

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.5418 OF 2023

Between:

Gundlapurapu Eswaramma
W/o. Daruga, aged about 70 years,
Occ.Agriculture and another

.... Petitioners

Vs.

The State of Telangana,
Rep by its Principle Secretary, Tribal Welfare Department,
Secretariat, Hyderabad and 20 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **14.03.2023**

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

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

+ WRIT PETITION No.5418 OF 2023

% DATED 14TH March, 2023

Gundlapurapu Eswaramma
W/o. Daruga, aged about 70 years,
Occ.Agriculture and another ... Petitioners

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Rep by its Principle Secretary, Tribal Welfare Department,
Secretariat, Hyderabad and 20 others.
... Respondents

<Gist:

>Head Note:

! Counsel for the Petitioners : Sri . Kondaparthi Srinivas, Adv

^Counsel for Respondents : Government Pleader for Social
Welfare
Sri C. Ramachandra Raju, Adv

? CASES REFERRED:

1. AIR 1963 SC 786.

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.5418 of 2023

ORDER:

This writ petition is filed seeking the following relief:

“..to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in rejected the stay application filed along with Revision Petition vide Memo No. 95/TWITR/2023-1 dated 22.02.2023 filed by the petitioners against the orders passed by the 2nd respondent in CMA No.36/2021 dated 09.12.2022 and the Order of the 3rd respondent passed in LTR Case No. A/02/2021/DGM dated 06.08.2021, in respect of the land in Sy No.63 to an extent of Ac.8.04 gts and Sy.No.62/1 to an extent of Ac.0.04 gts and Sy.No. 67/1 to an extent of Ac.5.30 gts situated at Singavaram Village of Dummugudem Mandal, Bhadradi Kothagudem District without giving any opportunity to the petitioners straight away rejected the stay petition filed along with Revision petition before the 1st respondent is illegal, arbitrary and against the principles of natural justice and also violative of Articles 14, 19, 21 and 300-A of Constitution of India by setting aside the Order dated 22.02.2023 and consequently direct the respondents not to interfere into the peaceful possession and enjoyment of the subject property of the petitioners in the interest of justice...”

Heard, Sri Kondaparthi Srinivasa, learned counsel for the petitioners, learned Government Pleader for Tribal Welfare and learned Government Pleader for Social Welfare appearing on behalf of respondent Nos.1 to 4, Sri C. Ramachandra Raju, learned counsel appearing on behalf of respondent Nos.5 to 21.

2. With the consent of the respective parties, this writ petition is disposed of at the stage of admission.

3. Learned counsel for the petitioners contended that the petitioners are the owners of the subject property covered under Survey Nos.63, 64, 67/1, 67/2 situated at Singavaram Village of Dummugudem Mandal, Bhadradi Kothagudem District and the same was acquired through Registered Will Deed *vide* document No.30/1994 dated 09.04.1994 executed by Devulapalli Jagannadha Rao. After his death the petitioners became the owners of the property.

3.1. He further submits that respondent No.3 initiated LTR proceedings *vide* Case No.A/02/2021/DGM, dated 06.08.2021, basing on the complaint filed by the unofficial respondents on the alleged ground that the petitioners have occupied Government land and requested to evict the petitioners from the said land. Respondent No.3 without considering the explanation of the petitioners passed the ejectment orders on 06.08.2021. He further submits that against the said order the petitioners filed appeal CMA

No.36 of 2021 before respondent No.2 and respondent No.2 also without considering the contentions raised by the petitioners simply dismissed the appeal and confirmed the order of respondent No.3 by its order dated 09.12.2022.

3.2. He further submits that aggrieved by the said orders the petitioners filed Revision under Section 6 of The Telangana State Schedule Areas Land Transfer Regulation 1/1959 as amended Regulation 1 of 1970, (herein after called for Brevity 'Regulations') along with the Stay petition seeking stay of operation of the orders passed by respondent Nos.2 and 3. Respondent No.1 without issuing any notice and without giving any opportunity to the petitioners, rejected the stay petition while admitting the Revision, by its order dated 22.02.2023 *vide* Memo No.95/TW.LTR/2023-1. The impugned order passed by respondent No.1 is a clear violation of the principles of natural justice and also contrary to law.

4. On the other hand the learned Government Pleader for Tribal Welfare contended that respondent No.1 has

rightly rejected the stay petition after going through the records and at the time of rejection of the stay petition, the petitioners are not entitled to any notice and opportunity.

5. Learned counsel appearing on behalf of unofficial respondents vehemently contended that the subject land belongs to Government and the petitioners are not entitled to claim any semblance of rights, interest or title over the property basing on the alleged will deed dated 09.04.1994 and the same is hit by provisions of Section 2(g) of regulations. He further submits that the petitioners filed Suit O.S.No.84 of 2019 on the file of Sub-Divisional Magistrate, Bhadrachalam against the unofficial respondents herein seeking perpetual injunction and also filed application for grant of temporary injunction. The said suit is pending and no injunction orders are granted in favour of the petitioners. He further submits that the petitioners were never in possession of the subject property and the unofficial respondents are in possession of the property and respondent No.1 has rightly rejected the stay application after going through the records. In support of his contention he relied

upon the judgment in *Katta Yesuratnam vs Commissioner, Land Revenue*, and equivalent citation viz., 1993 (1) ALT 200 and *Vemana Somalamma and Ors Vs. Deputy Collector Tribal* and equivalent citations 1993 (1) ALT 409 contending that the petitioners are claiming the rights over the property basing on the wills executed by non-tribals which is ex-facie illegal and as it is contrary to section 2(g) of Regulations the petitioners are not entitled to relief sought in the present writ petition.

6. Points for consideration in this writ petition are:

1. Whether the impugned order passed by respondent No.1 rejecting the stay application of the petitioners, pending Revision, without giving notice and opportunity, is sustainable under law?
2. Whether the petitioners are entitled to any relief?

Point Nos.1 and 2

7. Having considered the rival submissions made by respective parties and a perusal of the material available on record reveals that respondent No.3 by exercising his powers conferred under the Regulations, basing on the

complaint lodged by unofficial respondents, initiated the proceedings *vide* LTR Case No.A/02/2021/DGM in respect of lands in Survey No.64 to an extent of Acs.8.28 guntas, Survey No.62/1 to an extent of Acs.1.14 guntas, Survey No.62/2 to an extent of Acs.0.15 guntas, Survey No.63 to an extent of Acs.8.04 guntas, Survey No.67/2 to an extent of Acs.6.30 guntas, Survey No.67/1 to an extent of Acs.5.30 guntas situated at Singavaram Village of Dummugudem Mandal, Bhadradi Kothagudem District against the petitioners and respondent No.3 had passed the ejectment order on 06.08.2021. It further appears that against the said order, the petitioners filed appeal CMA No.36 of 2021 before respondent No.2 and the Appellate Authority dismissed the appeal confirming the orders passed by respondent No.3 on 09.12.2022, questioning the said order, the petitioners filed Revision petition invoking the provisions of Section 6 of Regulations on 04.01.2023 along with Interlocutory Application seeking stay of operation of the orders passed by respondent Nos.2 and 3. Respondent No.1 passed impugned

order *vide* Memo No.95/TW.LTR/2023-1 dated 22.02.2023,
relevant portion of the order is extracted below:

“Government after careful examination of the matter, hereby admitted the Revision Petition filed by Smt. Gundlapurapu Eswaramma, W/o. Daruga and Sri Gndlapurapu Daruga, S/o Somulu, R/o. Bhadrachalam Town and Mandal, Bhadradi Kothagudem District. The request for Stay is rejected as there are no sufficient grounds”.

8. Questioning the said rejection order, the petitioners filed the present writ petition. Respondent No.1 is adjudicating the proceedings by exercising the quasi judicial powers conferred under Regulations. Respondent No.1 while admitting Revision petition rejected the stay application filed by the petitioner only on the ground that there are no sufficient grounds and it appears that before passing the rejection order, respondent No.1 has neither issued notice nor given an opportunity of hearing to the petitioners and rejected the stay application. Respondent No.1 passed impugned rejection order without giving any reasons much less valid reasons and it amounts to clear violation of principles of natural justice.

9. No order adverse to a party should be passed without hearing them. The Hon'ble Apex Court in ***Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue***¹, relied upon the judgment in ***King v. London County Council*** [(1931) 2 KB 215, 243] stating as follows:

“Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority — a writ of certiorari may issue”. It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, *ex hypothesi* it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it.

10. Therefore, the contention raised by learned Government Pleader for Tribal welfare that at the time of rejection of stay petition, the petitioners are not entitled to any notice or opportunity is not tenable under law.

¹ AIR 1963 SC 786

11. Though the learned counsel appearing on behalf of the respondents raised several contentions by entering into the merits of the case, this Court is of the view that respondent No.1 has already admitted the statutory Revision filed by the petitioners and the same is pending, if this Court passes any order by entering into the merits of the case the Revision petition filed by the petitioners will become infructuous and it affects the rights of the petitioners under the Revision.

12. In view of the foregoing reasons, the impugned order *vide* Memo No.95/TW.LTR/2023-1 dated 22.02.2023 passed by respondent No.1 is set aside and the matter is remitted back to respondent No.1 on the ground that the respondent No.1 passed the impugned order without giving any reasons and opportunity to the petitioners.

12.1 Respondent No.1 is directed to dispose of the stay application or main Revision Petition by giving opportunity to the petitioners as well as the respondents therein and pass appropriate orders, in accordance with law,

within a period of four (4) weeks from the date of receipt of the copy of the order.

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

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

JUSTICE J. SREENIVAS RAO

14th March, 2023
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HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION No.5418 of 2023

14th March, 2023

PSW

Note

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

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