

**HIGH COURT FOR THE STATE OF TELANGANA**

**WRIT PETITION No.5673 OF 2013**

Between:

Mamillapalli Seetaramayya S/o Venkaiah,  
Aged about 77yrs. r/o Mulakalapally Village  
And Mandal, Khammam district.

.....Petitioner

Vs.

Government of Andhra Pradesh,  
Social Welfare (LTR-2) Department, rep.  
By its Secretary, Secretariate, Hyderabad & 4 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **29.03.2023**

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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 wish to see the fair copy of the judgment?           | Yes |

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

**+ WRIT PETITION No.5673 OF 2013**

**% DATED 29<sup>th</sup> March, 2023**

Mamillapalli Seetaramayya S/o Venkaiah,  
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<Gist:

>Head Note:

! Counsel for the Petitioners : Sri S. Madan Mohan Rao, Adv.

^Counsel for Respondents : Government Pleader for Social  
Welfare

? CASES REFERRED:

1. 2006(2)ALD 683
2. 1995 6 SCC 545
3. AIR 1982 AP 1
4. 2019(6) SCC 474
5. 2009 2 ALD 651

**HON'BLE SRI JUSTICE J. SREENIVAS RAO****WRIT PETITION No.5673 of 2013****ORDER:**

This writ petition is filed seeking writ of Mandamus declaring the order in G.O.M.S.No.9, Social Welfare(LTR.2) Department dt.31.01.2013 of respondent No.1 herein confirming the Order dated 20.06.2002 in C.M.A.No.24 of 2001 of respondent No.2 herein and also the order dated 11.04.1997 in LTR Case No.16/96/MKP of the respondent No.3 herein as illegal, arbitrary, unreasonable contrary to the provisions of A.P. Scheduled Area (Land Transfer) Regulations and also violative of Articles 14, 21 and 300 A of the Constitution of India and issue a consequential direction to the respondents herein not to give effect to the same.

**2.** Heard Sri S. Madan Mohan Rao learned counsel for the petitioner, learned Assistant Government Pleader for Social Welfare appearing on behalf of respondent Nos.1 to 4. During the pendency of the writ petition respondent No.5 died and the respondent Nos.6 to 30 were brought on record as legal representatives in I.A.No.1 of 2018.

Learned counsel for the petitioner submits that the respondent No.3 has not granted any relief in favour of respondent No.5 and his legal heirs i.e., respondent Nos.6 to 30 who are only proforma parties.

**3.** Learned counsel for the petitioner submits that the petitioner is the owner and possessor of the land to an extent of Acs.20.00 situated in Survey No.60, 63/E/1, 65/A, Mulakalapally village and Mandal, Khammam District and the same was purchased through a Sada Sale Deed dated 05.12.1969 from Madiraju Subba Rao, a non-tribal, who is the grandfather of respondent No.5. He further submits that respondent No.3 initiated proceedings *vide* LTR Case No.16/96/MKP under A.P. Scheduled Area land transfer Regulations, 1959 Amendment 1/1970(hereinafter called as 'Regulations' for brevity) against the petitioner. He further submits that the petitioner appeared before respondent No.3 and produced all the documents including Sada Sale deed dated 05.12.1969 specifically stating that the provisions of Regulations are not applicable to the subject land. Respondent No.3 without considering the contentions and documentary evidence, erroneously passed the ejectment

order on 11.04.1997. Aggrieved by the said order the petitioner filed appeal CMA.No.24 of 2001 before respondent No.2. Respondent No.2 also without considering the grounds raised by the petitioner and also evidence on record dismissed the appeal by its order dated 20.06.2002, on the ground that the Sada Sale deed dated 05.12.1969 produced by the petitioner is an ordinary sale deed which is not duly stamped and registered under the provisions of Registration Act, 1908 and basing on the said Sada Sale deed the petitioner is not entitled to claim any rights over the property and further stated that the petitioner has not produced original land revenue receipts.

**4.** Questioning the said order, the petitioner filed Revision under Regulations before respondent No.1. Respondent No.1 also dismissed the revision petition confirming the orders passed by respondent Nos.2 and 3 by way of GO.Ms.No.9 dated 31.01.2013.

**5.** Learned counsel for the petitioner vehemently contended that the petitioner purchased the property through Sada Sale deed dated 05.12.1969 from the original pattadar by paying valuable sale consideration and the provisions of Regulations are not applicable

especially as per the provisions of Section 24 of Transfer of Property Act. Respondent No.3 without properly examining the provisions of the Regulations passed the ejectment order. Respondent No. 3 erroneously held that in the pahanis pertaining to 1969-70 and 1970-71, there is a change of ink and writing through which the respondents' (therein) name is incorporated in occupation column. In such circumstances, the respondent Nos.2 and 3 ought to have summoned the original records from the concerned authority, on the other hand, shifted the burden upon the petitioner, especially respondent No.3 initiated the LTR proceedings by exercising *suo motu* powers.

**6.** He further submits that as on the date of initiation of the proceedings by the respondent No.3, the original pattadar Madiraju Subba Rao is no more. Respondent No.3 initiated the proceedings and passed the ejectment order against the dead person and the same is nullity. He further submits that Regulations is a special enactment and the provisions of Transfer of Property Act is not applicable to the subject property. In support of his

contentions, learned counsel relied upon the following judgments:

- i. Kalagara Vighneswararao Vs. Government of A.P. and others<sup>1</sup>.***
- ii. Deputy Collector and Another Vs. S. Venkata Ramanaiah and Another<sup>2</sup>***
- iii. Gaddam Narsa Reddy and others Vs. Collector, Adilabad District and others<sup>3</sup>.***
- iv. Bikkina Rama Rao and others Vs. Special Deputy Tahsildar (Tribal Welfare), Kota Ramachandrapuram and others<sup>4</sup>.***

**7.** Per contra, learned Assistant Government Pleader vehemently contended that the property is situated in the scheduled area and the petitioner as well as his father are non-tribals. As soon as respondent No.3 came to know about contravention of the provisions of the Regulations, he had rightly initiated proceedings and passed the ejectment order on 11.04.1997 and the same was

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<sup>1</sup> 2006 (2) ALD 683

<sup>2</sup> 1995 6 SCC 545

<sup>3</sup> AIR 1982 AP 1

<sup>4</sup> 2019(6) SCC 474

confirmed by the appellate authority and as well as revisional authority. There are no grounds to interfere with the impugned orders passed by respondents No.1 confirming the orders of the respondent Nos.2 and 3.

**8.** Having considered the rival submissions made by respective parties and a perusal of the material available record, reveals that the petitioner is claiming rights over the property basing on the Sada Sale deed dated 05.12.1969 which was executed by the original pattadar namely Madiraju Subba Rao and the petitioner's name is mutated in the revenue records and pattadar pass book and title deed also issued. Respondent No.3 had initiated the proceedings under Regulations by invoking *suo motu* powers. It is undisputed fact that as on the date of initiation of LTR proceedings by respondent No.3, the original pattadar namely Madiraju Subba Rao is no more and respondent No.3 passed order against the dead person.

**9.** The specific contention of learned counsel for the petitioner is that the petitioner appeared before respondent No.3 and submitted documents including the Sada Sale deed dated 05.12.1969. Without verifying the



documents, respondent No.3 held that the petitioner has not produced the copy of the Sada Sale deed and revenue receipts. Whereas respondent No.2 in the impugned order C.M.A. No.24 of 2001 observed that the Sada Sale deed dated 05.12.1969 is unregistered document and basing on the same the petitioner is not entitled to claim any rights over the property and revenue receipts are only Xerox Copies. Respondent No.1 while exercising the quasi judicial powers rejected the revision petition filed by the petitioner and upheld the orders of the respondent Nos.2 and 3 without considering the grounds raised by the petitioner.

**10.** This Court in ***Kalagara Vighneswararao case(supra)*** specifically held that as per the provisions of Section 2(g) of Regulations transfer is defined as follows:

Section 2(g) of the Regulation 1 of 1959 defines 'transfer' as follows:

“Transfer’ means mortgage with or without possession, lease, sale, gift, exchange, or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing.”

8. From the above said definition, it is very clear, that a contract relating to property is also 'transfer' for the purpose of this Regulation. In that view of the matter, in this case, the transfer is deemed to have been made on 2-5-1969, when agreement of sale was entered into and, on 14-9-1975, registered sale deed

was obtained. As much as purchase in favour of the petitioner from non-tribal was on 2-5-1969, the said transfer is not hit by Regulation 1 of 1959, or, as amended by Regulation 1 of 1970. Further it is to be noted, that the earlier transfers were not the subject-matter of scrutiny and, transfer, which was made in the year 1969 in favour of the petitioner is, before prohibition came into force. Further, the revisional authority had rejected the plea of the petitioner while examining the validity of transfer only on the ground, that agreement of sale dated 2-5-1969 was not registered one. So far agreement of sale relating to immovable properties is concerned, at that point of time, the registration was not compulsory. Only by virtue of State amendment, by amending Act 4 of 1999, agreement of sale relating to immovable property is made compulsory with effect from 14-1999. In that view of the matter, the only reason assigned by the revisional authority is also not sustainable under law. As much as the earlier transfer is not the subject-matter of scrutiny and the parties to the documents are also not the parties to the proceedings and, further, the sale deed obtained by the petitioner was in the year 1969; in that view of the matter, the order of eviction passed by the primary authority is not sustainable under law. Further, it is also to be noted, that the limited scope of jurisdiction conferred on the authority under Regulation 1 of 1959, as amended by Regulation 1 of 1970 is only to see whether transfer was made after regulations have come into force in violation of prohibitory clauses. As evident from the definition under Section 2(g) of the Regulation, a contract relating to property is also a transfer, in that view of the matter, the order of eviction passed by the primary authority, as confirmed by the revisional authority is fit to be set aside.

**11. In *V.R.Koteswar Rao Vs. Government of Andhra***

***Pradesh and others***<sup>5</sup> this Court specifically held that

8. The Regulations had defined the transfer under Regulation 2(g) to mean as under:

“2(g): “Transfer” means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary dispossession and includes a charge on such property or a contract relating to

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<sup>5</sup> 2009 2 ALD 651

such property or a contract relating to such property in respect of such mortgage, lease, gift, sale, exchange or other dealing.”

9. This definition is at substantial variation with the one under the Transfer of Property Act. It takes, in its fold, not only the mortgage, lease, sale, gift or exchange, but also any other dealing with the immovable property or a contract relating to such property. In other words, even a contract for sale, subsequent to the notified date, is void under Regulation 3 of the Regulations and would not give rise to any rights. Conversely, if such a transaction or contract, which is equivalent to ‘transfer’, as defined under the Regulations has taken place before the notified date, it is saved. Therefore, the agreement of sale, which was accepted by both the parties to the transaction, answers the description of a ‘contract’ relating to the property. Since this has taken place much prior to the notified date, the transaction is not hit by Regulation 3 of the Regulations. This Court has taken a similar view in *K. Nageswar Rao v. Government of A.P.*, 1995 (3) ALT 164.

12. A combined reading of the two orders, namely G.O.Ms. No. 87, dated 26.9.2000, and G.O.Ms. No. 54, dated 24.5.2001, discloses that the contentions advanced on behalf of the petitioner were taken into account. The fact, however, remains that the wider definition adopted under Regulation 2(g) of the Regulations was not taken into account and all the authorities were of the view that the date of actual sale deed alone becomes material. Such a view is contrary to law particularly when the agreement of sale, dated 15.11.1968, was admitted by the vendor and was proved through other cogent evidence.

**12.** In *Deputy Collector and Another case (supra)* the Hon’ble Apex Court specifically held that:

27. These were the only contentions canvassed in support of the appeals preferred by the authorities under the Regulation. There is no substance in these contentions. It must be held that as the transfers in these cases were effected years back, prior to the coming into force of the Regulations in question, they could not be covered by these Regulations. The authorities acting under the Regulations had no jurisdiction to deal with them. In the result the Civil Appeals Nos. 2909 of 1977, 6 of 1991, Civil Appeal No. 8422 of 1995 arising out of SLP (C) No. 10746 of 1981 and Civil Appeal No. 8423 of 1995 arising out of SLP (C) No. 1041 of 1986 will have to be dismissed.

**13. In *Gaddam Narsa Reddy and others case (supra)***

this Court held that :

**18.** .....The authorities under Section 3(2)(a) of the Regulation are conferred special or exclusive jurisdiction to determine the limited question whether the transfer of immovable property situated in the agency tracts is made in contravention of the provisions of section 3(1) of the Regulation, and any other question is outside the scope of such a proceeding under Section 3(2)(a) of the Regulation. In this view, it is not open to the authorities under section 3(2)(a) to go into the question whether the sale or agreement to sell is registered or not, or whether the transferee under such a transfer is entitled to the protection of section 53A of the Transfer of Property Act in the absence of any prior permission under Section 47 of the Hyderabad Tenancy and Agricultural Lands Act or validation certificate under section 5 D-B of the said Act. Hence it is unnecessary for us to go into the conflicting views expressed by several decisions of this Court on the question whether the protection of section 53-A of the Transfer of Property Act is available to a transferee in possession under an agreement to sell, where the provisions of section 47 or section 50-B of the Hyderabad Tenancy and Agricultural Lands Act have not been complied with.

19. The only question then for consideration is, whether the provisions or section 3(1)(a) of Regulation

I of 1959 are retrospective in operation. This Regulation was made by the Governor of the State of Andhra Pradesh in exercise of the powers conferred under Art. 244(1) of the Constitution of India read with the 5th Schedule to the Constitution. Article 244(1) provides that the provisions of 5th Schedule of the Constitution shall apply to the administration and control of the Scheduled areas and Scheduled Tribes in any State other than the States of Assam and Meghalaya. Para (2) of the 5th Schedule Provides that the executive power of the State extends to the Scheduled areas therein subject to the provisions of the said Schedule. Para (4) of Part B of the said Schedule provides for the establishment of Tribes Advisory Council in each State having scheduled areas for advising on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

**Paragraph No.31**

(2) Section 3(1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and 1 of 1970 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities under section 3(2) of the Regulation have no jurisdiction to pass orders in relation to immovable property, covered by such transfers.

**14. In *Bikkina Rama Rao and others case (supra)***

the Hon'ble Apex Court specifically held that:

12. First, the High Court did not examine the case in the context of the definition of the expression "Transfer" as defined in Section 2(g) of the Regulation; and second, certain documents filed by the appellants to prove the transactions in question as being legal and not hit by Section 3 of the Regulation as amended with effect from 1-1-1970, were not considered.

**15.** In view of the principle laid down in said judgments, the observation made by respondent No.2 in the impugned order dated 20.06.2002 that the document dated 05.12.1969 is only an ordinary sale deed but not a registered one and basing on the same the petitioner is not entitled to claim any rights over the subject property is not tenable under law.

**16.** It is very interesting to mention here that when the Revision Petition is pending before respondent No.1, respondent No.3 initiated proceedings afresh in respect of very same subject property vide Case No.144/2011/MKP exercising the powers conferred under Regulations against the petitioner and dropped the proceedings holding that the provisions of Regulations are not attracted by its order dated 15.07.2011.

**17.** It is already stated supra that the petitioner is claiming rights over the subject property basing on the Sada Sale deed dated 05.12.1969 which is executed prior to the Regulations came into effect. The Hon'ble Apex Court as well as this Court in the above judgments mentioned supra specifically held that if the transaction took place prior to enactment of Regulations, the

provisions of Regulations are not applicable. In view of the foregoing reasons, the impugned ejectment order passed by respondent No.3 dated 11.04.1997 which was confirmed by respondent No.2 in C.M.A No.24 of 2001 dated 20.06.2002 and orders of respondent No.1 in GO.Ms.No.9 dated 31.01.2013 are liable to be set aside and accordingly set aside.

**18.** Accordingly, the writ petition is allowed. No costs.

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

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**JUSTICE J. SREENIVAS RAO**

29<sup>th</sup> March, 2023

**Note:**

L.R. copy to be marked: **“Yes”**

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

**WRIT PETITION No.5673 of 2013**

**29<sup>th</sup> March, 2023**

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