

(1999) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4512 of 1999

Gangavath Samya

APPELLANT

Vs

Mandal Revenue Officer, Khammam and others

RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Section 3(2)(a),
3(2)(b)
Constitution of India, 1950 — Article 226

Citation : (1999) 5 ALD 537 : (1999) 3 AnWR 191

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : M/s. Nuthalapati Krishna Murthy, for the Appellant;

Judgement

1. The petitioner herein is a tribal. His father was the owner of the land bearing Survey No.31/AA measuring two acres situated at Chandragiri Revenue Village of Garla Mandalam which admittedly forms part of agency area. The petitioner's father has entered into an agreement of sale of the said land in favour of Podesetty Gopiah who is a non-tribal on 28-7-1979. As sale of land in agency area in favour of a non-tribal is illegal, respondent No.2 the Revenue Divisional Officer proceeded suo moto under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation for evicting the purchaser. Accordingly, u/s 3(2)(a) of the said regulations, the ejectment order was passed against the said purchaser.

2. The petitioner claims that the purchaser from the petitioner's father had delivered back the possession of the land to the petitioner and that he has been in possession of the land and that the respondents-revenue authorities were trying to interfere with his possession. It is under these circumstances, the petitioner filed this petition under Article 226 of the Constitution of India for a direction restraining the respondents from interfering with the possession of the petitioner over the land in question.

3. On behalf of the respondents, a counter-affidavit has been filed by the Mandal Revenue Officer, Garla Mandal, Khammam District. It is admitted that the petitioner's father was having Ac.10.27 guntas of dry land in Survey No.31/AA in Chandragiri Revenue Village of Garla Mandal. It is stated that it is not correct to say that the petitioner was in possession of only two acres of land but his family was in possession of Ac.10.27 guntas of the land. In para 4 of the counter affidavit, Podisetti Gopaiah, the purchaser front the father of the petitioner, is shown to be in possession of 2 acres of land. It is admitted that in view of sale of the said 2 acres of land in Survey No.31/AA by the father of the petitioner in favour of a non-tribal proceedings were initiated before the Agency Divisional Officer, Kothagudem for recovery of the possession of the land from the non-tribal.

4. It is stated in counter in para 6 that the Agency Divisional Officer, Kothagudem passed an order in LTR Case No.76 of 1993 on 21-5-1997 stating that in exercise of powers conferred on the Agency Divisional Officer under the provisions of Section 2(a) or Section 3 of the Act the Agency Officer ordered that the said purchaser Podisetti Gopaiah be ejected from the land in Survey No.31/AA. It is stated that the Agency Divisional Officer passed an order that the land in Survey No.31/AA including the land claimed by the petitioner herein to an extent of 2 acres stood vested in the Government since the land was transferred to a non-tribal. The Agency Divisional Officer is said to have accordingly directed the Mandal Revenue Officer, Garia to serve the order in question to the persons concerned. He further directed that necessary entries be made in the revenue records concerned and the said land may be assigned to the eligible land less poor as per rules.

5. It is further stated in the counter-affidavit that the Mandal Revenue Officer implemented the said orders through the Revenue Inspector, Garla who has taken over the possession of the land in question under Panchanama dated 7-7-1997.

6. It is further stated that the Revenue Divisional Officer, Kothagudem through proceedings Re No.B/1540 of 1997 dated 9-7-1997 had ordered assignment of these lands in favour of the eligible persons belonging to the Scheduled Tribes by his order dated 16-8-1998. It is further stated that the physical possession of the lands were not delivered to the assignees and the lands stood vested with the Government. It is further stated that the petitioner's name is not found in the revenue records as possessor in respect of Survey No.31/AA.

7. From this what emerges is that the petitioner claims that two acres of land out of survey No.31/AA was alienated by his father in favour of a non-tribal. But, somehow he happened to get back possession of the said land from the non-tribal and that he is in actual possession of the said land and the revenue officials are seeking to interfere with his possession.

8. The stand taken on behalf of the respondents is that the father of the

petitioner sold away Ac 2.00 cents to a non-tribal in Survey No.31/AA. But, it is denied that the petitioners get back the possession of the said land and on the other hand it is contended that under the orders passed by the Revenue Divisional Officer u/s 3(2)(a) of the said Regulations, a non-tribal has been evicted and the possession now vests in the Government. It is also averred that the concerned Government Officers have already assigned the said land in favour of eligible tribals and as such the petitioner is not entitled to either a direction for restraining them from interfering with his possession nor the petitioner is entitled for possession of the said land.

9. From the material placed before this Court, it is not possible to give a finding as to whether the petitioner is in actual possession of the said land or whether the land is lying in the possession of the Government. But, what appears from the counter filed on behalf of the respondents is that this land out of Survey No.31/AA after evicting the non-tribal purchaser is lying in possession of the Government and the Government has assigned that land to eligible tribal persons. However, it is stated that the physical possession of the land was not delivered to the assignees.

10. The question for consideration is whether in view of the action taken under Rule 3(2)(a) of the Regulation in which the non-tribal purchaser has been evicted from the said land said to have been purchased by him in the agency area from the tribal, whether the land in question vests in the Government.

11. The learned Government Pleader for Social Welfare relies on Rule 3(2)(b) of the A.P. Scheduled Areas Land Transfer Regulation as the basis for the contention that the title in the land after evicting the non-tribal who acquired possession by way of transfer vests in the Governments. The contention is absolutely fallacious and has no legs to stand. Rule 3(2)(a) of the said Regulation reads as follows:

"3(2)(a). Where a transfer of property is made in contravention of sub-section (1), the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by any one interested, or on information given in writing by a public servant, or suo moto 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."

This makes it abundantly clear that where the proceedings are taken u/s 3 of the Regulation on the ground that a non-tribal has purchased the land in agency area from a tribal and if such a non-tribal is evicted from the said land under the said proceedings, the natural consequence of such action will be restoration of the possession of said land to the tribal to whom the land originally belonged before the transfer in violation of Andhra Pradesh Scheduled Areas Land Transfer Regulation took place. Clause (b) of Section 3(2)(b) will come into play only under two contingencies. Clause 2(b) of the Rule 3 of the said Regulation is extracted below for ready reference.

"3(2)(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 the State Government."

12. Such land which has been restored from the possession of the non-tribal will vest in the Government firstly when the transferor or his heirs are not willing to take back the property or secondly where, whereabouts of the transferor are not known. Neither of this contingency has arisen in this case. The petitioner, who admittedly, is the son of the transferor tribal is quite willing to take back possession of the land. The fact that he filed the writ petition is enough, if any evidence of his willingness is required. It is obviously not a case where the whereabouts of the vendor tribal or his heirs are not known. Thus, the question of the land said to have been transferred by the petitioner's father in favour of Polisetty Gopiah to an extent of 2 acres out of survey No.31/AA vesting in the Government would scarcely arise. The further action of the Government in assigning that land along with other lands in favour of other eligible tribals is obviously illegal.

13. The action of respondent No.2 Revenue Divisional Officer, in refusing to deliver back the possession of the land in question to an extent of 2 acres in survey No.31/AA to the petitioner after having it restored from the possession of the non-tribal purchaser in itself is a flagrant violation of the provisions in Rule 3(2)(a) of the Regulation. Thus, even if the petitioner has not made out a case for his actual possession of the land as on the date of the filing of this petition, there is no manner of doubt that even if he is not entitled to the relief in the form of a direction restraining the respondents from interfering in his possession, the relief awardable to the petitioner can always be moulded in the light of facts and circumstances of the case appearing on record. In this case, it has been held that the petitioner is entitled to restoration of possession of 2 acres of land in Survey No.31/AA which his father had sold in favour of Polisetty Gopiah who was evicted under the orders of the Agency Divisional Officer and the possession of the said land is now admitted to be in the hands of Mandal Revenue Officer Respondent No. 1 herein.

14. The above discussion would show that the action of respondent No.2 the Revenue Divisional Officer, Kothagudem, Khammam in refusing to restore the possession of the land to the petitioner and further his action in seeking to assign that land in favour of other eligible tribals is violative of the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation is arbitrary.

15. In the result, this petition is allowed and the respondents are directed to deliver possession of two acres of land in Survey No.31/AA which the respondent No.1 got back by evicting the non-tribal purchaser Polisetty Gopiah, under the

orders of the Agency Divisional Officer. The possession shall be delivered back to the petitioner by the respondents within a period of two months from today. No costs.