

**IN THE HIGH COURT FOR THE STATE OF TELANGANA**

**AT: HYDERABAD**

**CORAM:**

**\*HON'BLE SRI JUSTICE K. LAKSHMAN**

**+ WRIT PETITION No.39758 OF 2022**

**% Delivered on: 24-08-2023**

**Between:**

# Pingili Pullaiah S/o Buchaiah & Others .. Petitioners

Vs.

\$ The State of Telangana, rep.by its Principal  
Secretary, Revenue Department, Hyderabad & Others. .. Respondents

! For Petitioners : Mr. Raghavendra Reddy K.L.N.

^ For Respondents : G.P. for Revenue

< Gist :

> Head Note :

? Cases Referred :

1. 2001 (3) ALT 501
2. 1998 (1) APLR 316
3. MANU/JH/0843/2022
4. MANU/JH/0562/2022
5. 2007 (6) ALD 292
6. MANU/AP/1435/2013
7. (2004) 10 SCC 65

**HON'BLE SRI JUSTICE K. LAKSHMAN****WRIT PETITION No.39758 OF 2022****ORDER:**

Heard Mr. Raghavendra Reddy K.L.N., learned counsel representing Mr. Sanjeev Gillella, learned counsel for the petitioners and learned Government Pleader for Revenue appearing on behalf of the respondents.

2. This writ petition is filed to issue a writ of *certiorari* declaring the order dated 22.08.2022 in Case No.44 of 2022 passed by respondent No.2 in dismissing the appeal filed by the petitioners stating that the land to an extent of Acs.6-12 guntas in Survey No.298/1 of Gudur Village fields, Gudur Mandal, Mahabubabad District is Government Land and consequential direction to respondent No.4 to safeguard the Government land from further encroachment as illegal and arbitrary and consequently set aside the said order.

3. According to the petitioners, petitioner No.1 had purchased the land admeasuring Acs.6-12 guntas in Survey No.298/1 of Gudur Village fields, Gudur Mandal, Mahaboobabad District, which is hereinafter referred to as 'subject land', in the year 1968. Petitioner Nos.2 and 3 are his son and daughter-in-law, respectively. Since the date of purchase,

the petitioners are in possession and enjoyment of the subject land. They have filed copies of tax receipts in proof of the same.

4. Respondent No.4 issued a notice Rc.No.B/189/2017, dated 24.04.2017 under Section - 7 of the Andhra Pradesh Land Encroachment Act, 1905 (hereinafter referred to as 'Act, 1905') to petitioner No.3 and the wife of petitioner No.1 - Smt. Pingili Poolamma, stating that they have encroached into the Government land and, therefore, respondent No.4 sought explanation from them as to why they shall not be evicted from the subject land.

5. The petitioners filed a writ petition vide W.P. No.17255 of 2017 challenging the said notice. Vide order dated 25.05.2017, this Court disposed of the said writ petition granting liberty to the petitioners to submit explanation to the said notice. This Court also directed respondent No.4 to consider the said explanation to be submitted by the petitioners and pass appropriate orders in accordance with law. Till passing such orders, *status quo* with regard to the possession to be maintained.

6. In compliance with the said order, the petitioners herein have submitted explanation on 19.06.2017 stating that they are in continuous possession of the subject land from 1968, there is standing crop and that

they have been paying tax etc. However, respondent No.4 passed the eviction orders dated 08.03.2022 directing the petitioners to vacate the land.

7. The petitioners filed W.P. No.14527 of 2022 challenging the said eviction orders dated 08.03.2022. This Court vide orders dated 22.03.2022 disposed of the said writ petition directing respondent No.4 to maintain *status quo* obtaining as on that date till the expiry of thirty (30) days from the said date, and within such period, the petitioners shall take steps to prefer an appeal challenging the said order of eviction dated 08.03.2022 passed by respondent No.4. Liberty was also granted to them to move suspension/stay petition before respondent No.3 in the appeal.

8. In compliance of the said order, the petitioners have filed an appeal under Sections - 10 (1) and 10 (2) of the Act, 1905 challenging the eviction order dated 08.03.2022 issued by respondent No.4 before respondent No.3. Vide order dated 07.05.2022, respondent No.3 dismissed the said appeal. Feeling aggrieved and dissatisfied with the said order, the petitioners have preferred an appeal in Case No.44 of 2022 before respondent No.2. They have also filed an application seeking to stay the order dated 07.05.2022 of respondent No.3. They

have also filed a writ petition vide W.P. No.23943 of 2022 seeking a direction to respondent Nos.2 to 4 not to dispossess them from the subject property during pendency of the said appeal. Vide order dated 26.05.2022, this Court disposed of the said writ petition directing respondent No.2 to pass appropriate orders in the stay petition filed by the petitioners in Appeal No.44 of 2022 within a period of two (02) weeks from the date of receipt of copy of the said order.

9. Vide impugned order dated 22.08.2022, respondent No.2 dismissed the said appeal filed by the petitioners. Impugning the said order, the petitioners herein filed the present writ petition.

10. Mr. Raghavendra Reddy K.L.N., learned counsel for the petitioner, would submit that the subject property is in Gudur Village, which is in Agency Area, it falls under the Land Transfer Regulation Act 1 of 1970 (for short 'LTR 1/70'). The petitioners are non-tribals. Therefore, the Scheduled Tribe Land Transfer Regulation 1 of 1970 is applicable and the provisions of the Act, 1905 are not applicable. Thus, the respondents cannot invoke the procedure laid down under Act, 1905. They have to invoke the procedure laid down under LTR 1/70.

11. He would further submit that petitioner No.1 has purchased the subject land in the year 1968. Petitioner No.2 is the son and

petitioner No.2 is the daughter-in-law of petitioner No.1 and they are in continuous possession of the subject property. There is standing crop. Without considering the said facts, respondent No.2 dismissed the said appeal filed by the petitioners vide impugned order dated 22.08.2022 confirming the order dated 07.05.2022 of respondent No.3. With the said submissions, he sought to set aside the impugned order.

12. On the other hand, respondent No.4 filed counter contending that Survey No.298/1 of Gudur village is a Government land. It is classified as '*Bancharai/Poromboke*' with an extent of Acs.205.28 guntas. The cultivation column is filled with '*poromboke*'. It is notified/scheduled Village other than the Scheduled Tribes are not eligible for allotment through assignment.

13. Respondent No.2 has issued instructions to select suitable Government land for construction of '*Ekalavya Model Residential School*', Gudur, within the limits of Mandal Headquarters; selected land should be an extent of Acs.10.00 guntas in a single compact block with road access to reach the land. In compliance of the said instructions, the field staff of respondent No.4 office selected the Government land in Survey No.298/1 and demarcated to an extent of Acs.6.12 guntas for allotment of construction of '*Ekalavya Model Residential School*', Gudur.

14. The Principal of *Ekalavya* Model Residential School, Gudur, has submitted alienation proposal for allotment of Government land permanent school building, on receipt of budget sanctioned by the Government of Telangana State for the said purpose. Since the subject land is in Agency Area, therefore, the petitioners cannot claim that the said land was allotted/assigned in their favour.

15. It is further contended that the Government lands are available in Agency Areas which are to be allotted to the Tribal Ryoths only as per the Government Orders and no land transactions will be made in the Agency Areas among Non-Tribal. The petitioners are non-tribals. Hence, according to the revenue records, it is found that the subject land in question is not a patta land and the petitioners are not in possession in the basic revenue record of *khasra pahani* i.e., 1954-55 laid down in the Presidential Orders, 1975 by the petitioners. Thus, the petitioners have no title on the Government lands. They have not filed any document to show that they were put in possession of the subject land. Except filing tax receipts, the petitioners have not filed any other document to establish their ownership rights over the subject land. Thus, they have violated Section - 7 of the Act, 1905. Therefore, the respondents have initiated the procedure laid down under Act, 1905 and issued eviction

notice and the same was confirmed by respondent Nos.3 and 2. The said facts were considered by respondents in the aforesaid proceedings and there is no error in it.

16. Learned Government Pleader for Revenue appearing for the respondents would submit that the petitioners never raised the jurisdiction issue before respondent Nos.2 to 4 either in the explanation or in the appeals filed by them. For the first time, they have raised the said contention. They are Non-tribals. Admittedly, Gudur village is in Agency Area. They are in illegal possession of the subject land which is government land. Therefore, the respondents have rightly invoked the procedure laid down under the Act, 1905 and issued eviction orders and the same were confirmed by respondent Nos.3 and 2. There is no error in it.

17. The aforesaid facts would reveal that the petitioners are claiming that they are the absolute owners and possessors of the subject land, and according to them, petitioner No.1 purchased the subject land in the year 1968. They have filed tax receipts issued by the Village Revenue Officer and the Tahsildar, Gudur. Whereas, the respondents are claiming that it is a Government land, the petitioners being Non-tribals cannot claim the land in Agency Area.



18. However, the petitioners have submitted explanation on 19.06.2017 to the notice dated 24.04.2017 issued by respondent No.4. They have also filed appeals before respondent Nso.3 and 2 challenging the eviction orders. In the said orders, they have not contended that the respondents cannot initiate the procedure laid down under the Act, 1905 seeking eviction of the petitioners since the subject land is in Gudur Village which is Agency Area and Act, 1905 is not applicable. The respondents have to invoke LTR 1/70. However, it is a legal ground which can be raised by the petitioners at any stage during any proceedings. The said principle was laid held by the Hon'ble Supreme Court in catena of decisions.

19. In the light of the aforesaid submissions, the first issue to be decided by this Court is whether the Act, 1905 applies to the scheduled areas.

20. Article - 244 (1) of the Constitution of India is relevant and the same is extracted as under:

**“Article - 244. Administration of Scheduled Areas and Tribal Areas:-** (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the State of Assam, Meghalaya, Tripura and Mizoram.”

21. Fifth Schedule of the Constitution of India consists of four (04) Parts. Part 'B' deals with 'administration and control of scheduled areas and scheduled tribes'. Paragraph No.4 provides for the arrangement of a 'Tribes Advisory Council', and the duties of such Council. Paragraph No.5 provides for making of laws or applying of laws to the scheduled areas, and the same is extracted as under:

**“ FIFTH SCHEDULE**  
**[Article 244 (1)]**  
**PROVISIONS AS TO THE ADMINISTRATION AND**  
**CONTROL OF SCHEDULED AREAS AND**  
**SCHEDULED TRIBES**

1. xxxxx
2. xxxxx
3. xxxxx
4. xxxxx

**5. Law applicable to Scheduled Areas.—(1)**

Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is

for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
  - (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
  - (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.
- (3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
- (4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
- (5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.”

22. Pursuant to the power conferred by sub-para (2) of Paragraph No. 5 of the Fifth Schedule, the Governor made the Andhra Pradesh Scheduled Areas Land Transfer Regulation I of 1959 (for short LTR I/59). The said Regulation came into force into the Scheduled Areas of

East Godavari, West Godavari, Viskhapatnam and Srikakulam in the year 1959. By a subsequent Regulation, Andhra Pradesh Regulation II of 1963, it has been extended to the Scheduled Areas in Adilabad, Warangal, Khammam and Mahabubnagar Districts of Telangana Area.

23. As per Regulation 3(1)(a) of the LTR 1/70, any transfer of immovable property situated in Agency tracts, by a member of a Scheduled Tribe in favour of a person unless the transfer is made in favour of a person belonging to the Scheduled Tribe or a society deemed to be registered under the Andhra Pradesh Co-operative which is composed solely of the Members of the Scheduled Tribe as null and void. Even transfers of immovable property situated in Agency tracts made by Members of non-tribal as null and void as per the said proviso unless it is made in favour of the Members of Scheduled Tribes or a society under the Andhra Pradesh Co-operative composed solely of the members of Scheduled Tribe.

24. In **Koppula Saramma v. Govt. of A.P., Social Welfare Dept.**<sup>1</sup>, the erstwhile High Court of Andhra Pradesh at Hyderabad held in paragraph Nos.7 and 8 and the same is as under:

“7. With regard to the 2nd contention that admittedly, the provisions of the Act extend to the whole of the

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<sup>1</sup>. 2001 (3) ALT 501

State of Andhra Pradesh including the scheduled areas. It is open for the Governor to issue a notification to exclude the provisions of certain Acts operating over the scheduled areas. As there is no notification issued under the Schedule V of the Constitution of India, the Act is also applicable over the scheduled areas. Having regard to the object and scheme of the Regulation, which is to give effect to the principles contained in the 5th Schedule of the Constitution of India and is a social enactment made in favour of the Scheduled Tribes, and as admittedly, the assignment of land was made within the scheduled area contrary to the Regulation, and therefore, it was cancelled and the cancellation of the house-site patta has become final, the request of the learned Counsel for the petitioner on the technical contentions that the petitioner cannot be evicted by exercise of the provisions of the Act, is without any force of law, as the petitioner is an encroacher.

8. The learned Counsel for the petitioner further submits that as per the orders of the Government in G.O.Ms. No. 634, Employment & Social Welfare Department, dated 19-8-1974, the Land Acquisition Act, 1894 is also applicable to the scheduled areas; and the land in the scheduled areas can be acquired for the purpose of allotting house-sites in favour of the Scheduled Castes; and as the acquisition of the land in the scheduled areas for allotting the same in favour of the Scheduled Castes is also a public

purpose, it cannot be said that the assignment of the house-site in favour of the petitioner's husband is contrary to the Regulation.”

The same view was taken in **P. Gangamma v. Vasudha Misra**<sup>2</sup>.

25. In **Sonu Pascal Ekka v. The Governor, Ranchi**<sup>3</sup>, the Jharkhand High Court held in paragraph No.17 and the same is as under:

“17. In the said case, the learned Division Bench has analyzed the 5th Schedule of the Constitution of India where special provisions have been made with regard to the administration and control of Scheduled Areas and Scheduled Tribes and has held that as per the said provision, notwithstanding anything contained in the Constitution, the Governor by public notification may direct that any Act of Parliament or Legislature of the State shall not apply to the Scheduled Area. Even though these powers are conferred to the Governor, the same have not been exercised by the Governor by directing that the Act of 1922 would not apply to the Scheduled Areas. The provisions of Bihar Municipal Act, 1922, as adopted and amended by the State of Jharkhand were made applicable to the entire State of Bihar even prior to the 74th Amendment of the Constitution of India. Only the Governor of the State of Jharkhand having conferred the powers under 5th Schedule is empowered to direct by way of public

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<sup>2</sup>. 1998 (1) APLR 316

<sup>3</sup>. MANU/JH/0843/2022

notification that any particular Act of Parliament or of the Legislature of the State shall apply or shall not apply to a Scheduled Area or any part thereof in the State. The Governor of the State of Jharkhand, however did not choose to pass any order or to give any direction that the provisions of the said Act i.e. Bihar Municipal Act, 1922 would not be applicable to the Scheduled Areas of the State of Jharkhand.”

26. In **Suresh Tirkey v. The Governor**<sup>4</sup>, the Jharkhand High Court held in paragraph No.2 and the same is as under:

“We shall first see in what manner the appellants have challenged the aforesaid notices and public notice on the ground of jurisdiction of RMC. The plea raised by the appellants is that the district of Ranchi has been declared Scheduled Area by the President of India and unless the Governor of the State in exercise of the powers under 5th paragraph of the Fifth Schedule directs by a public notification that the Jharkhand Municipal Act, 2011 shall apply to the Scheduled Areas or any part thereof in the State of Jharkhand, any provision under the Jharkhand Municipal Act, 2011 cannot apply in the district of Ranchi and while so the notices issued by RMC are without any authority of law vested in it.”

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<sup>4</sup>. MANU/JH/0562/2022

27. In **Vuppuluri Veera Venkata Raju v. Special Deputy Tahsildar, Tribal Welfare**<sup>5</sup>, the erstwhile High Court of Andhra Pradesh at Hyderabad held in paragraph No.10, which is as under:

“10. Whether the provisions of the Regulation apply even in respect of poramboke land, which is in possession of a non-tribal? Section 2(g) of the Regulation defines "Transfer" means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property not being a testamentary disposition. As per the definition "Transfer" 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. Therefore the term "Transfer" is given a wide meaning unlike in the term "Transfer of property" as defined in Section 5 of Transfer of Property Act, 1882 [Transfer of property, defined:-In the following Sections "Transfer of Property" means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one or more other living persons, and 'to transfer property' is to perform such act.]. Conveyance of property in present or in future by a living person to another living person is 'transfer of property' as per Transfer of Property Act. But as per Section 2(g) of the Regulation, (i) lease, (ii) sale, (iii) gift, (iv) exchange, (v) mortgage, (vi) charge on

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<sup>5</sup>. 2007 (6) ALD 292



property, and (vii) "any other dealing with the immovable property" are treated as "Transfer" for the purpose of the Regulation. To say in other words, even if a person is found to be in possession of immovable property not by reason of lease, sale, gift, exchange or mortgage, still such person is said to be dealing with the immovable property and therefore it falls within the definition of "Transfer". A person dealing with the immovable property being in possession or encroachment or trespass is deemed to have been in possession in contravention of the provisions of the Act as per Section 3(1)(a) of the Regulation.”

**28. In G. Varalakshmi v. The Secretary to Government, Social Welfare (LTR) Department<sup>6</sup>**, the erstwhile High Court of Andhra Pradesh at Hyderabad held in paragraph No.37, which is as under”

“37. It is not in dispute that prior to 1970, it was permissible for a transfer to be made by a tribal to non-tribal and such a transfer would be valid only if it is done with the previous sanction of the State Government subject to Rules made in that behalf or with the previous consent in writing of the Agent or of any prescribed officer [Section 3(1)(ii)]. In my view, the language of Regulation 1/1959 (prior to amendment by regulation 1/1970) empowers the competent authority to go into the issue whether a

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<sup>6</sup>. MANU/AP/1435/2013

transaction which apparently is between a tribal and another tribal is in reality such a transaction or not. If the real nature of the transaction is found to be one between a tribal and non-tribal on the basis of material placed on record, it is the bounden duty of the competent authority to take steps to evict the non-tribal by ignoring the transaction. Else, there is a possibility of non-tribals circumventing the provisions of the Regulation by purchasing property in the name of a tribal benami and circumventing the mandatory provisions of the Act regulating sales between tribals and non-tribals. Regulation 3 has thus to be interpreted as conferring a power coupled with a duty to take action on the competent authority, if such fraud is being perpetrated to defeat the purposes of the Regulation.”

29. Perusal of the aforesaid provisions of Constitution of India and the principle laid down in the aforesaid judgments would reveal that Paragraph - 5 (1) of the Fifth Schedule confers power on the Governor to direct by public notification that a particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled area or any part thereof in the State subject to the exceptions and modifications as he may specify in the Notification and any direction given under this subparagraph may be given so as to have retrospective effect. Thus, until

the Governor of a State issue a notification to exclude the provisions of certain Acts operating over the Scheduled Areas such acts shall not be applicable to those Areas then such Act shall be deemed to be effective. As there is no notification issued under Para 5 (1) of the First Schedule of the Constitution of India, it cannot be said that the Act, 1905 will not be applicable to the Scheduled Areas. The said principle was also laid down by the erstwhile High Court of Andhra Pradesh at Hyderabad in **Koppula Saramma<sup>1</sup>**.

30. It is relevant to note that the Telangana Land Encroachment Act, 1905 has been extended to the Areas in Telangana in 1958 vide act No.XXV of 1958 i.e., applicable to the Scheduled Areas in Telangana as well. There is no regulation notified by the Governor, expressly barring the application of the said Act to the Scheduled Areas. Thus, in the light of the aforesaid discussion, the Act, 1905 is very well applicable to the Scheduled areas and can be pressed into force for eviction of ineligible or illegal encroachment of Government lands in the Scheduled Area.

31. Regulation 2(g) of LTR 1/59 deals with 'Transfer', and the same is extracted as under:

“(g) **"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.”

32. Regulation 3 of LTR 1/70 deals with ‘transfer of immovable property by a member of a Schedule Tribe’, and the same is extracted as under:

“3(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.

b) Until the contrary is proved, any immovable property situated in the Agency tracts and in the possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.

(c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member

of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government and the Agent, Agency Divisional Officer or the prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in Section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961 (Act X of 1961), and such land shall thereupon vest in the State government free from all encumbrances and shall be disposed of in favour of members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed;

- (2) (a) Where a transfer of immovable property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by anyone interested, or on information given in writing by a public servant, or suo motu decree ejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner

prescribed and may restore it to the transferor or his heirs.

- (b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe '[or a society registered or deemed to be registered under any law relating to Co-operative Societies for the time being in force in the State] composed solely of members of the Scheduled Tribes, or otherwise dispose of it, as if it was a property at the disposal of State Government.
- (3) (a) Subject to such conditions as may be prescribed, an appeal against any decree or order under sub-section (2), shall lie within such time as may be prescribed-
  - (i) if the decree or order was passed by the Agent, to the State Government;
  - (ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and
  - (iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.
- (b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.
- (4) For the purposes of this section, the expression 'transfer includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe in

favour of any other member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe; but does not include a partition or a devolution by succession.”

33. Thus, the aforesaid provision makes any kind of dealing by the persons other than scheduled tribe with even Government land as ‘null and void’. The said principle was also laid down in **Vuppuluri Veera Venkata Raju**<sup>5</sup>. Non-tribal persons cannot claim the benefit of adverse possession in the Fifth Scheduled Area. The said principle was also laid down in **Amrendra Pratap Singh v. Tej Bahadur Prajapati**<sup>7</sup>. The relevant paragraph of the said judgment is as under:

“In our opinion, the above shall be the position of law under the 1956 Regulations where 'transfer of immovable property' has been defined and also under the 1950 Act where 'transfer of holding' has not been defined. Acquisition of title in favour of a non-tribal by invoking the Doctrine of Adverse Possession over the immovable property belonging to a tribal, is prohibited by law and cannot be countenanced by the court.”

34. It is relevant to note that the Act, 1905 is a procedural law. Whereas, the LTR 1/70 is a substantial law. Thus, LTR 1/70 prohibits any kind of dealing of land by the persons other than scheduled tribe in

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<sup>7</sup>. (2004) 10 SCC 65

Scheduled Area, including Government land. As discussed above, there is no bar in pressing into service the procedural law i.e., Act, 1905, for eviction of illegal/null and void encroachment by non-tribal persons.

35. It is relevant to note that the Act, 1905 provides for notice, response and appeal provisions and passing of orders by affording opportunity in accordance with principles of natural justice. Therefore, there is no legal or constitutional impediment in invoking the said legislation in Scheduled Areas.

36. As discussed above, Regulation No.3 deals with 'transfer of immovable property by a member of a Schedule Tribe'. Once legal provisions under Regulation 3 (1) (a) are attracted against a Non-tribal person, the procedure prescribed under Regulation 3 (2) (a) is that the Agent, the Agency Divisional Officer or any other prescribed Officer may on any complaint or *suo motu* pass a decree of ejectment against such person in possession of the property after due notice to him in the manner prescribed. The procedure has been prescribed in LTR Rules, 1968.

37. Application of Regulation 3 (1) (b) is not certain, unless the facts reveal that the possession of the said Government land was transferred to him by a member of a scheduled tribe. However, as it is a



Government land and in case of no immediate identifiable transferor (scheduled tribe) of the said land, provisions of Section 3 (2) (b) come into force i.e., possibility of assignment or sale of the property to any scheduled tribe. Therefore, any occupation of the Government land by a non-tribal in Scheduled area amounts to denial of opportunity of a prospective land holding by a tribal person and can be deemed as contravention to the letter and spirit of the Regulation. The said principle was also laid down in **Amrendra Pratap Singh**<sup>7</sup>.

38. Whereas, the objective of the Act, 1905 as provided in its preamble is to check the unauthorized occupation of lands which are the property of Government by imposition of penal or prohibitory assessment or charge and to make statutory provision for the same. The said Act, 1905 is applicable to the Scheduled Areas of Telangana State. Admittedly, Gudur Village is in Scheduled Area and the subject property is in the said village. As discussed above, there is no notification issued by the Governor, expressly barring the application of the Act, 1905 to the scheduled areas.

39. Section - 13 of the Act, 1905 provides for 'saving of operation of other laws in force' i.e., nothing in this Act contained shall be construed as exempting any person unauthorizedly occupying land from

liability to be proceeded against under any law for the time being in force. It implies that the Act, 1905 does not come in the way of invoking provisions of LTR 1/70 and the Rules therein, in the event of a finding that a transfer of immovable property is made in contravention of Regulation 3 (1). Regulation 3 (1) (a) of LTR 1/70 starts with a *non-obstante* clause. i.e., notwithstanding anything contained 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 a person, who is a member of a Scheduled Tribe.

40. In **P. Gangamma**<sup>2</sup>, it was directed that all the Government Orders permitting the continuance of non-tribal Sival Zamadars shall be ignored and all of them have to be necessarily dispossessed by following due process of law and by pressing into service the provisions of the Act, 1905.

41. In the light of the aforesaid discussion, coming to the facts of the present case, as discussed above, the petitioners herein are claiming that petitioner No.1 purchased the subject land in the year 1968. But, they have not filed any document to the said effect. They have not

stated the details of their Vendors. It is stated as to whether the Vendors of the petitioners are tribals or non-tribals. They have filed tax receipts (dated 29.01.1979, 28.12.1988, 14.02.1990, 25.04.1998, 06.01.1995, 31.01.1991, 28.02.1994, 06.01.1994, 09.04.1988, 17.01.1993, 06.07.1995 (16 in number of which some of them were undated) and also *pahanies* for the years 2010-11 and 2011-12, and most of them were issued by the Village Administrative Officer and some of them by the Tahsildar. In some of the aforesaid receipts, there are no signatures. Even the extents are also not tallying.

42. Whereas, according to the respondents, it is a Government land and they are relying on the  *khasra pahani*  for the year 1954-55. Considering the said aspects only, respondent No.4 passed the eviction orders dated 08.03.2022 confirmed by respondent No.3 vide order dated 07.05.2022 and also by respondent No.2 vide order dated 22.08.2022. As discussed above, this is the fourth round of litigation.

43. It is trite to note that the petitioners having submitted explanation dated 19.06.2017 to the notice dated 24.04.2017 issued by respondent No.4 under Section - 7 of the Act, 1905, having filed the aforesaid appeals before respondent Nos.3 and 2 under the provisions of the Act, 1905 and having invited the aforesaid orders, now they cannot

turn around and say that the provisions of the Act, 1905 are not applicable. The said ground they have not raised at any point of time.

44. It is also trite to note that there is no third party/private person claiming the subject land. Therefore, the respondents invoked the procedure laid down under the Act, 1905 by following the procedure laid down under the Act, 1905. Therefore, viewed from any angle, there is no irregularity in the said orders passed by respondent Nos.4, 3 and 2 respectively.

45. In the light of the aforesaid provisions and also the finding that the respondents can invoke the procedure laid down under the Act, 1905 and that they have already followed the said procedure. Respondent No.4 passed eviction order dated 08.03.2022, confirmed by respondent No.3, first appellate authority and by respondent No.2, second appellate authority. All three orders are reasoned orders and respondent Nos.4, 3 and 2 considered the pleadings, record and assigned reasons in all the three (03) orders. The findings in the aforesaid orders are concurrent in nature. Therefore, the present writ petition fails and the same is liable to be dismissed.

46. The present writ petition is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.

**24<sup>th</sup> August, 2023**

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**K. LAKSHMAN, J**

**Note:**

L.R. Copy be marked  
(B/O.) Mgr