

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.21405 OF 2007

Between:

Chava Lingaiah S/o. late Seshaiah
Aged 63 years Occ: Agriculture
R/o. H.No.14-1-228, Nataraj center,
Masjid Road, Paloncha,
Khammam District.

.. Petitioner

Vs.

Government of A.P., Social Welare(LTR)
Department, Rep. by its Secretary,
Secretariat, Hyderabad and 5 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **26.04.2023**

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| 1. Whether Reporters of Local newspapers may be allowed to see the judgment? | No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes |
| 3. Whether his Lordship wishes to see the fair copy of the judgment? | Yes |

*** HON'BLE SRI JUSTICE J. SREENIVAS RAO**

+ WRIT PETITION No.21405 OF 2007

% DATED 26TH April, 2023

Chava Lingaiah S/o. late Seshaiah
Aged 63 years Occ: Agriculture
R/o. H.No.14-1-228, Nataraj center,
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.. Petitioner

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<Gist:

>Head Note:

! Counsel for the Petitioner: Sri Kowturu Vinaya Kumar

^Counsel for Respondents : Govt. Pleader for Social Welfare

? CASES REFERRED :

1. (2010) 5 ALT 249

HON'BLE SRI JUSTICE J.SREENIVAS RAO**W.P. No.21405 OF 2007****ORDER:**

This writ petition is filed questioning the orders passed by respondent No.1 in G.O.Ms.No.80 dated 22.09.2007 confirming the orders passed by respondent No.2 in C.M.A.No.9 of 1998 dated 16.07.2001 and orders of respondent No.3 in LTR Case No.1130 of 1995/PAL, dated 22.11.1997 as illegal, contrary to the records, without jurisdiction and violative of principles of natural justice.

2. Heard Sri K. Jagadeeshwar, learned counsel appearing for Kowturu Vinaya Kumar, learned counsel for the petitioner and learned Assistant Government Pleader for Social Welfare appearing for respondent Nos.1 to 5. Notice in respect of respondent No.6 is returned unserved.

3. Learned counsel for the petitioner submits that the petitioner is the owner of the subject land to an extent of Acs.4.20guntas in Survey No.81/80 situated at Payakari, Yanambile(v), Paloncha(M), Khammam District presently, Bhadradi Kothagudem District. Petitioner purchased the property through agreement of sale dated 10.10.1968 from one G. Janakaiah thereafter he executed a registered sale deed vide No.1275/76 on 11.06.1976. He further submits that the

petitioner's vendor had purchased the said property through registered sale deed dated 19.08.1968 from one Sri. Ganduri Achaiah, S/o Papaiah who is none other the father of respondent No.6 and the transaction is between non-tribals and no tribal interest is involved. He further submits that basing on the complaint of respondent No.6, respondent No.3 initiated the proceedings exercising the powers conferred under the Telangana State Scheduled Area Land Transfer Regulations 1 of 1959 amended Regulation 1 of 1970 and its Rules 1969(herein after called as 'Regulations' for brevity) and passed ejectment order on 22.11.1997, though the provisions of the Regulations are not applicable to the subject land. Aggrieved by the said order the petitioner filed appeal CMA No.9 of 1998 and respondent No.2 also without properly considering the material evidence on record dismissed the appeal and confirmed the order of respondent No.3 by its order dated 16.07.2001. Aggrieved by the above said orders the petitioner filed Revision invoking the provisions of Section 6 of Regulations before respondent No.1. The Revisional authority also without considering the grounds raised by the petitioner simply confirmed the orders of respondent Nos.2 and 3 *vide* G.O.Ms.No.80 dated 22.09.2007.

4. Learned counsel for the petitioner vehemently contended that the petitioner's vendor purchased the property from the original assignee thereafter the petitioner purchased the property through agreement of sale dated 10.10.1968 and thereafter obtained the registered sale deed dated 11.06.1976. Respondent No.3 is not having any authority or jurisdiction to initiate the proceedings exercising the powers conferred under Regulations, as the subject land is assigned land and the revenue authorities are alone entitled to initiate the proceedings under the provisions of Telangana Assigned Lands(Prohibition of Transfers) Act, 1977(Act 9 of 1977)(herein after called as Act) for cancellation of the assignment patta. He further contended that the petitioner is a bonafide purchaser and also land less poor person and he is entitled to claim the benefits as envisaged under Section 3(5) of the Act, and the petitioner raised specific ground about applications of Regulations. The primary authority, appellate authority or revisional authority have not considered the same and passed ejection orders.

5. Per contra, learned Assistant Government Pleader submits that subject property situated in the scheduled area and respondent No.3 has rightly initiated the proceedings exercising the powers conferred under the Regulations, as the petitioner

purchased the property through registered sale deed only on 11.06.1976 and the same is clear contravention of the provisions of Section 3(1) of the Regulations. Respondent No.3 after considering the contentions of the respective parties and after due verification of the records rightly passed the impugned order on 22.11.1997 and the same was confirmed by the respondent No.2-appellate authority in the appeal in CMA No.9 of 1988 dated 16.07.2001 and also respondent No.1 - Revisional authority in G.O.Ms.No.80 dated 22.09.2007 and the same are in accordance with law. She further submits that pursuant to the orders passed by respondent No.3 dated 22.11.1997, respondent No.5 has already taken possession of the subject property into the Government Custody.

6. Having considered the rival submissions made by respective parties and after perusing the material available on record, the following points arise for consideration:

i Whether respondent No.3 is having authority and jurisdiction to initiate the proceedings exercising the powers conferred under the Regulations, 1959 and its Rules, 1969 especially when the subject land is assigned land.

ii Whether the petitioner is entitled to relief sought in the writ petition?

Point Nos.1 and 2

7. It is undisputed fact that the respondent No.3 had initiated the proceedings invoking the provisions of Regulations on the complaint of respondent No.6, whereas the petitioner is claiming rights over the property basing on the agreement of sale dated 10.10.1968 and registered sale deed dated 11.06.1976 and also pleaded that the petitioner's vendor had purchased the property from father of respondent No.6 namely Ganduri Atchaiah who is assignee through registered sale deed dated 19.08.1968. The specific contention of the learned counsel for the petitioners is that the Provisions of Regulations are not applicable to the Assigned Lands and the provisions of Act 9/1977 is alone applicable.

8. Respondent No.3 after following the due procedure prescribed under Regulations passed the ejectment order on 22.11.1997, specifically holding that the petitioner has not produced any piece of evidence that he is in possession of the subject land prior to the Regulations came into effect and further observed that the revenue receipts filed by the petitioner clearly shows that the petitioner name was recorded in the possessor column from 1977 onwards only and he is not entitled to claim the benefits under Sec. 2(g) of Regulations.

9. It is very much relevant to extract the provisions of Section 3(1)(a) of Regulations which reads as follows:

3. Transfer of immovable property by a member of a Schedule Tribe. –

(1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

10. In *Pathipati Rangamma v. Agent to the Government at Khammam*¹ this Court in paragraph Nos.16, 17 and 20 held that:

16. In view of the overriding effect given to Section 3(1) (a) of Regulation 1 of 1959, over all other enactments in force in the agency tracts, it is clear that the enquiry contemplated under Regulation 1 of 1959 is an independent enquiry. Hence it is for the person in possession of immovable property situated in agency tracts to establish by adducing acceptable evidence to the satisfaction of the Special Deputy Collector that his possession was not in contravention of Section 3 (1) (a) of Regulation 1 of 1959. In the absence of such material, it is always open to the Authority to draw a presumption under Section 3(1) (b) of Regulation 1 of 1959.

17. It is to be noted that Regulation 1 of 1959 is a special legislation intended to protect the interest of the tribals. Having regard to the object and intendment of the legislation, an overriding effect has been given to its provisions over all other enactments in force in the agency tracts. It is also relevant to note that the provisions of Regulation 1 of 1959 constitute a complete Code in relation to the determination of the validity of transfer of immovable property in a Scheduled area. Hence, the authority empowered under Section 3 (1) (a) of Regulation 1 of 1959 while enquiring into the validity of the transfer of any immovable property in a Scheduled area, has to

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arrive at an independent conclusion on the parameters of law contained in Regulation 1 of 1959 and for the said purpose he is not bound by the finding, if any, recorded under any other enactment with regard to such transfer.

20. In the circumstances, the mere fact that the competent authority under the R.O.R. Act, 1971 had regularized the sale in favour of the petitioner dated 15.5.1968 under an unregistered sale deed will not operate as a bar to make an independent enquiry under Regulation 1 of 1959 with regard to the validity of the said sale transaction. Consequently, the protection, if any, given under Section 5-A(4) of R.O.R. Act, 1971 will not be available to the petitioner so far as the enquiry under Section 3 (1) (a) of Regulation 1 of 1959 is concerned and if the competent authority under Regulation 1 of 1959 finds that the transfer is in contravention of the provisions of Section 3 (1) (a) of Regulation 1 of 1959, such transfer will not be saved by virtue of the validation under the provisions of R.O.R. Act, 1971.

11. The above provision as well as the law laid down by this Court clearly envisages that the non-obstante clause employed in Section 3 (1) (a) makes it clear that the prohibition of transfer under Section 3(1) of Regulation 1 of 1959 has an overriding effect over all other enactments in force in the agency tracts. It is also clear that Section 3 (1) (b) of Regulation 1 of 1959 enables to draw a presumption that the immovable property situated in the agency tracts and in possession of a non-tribal has been acquired through a transfer made to him by a member of scheduled tribe unless the contrary is proved. Thus, the burden of proof is on the person who is in possession of the land situated in the agency tracts to establish that his possession is not in

contravention of Section 3 (1) (a) of Regulation 1 of 1959. Hence, the contention of learned counsel for the petitioner that provisions of Act 9/1977 is alone applicable and Regulations are not applicable to the assigned lands is not tenable under law.

12. In this instant case, the petitioner is a non-tribal and the property is situated in the scheduled area and he purchased the same through registered sale deed dated 11.06.1976 from the assignee. The transaction took place after the Regulations came into effect and the same is clear contravention of the Regulations. Respondent No.3 has rightly initiated the proceedings exercising the powers conferred under Regulations and passed the ejectment order on 22.11.1997 and the same was confirmed by the appellate authority i.e, respondent No.2 and Revisional authority respondent No.1 and there are no grounds much less valid grounds to interfere with the impugned orders passed by respondent Nos. 1 to 3, invoking the jurisdiction of this Court excising powers conferred under Article 226 of Constitution of India, as the scope of judicial review is very limited.

13. It is already stated supra that respondent No.5, pursuant to the ejectment order passed by respondent No.3, has already taken possession of the subject property from the petitioner and the same is under the custody of the Government and the petitioner is not entitled to any relief much less the relief claimed in the writ petition.

14. Accordingly, the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE J.SREENIVAS RAO

26th April, 2023

Note:

L.R. Copy to be marked: **'Yes'**

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HON'BLE SRI JUSTICE J.SREENIVAS RAO

W.P.No.21405 OF 2007

26th April, 2023

PSW

L.R. Copy to be marked: **'Yes'**

BO.
PSW