

HON'BLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION No.20873 of 2018

ORDER:

This writ petition is filed for seeking writ of Mandamus, declaring the Notice in LTR Case No.1/2018/Mkp in Form-E, dated 08.03.2018 issued by respondent No.3 under A.P. Scheduled Area (Land Transfer) Regulation, 1959 (A.P. Regulation 1 of 1970) as illegal, arbitrary, unreasonable, without jurisdiction, barred by principles of *res judicata*, abuse of process of Court, contrary to the provisions of A.P. Scheduled Area (Land Transfer) Regulation and violative of articles 14, 21 and 300-A of the Constitution of India and issue a consequential direction to effect the same.

2. Heard Sri Mallarapu Kiran Reddy, learned counsel for the petitioner, learned Asst. Government Pleader for Tribal Welfare appearing on behalf of respondent Nos.1 to 4. In spite of service of notice to the respondent Nos.5 and 6, they have not chosen to enter into appearance.

3. Learned counsel for the petitioner submits that the petitioner is the owner and possessor of the land to an extent of Acs.13.32 guntas in Sy.No.253 of Jagannadhapuram Village, Mulkalapalli Mandal, Bhadrachari-Kothagudem District and the

same was purchased by his father from Geega Bojji, father of the respondent Nos.5 and 6 and grandfather of respondent Nos.5 and 6 under a sale deed dated 15.02.1962. He further submits that the then Special Deputy Collector, Tribal Welfare Paloncha initiated proceedings vide Case No.367/1974 for eviction of petitioner's father from the subject land and by order dated 10.07.1974 dismissed the case specifically holding that the petitioner's father purchased the property prior to A.P. Scheduled Area (Land Transfer) Regulation, 1959 and (Regulation 1/1970) (hereinafter referred as "Regulations" for brevity) came into effect i.e. 01.12.1963 and further held that the vendor of the petitioner's father also admitted the sale transaction.

4. He further submits that at the instance of respondent Nos.5 and 6, respondent No.3 initiated proceedings under the Regulations and issued impugned notice in LTR Case No.1/2018/ Mkp in Form-E, dated 08.03.2018 stating that the transfer of the subject land has been made in contravention of the Regulations, though the then Special Deputy Collector, Tribal Welfare initiated the proceedings under the very same

Regulation vide case No.367/1974 and the same was dismissed on 10.07.1974 by giving cogent reasons.

5. Learned counsel for the petitioner contends that respondent No.3 is not having any authority or jurisdiction to initiate proceedings afresh merely basing on the complaint lodged by the respondent Nos.5 and 6 and the same is not permissible under law and initiation of the proceedings barred by *res judicata*.

6. *Per contra* the learned Asst. Government Pleader contended that the then Special Deputy Collector, Tribal Welfare initiated proceedings in Case No.367/1974 by exercising the *suo moto* powers, whereas the present impugned proceedings initiated by the respondent No.3 are basing on the complaint lodged by the respondent Nos.5 and 6. The petitioner without approaching respondent No.3 pursuant to the impugned notice, straight away filed the writ petition and the same is not maintainable under Article 226 of Constitution of India.

7. Having considered the rival submissions made by the respective parties and after going through the record and impugned notice, it reveals that the then Special Deputy

Collector, Tribal Welfare initiated the proceedings in Case No.376/1974 in respect of very same schedule property by invoking the provisions of Regulations 1959 and 1 of 1970 and after hearing the parties dismissed the case by its order dated 10.07.1974 specifically holding that the transaction of the subject land was effected prior to 01.12.1963 i.e. before the enforcement of Regulations and further held that the vendor of the petitioner's father also admitted the transaction. Learned counsel for the petitioner rightly contended that the order passed by the Special Deputy Collector, Tribal Welfare, Paloncha dated 10.07.1974 has become final and binding upon all the parties including respondent Nos.5 and 6 and the impugned proceedings initiated by respondent No.3, basing on the complaint of the respondent Nos.5 and 6 barred by *res judicata*.

8. In view of the foregoing reasons, the impugned notice vide LTR Case No.1/2018/Mkp dated 08.03.2018 issued by respondent No.3 is declared as barred by principles of *res judicata*.

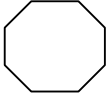
9. Accordingly the writ petition is allowed. There shall be no order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

JUSTICE J. SREENIVAS RAO

15th February, 2023
Skj

HON'BLE SRI JUSTICE J. SREENIVAS RAO



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Date : 15-02-2023

Skj