

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1554 of 2016

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the action of the official respondents in treating the petitioner's village i.e., Dharmapuram Village, Bayyaram Mandal, Khammam District as a Tribal Village, within the Scheduled area and issuing the notice Vide LTR case No.16/2015/Bayyaram, dated 07.12.2015 under Section 3(1) of the Andhra Pradesh (Schedule Areas) Land Transfer (Amendment) Regulation 1 of 1970, as unconstitutional, without jurisdiction and in violation of Article 244 (1) and sub-paragraph (1) of paragraph 6, PART-C of the Fifth schedule of the Constitution of India, r/w Article 372 of the Constitution of India, consequently, to declare that the petitioner's village i.e., Dharmapuram Village, Bayyaram Mandal, Khammam District is not a notified Tribal Village in scheduled area.

2. Brief facts which are necessary for disposal of the Writ Petition are as follows:

The petitioner is a resident of Dharmapuram Village, Bayyaram Mandal, Khammam District and same was part of Mahabubabad Taluq as on the date of Notification No.2, dated 16.11.1949, which was issued in exercise of powers conferred under the Tribal Area Regulation 1359 Fasli. By the said date, neither the Mahabubabad Taluq nor the Dharmapuram village in Mahabubabad Taluq was declared as a Tribal Village in the

said notification. Subsequently, the then Government of Hyderabad issued notification No.21, dated 21.04.1950 while reorganizing the Talukas in Warangal District, 27 villages of the then Mahabubabad Taluq were transferred to Yellandu Taluq, for administrative convenience. Thereupon the villages formed part of the Yellandu Taluq and the said circle was also neither declared as Notified Tribal Area nor was the Dharmapuram village. That mere alteration of the boundaries of the revenue villages does not change the nature of the villages and that the said alterations were affected only for the purpose of administrative convenience, which has nothing to do with the exercise of power under Tribal Area Regulations of 1359 Fasli or with V Schedule of the Constitution of India. The then Government of Hyderabad had forwarded the Notification No.2 of 1949, dated 16.11.1949 to the Government of India in the month of December, 1949, which had taken up the proposal on the file No.13(12) Political/1949 of Ministry of State (Political Branch) during the Debates in the Constitutional Assembly which were on the anvil. However, the said proposal as sent by the then Government of Hyderabad had been adopted by the President of India and the Presidential Order C.O.No.26, dated 07.12.1950 came to be notified. The then Raj Pramukh (Governor) of the Hyderabad State vide Notification No.14, dated 02.02.1954, after formation of the Khammam District in the year 1953, sought an amendment to the Notification No.2, dated 16.11.1949, which itself establishes the fact that those villages,

which were notified as Tribal Villages by Notification No.2 of 1949 are the Tribal Villages only and the said Notification No. 2 of 1949, issued under Tribal Area Regulation 1359 Fasli was the law in force and the same is the 'existing law' within the meaning of Article 366 (10) of the Constitution of India and the same was adopted by the President of India within the meaning of Article 372 of the Constitution of India r/w Article 35(b) of the Constitution of India. Though the petitioner and others are residents of Dharmapuram village, owns land, but their names are not shown in the revenue records as possessors or owner on the ground that they are non-Tribals and that when the same is brought to the notice of the higher authorities, they have not taken any action, which is in violation of Article 300-A of the Constitution of India. That mere shifting of a village from one Taluk to another Taluk does not change the nature of the village i.e., either to the Tribal village or non-Tribal village and that since the subject village is not included in the Notification No.2 of 1949 and the same is adopted by the Presidential Order, the question of treating the subject village as Schedule village does not arise, as such, the notice issued by the 3rd respondent dated 07.12.2015 is liable to be declared as unconstitutional.

3. Counter affidavit and vacate stay petition is filed by the 5th respondent on behalf of other respondents denying the averments in the affidavit filed in support of the Writ Petition stating that on 1st October, 1953, the Khammam District was divided from the existing District of Warangal by clubbing

together the Taluqs of Khammam Madhira, Yellandu, Palvancho and Burgampad. Subsequently, in the year 1959, the Bhadrachalam and NUGUR Taluqs of East Godavari District were demarcated and attached to the Khammam District, forming as Bhadrachalam Division. That as per notification of State of Hyderabad, Revenue Department bearing No.19, dated 21.04.1950, the Hyderabad State had been divided into 16 districts and Warangal District was one of them consisting of Warangal, Mulugu, Burgampad, Palvancho, Madhira, Yellandu, Khammam and Mahabubabad Taluqs and as per Notification No.20, dated 21.04.1950, the said Warangal District was divided into four revenue districts comprising the Taluqs i.e., Warangal Division consisting of Warangal, Mulugu Taluqs, Mahabubabad Division consisting of Mahabubabad and Pakhal Taluqs, Khammam Division consisting of Khammam and Madhira Taluqs and Kothagudem Division consisting of Yellandu, Palvancho and Burgampadu Taluqs. As per the notification No.21, dated 21.04.1950, the Taluqs are annexed to the Revenue Department. The Yellandu Taluq consists of several villages and four Girdavar circles and the Bayyaram Mandal existed in Garla Girdavar circle. The Dharmapuram village is at Sl.No.68 in Garla Girdavar Circle, which had existed in Agency Area. Vide notification No.48/A4/193/52, dated 18.09.1953, the Warangal District has been bifurcated and Khammam District was formed with five Taluqs i.e., Khammam, Madhira, Paloncho, Yellandu and Burgampad. As per the Presidential

order, it is clear that Dharmapuram village of Bayyaram Mandal is in Yellandu Taluk of erstwhile Warangal District. As per Scheduled Area (Part-B States) Order 1950, in SRC 1031, dated 07.12.1950 in C.O.No.26 of 1950, the Scheduled Area Notified by Sub paragraph (1) of Paragraph (6) of Scheduled to the Constitution of India, the President made the Order called the Scheduled Area (Part-B) States) Order 1950 (1) under paragraph-12 of the above order stating that "all the villages of Yellandu Taluq of Warangal District (excluding the Yellandu, Singareni, Siripuram, and Town of Kothagudem) are Scheduled Villages". Accordingly, Dharmapuram village of Bayyaram Mandal in erstwhile Yellandu Taluka of Warangal District is included in Scheduled area. Dharmapuram village of Bayyaram Mandal was in Yellandu Taluq at the time of Presidential notification on 07.12.1950. As per the notification of Government of Hyderabad, Revenue Department bearing No.19, dated 21.04.1950, the Hyderabad State had been divided into 16 Districts and Warangal District as then (as Sl.No.15) consisting of Warangal, Pakhal, Mulugu, Burgampad, Palvancha, Madhira, Yellandu, Khammam and Mahabubabad Taluk. As per notification No.20, dated 21.04.1950, Warangal District was divided into four revenue divisions. As per notification No.21, dated 21.04.1950, the Taluq annexed to the Revenue Department notification No.19, dated 21.04.1950, Yellandu Taluq consisting of the villages mentioned in the notification, had taken effect from 6.5.1950. That at the time of

issuance of notification 2 of 1949, Dharmapuram village/scheduled village was notified as tribal village, as the village was in erstwhile Yellandu Taluk of Warangal District at the time of Presidential Order dated 07.12.1950. As such, as per C.O.No.26 of 1950, the said village was Tribal village/scheduled village. It is also stated that the authority is competent to issue impugned notice dated 07.12.2015 and as the village was already notified by the Gazette of India extraordinary Part-II Section 3, No.90, dated 07.12.1950, which falls within the jurisdiction of Revenue Division, Kothagudem, as such, sought for vacating the interim order and also to dismiss the Writ Petition.

4. Counter affidavit and vacate stay petition is filed by the respondent No.9, on his behalf and also on behalf of respondents 6 to 14, denying the averments in the affidavit filed in support of the Writ Petition stating that the petitioner, being a non-tribe, purchased the land under unregistered sale deed, from the unofficial respondents, who are tribes. Petitioner has an alternative remedy by way of appeal against the impugned notice before the Agent of the Government (District Collector), as such, this Writ Petition is not maintainable. Dharmapuram village was taken out from Mahaboobabad taluq and transferred to Yellandu Taluq by the then Government of Hyderabad by notification No.21, dated 21.04.1950. The President of India had issued notification C.O No.26 i.e., Scheduled Areas (Part-B States) order 1950 on 07.12.1950 in exercise of powers

conferred by sub-para 1 of paragraph 6 of the 5th Schedule to the Constitution of India, wherein the President of India declared all the villages in Yellandu Taluq of Warangal District (except Yellandu, Singareni and Sirpur villages and town of Kothaguda) to be scheduled areas within the State specified in Part B of the 1st schedule to the Constitution. That as per the Presidential Order, the Dharmapuram village has been a tribal village since the date of notification issued by the President of India, as such, the notice issued by the Agency Divisional Officer is valid.

5. Heard learned counsel for the petitioner, learned Assistant Government Pleader for Social Welfare appearing respondents 1 to 3 & 5, Sri V.V.Raghavan, learned counsel for the respondents 6 to 14.

6. Learned counsel for the petitioner submits that the Dharmapuram Village is not included in the Scheduled Areas as per the notification dated 16.11.1949. He submits that by the time of issuance of notification dated 16.11.1949, Dharmapuram Village is in Mahabubabad Taluk and Mahabubabad Taluk is not included in the scheduled areas by notification dated 16.11.1949. He submits that by virtue of the Presidential Order dated 7th December, 1950, the Government of India adopted the notification dated 16.11.1949, when such is the case in both the notifications, Dharmapuram Village is not included in the scheduled areas, as such, issuance of impugned notice under the provisions of the A.P. Scheduled

Areas Regulation Act, is without jurisdiction. He submits that Dharmapuram Village was transferred to Yellandu Taluq by notification dated 21.04.1950 by the revenue department reorganizing the Taluqs in the State for only administrative convenience which is revenue purpose and by virtue of the said notification, Dharmapuram village, cannot be treated as included in the Scheduled Area. He further submits that there is no separate notification including the Dharmapuram Village in the Scheduled Area. In support of his contention, he relied on the judgment reported in **Mandava Rama Krishna v. State of Andhra Pradesh**¹.

7. On the other hand, learned Government Pleader for Social Welfare, while reiterating the averments in the counter affidavit submits that the Dharmapuram Village was in Yellandu Taluq by the time Presidential Notification dated 7th December, 1950 was issued in exercise of the powers conferred by sub-paragraph (1) of paragraph 6 of Fifth Schedule to the Constitution of India and when such is the position, the villages in the Yellandu Taluq except, Yellandu, Singareni and Sirpur villages, are to be treated as Scheduled Areas within the State specified in Part-B of the First Schedule to the Constitution, as such, the Dharmapuram Village has been notified as scheduled village by the President of India.

8. Learned counsel for unofficial respondents while reiterating the averments in the counter affidavit, adopting the

¹ 2014 (5) ALD 181

arguments of the learned Government Pleader, submits that the writ petition is not maintainable, as it is only notice and petitioner can avail alternate remedy by filing explanation to the impugned notice. In support of his contention, he relied on the judgment reported in **Special Deputy Collector (Tribal Welfare), Rampachodavaram v. Datla Venkatapathi Raju**².

9. Admittedly, by the time of issuance of Presidential Notification C.O.No.26 of the Scheduled Areas (Part-B States) Order, dated 7th December, 1950, Dharmapuram village was in Yellandu Taluq and all the villages of Yellandu Taluq excepting Yelladu, Singareni and Sirpur villages and the town of Kothaguda, are declared as Scheduled Areas by the said Notification. Even according to the learned counsel for the petitioner, the notification issued by the President of India in exercise of the powers conferred by sub-paragraph (1) of paragraph 6 of Fifth Schedule to the Constitution of India, the President of India is the final authority, who can declare the areas as Scheduled areas. When such is the position, the only conclusion that can be drawn is that Dharmapuram Village of Yellandu Taluq is in the Scheduled Areas.

10. In view of the conclusion drawn above, the contention of learned counsel for the petitioner that Dharmapuram village was in Mahabubabad Taluk of Warangal District as on the date of issuance of Notification No.2, dated 16.11.1949, which was issued in exercise of the powers conferred under the Tribal Area

² 2002 (4) ALT 669 (D.B)

Regulation 1359 Fasli and that the Presidential Notification issued on 07.12.1950 is just a verbatim and that since Mahabubabad Taluq was not included in the Scheduled Areas, the Dharmapuram Village also does not come under the Scheduled Areas, has no legs to stand. May be Dharmapuram village is not in the Yellandu Taluk at the time of issuance of notification dated 16.11.1949, but fact remains that the final authority i.e., the President of India in exercise of powers under sub paragraph (1) of paragraph 6 of Fifth Schedule to the Constitution of India, declared the areas as Scheduled Areas vide Presidential Notification dated 07.12.1950. By the time of Presidential Order notification on 7th December, 1950, Dharmapuram village stood included in Yellandu Taluq vide notification dated 21.04.1950 by the revenue department under the provisions of the Hyderabad Land Revenue Act No.8 of 1317 Fasli, as such, the contention of the learned counsel for the petitioner that since the President of India has adopted the notification dated 16.11.1949 as it is in the notification dated 07.12.1950, as such, Dharmapuram village is not included in the scheduled areas, cannot be accepted. As such, no separate notification is to be issued for declaring Dharmapuram Village as scheduled area. When once the Dharmapuram Village forms part of territory of Yellandu Taluq as on 7.12.1950 and that Yellandu Taluq was declared as Scheduled Area, Dharmapuram Village would automatically come within the zone of scheduled areas, which is clarified in para 3 of the Presidential Order. In

the said notification, at paragraph 3, it is specifically stated as follows:

“3. Any reference in the preceding paragraph to a territorial division by wherever name indicated shall be construed as a reference to the territorial division of that name existing at the time of this order.”

11. In exercise of powers conferred by sub-section (2) of the Tribal Area Regulation, 1359 Fasli, the Raj Pramukh got issued notification on 02.02.1954 including the Yellandu Taluq in the Scheduled Areas and by that time Dharmapuram village was in Yellandu Taluq, but the same is of no consequence. While H.E.H. the Nizam, as the Rajpramukh, was not entitled to include any area or a village in, or delete them from, the list of Scheduled Areas, as such a power was conferred exclusively on the President under Para 6(1) of the Fifth Schedule

12. Though the learned counsel for the petitioner relied on the judgment of Division Bench of this Court in **Mandava Rama Krishna v. State of Andhra Pradesh** (supra), but that was a case where the subject villages therein in Mangapet Mandal were included in the Scheduled Areas by virtue of Notification dated 16.11.1949, the same was not included in the Presidential Notification dated 07.12.1950. In that context, it was held that change of Village from one Taluq to another Taluq, will not change the status of the Scheduled area into Non-Scheduled Area. In the present case, the President of India had issued Notification dated 07.12.1950, who is the final authority and that Yellandu Mandal is included in the Scheduled Areas and by that time, the subject village i.e., Dharmapuram is included

in the Yellandu Mandal. Therefore, the aforesaid judgment is not applicable to the facts and circumstances of the present case.

13. In WP No.43687 of 2017, learned Single Judge was dealing with the similar situation therein in respect of Thuthaklingannapet Village, which was included in the Paloncha Taluq by virtue of notification dated 21.04.1950 issued by revenue department under the provisions of Hyderabad Land Revenue act 8 of 1317 Fasli, by the time Presidential Notification was issued on 07.12.1950. The fact of inclusion of subject village in Paloncha Mandal by virtue of the Notification dated 07.12.1950 issued by the President of India was not considered by the learned Single Judge. All the villages of Paloncha Taluq of Warangal District except some Villages, are included in the Scheduled Areas, but the subject village is not exempted from the said list and the same forms part of Paloncha Mandal. The said aspect is also stated in the counter affidavit, which was extracted by the learned Single Judge at paragraph 6 of the order, but that aspect was not dealt with by the learned Single Judge and the said judgment is *sub silentio* on that aspect, as such, petitioner cannot claim relief by relying on the said judgment. Precedents *sub-silentio* and without arguments are of no moment [**Municipal Corporation of Delhi v. Gurnam Kaur (1989) 1 SCC 101**]. Decision *sub-silentio* or rendered *per incurriam*, ceases to be a binding precedent (see **Commissioner of Income Tax v. B.R. Constructions [(1993) 202**

ITR 222 (AP) (FB)]. Any declaration or conclusion, arrived at without being preceded by any reason, cannot be deemed to be the declaration of law or authority of a general nature binding as a precedent. (*State of U.P v. Synthetics and Chemicals Ltd.*, (1991) 4 SCC 139; *B.Shama Rao v. Union Territory of Pondicherry*, AIR 1967 SC 1480). The view, if any, expressed without analysing the statutory provision cannot be treated as a binding precedent. (*N.Bhargavan Pillai v. State of Kerala*, (2004) 13 SCC 217. A decision, which is neither founded on reasons nor it proceeds on a consideration of an issue, cannot be deemed to be a law declared to have binding effect. That which escapes in the judgment without any occasion is not the *ratio decidendi*. A decision is binding not because of its conclusions but in regard to its ratio, and the principles laid down therein. Any declaration or conclusion preceded without any reason is not a declaration of law or authority of a general nature binding as a precedent. (*Jaisri sahu v. Rajdewan Dubey*, AIR 1962 SC 83). (see **Mandava Rama Krishna v. State of A.P (surpa)**).

14. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the *ratio decidendi* are not authoritative. Without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made. It is not everything said by a Judge, while giving judgment, that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon

which the case is decided. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio, and not every observation found therein nor what logically follows from the various observations made in the judgment. The enunciation of the reason or principle, on which a question before a Court has been decided, is alone binding as a precedent. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case, or is put in issue, would constitute a precedent. It is the rule deductible from the application of the law to the facts and circumstances of the case which constitutes its *ratio decidendi*. (*Union of India v. Dhanwanti Devi*, (1996) 6 SCC 44; *State of Orissa v. Mohd. Illiyas*, (2006) 1 SCC 275; *ICICI Bank v. Municipal Corpn. Of Greater Bombay*, (2005) 6 SCC 404; *State of Orissa v. Sudhansu Sekhar Misra*, AIR 1968 SC 647; *Quinn v. Leathem*, (1901) AC 495).

15. Another exception, to the rule of precedents, is the rule of *sub-silentio*. “A decision passes *sub-silentio*, when the particular point of law involved in the decision is not perceived by the Court or the present to its mind.” (Salmond on Jurisprudence 12th Edn., p.153). A decision passes *sub-silentio* when the particular point of law involved in the decision is not perceived by the Court or present to its mind. (see **Mandava Rama Krishna v. State of A.P.**)

Apart from that, it is well settled law that judgments cannot be read as statutes. In ***P.S. Sathappan v. Andhra Bank Ltd.***,³ the Hon'ble Supreme Court held as follows:

“144. While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.

145. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See *Haryana Financial Corpn. v. Jagdamba Oil Mills* [(2002) 3 SCC 496 : JT (2002) 1 SC 482] , *Union of India v. Dhanwanti Devi* [(1996) 6 SCC 44] , *Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation)* [(2002) 257 ITR 123 (Del)] , *State of U.P. v. Synthetics and Chemicals Ltd.* [(1991) 4 SCC 139] , *A-One Granites v. State of U.P.* [(2001) 3 SCC 537 : 2001 AIR SCW 848] and *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111]]”

In view of above facts and circumstances, there is no merit in Writ Petition and accordingly same is dismissed. However, what is challenged in the writ petition is only show-cause notice, as such, it is open for the petitioner to file explanation within a period of eight weeks from the date of receipt of a copy of this order and contest the matter on any other grounds, available under law.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, shall stand dismissed.

A.RAJASHEKER REDDY,J

25-11-2019

Note: LR copy to be marked.

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³ (2004) 11 SCC 672 at page 738

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