

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.119 OF 2023

Between:

Seelapaka Shyvalini @ Banoth Shyvalini,
W/o. Vamshi Manoj Kumar,
Caste:ST(Lambada),
Age: 33 years, Occ: Junior Advocate,
R/o. Sampath Nagar, Gangaram GP,
Tekulapalli Mandal,
Bhadradi Kothagudem District and one another.

.. Petitioner

Vs.

State of Telangana
Rep. by its Principal Secretary,
Tribal Welfare Department,
Secretariat Buildings, Hyderabad and 7 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **06.04.2023**

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.119 OF 2023

% DATED 6TH April, 2023

Seelapaka Shyvalini @ Banoth Shyvalini,
W/o. Vamshi Manoj Kumar,
Caste:ST(Lambada),
Age: 33 years, Occ: Junior Advocate,
R/o. Sampath Nagar, Gangaram GP,
Tekulapalli Mandal,
Bhadradi Kothagudem District and one another.

.. Petitioners

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.. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner: Sri G. Naresh Kumar.

^Counsel for Respondents : Govt. Pleader for Tribal Welfare
Govt. Pleader for Revenue
Sri Dasi Ramesh.

? CASES REFERRED :

1. (1977) 2 SCC 435

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.119 of 2023****ORDER:**

The Writ Petition is filed seeking writ of mandamus to declare the action of respondent No.3 in passing an impugned order dated 05.08.2022 in O.S.No.138 of 2017 in pursuance of the scheduled property house bearing no.6-74/A to an extent of Ac.0.06 guntas along with vacant place situated at Sampath Nagar Village of Gangaram Gram Panchayat, Tekulapalli Mandal, Bhadradri Kothagudem District, Telangana State as illegal, ex-facie, arbitrary, discriminatory, unjust, unfair, unreasonable, irrational, inequity, unlawful, unconstitutional, perverse, mockery and against the principles of natural justice.

2. Heard Sri Chikkudu Prabhakar, learned counsel representing Sri G.Naresh Kumar, learned counsel for the petitioners, learned Assistant Government Pleader for Tribal Welfare appearing for respondents No.1 to 4, learned Assistant Government Pleader for Revenue appearing for respondent No.5 and Sri D.Ramesh, learned counsel appearing for respondent No.7.

3. Learned counsel for the petitioners submits that respondents No.6 to 8 filed O.S.No.138 of 2017 on the file of respondent No.3 for grant of perpetual injunction restraining the petitioners from interfering with the suit schedule property i.e., house bearing (old) No.8 and new house bearing No.6-74/A to an extent of Ac.0.06 guntas along with vacant place situated at Sampath Nagar Village of Gangaram Gram Panchayat, Tekulapalli Mandal, Bhadadri Kothagudem District. Respondent No.3, without giving proper opportunity to the petitioners, passed the impugned judgment dated 05.08.2022 and the same is in clear violation of principles of natural justice.

4. He further contended that the petitioners filed Suit viz., O.S.No.566 of 2015 on the file of Sub Divisional Magistrate & Special Assistant Agent, Mobile Court at Bhadrachalam, for grant of perpetual injunction in respect of very same property and the said Court declared the suit by its judgment and decree dated 22.10.2022 and the same has become final and the suit i.e., O.S.No.138 of 2017 filed by the respondents Nos.6 to 8 is not maintainable.

5. Per contra, learned counsel appearing for respondent No.7 vehemently contended that writ petition filed by the

petitioners under Article 226 of Constitution of India is not maintainable when the remedy of appeal is provided under Section 49 of Telangana State Agency Rules, 1924(herein after called as 'Regulations' for brevity).

6. He further contended that the Judgment and Decree dated 22.10.2022 passed in O.S.No.566 of 2016 filed by the petitioners is not binding against respondents No.7 and 8 as they are not parties to the said suit.

7. Learned Assistant Government Pleader for Tribal Welfare Department submits that writ petition filed by the petitioners invoking the extraordinary jurisdiction of this Court under Article 226 of Constitution of India is not maintainable, when statutory remedy – appeal is provided under Regulations.

8. Having considered the rival submissions made by the respective parties and after perusal of the records, it clearly reveals that respondent No.6 during her life time filed O.S. No.138 of 2017 on the file of respondent No.3 seeking perpetual injunction against petitioners. During the pendency of the suit the respondent No.6 died and respondent Nos.7 and 8 were impleaded as her legal heirs. It further reveals that after receiving summons, the petitioners herein have engaged

their counsel but they have not filed written statement and contested the suit proceedings.

9. However, merely because the petitioners herein not prosecuted the proceedings, respondent No.3 without recording the contentions of the respondent Nos.6 to 8 herein and material evidence on record in the suit, passed the cryptic judgment, which reads as follows:

“Counsel for plaintiff present. Defendants absent, service sufficient and set exparte. Proof affidavit filed. Exhibits A1 to A4 marked. The suit claim is proved. The suit is decreed with costs restraining the defendants their men, agents, servants, supporters, and all other persons claiming through them from in any way interfering with the peaceful possession and enjoyment of the suit scheduled property of the plaintiff.”

10. It is needless to observe that respondent No.3 is adjudicating the proceedings on par with Civil Courts, while exercising the powers conferred under the Regulations. In such circumstances, respondent No.3 ought to have passed the impugned judgment by considering the pleadings and material evidence on record by giving findings/reasons, even though the defendants have not contested the proceedings. Hence, the impugned judgment passed by respondent No.3 is

liable to be declared as contrary to the settled principles of law.

11. In *State of Madhya Pradesh V. Babu Lal and Others*¹ the Hon'ble Supreme Court in paragraph Nos.5 and 6 held that:

5. One of the principles on which certiorari is issued is where the court acts illegally and there is error on the face of record. If the court usurps the jurisdiction, the record is corrected by certiorari. This case is a glaring instance of such violation of law. The High Court was in error in not issuing writ of certiorari.

6. The judgment of the High Court is set aside. A writ of certiorari is issued to quash the judgment and decree dated August 8, 1973 passed by the respondent Civil Judge, Class II, Tehsil Jhabua, District Jhabua in Civil Suit No. 70-J of 1973.

12. The Hon'ble Apex Court in the above judgment specifically held that Writ of Certiorari can be issued to quash the judgment and decree, where the Court acts illegally and there is error on the face of record. Hence the writ petition filed by the petitioner seeking writ of Certiorari questioning the impugned order passed by the respondent No.3 is maintainable.

¹(1977) 2 Supreme Court Cases 435

13. In view of the foregoing reasons, without going into the other aspects of the case, the impugned judgment & decree passed by the respondent No.3 dated 05.08.2022 is set aside and the respondent No.3 is directed to dispose of the suit, in accordance with law, within a period of two (2) months from the date of receipt of copy of this order,. The learned counsel for the petitioners as well as learned counsel for respondents No.7 and 8 has given an undertaking to this Court that the respective parties in the suit will co-operate for the disposal of the suit before respondent No.3. Till the disposal of the suit, both the parties i.e., petitioners and respondents No.7 and 8 are directed to maintain *Status-Quo* in respect of subject property.

14. Accordingly, the writ petition is disposed of. No costs

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

JUSTICE J. SREENIVAS RAO

06th April, 2023

Note:

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

BO.
TMK

HON'BLE SRI JUSTICE J SREENIVAS RAO

WRIT PETITION No.119 of 2023

06th APRIL, 2023

Note:

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

BO.
TMK