

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Writ Petition No.27402 of 2019

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India for issuing a *Writ of Mandamus* to declare the action of the 2nd respondent-Special Deputy Collector, Tribal Welfare Department, Office of the I.T.D.A., Bhadrachalam, in entertaining the suit proceedings filed by the 4th respondent, vide LTR Case No.20 of 2019 on the file of 2nd respondent by issuing notice proceedings in LTR Case No.20/2019/MKP/Special Deputy Collector (T.W.) dated 26.09.2019 in connection with the suit schedule property to an extent of Ac.1.10 guntas in Survey No.279 of Mulakapally Village and Mandal, Bhadradri-Kothagudem District, as being illegal, void, without power or authority.

2. Heard Sri Mummaneni Srinivasa Rao, learned counsel appearing for the petitioner and the Government Pleader for Social Welfare appearing for the official respondents 1 to 3.

3. It is seen from the documents filed along with the writ petition that based on the application of the 4th respondent, the 2nd respondent authority has initiated proceedings in LTR case and has issued notice dated 26.09.2019 informing the petitioner that the said LTR case is posted before the 2nd respondent authority on 16.10.2019 and called upon the petitioner to produce the documents as specified therein,

failing which it is stated that action in accordance with law would be taken.

4. The learned counsel for the petitioner submits that the 2nd respondent authority is not the competent authority to entertain the suit in the agency areas, as it is either the District Collector, who acting as Agent to the Government or the Agency Divisional Officer, is the competent authority under 1924 Agency Rules. Thus, the learned counsel for the petitioner submits that the notice dated 26.09.2019 issued by the 2nd respondent by entertaining the petition filed under sub-section 2 (a) of Section 3 of the A.P. Scheduled Areas Land Transfer Regulation/Act 1 of 1959 as amended by Regulation/Act 1 of 1970 read with Rule 7 (1)(2) of the A.P. Scheduled Areas Land Transfer Rules, 1969, is illegal and liable to be set aside.

5. The learned counsel for the petitioner further submits that if the said application is treated as proceeding under Section (3)(2) of the Regulation/Act 1 of 1959, as amended by the Act 1 of 1970, the authority is required to issue notice as prescribed under Rule 7 (2) of the Rules mandatorily and the present notice as issued does not meet the requirement as specified in Rule 7 of the Rules.

6. On the other hand, the learned Government Pleader for Social Welfare submits that the 2nd respondent authority has initiated proceeding under Act 1 of 1959 as amended by Act 1

of 1970 of A.P. Scheduled Areas Land Transfer Regulations based on the application made by the 4th respondent and for the said reason, the case is taken up as LTR case and the 2nd respondent authority is the competent authority to entertain and adjudicate the said case.

7. The learned Government Pleader for Social Welfare further submits that the claim of the petitioner that the application made as a suit which can be adjudicated only by the Agent to the Government or Agency Divisional Officer based on the monetary limit is misplaced. The learned Government Pleader further submits that the said fact would be evident from the notice issued to the petitioner calling upon him to produce the documents in order to adjudicate the said case by the 2nd respondent authority, wherein it is mentioned that the proceedings are initiated under Act 1 of 1959 as amended by Act 1 of 1970. Thus, the learned Government Pleader submits that the present writ petition is misconceived.

8. The learned Government Pleader for Social Welfare, insofar as the submission of the learned counsel for the petitioner on the notice in the prescribed form not being issued, submits that the notice dated 26.09.2019 as issued contains all the particulars that are specified in Form-E, which is prescribed under Rule 7 (2) of the Rules and for mere procedural deficiencies, the same cannot be found fault with.

9. Having regard to the submissions made as above, it is to be seen that the application filed by the 4th respondent before the 2nd respondent authority though is in the format of a suit, it cannot be said that the 4th respondent issued notice to the petitioner by treating the suit as initiated under 1924 Agency Rules. On the other hand, from a perusal of the petition as filed, it is clear that the said petition has been filed under sub-section (2) (a) of Section 3 of the A.P. Scheduled Areas Land Transfer Regulation/Act 1 of 1959 as amended by Act 1 of 1970. Thus, it is the 2nd respondent authority who is competent authority to adjudicate on such application, and the claim of the petitioner that the 2nd respondent authority lacks jurisdiction to entertain the suit is without basis and is liable to be rejected.

10. Insofar as the other submission on the issue of notice not being issued in the prescribed format, it is to be seen that insofar as proceedings under Section (3)(2) read with Rule-7, the Act itself prescribes the format for issuing notice, which is specified as Form-E. Further, by issuing the said notice, the authority is required to call upon the noticee to show cause within the period specified therein as to why the notice shall not be adjudicated and the property restored to the transferor or his/her heirs. By the impugned notice dated 26.09.2019, the 2nd respondent instead of putting the petitioner on notice in the Form as prescribed and calling upon the petitioner to show cause, on the other hand

proceeded with the matter by informing the petitioner that the said case is posted on 16.10.2019 whereat the petitioner was required to produce the documents in support of his claim, failing which action will be taken. The said action on the part of the 2nd respondent authority in issuing the impugned notice is clearly contrary to the Rule-7 (2) of the Rules and also the notice not being in the prescribed form, the same cannot be sustained.

11. Accordingly, the impugned notice dated 26.09.2019 in LTR Case No.20 of 2019 is set aside and the 2nd respondent authority is hereby directed to act on the petition filed by the 4th respondent by issuing fresh notice to the petitioner in Form-E, as prescribed under Rule 7 (2) of the Rules and proceed in the matter thereafter in accordance with the provisions of the Act and the Rules made thereunder.

12. Subject to the above observation and direction, the writ petition is allowed. However, there shall be no order as to costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this writ petition shall stand closed.

T. VINOD KUMAR, J

Date: 27.01.2020
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