

HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION No.5133 of 2009

ORDER:

This writ petition is taken up for hearing in the Special sitting of the Court held on 02.11.2019 with the consent of learned counsel for the respective parties.

The present writ petition is filed aggrieved by the order dt.21.02.2009 in I.A.No.91 of 2008 (SR.No.91/2008) dismissing the application filed under Section 5 of the Limitation Act, seeking condonation of delay in filing third party appeal dt.16.04.2008 by the petitioners before respondent No.1 – Additional Agent to Government-cum-Project Officer, ITDA, Bhadrachalam, against the order dt.30.11.1987 in A.P.S.A.L.T.R. Case No.232/MGR/87 passed by respondent No.2 – Special Deputy Collector (TW), Bhadrachalam, initiated against one D. Panakala Rao, as arbitrary, illegal and contrary to the provisions of A.P. Scheduled Area Land Transfer Regulations, 1959, as Amended by Act No.1 of 1970 (for brevity “Act No.1 of 1970”).

Heard Sri S. Madan Mohan Rao, learned counsel for the petitioners and the learned Government Pleader for Social Welfare appearing for respondent Nos.1 to 3 as well as the learned Government Pleader for Home appearing for respondent No.4. Despite service of notice, respondent Nos.5 and 6 did not choose to enter appearance either by themselves or through counsel.

It is the case of petitioners that only after initiation of proceedings under Section 6-A of the Act No.1 of 1970 by the 2nd

respondent dated 12.03.2008, the petitioners become aware of the proceedings of the 2nd respondent dated 30.11.1987 in respect of Ac.0.05 guntas of land in Sy.No.209, situated at Manuguru Village and Mandal and took steps by filing third party appeal before the 1st respondent on 16.04.2008, as the petitioners were not parties to the proceedings before 2nd respondent herein in LTR Case No.232/MGR/87, dated 30.11.1987, since the property sought to be repossessed belongs to them having purchased by the petitioners' predecessors in the year 1959-60. Along with the appeal, the petitioners also filed an application in I.A.No.91 of 2008 (SR.No.91/2008) under Section 5 of the Limitation Act, seeking to condone the delay of 20 years in filing the said appeal. The said application I.A.No.91 of 2008 was dismissed by respondent No.1 vide order dt.21.02.2009, on the ground that the petitioners in the appeal are not parties before the Court below and also held that the petitioners/appellants also failed to explain their relationship with late Panakala Rao, who was the respondent in the Court below, against whom the proceedings under Section 6-A of the Act No.1 of 1970 were initiated. Further, respondent No.1 also held that since the appeal was filed with an abnormal delay of more than 20 years and the appellants having failed to satisfy the Court in filing appeal with such a long period of delay, dismissed the application for condonation of delay on the point of limitation.

Aggrieved by the said order dt.21.02.2009 passed by respondent No.1, the petitioners have approached this Court. The case of 1st petitioner's is that the father of the petitioner had purchased the land of Ac.0.05 guntas in Survey No.209 in Munuguru village and Mandal under a Sada Sale Deed

dt.04.01.1960 and thereafter they have constructed a small hut and residing therein, which was subsequently developed into a permanent structure. Further, it is stated that a major portion of the land of the 1st petitioner is lost in road widening and is left with only 40 Sq. Yards.

So far as 2nd petitioner is concerned, the land to an extent of Ac.0.05 guntas in Survey No.209 in Manuguru Mandal was purchased by the father of the 2nd petitioner under a Sada Sale Deed dt.05.04.1960 and a major portion of the said land was also lost in road widening and the 2nd petitioner is left with only 33 Sq. Yards.

It is the case of the 1st petitioner that in the land in the land left out he has constructed a RCC Building with Ground Floor + First Floor in the year 1985, for which Door No.8-2-401 was allotted and thereafter he has been in possession and enjoyment thereof and also paying taxes regularly to the local authorities till date. Similarly, the father of the 2nd petitioner had constructed Ground Floor + First Floor in the left out land after a major part of the land was lost in road widening and was allotted Door No.8-2-404 and has been paying taxes regularly to the authorities concerned in respect of the said property. After the demise of the father, the 2nd petitioner has succeeded to the said property and now he is in physical possession and enjoyment of the said property. It is claimed by the petitioners that they were unaware of any proceedings before the 2nd respondent nor that there were any claims made over their land which is in their possession and enjoyment.

It is pertinent to mention here that the respondent No.2 has issued proceedings in LTR Case No.232/MGR/87, dt.30.11.1987, against one Panakala Rao in respect of Ac.0.05 guntas of land in Sy.No.209 of Manuguru Village. In pursuance of the said proceedings dt.30.11.1987, respondent No.3 - Tahsildar, Manuguru Mandal, has taken possession of the said land under the cover of panchanama dt.28.08.1994. A perusal of the panchanama drawn up by the 3rd respondent reveals that the possession of land that is taken over while giving effect to the proceedings of the 2nd respondent is to an extent of Ac.0.05gts of land in Sy. NO.209 of Manuguru village and Mandal with one significant identity i.e., mentioning of Door No.8-1-307 from one Sri Panakala Rao. However, the respondent No.2 while addressing letter dated 12.03.2008 to the Station House Officer, Manuguru Police Station whereby police protection was directed to be extended for launching prosecution under Section 6-A of Act No.1 of 1970 on the basis of the complaint made by respondent No.5 herein for re-occupying the land to the extent of Ac.0.05 gts in Sy. No.209 by non-Tribals which was taken possession under panchanama dated 28.08.1994 mentioned the name of the 1st petitioner. Thus, the re-occupying of the land forcibly by non-Tribals can only be in respect of land which was taken possession under panchanama dated 28.08.1994, which as noted above is identifiable with D. No.8-1-307 which is entirely different from the land of the petitioners bearing D. No.8-2-401. In view of the same, the proceeding of the 2nd respondent dated 12.03.2008 would have to be construed as relating to land admeasuring Ac.0.05 gts in Sy. No.209 in Munuguru village and Mandal belonging to one Sri

Panakala Rao with distinct identity bearing D. No.8-1-307. The said conclusion arrived at by this Court is also fortified by the fact that the respondent No.2 had initiated separate proceedings in respect of the 1st petitioner's property bearing Door No.8-2-401, situated at R & B Main Road, Bandarugudem village, vide proceedings in LTR Case No.232/MGR/87, which was subsequently dropped vide proceedings dt.06.05.2009 after going through the documents produced by the 1st petitioner, who was respondent in the said proceedings. So far as 2nd petitioner's property is concerned, it is stated by the learned counsel for petitioners that no proceedings have been initiated, and thus, both the petitioners are presently in possession and enjoyment of their respective properties and no proceedings are pending against them.

The petitioners were constrained to approach this Court, as the impugned proceedings dt.30.11.1987 issued by respondent No.2 only indicated Sy.No.209 to an extent of Ac.0.05 guntas, without specifying the Door number of the property, which confusion further got multiplied due to mistaken identity at the hands of 5th respondent who sought for protection under Section 6-A of APSTLRA.

The counter affidavit filed on behalf of respondent No.1, does not take any further or throw any light or bring about any clarity as the respondent No.1 authority has merely sought to justify the order passed by it dismissing the appeal filed by the petitioners on the ground of limitation, without actually adjudicating on the merits of the case.

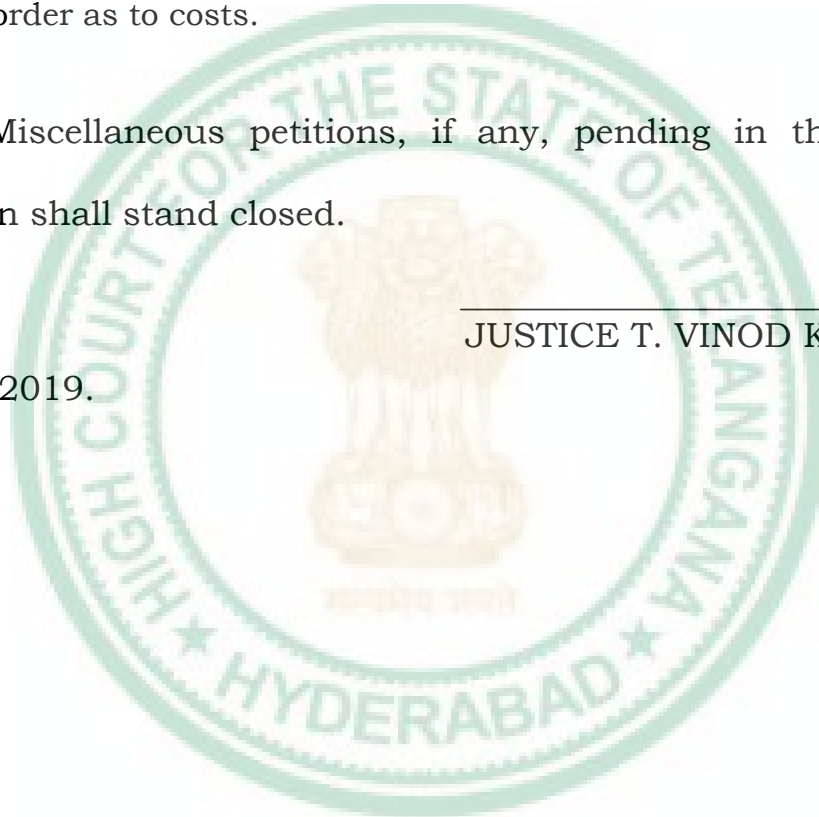
In view of the conclusions arrived at as above and in as much as the interest of the petitioners is protected, having regard to the findings recorded hereinabove with regard to the extent of the possession of the land which is taken by R-3, pursuant to the proceedings of R-2 dated 30.11.1987 being different from the land of the petitioner, no orders are required on the rejection of appeal by the 1st respondent.

With the aforesaid observations, this writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE T. VINOD KUMAR

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Msr



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