

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION No.17046 of 2012

ORDER:

This writ petition is filed for the following relief:

“...to issue an order or a direction more particularly a writ of certiorari by calling for the records in respect of the show cause notice in Rc.No.E/87/2011 dated 15.05.2012 and quash the same...”

2. Brief facts of the case:

2.1. The case of the petitioners is that they are the members of the undivided Hindu joint family. They owned and possessed agricultural lands in Nellutla, Lingala Ghanpur, Kallem, Yeshwanthapur, Kilashipuram and Machupahad of Warangal District and they have filed declarations under Section 8(1) of the A.P./Telangana Land Reforms (Ceiling on Agricultural) Holdings Act, 1973 (hereinafter called brevity, ‘the Act’) before the primary Tribunal. The Additional Divisional Officer (LR) Warangal-II passed orders under Section 9 of the Act on 23.04.1997 and declared that the petitioners are having lands in excess of ceiling limits to the extent of equivalent to 34.9353 Standard Holding (SH) as on 01.01.1975 and directed to surrender the said land as surplus land. Questioning the said order, the petitioners have preferred an appeal before the Land Reforms Appellate Tribunal *vide* L.R.A.No.1884 of 1977. The appellate Tribunal allowed the appeal in part holding that the lands covered by residential houses, cattle sheds,

vaagu, port kharab are liable to be excluded from the holding of the petitioners/declarants, however, remanded the matter in respect of the lands in Sy.Nos.153, 191, 193, 202, 204, 205, 207 to 211 and 212/2, which are under submergence of the tank water and rejected the claim of the petitioners relating to examination of lands covered by tank submergence from the holding by its order dated 06.06.1979. Aggrieved by the said order, the petitioners have filed appeal i.e., LRA.No.90 of 1980 before Land Reforms Appellate Tribunal, Warangal. The appellate Tribunal after considering the contentions of the respective parties and considering the documentary evidence on record allowed the appeal holding that the lands covered under the Tank submergence are exempted from the holding of the declarants, by its order dated 20.03.1981. Pursuant to the said order, Primary Tribunal re-determined the holding of the declarants and excluded the lands covered under the tank submergence, by its order dated 08.05.1981. Subsequently, the primary Tribunal corrected the clerical error with regard to the land in Sy.No.247 of Kallam village and the said land was excluded from the holding, by its order dated 14.11.1983 and the above said orders have become final.

2.2. While things stood thus, respondent No.2 issued notice dated 11.01.2005 basing on the complaint lodged by respondent No.4 to stop the construction activity and also issued directions to the Sub Registrar, Jangaon, to stop the registrations in Sy.Nos.153, 191, 193,

202, 204, 207 to 211 and 212/2 situated at Nellutla (v) of Lingala Ghanpur Mandal, without issuing any notice to the petitioners. Questioning the same, the petitioners have filed W.P.No.2386 of 2005 before the erstwhile High Court of Andhra Pradesh, Hyderabad, and the same was allowed and set aside notice dated 11.01.2005 issued by respondent No.2 by its order dated 16.12.2010, and the said order has become final.

2.3. The petitioner further stated that respondent No.2 issued show-cause notice once again on 25.03.2011, basing on the complaint of respondent No.4 alleging that why the construction activities should not be stopped. Pursuant to the same, petitioners have submitted explanation on 30.03.2011. However, respondent No.2 has not passed any order. It is also stated that respondent Nos.4 and 5 have submitted representations on 01.04.2011 and 15.03.2012 respectively alleging that the petitioners have filed wrong declaration and got exception on false grounds and escaped from surrender of surplus lands. Pursuant to the said representations, respondent No.2 directed respondent No.3 to submit a report. Accordingly, respondent No.3 submitted a report to respondent No.2 without issuing any notice to the petitioners. Basing on the said alleged report, respondent No.2 had issued show-cause notice dated 16.04.2012 directing the petitioners to submit explanation as to why the ceiling Case No.1747, 1852 and 1986/Jng/1975 should not be reopened under Section 22(1) of the Act

and Rule 16 of A.P./Telangana Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (brevity 'Rules'). Pursuant to the same, the petitioners have submitted detailed explanation on 04.05.2012 denying the allegations made therein and requested him to drop the proceedings. Respondent No.2, without considering the explanation submitted by petitioners, issued the impugned order/notice dated 15.05.2012 reopening the Ceiling Case No.1747, 1852 and 1986/Jng/1975 after lapse of more than 32 years especially, without assigning any reasons.

3. Heard Sri V. Ravinder Rao, learned senior counsel, representing Sri Ashok Reddy Kanothala, learned counsel for the petitioners, Sri Sridhar Reddy Pottigari, learned Special Government Pleader appearing for respondent Nos.1 to 3 and Sri Bommagani Prabhakar, learned counsel appearing on behalf of respondent No.4. In spite of service of notice, respondent No.5 has not chosen to enter appearance.

4. Learned senior counsel appearing for the petitioners submits that respondent No.2 is not having authority or jurisdiction to reopen the case after a long period of 32 years basing on the alleged representations dated 01.04.2011 and 15.03.2012 made by unofficial respondents, who are political leaders. He further submits that the Appellate Tribunal, Warangal, allowed the appeal *vide* L.R.A.No.90 of 1980 on 20.03.1981 after considering the contentions of the respective parties and after due verification of the documentary evidence on

record held that the lands covered under tank submergence are exempted from the holding of the declarants and the said judgement has become final. The respondent authorities have not questioned the said judgement before any Court of law. Hence, respondent No.2 is not having jurisdiction to initiate the proceedings afresh to review the orders of the appellate Tribunal.

4.1. He further contended that respondent No.2 issued the impugned order/notice dated 15.05.2012 invoking the powers conferred under the provisions of Section 22 (1) of the Act and Rule 16 of the Rules, though the said provisions are not applicable. He also contended that pursuant to the show-cause notice dated 25.03.2011 issued by respondent No.2, the petitioners have submitted explanation on 30.03.2011 and respondent No.2 has not passed any order. Once again, respondent No.2 issued another show-cause notice on 16.04.2012 basing on the representations made by unofficial respondent Nos.4 and 5 with the very same allegations. Pursuant to the said show cause notice, the petitioners have submitted detailed explanation denying the allegations made therein on 04.05.2012. Respondent No.2, without considering the said explanation, issued impugned order/notice dated 15.05.2012, by reopening the Land Ceiling Case No.1747, 1852 and 1986/Jng/75 which was concluded in the year 1981, without assigning any reasons, simply stating that the explanation submitted by the petitioners was not found convincing and

the impugned notice/order passed by respondent No.2 is gross violation of the principles of natural justice and contrary to law.

4.2. Learned senior counsel further contended that as on the date of submission of the declaration, the subject lands were covered by tank submergence. Hence, the unofficial respondents are not entitled to make allegations that the petitioners wrongly availed the benefits under the provisions of the Act, and they are utilizing the said land for other purpose, after lapse of more than 32 years. The unofficial respondents or the respondent authorities are not entitled to contend that the petitioners have to use the said land for the very same purpose. He further submits that the subject land and surrounding lands were presently covered with residential houses and residential colonies.

4.3. He further contended that the provision of Section 9(A) of the amended Act, is also not applicable for reopening of the case by the Tribunal, as the petitioners have not played any fraud, misrepresentation or suppressed the facts before the primary authority or appellate authority while submitting their declarations. Respondent No.2 initiated the proceedings basing on the alleged complaint submitted by the unofficial respondents. He also contended that appellate Tribunal allowed the appeal on 20.03.1981 *vide* LRA.No.90 of 1980, after considering material evidence on record. Hence, the impugned proceeding issued by respondent No.2 is contrary to law and without jurisdiction and the same is liable to be set aside.

5. *Per contra*, Sri Bommagani Prabhakar, learned counsel, submits that the petitioners have availed the benefits on the ground that the subject lands covered by tank submergence and the petitioners are converting the said lands into house sites and using for commercial purpose and also alienating the same to third parties. The intention of the Act is that excess ceiling lands have to be distributed to the weaker sections and needy people. The unofficial respondents have submitted representation to the respondent authorities to conduct enquiry and take appropriate steps as per the provisions of the Act, especially the petitioners are not entitled for exclusion of the subject lands from their holding. He further submits that as per Section 9(A) of the Act, no time limit is prescribed to initiate the proceedings. Hence, respondent No.2 has rightly initiated the proceedings.

5.1. He also contended that the petitioners filed this writ petition questioning the impugned order/notice dated 15.05.2012 issued by respondent No.2 and the same is not maintainable under law and they are entitled to raise all the grounds before respondent No.2.

6. Learned Special Government Pleader reiterated the very same submissions made by the learned counsel for the unofficial respondent No.4. He further contended that when element of fraud brought to notice of the authorities, they are entitled to initiate proceeding under the Act and no time limit is prescribed. He submits that Section 22(1) and Rule 16 of the Rules are not applicable. However, as per Section

9-A of the Act, respondent No.2 is having jurisdiction to initiate proceedings. The petitioners are entitled to raise all the grounds before the primary Tribunal by participating in the enquiry and they are not entitled the relief as sought in the writ petition.

6.1. In support of his contention, he relied upon the following judgments.

1. **Digambar Rao and another v. Government of Andhra Pradesh¹.**
2. **Union of India and others v. Ramesh Gandhi².**
3. **United India Insurance Co. Ltd., v. Rajendra Singh and others³.**

7. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that the petitioners have filed declaration as per the provisions of the Act in Ceiling Case No.1747, 1852 and 1986/Jng/1975. The Land Reforms Tribunal determined and held that the petitioners/declarants are having excess land to the extent equivalent to 34.9353 standard holding as on 01.01.1975 and passed order on 23.04.1977. Aggrieved by the said order, the petitioners have filed appeal *vide* L.R.A.No.1884 of 1977 on the file of the Land Reforms Appellate Tribunal, Warangal.

¹ 2001 SCC OnLine AP 865 = (2001) 6 ALT 226 (FB)

² (2012) 1 SCC 476

³ (2000) 3 SCC 581

8. That the appellate Tribunal allowed the above said appeal in L.R.A.No.1884 of 1977 in part holding that the lands covered by houses, cattle shed in Sy.Nos.188 and 199, the land covered by Vaagu (stream), pote kharab and alienations made by the declarants prior to the enactment and also the lands which are in possession of the protected tenants are exempted from the holding of the declarants. Insofar as the issue with regard to submergence of the tank to an extent of 2.329 standard holding in Sy.Nos.153, 191, 193, 202, 204, 205, 207 to 211 and 212/2 was remitted to Primary Tribunal for reconsideration, by its order, dated 06.06.1979. Thereafter, the primary Tribunal rejected the claim of the petitioners in respect of the above said extent of Standard Holding 2.329 covered by tank submergence, by its order dated 15.04.1980.

9. Aggrieved by the above said order dated 15.04.1980 the petitioners have filed appeal before the Land Reforms Appellate Tribunal, Warangal, *vide* L.R.A.No.90 of 1980 and the appellate Tribunal after considering the contentions of the respective parties and due verification of the documentary evidence on record allowed the appeal holding that the declarants are entitled for exclusion of the land covered under tank submergence from their holding, by its order dated 20.03.1981. Pursuant to the same, the primary Tribunal re-determined the standard holding of the petitioners by its order dated 08.05.1981 and corrected clerical errors by its order dated 14.11.1983. The record

further discloses that the above said orders passed by the appellate Tribunal dated 15.04.1980 and consequential orders passed by the Primary Tribunal dated 08.05.1981 and 14.11.1983 have become final.

10. Pursuant to a complaint submitted by respondent No.4, respondent No.2-RDO issued notice/order *vide* Proc.No. E/1118/2014, dated 11.01.2005 directing the petitioners to stop the construction and also issued a direction to the sub-register to stop the registration of documents in Sy.Nos.153, 191, 193, 202, 204, 207 to 211 and 212/2 situated at Nellutla (v) of Lingala Ghanpur Mandal. Questioning the same, the petitioners have filed W.P.No.2386 of 2005 and erstwhile High Court of Andhra Pradesh, Hyderabad, allowed the same on 16.12.2010 and set aside the impugned order dated 11.01.2005 and further observed that however, the said order does not preclude the respondent authorities from taking appropriate legal action as per law.

11. It further reveals from the record that respondent No.2 had issued show cause notice dated 25.03.2011, basing upon the complaint/representation submitted by respondent No.4 dated 20.01.2011, directing the petitioners to submit explanation as to why registration/conversion/ construction activities should not be stopped/prohibited in the subject property stating that the petitioners have filed a wrong declaration and got exemption on false grounds and escaped from surrender of ceiling surplus lands. Pursuant to the same, the petitioners have submitted explanation on 30.03.2011, however,

respondent No.2 had not passed any order. On the other hand, respondent No.2 had issued another show-cause notice dated 16.04.2012 basing upon the complaint/representation of respondent Nos.4 and 5 dated 15.03.2012 and 01.04.2011 respectively on the very same allegations and directed the petitioners to submit the explanation within 15 days from the date of receipt of the notice as to why the ceiling case should not be reopened under Section 22(1) of the Act and Rule 16 of the Rules. Pursuant to the same, the petitioners have submitted detailed explanation on 04.05.2012 denying the allegations and requested respondent No.2 to drop the proceedings. Respondent No.2 without considering any of the grounds raised in the explanation submitted by the petitioners and without giving any reasons, much less valid reasons issued the impugned order/notice dated 15.05.2012 simply stating that the “*explanation of the petitioner was not found convincing*” and reopened the land ceiling case No. 1747, 1852 and 1986/Jng/75 and posted for hearing on 26.05.2012 and directed the petitioners to appear before him along with records.

12. Admittedly, the provision of Section 22(i) and Rule 16 of the A.P. Land Reforms Act is not applicable for reopening of the case. The learned Special Government Pleader during the course of arguments fairly submitted that the above said provision is not applicable. However, as per the provisions of Section 9-A of the Act, respondent No.2-Tribunal is having power to reopen the matter. It is settled

principle of law that mere quoting of the wrong provision is not a ground to set aside the proceedings.

13. It is pertinent to mention here that respondent No.2 himself without forming an opinion and without giving any reasons, as to how the proceedings required reopening, passed the cryptic impugned order/notice dated 15.05.2012 and re-opened the land ceiling case proceedings, which was concluded in the year 1981 i.e., after lapse of nearly 32 years, without considering the explanation submitted by the petitioners dated 14.05.2012 to the show-cause notice dated 16.04.2012. It is also relevant to mention here that once respondent No.2 issued show-cause notice and invited the objections/explanation, ought to have considered the same by giving reasons. The issuance of the show-cause notice and inviting explanation/objections from the parties is not an empty formality. Hence, the impugned order/notice issued by respondent No.2 dated 15.05.2012 is gross violation of the principles of natural justice.

14. It is also relevant to place on record that the reasons are heart and soul of the order passed by the authority. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice.

15. In **Guridial Singh Fijji v. State of Punjab**⁴, the Hon'ble Apex Court held as under:

“... “Reasons” are the links between the materials on which certain conclusions are based and the actual conclusions...”

16. The Hon'ble Apex Court in case of **S.N.Mukherjee v. Union of India**⁵, while emphasizing the importance of recording of reasons for decisions by the Administrative authorities and Tribunals observed that "*administrative process will best be vindicated by clarity in its exercise*". Thus, further observed "the orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained."

17. In the case of **Mc.Dermott International Inc. v. Burn Standard Co. Ltd. and others**⁶, the Apex Court clarified the rationality behind providing of reasons and stated the principle as follows:

"... Reason is a ground or motive for a belief or a course of action, a statement in justification or explanation of belief or action. it is in this sense that the award must state reasons for the amount awarded. The rationale of the requirement of reasons is that reasons assure that the arbitrator has not acted capriciously. Reasons reveal the grounds on which the Arbitrator reached the conclusion which adversely affects the interests of a party. The contractual stipulation of reasons means, as held in Poyser and Mills' Arbitration in Re, 'proper adequate reasons'.

⁴ (1979) 2 SCC 368,

⁵ (1990) 4 SCC 594

⁶ (2006) SLT 345 = 2006 (5) ALT 1.3 (DN SC)

Such reasons shall not only be intelligible but shall be a reason connected with the case which the Court can see is proper. Contradictory reasons are equal to lack of reasons..."

18. In **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others**⁷, the Hon'ble Supreme Court held that the respondents cannot make their case by filing counter affidavit before the Court without giving any reasons in the impugned order and the same is not permissible under law.

19. In **Digambar Rao and another** (1 *Supra*), the Full Bench of erstwhile High Court of Andhra Pradesh, Hyderabad, and in **Union of India and others** (2 *Supra*), **United India Insurance Co. Ltd.**, (3 *Supra*), the Hon'ble Apex Court held that any party obtained a decree/judgment by playing fraud can be challenged in a Court even in collateral proceedings and period of limitation is not applicable and the same can be declared as nullity. Whereas, in the case on hand, the judgment passed by the Land Reforms Appellate Tribunal in L.R.A.No.90 of 1980 dated 23.09.1981 has become final, but respondent No.2 passed the impugned order/notice reopening the land ceiling proceedings after a long period 32 years, without considering the explanation submitted by the petitioner, dated 14.05.2012, to the show-cause notice dated 15.05.2012 and without assigning any reasons, and the same is gross violation of principles of natural justice and contrary to law.

⁷ (1978) 1 SCC 405

20. For the foregoing reasons as well as the '*plethora*' of judgments as mentioned supra, the impugned order/notice dated 15.05.2012 issued by respondent No.2 is liable to be set aside and accordingly set aside. However, this order will not preclude the respondent authority to proceed further in accordance with law.

21. Accordingly, the writ petition is allowed. No costs.

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

J. SREENIVAS RAO, J

Date: 16.07.2024

L.R. Copy to be marked -YES/NO

mar