass the following order:

‘Interim injunction is granted in favour of the Appellant in Case No.A4/LTR/411/2016, by restraining the Respondent not to evict them from the Agriculture land in Sy.No.4/3 to an extent of 6-04 Acres situated at Nandigoan village of Talamadugu mandal of Adilabad district and the Tahsildar, Talamadugu Mandal is directed to not to resume the above suit land from the appellant and status quo will be maintain, and both the parties should be follow the orders as on today i.e. 12.8.2017 till the final orders”.

4. This writ petition challenges the validity and legal sustainability of the said order passed by the 3rd respondent-Additional Agent to the Government. A counter affidavit is filed by the unofficial respondent herein, resisting the writ petition. According to the learned counsel for the petitioner Sri C.Damodar Reddy that the impugned injunction order granted in favour of the unofficial respondent is highly illegal, arbitrary and erroneous and contrary to the provisions of A.P Scheduled Areas Land Transfer Regulation 1959 as amended in 1970. It is also the submission of the learned counsel that the said order was passed without giving any notice to the petitioner herein. It is also maintained by the learned counsel that when the appeal filed by the petitioner herein is pending consideration before the concerned authority, the 3rd respondent is not justified in passing the order under challenge without notice to the petitioner.

5. On the contrary, it is submitted by the learned Government Pleader, so also the learned counsel appearing for 5th respondent that there is no illegality nor there exists any infirmity in the impugned order and in the absence of the same, the impugned action is not amenable to judicial review under Article 226 of the Constitution of India. It is also the submission of the learned counsel that having regard to the facts and circumstances of the case, the 3rd respondent is perfectly justified in passing the impugned order.

6. There is absolutely no controversy on the reality that the appeals filed by the petitioner herein and 5th respondent herein against the orders of the 4th respondent dated 20.5.2016, ordering resumption of the subject property to the Government are pending consideration before the 3rd

respondent. The said appeals have been filed by the petitioner and the 5th respondent under the provisions of Regulation 3 of 1959 Regulations. The procedure for consideration of appeal is stipulated under Rule 8 of A.P. Scheduled Areas Land Transfer Rules, 1969. The said rule reads as under:

“(1) An appeal against any decree or order passed under sub-rule (4) of Rule 7 by the officer referred to in sub-rule (2) of Rule 3 shall lie to the Agent.

(2) Subject to the provisions of Clause (b) of sub-section (3) of Section 3, every appeal under the said sub-section shall be preferred within a period of two months from the date of the decree or order appealed against.

(3) The appellate authority to whom an appeal has been preferred under sub-section (3) of Section 3 may hold or cause to be held such further enquiry, if any, as it may consider necessary and after giving the parties concerned a reasonable opportunity of being heard, may pass such orders as it thinks fit”.

7. It is very much obvious from a reading of clause 3 of Rule 8 of the above mentioned rules that before passing any orders, the appellate authority is obligated to afford reasonable opportunity of being heard to the parties concerned. Admittedly, the petitioner in the present case is the Respondent in the appeal filed by the unofficial respondents before the 3rd respondent. Therefore, this Court does not find any justification on the part of the 3rd respondent-Agent to the Government in passing the exparte order under challenge without giving any notice to the petitioner herein in the present writ petition. On the said ground alone, the writ petition is liable to be allowed.

8. Accordingly, the writ petition is allowed, setting aside the order dated 12.8.2017 in Case No.A4/LTR/411/2016 passed by the 3rd respondent and the 3rd respondent is directed to dispose of the appeals filed by the petitioner and the 6th respondent within a period of three (3) months from the date of receipt of this order. Till the said exercise attains finality, status quo as on today with regard to possession shall be maintained over the subject property. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 31.1.2018
DA

A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.36183 of 2017



31.1.2018

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