

**(2006) 07 AP CK 0039**

**In the Andhra Pradesh High Court**

**Case No :** WPMP No. 17532 of 2006 in WP No. 14068 of 2006

Eppala China Venkateswarlu and Others

APPELLANT

Vs

Secretary to Govt., Social Welfare (F) Department, Govt. of  
A.P. and Others

RESPONDENT

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**Date of Decision :** 14-07-2006

**Acts Referred:**

Andhra Pradesh Land Transfer Rules, 1959 — Rule 7, 7(1), 9, 9(2)

Andhra Pradesh Scheduled Areas Land Transfer Act, 1959 — Section 3(1)

**Citation :** (2006) 5 ALD 478

**Hon'ble Judges :** P.S. Narayana, J

**Bench :** Single Bench

**Advocate :** Y.S. Sai Vara Prasad, for the Appellant; Government Pleader for Panchayat Raj for Respondent Nos. 1 and 6 and V.V. Prabhakar Rao, for the Respondent

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## **Judgement**

P.S. Narayana, J.—Heard the learned Counsel representing the petitioners, learned Government Pleader for Social Welfare and also the learned Assistant Government Pleader for Panchayat Raj.

2. This matter was adjourned to this day, since the learned Assistant Government Pleader for Panchayat Raj requested time to get instructions relating to the position of the Gram Panchayats in question, till the prior elections.

3. Learned Assistant Government Pleader for Panchayat Raj had stated before this Court that in the prior elections, the general rules relating to the reservations alone were made applicable and in view of the fact that the District Collector had issued a clarification, which is placed before this Court at present, since these are schedule areas, all these offices are reserved to the Scheduled Tribe. The proceedings are also placed before this Court.

4. Sri Y.S. Sai Vara Prasad, learned Counsel representing the petitioners would submit that the Gram Panchayats in question are not in scheduled area and in fact, in a slightly different context, several persons relating to these areas

approached this Court by way of W.P. No. 1413 of 1973 with respect of 14 villages, out of 23 villages of the erstwhile Mulugu Taluk, Warangal District, and this Court made a specific order declaring that these villages are not covered by the notification, dated 7-12-1950. The learned Counsel also would maintain that this matter was carried even by way of writ appeal and the writ appeal was also dismissed. The learned Counsel would contend that unless the said judgment is varied or set aside or declared to be bad in law by a Larger Bench, as the case may be, the concerned District Collector is not empowered to issue any clarification in this regard, since it would amount to ignoring the judgment made by this Court. Hence, the learned Counsel would contend that inasmuch as there is already a judicial verdict and in view of the fact that for the first time the District Collector is issuing the clarification declaring that these villages also fall within the scheduled area, it would be just and proper to further hear the writ petition, after giving liberty to the opposite parties to file their counter-affidavits, and if in the meanwhile the elections to the Gram Panchayats are further proceeded with, the valuable rights of the petitioners would be affected.

5. On the contrary, the learned Government Pleader for Social Welfare had explained the historical background of this litigation, the notification which had been issued relating to the relevant scheduled area and pointing out certain areas which had fallen into Khammam District and how certain areas are being continued under Mulugu in the Warangal District. The learned Counsel also explained that the order made in the writ petition is not clear, and even otherwise in a different context certain observations were made, and the matter was, no doubt, carried by way of writ appeal, and the writ appeal was dismissed with one line order and in the facts and circumstances, especially in the light of Clause 13 of the notification, the District Collector of the district concerned had arrived at the correct conclusion in giving clarification, since at some point of time the decision may have to be taken in relation to these areas.

6. The learned Government Pleader for Social Welfare also had drawn the attention of this Court to the Presidential Notification, dated 7-12-1950, and would maintain that Madhya Bharath and Hyderabad were Part B States. The learned Counsel also would maintain that the States Reorganization Act came into force subsequent thereto, and when a particular area was declared as scheduled area by the Presidential Order, unless the same is amended, the said area continues to be scheduled area, wherever it is. It is immaterial whether it is Paloncha or Mulugu, the concerned area to be taken into consideration in this context. The learned Counsel also further explained in relation to Paloncha taluk a such, and except six taluks, inasmuch as the Presidential order till now is not amended, all the rest of the area has to be taken to be scheduled area. The Counsel also pointed that out of 280 villages in Mulugu as many as 86 villages are non-scheduled.

7. While further elaborating his submissions, the learned Counsel would point out that in the prior writ petition, only the show-cause notices had been challenged.

The Special Deputy Collector was made the party. What was questioned was to the effect that the show-cause notices were contrary to the regulations. Hence, the scope of the said writ petition being limited, the said decision cannot be taken as a binding precedent for the proposition that these areas were declared to be non-scheduled areas. Even otherwise, the learned Counsel would contend that on a careful analysis of the order made by the learned Single Judge, which was, no doubt, confirmed in the writ appeal, a mistake had been committed by the learned Judge. The Special Deputy Collector alone was the party. Hence, the said judgment to be taken as per incuriam, rendered by the learned Judge in ignorance of law. The learned Counsel also would contend that the Project Officers and other officers in that areas are also paid the agency allowances and thus, being treated as scheduled areas.

8. While further elaborating his submission, the learned Counsel pointed out that inasmuch as the District Collector and the other officers being not parties to the prior writ petition, they are not bound by the same, and hence in view of the Presidential Notification, the District Collector concerned is competent to issue clarification and accordingly, the Revenue Divisional Officer, Mulugu is competent to proceed further with the elections. Learned Counsel also would conclude saying that unless and until the presidential notification is amended in relation to the aspect that which area is scheduled area, despite the fact that certain judgments had been rendered by this Court, those judgments would be of no consequence. Learned Counsel also placed strong reliance on the judgments in N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala, , Mehboob Dawood Shaikh Vs. State of Maharashtra, and Ramesh Singh @ Photti Vs. State of A.P., .

9. The learned Assistant Government Pleader for Panchayat Raj had placed before this Court the instructions which the learned Counsel had received from the Revenue Divisional Officer, Mulugu, and would maintain that all the revenue villages in Mangapet Mandal were notified as scheduled villages, vide the notification published in Gazette Notification No. 90 of Gazette of India, dated 7-12-1950, and these villages were part of erstwhile Paloncha taluq of Warangal District. It is also stated by the learned Counsel that the District Collector, Warangal, vide reference in Lr.RC. No. E5/ 3084/2006, dated 17-6-2006, had given clarification that all 23 villages in Mangapet Mandal would fall under scheduled area and hence, reservations of Sarpanchas in Mangapet Mandal to be made treating them as scheduled area. The copy of the notification, dated 7-12-1950 also was placed before this Court.

10. The petitioners are residents of various villages of Mangapet Mandal, Warangal District, and it is stated that all these petitioners are enrolled as voters. The other details had been narrated. It was also stated that 18 Gram Panchayats (23 villages) in Mangapet Mandal viz., 1. Akinepally Mallaram, 2. Blannagudem, 3. Bauchampet, 4. Cherupally, 5. Domeda, 6. Kamalapur, 7. Kathigudem, 8. Komatipally, 9. Mallur, 10. Narasapur (Boru), 11. Narasimha Sagar, 12.

Ramannakka peta, 13. Chunchupally, 14. Mangapet, 15. Rajupet, 16. Ramachandrunipet, 17. Thimmapet and 18. Wadagudem were not declared as Scheduled areas by the President of India under sub-para (1) of Para 6 of the Fifth Schedule to the Constitution of India. This was declared by this Hon'ble Court earlier in W.P. No. 1413 of 1973, dated 30-11-1973 with respect to 14 villages out of 23 of erstwhile Mulug Taluk, Warangal District, as the persons from 14 villages only were issued notices under Andhra Pradesh Land Transfer Regulation, 1959 as amended in Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1970. The remaining villages were also not notified, hence they are also non-scheduled areas. Questioning the above mentioned order, the Special Deputy Collector, Tribal Welfare, Warangal, filed W.A. No. 486 of 1974, which was dismissed on 8-7-1974 and it has become final.

11. It is also stated that the petitioners came to know that the District Collectors who worked earlier in Warangal District sought clarification regarding inclusion of these 23 non-scheduled areas of Mangapet Mandal in scheduled areas as per the fresh proposals and addressed letter to the Secretary to Government, Social Welfare (F) Department, A.P., Hyderabad, in R.C. No. E5/6371/2000, dated 20-7-2000, 17-10-2000 and 7-12-2000. It is also stated that the Director, Tribal Welfare, Government of Andhra Pradesh, Hyderabad, addressed a letter in D.O.Rc. No. 1031/2003/C(1)/TRI, dated 5-12-2003, clearly mentioning the history of the case as hereunder ;

The erstwhile Hyderabad Government had sent proposals to the Government of India for issue of Presidential Notification as required under sub-para (1) of Para (6) of the V Schedule to the Constitution of India to the 23 villages as Scheduled villages in regard to Palwancha Taluk when the entire (Parwancha Samstha) Palwancha Taluq was in Warangal District. In the meanwhile, due to the abolition of Jagirs and re-organisation of Taluk took place which was given effect from 6-5-1950 vide, Government of Hyderabad in Revenue Department Notification No. 21, dated 214-1950 published in the Hyderabad in Extraordinary Gazette No. 47, dated 23-4-1950. As a result of this, the said (23) Samsthan villages which were part of Palwancha Taluq come under Mangapet Circle of Mulug Taluq of Warangal District on the ground of administrative convenience. Later on, re-organisation of Taluqs took place and Presidential Order vide., No. C.O.26 in S.R.O. 1031 dated 7-12-1950 was issued which was called as "the Scheduled Areas (Part-B States) Order 1950" based solely on the proposals sent much earlier by the erstwhile Hyderabad Government. After issue of the Presidential Order, APSA LTR was initiated and show-causes notices were issued to the non-Tribals for the eviction from their lands from under their occupation by Special Deputy Collector (TW), Etunagaram. The non-tribals approached the High Court and the High Court in W.P. No. 1413 of 1973, dated 30-11-1973 ruled out that the villages in which the non-Tribals (petitioners) own lands are not those notified in the Presidential Order and hence the application of APSA LTR is not implementable to these 23 villages.

12. Several other factual details also had been narrated. It is also stated that the petitioners came to know that the Project Officer, ITDA, Eturranagaram, Warangal District, had sent the particulars of the population of 23 villages of Mangapet Mandal for the years 1971, 1981, 1991 and 2001 together with percentage of S.T. population and stated that only 7 villages out of 23 villages have S.T. population of more than 50 per cent. It is also stated that the District Collector, Warangal, seems to have given a clarification to the Revenue Divisional Officer in letter Rc. No. E5/3084/ 2006 dated 17-6-2006 to the effect that all the 23 villages referred to above, were notified as scheduled areas in the gazette notification published in Gazette No. 90, New Delhi, dated 7-12-1950, by enclosing the proceedings of District Collector, Warangal, in R.Dis. No. A7/14853/70, dated 13-10-1970. Several other factual details had been narrated, and further G.O. Ms. No. 220, the Rules governing the field, had also been referred to.

13. It appears several persons of these areas filed a writ petition, W.P. No. 1413 of 1973, praying for a writ of mandamus directing the respondents to forebear from applying the provisions of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended in Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation 1970 or the rules made thereunder to the immovable properties situated, in the villages - Rajupet, Ramachandrunipet, Malluru, Narasimhasagar, Kathigudem, Chunchupally, Narasapoor, Timmapet, Cherlapally, Komatipally, Tondyala Laxmipur, Kamalapur, Domeda and Podmoor (Mangapet) in Mulugu Taluk, Warangal District. A learned Judge of this Court by order, dated 30-11-1973, held as under:

Section 3(1) of the Regulation says that 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 or a society registered or deemed to be registered under the A.P. Co-operative Societies Act, 1964.

Agency tract is defined in Section 2(a) as meaning the area in the districts named thereunder, declared from time to time as scheduled areas by the President under sub-paragraph (1) of Paragraph 6 of the Fifth Schedule to the Constitution. The notice to show-cause, given to the petitioners is with reference to the lands owned by them in Mulg Taluk in Warangal District. While notification in the Extraordinary Gazette dated 23rd April, 1950, the villages in Mulug Taluk were notified and 218 villages were shown therein. The presidential notification as contemplated in Section 3(1) of the Regulation was notified on 7th December, 1950 notifying the scheduled areas in Part "B" States. The villages in which the petitioners own lands, with regard to which show-cause notice has been issued, are not those notified in the Presidential order. Therefore, they are not part of the Agency tracts as contemplated under the Regulation. It is further clear that

Section 3(1) of the Regulation is not applicable to them and no show-cause notice as has been done can be given to them with regard to the lands in their possession in those villages. The impugned show-cause notice has therefore been given without jurisdiction by the Special Deputy Collector, (Tribal Welfare) Warangal. A writ of mandamus will therefore issue as prayed for.

14. The matter was carried by way of writ appeal, in W.A. No. 486 of 1974 and the writ appeal was dismissed observing, "we see no grounds to entertain this writ appeal. The writ appeal is dismissed." Thus, in a way this question, though in a slightly different context, had attained finality.

15. The orders passed in the writ petition and the writ appeal, referred to supra, are self-explanatory. It is true that aggrieved by the show-cause notices, the petitioners in the said writ petition had questioned the show-cause notices, and the Special Deputy Collector, Tribal Welfare, was the party. Reasons had been recorded by the learned Single Judge, and ultimately a writ of mandamus as prayed for had been issued. The same was carried by way of writ appeal and in the writ appeal also the said judgment was confirmed. What is contended before this Court is that the said judgment cannot be said to be a binding precedent, since it is a judgment per incuriam.

16. Yet another contention is made that inasmuch as the District Collector and other officers are not parties to the said judgment, the said judgment cannot come in the way of the District Collector in issuing the notification relating to these areas as Scheduled Areas, and the same cannot be found fault. When a judgment is delivered by this Court, it is for this Court to modify the said judgment or to arrive at a different conclusion. Under the guise of the Presidential notification, the officers concerned with the executive cannot venture to issue such clarifications. It is needless to say that in the Judicial Hierarchy, the Larger Benches always can rectify the mistakes, if any, committed by the learned Judges constituting the smaller Benches. Till then, the judgment is binding. Even otherwise, this Court is concerned with the prima facie case at the stage of deciding the W.P.M.P. In G.O. Ms. No. 220 dated 25-5-2006, Rule 7(1) proviso specifies, "provided that all the offices of Sarpanches of Gram Panchayats located in scheduled areas shall be reversed for Scheduled Tribe." Likewise, Rule 9(2) proviso specifies that this does not apply to Gram Panchayats in the scheduled areas. This question is not in controversy. The question is whether these Gram Panchayats of Mangapet Mandal would fall within the scheduled area. The learned Assistant Government Pleader for Panchayat Raj, as already referred to supra, made it clear that till the issuance of clarification by the District Collector, Warangal, the situation was that this area was being treated, even in the prior elections, as non-scheduled, and for the first time for the purpose of the present elections, these are being treated as falling under scheduled area, applying the proviso to Rules 7 and 9, of the Rules governing the field.

17. Hence, this Court is of the considered opinion that merely because the Presidential notification had not been taken into consideration properly, it cannot

be said that the judgment made by the learned Judge is per incuriam. Merely because a learned Judge committed some error, automatically it cannot be said that such judgment is per incuriam. Apart from this aspect of the matter, though the judgment made in the appeal is not a speaking order, it cannot be said that the appellate Court had not applied the mind while disposing the writ appeal. The Government is a party and it is true that the District Collector, as such, was not a party to the proceedings. But the question involved even in the said writ petition was in relation to the show-cause notices, whether the said notices could be issued in the context of the areas falling under the scheduled area or not. When that being the question, in substance, this Court is of the prima facie opinion that it cannot be said that the said judgment is per incuriam, This Court may have to give due respect to the judgments made by the co-ordinate Benches and also the Larger Benches. It is judicial discipline. The learned Government Pleader for Social Welfare had placed strong reliance on the decisions in *N. Bhargavan Pillai v. State of Kerala*, *Mehboob Dawood Shaikh v. State of Maharashtra*, and *Ramesh Singh alias Photti* referred to (*supra*).

18. There cannot be any quarrel relating to the propositions laid down in the said decisions. Be that as it may, this Court, as Court of record, is bound to maintain its independence and dignity. When a judgment had been delivered by another learned Judge of this Court, which was carried by way of writ appeal, this Court is of the considered opinion that due weight may have to be given, unless Larger Bench expresses a different opinion from the opinion, which had been already expressed by the learned Judge, which had been confirmed in the writ appeal.

19. It is no doubt true that in the notification placed before this Court Clause 13(i) reads as hereunder:

13.(i) All the villages of Paloncha taluq of Warangal District (excluding Paloncha, Borgampet, Ashwaraopet, Damraapet, Kuknur and Nolipak villages) and (ii) Samesthan Paloncha.

20. Certain factual controversies are also being raised before this Court. When there is a judgment made by this Court and it was confirmed in writ appeal, it is needless to say that this Court is bound to follow the same, unless the view expressed by the learned Judge is held to be unsustainable for reasons to be recorded by this Court again in accordance with law at the appropriate stage.

21. In the light of this legal position and on the strength of the clarification said to have been issued by the District Collector of the district concerned, the Revenue Divisional Officer of Mulugu cannot further proceed in the matter. This is a matter to be decided after giving opportunity to the respondents also to file their counter-affidavits. However, in the light of the judgments of this Court referred to *supra*, this Court is of the considered opinion that this is a matter wherein, the questions raised in the writ petition may have to be seriously considered.

22. In view of the peculiar facts and also in the light of the submission made by

the learned Assistant Government Pleader for Panchayat Raj that till the prior elections these Gram Panchayats were not treated to be falling under Scheduled Area, and for the first time in pursuance of the clarification issued by the District Collector, this is being made, until further orders, the further proceedings relating to the Gram Panchayat elections in relation to these Gram Panchayats in Mangapet Mandal are hereby stayed. The respondents are at liberty to file their counter-affidavits within a period of four weeks from today.

23. Inasmuch as a question is raised that in view of the fact that the writ petition was filed subsequent to the issuance of the notification and, since such questions are being argued before the Division Bench, at present, it would be appropriate to place this writ petition also before the Division Bench.

24. In view of the same, Registry to obtain necessary orders from the Hon''ble Chief Justice to post this matter before the appropriate Division Bench for further orders.