

(1992) 03 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17266 of 1990

Ajmera Bigna and Another

APPELLANT

Vs

The Agent to the Government (District Collector) and Others

RESPONDENT

Date of Decision : 25-03-1992

Acts Referred:

Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Section 3(1)
Constitution of India, 1950 — Article 226

Citation : (1992) 2 ALT 312 : (1992) 2 APLJ 64

Hon'ble Judges : S.C. Pratap, C.J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : M. Surendar Rao, for the Appellant; Government Pleader for Revenue for Respondents 1 to 3, J. Chamanthi and J.V. Prasad for Respondent 4, for the Respondent

Final Decision : Allowed

Judgement

B. Subhashan Reddy, J.—This Writ Petition is filed questioning the proceedings of the first respondent - Agent to Government, Khammam, who had reversed the order passed by the second respondent herein - Special Deputy Collector (Tribal Welfare), Paloncha.

2. Proceedings have been initiated under the Provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, which extended to the area of Khammam with effect from 1-12-1963. The matter was taken up as Case No. 211 of 1988 on the file of the Special Deputy Collector (Tribal Welfare), Paloncha, and after following the formalities as contemplated under the Statute and the statutory Rules, enquiry was conducted.

3. The allegations levelled against the writ petitioners are that the land bearing S.No. 408/E situated at Komatlagudem village of Khammam District admeasuring Ac.4-02 guntas originally belonged to the grandfather of the 4th respondent, that the grandfather of the 4th respondent and one Shaik Madar Saheb were friends, that taking undue advantage of the friendship, Shaik Madar Saheb had got

executed a sale deed in the year 1953 and entered into possession of the property, that the petitioners thereafter acquired rights from the said Shaik Madar Saheb, that the possession of both Shaik Madar Saheb and his successors-in-interest, i.e., writ petitioners, was unauthorised u/s 3(1) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (herein after referred to as the "Regulation") and that as such, they are liable to be evicted. A comprehensive enquiry was conducted by the second respondent, i.e., Primary authority. Both the parties i.e., the writ petitioners and the 4th respondent, have adduced evidence - oral and documentary - and accordingly the petitioners had filed pahani patriks, land revenue receipts and also the source title i.e., sale deed 4-4-1953, of their predecessor-in-title and also the sale deed dated 24-5-1978 which was executed by Shaik Madar Saheb in their favour. The statement of the 4th respondent was also recorded by the second respondent. In the said sworn statement, the 4th respondent has categorically admitted the execution of the document of sale by his ancestor in favour of Shaik Madar Saheb, but pleaded that the same was got executed under undue influence. The second respondent, after scanning the evidence, has held that the transaction between a tribal and a non-tribal was made during the year 1953, and then from a non-tribal to a tribal during the year 1978, and that therefore, both the transactions are valid under law, as they are not barred under the provisions of the aforesaid Regulation. Before the Regulation came into force, there were Rules title "The Andhra Pradesh (Telangana Tribal Areas) Regulation, 1359 Fasli" and the said Rules did not prohibit transfer from a tribal to a non-tribal. As such, there was no embargo for the sale made by the 4th respondent's ancestor in favour of Shaik Madar Saheb and consequently, his possession was legal and valid. The writ petitioners became Tribals during two years consequent to the promulgation of the order by the President of India in exercise, of the powers under the Fifth Schedule to the Indian Constitution. As such, on the day when they purchased the above said land from Shaik Madar Saheb, they were tribals and under the Regulation, transfer from a non-tribal to a tribal was not barred. It is pertinent to mention that a ban from a tribal to a non-tribal was imposed only under the Regulation which came into force in Andhra Area, in the year 1959. whereas in the area of Telangana it came into force with effect from 1-12-1963. Further, under Regulation 2 of 1970, a further ban was imposed even on transfers inter se non-tribals. Nowhere the Regulation restricts the transfer from a non-tribal to tribal, as the very object and intendment of the above Regulation as also Regulation 2 of 1970 is to safeguard the interests of tribals from unlawful transfers of lands belonging to the Scheduled Tribes. Further, either the Regulation of 1959 or of 1970 is not retrospective in operation and it was so authoritatively held by a Full Bench of this Court reported in Gaddam Narsa Reddy and Others Vs. Collector, Adilabad District and Others, . In the said case also, there was an agreement of sale before the Regulation came into force and the authorities acting under the Regulation, ignored the said agreement of sale and ordered dispossession. But that was set at naught by the Full Bench of this Court holding categorically that the Regulation had no retrospective operation and if any transaction, whether

by a valid document or not, had taken place and transfer of possession was effected before 1-12-1963, the Regulation cannot be made applicable.

4. For the foregoing reasons, the order of the first respondent, which has got no basis either factual or legal, deserves reversal and accordingly, the same is set aside restoring the order passed by the second respondent-Primary authority. The possession of the land in question if already taken from the writ petitioners shall forthwith be restored to them.

5. The writ petition is allowed accordingly. No order as to costs. Government Pleader's fee Rs. 300/-.