

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.25141 OF 2019

Date: 15.11.2019

Between:

Chinnamalla Swamy, s/o. Mallaiah,
Aged about 67 years, occu: Agriculture,
R/o. Mukundapuram village, Yellandu
Mandal, Bhadrachalam district.

.....Petitioner

and

The State of Telangana, rep.by its Prl.Secretary,
(Revenue & Tribal Welfare), Secretariat, Hyderabad
and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioners claim that the land to an extent of Ac.2.25 guntas belong to Mukti Peda Eedaiah was purchased by them (Ac.0.20 guntas in the year 1968 by the 2nd petitioner; Ac.1.00 guntas on 26.06.1985 by the 2nd petitioner; and Ac.1.00 guntas on 08.08.1986 by the 1st petitioner). Admittedly, petitioners are non-Tribals and the 4th respondent is Tribal and the land is situated in Challasamudram village, which is an agency area. In agency area, as per the A.P. (SA) Land Transfer Rules, 1970, the lands in Tribal areas cannot be sold to non-tribals by the tribals and even if non-tribal is holding the land, he can only cultivate the land, but cannot alienate. Apparently, in violation of the said terms, the land was purchased by the petitioners from the tribal. Therefore, proceedings were initiated under the Rules, 1970 in L.T.R.Case No.66/07/YLD, and by orders dated 07.06.2007, the Agency Divisional Officer, Kothagudem ordered ejectment against respondents 2 and 3 therein, who are the petitioners herein, and to resume the possession of the land to the tribal pattedar i.e., Mukthi Peda Eedaiah or his legal heirs. He also ordered that if the tribal pattedar or his legal heirs are not available and the restoration of land to them is not possible, then the land to be resumed to the Government.

2. According to the learned counsel for petitioners, petitioners were not served with the copy of the said order and the order is not implemented as petitioners continued to be in possession and enjoyment of the land. Learned counsel for the petitioners further

contends that 4th respondent has not shown any interest to take possession of the land and he clearly admits of alienation of land in favour of petitioners. While so, the Tahsildar is now trying to dispossess the petitioners from the above extent of land by referring to the orders of the Agency Divisional Officer, dated 07.06.2007, and the same is illegal.

3. According to learned counsel for petitioners, petitioners came to know about the said order only when Tahsildar attempted to dispossess them from the above land and having secured copy of the order, this Writ Petition is filed challenging illegal action of the Tahsildar to dispossess the petitioners based on order passed on 07.06.2007. He would further submit that petitioners have remedy of appeal against said order and even before the appeal remedy is exhausted, no coercive action can be taken.

4. It is not in dispute that notice was served on the petitioners and petitioners have appeared before the Agency Divisional Officer and made their submissions, and on due consideration and having found that tribal land was purchased by the non-tribals in violation of Rules, 1970, resumption orders were passed. Though learned counsel for petitioners sought to contend that petitioners were not aware of these orders, and recently they came to know when the Tahsildar attempted to dispossess them, it is not stated how said orders were not within their knowledge when they appeared before the Agency Divisional Officer pursuant to the notice issued in the case and made their submissions. It is to be noted that Agency Divisional Officer is vested with powers to adjudicate civil disputes and disputes concerning sale transaction on lands belonging to Tribals by non-tribals. Further, it is not

stated what consequential steps were taken by the competent authority.

5. In the Writ Petition there is no challenge, assuming that challenge is maintainable, on orders passed by the Agency Divisional Officer, dated 07.06.2007, in judicial proceedings, whereas the relief sought by the petitioners is to direct the Tahsildar not to dispossess the petitioners. In other words, petitioners are asking to restrain the Tahsildar from complying with the judicial order passed by the competent Court. No such relief can be granted in exercise of power of judicial review under Article 226 of the Constitution of India. Learned counsel for petitioners sought to contend that even after lapse of 12 years from the date of order, as no action is taken petitioners cannot be dispossessed. Thus, what steps are taken after the order was passed, whether the claim is available in agency area, and is it open to petitioners to claim possession of land belonging to a Tribal in agency area, are all questions of fact to be gone into in appropriate proceedings. Even assuming that order was not served on the petitioners earlier and petitioners came to know about the same recently, no valid reason is shown for not availing the remedy of appeal and straightaway instituted writ petition only alleging dispossession by Tahsildar. Thus, Writ Petition is not maintainable and is accordingly dismissed, leaving it open to petitioners to work out remedy as available in law, if so advised. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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