

(2023) 01 TEL CK 0007

In the Telangana High Court

Case No : Writ Petition No. 2470, 22656 Of 2020, 1201, 40600 Of 2022

Shaik Rafi Ahmed And 2 Others

APPELLANT

Vs

State Of Telangana And 6 Others

RESPONDENT

Date of Decision : 05-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 — Rule 7(2)

Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2023) 01 TEL CK 0007

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : T Sharath

Final Decision : Dismissed/Disposed Of

Judgement

1. Since common issues arise in these writ petitions, they are being disposed of by way of this common and consolidated order.

2. W.P.No.22656 of 2020 was filed seeking a Writ of Mandamus declaring the action of respondent No.2, i.e., the Superintendent of Police and respondent No.3, i.e., the Station House Officer in not providing aid for implementing the order of injunction pursuant to the order granted by the competent Court, i.e., Special Agent and Sub-Divisional Magistrate, Mobile Court, Bhadrachalam in I.A.No.137 of 2020 in O.S.No.147 of 2020, in I.A.No.147 of 2020 in O.S.No.151 of 2020 and in I.A.No.142 of 2020 in O.S.No.152 of 2020, as illegal and arbitrary.

3. The respondent No.7 in W.P.No.22656 of 2020 filed W.P.No.1201 of 2022 seeking a Writ of Mandamus declaring the action of respondents 5 to 9 therein in interfering with the possession and enjoyment of the petitioner therein in respect of the land in Survey Nos.170, 171 and 172 to an extent of Ac.8.37 cents situated at Sithampuram Village, Mulakalapalli Mandal of Bhadrachalam District and the Memo dt.15.11.2021 issued by the Sub-Divisional Magistrate, Bhadrachalam with respect to misplacement of files relating to

I.A.No.137 of 2020 in O.S.No.147 of 2020, I.A.No.147 of 2020 in O.S.No.151 of 2020 and I.A.No.142 of 2020 in O.S.No.152 of 2020, as illegal and arbitrary and consequently to direct respondent No.4 to furnish certified copies of I.A.No.137 of 2020 in O.S.No.147 of 2020; I.A.No.147 of 2020 in O.S.No.151 of 2020 and I.A.No.142 of 2020 in O.S.No.152 of 2020 to the petitioner and further to direct not to interfere with the possession of the petitioner and to pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

4. In W.P.No.2470 of 2020, the petitioners claiming to be the owners and possessors of the subject property are seeking a Writ of Mandamus under Article 226 of the Constitution of India declaring the action of respondent No.2 District Collector in directing an action to be taken vide Rc.No.E3/5/115/2019 dt.30.11.2019 on issuance of pattadar pass book to a non-tribal in Contravention of Act 1 of 1970 (Regulation

1 of 1970) as illegal, arbitrary and without power and without jurisdiction and to pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

5. In W.P.No.40600 of 2022, the petitioners claiming to be the successors-in-interest of the subject property are seeking a Writ more in the nature of a Writ of Prohibition under Article 226 of the Constitution of India prohibiting respondent No.2 therein from proceeding further in O.S.No.93 of 2021 on the file of the Agent to the Government at Kothagudem, Bhadradri-Kothagudem District and to annul the same and to pass such other order or orders as this Court may deem fit and proper in the circumstances of the case.

6. Brief facts leading to the filing of the above Writ Petitions are that the petitioners (non-tribals) claimed to be the owners and possessors of the agricultural lands in Survey Nos.170, 171, 172, 192/21, 241/5 and 241/6 admeasuring Ac.14.33 gts., situated at Sitarampuram Village of Mulakalapalli Mandal of Bhadradri-Kothagudem District and the said land had been purchased by their predecessors-in-title under registered sale deeds dt.20.01.1970 and 24.03.1975 from Vunnam Poornaiah and Venkateswarlu. The sale deeds were executed in favour of Mohd. Ibrahim and Shaik Madhar, who is the son-in-law of Mohd. Ibrahim. It is submitted that vide proceedings No.ROR/127/17 dt.12.05.2017, ROR/128/17 dt.12.05.2017 and ROR/129/17 dt.12.05.2017, the subject land was mutated in the names of the petitioners (non-tribals) who are the wife and sons of Shaik Madhar.

7. It is submitted that in the year 1974, on information that the land was transferred to non-tribals and therefore it was in violation of Regulation 1 of 1959, a case was taken up suo motu by the Special Grade Deputy Collector (Tribal Welfare), Khammam and the same was registered as Case No.474 of 1974. The said petition was dismissed vide order dt.06.07.1974 holding that the sale made on 26.01.1961 was not hit by the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959.

8. Thereafter, another case was initiated against Mohd. Ibrahim and his son-in-law Mohd. Madhar Saheb on the report of the Tahsildar, Kothagudem complaining that non-tribal respondents are in occupation of tribal lands in contravention of Regulation 1 of 1959, which was taken on file as Case No.181/79/Kgm/350/79/Kgm and 234/79/Kgm. The said proceedings were also dropped vide orders dt.30.12.1981 holding that the earlier sale transactions took place prior to promulgation of the Regulation 1 of 1959.

9. Subsequently, another case was initiated on the report of the Special Deputy Revenue Inspector dt.01.12.1988 against Mohd. Ibrahim and Shaik Madhar and the same was registered as Case No. 1733/88/Mkp, and vide orders dt.25.09.1990, the same was dismissed. It is submitted that one person by name Kesari Venkateswarlu had filed LTR Case No.223/95/MKP and the same was dismissed vide orders dt.01.06.1995. Thereafter, one Sri Sunnam Bazaru, father of Sunnam Chanti, the petitioner (tribal) in W.P.No.1201 of 2022, filed a petition before the same authorities, which was taken on file as LTR/1164/97/Mkp which was also dropped as being res judicata vide orders dt.22.10.1997 while referring to all the earlier proceedings. It is submitted that the Agent to Government (District Collector), Kothagudem without application of mind vide letter dt.30.11.2019, on the strength of the representation made by one Sri Sunnam Mallaiah and others, directed enquiry into the aspect of issuance of pattadar pass books and title deeds in favour of the petitioners (non-tribals), the wife and sons of Shaik Madhar, on the ground that the transactions are in contravention of Regulation 1 of 1970. Consequently, an enquiry was ordered by the Agent to Government, Kothagudem vide letter Rc.No.E3/5/115/2019 dt.30.11.2019. Challenging the same, the wife and sons of Shaik Madhar have filed a Writ Petition in W.P.No.2470 of 2020 and by order dt.13.02.2020, this Court suspended the proceedings of the Agent to Government, Kothagudem and thereafter, three civil suits in O.S.No.147 of 2020, O.S.No.151 of 2020 and O.S.No.152 of 2020 were filed by Shaik Jabi Ahmed, petitioner No.3 in W.P.No.40600 of 2022 and petitioner No.4 in W.P.No.2470 of 2020, along with interlocutory applications in I.A.No.137 of 2020, I.A.No.147 of 2020 and I.A.No.142 of 2020 respectively in the Court of Special Assistant Agent and the Sub-Divisional Magistrate, Mobile Court, Bhadrachalam, who vide orders dt.24.07.2020 granted interim injunction. It is submitted that Sunnam Chanti, unofficial respondent No.3 in W.P.No.40600 of 2022 and unofficial respondent No.5 in W.P.No.2470 of 2020, filed O.S.No.93 of 2021 before the Agent to Government, Kothagudem for recovery of possession on 01.10.2021. In the meanwhile, Sunnam Chanti (petitioner-tribal) challenged the orders in I.A.No.137 of 2020, I.A.No.147 of 2020 and I.A.No.142 of 2020 before this Court in C.R.P.Nos.575, 590 and 592 of 2022 and this Court vide separate orders dt.21.04.2022, set aside the interim orders and directed fresh consideration of the matter in the three civil suits filed by the petitioners. Thereafter, vide orders dt.22.10.2022, orders were passed in all the three suits afresh by granting injunction in favour of the writ petitioners (non-tribals). Apprehending that by

virtue of entertaining suit in O.S.No.93 of 2021, the Agent to Government at Kothagudem would pass orders in favour of unofficial respondents even though the suit has attained finality in view of the earlier proceedings, W.P.No.40600 of 2022 has been filed seeking a Writ of Prohibition, while W.P.No.2470 of 2020, W.P.No.22656 of 2020 and W.P.No.1201 of 2022 have been filed seeking the reliefs mentioned therein as narrated above. In view of the same, all these Writ Petitions were taken up together and are being disposed of by this common and consolidated order.

10. At the time of hearing, the learned counsel for both the parties submitted that the orders in I.A.No.137 of 2020 in O.S.No.147 of 2020; I.A.No.147 of 2020 in O.S.No.151 of 2020 and I.A.No.142 of 2020 in O.S.No.152 of 2020 on the file of the Special Assistant Agent and Sub-Divisional Magistrate, Mobile Court, Bhadrachalam have been challenged in C.R.P.Nos.575, 590 and 592 of 2022 and this Court vide separate orders dt.21.04.2022, set aside the interim orders in the said I.As. and directed fresh consideration of the matter in the three civil suits filed by the respondents therein, i.e., petitioners herein (non-tribals) and therefore, W.P.No.22656 of 2020 and W.P.No.1201 of 2022 filed seeking relief on the basis of the orders in the three I.As., have become infructuous.

11. Recording the above submission of the learned counsel for both parties, W.P.No.22656 of 2020 and W.P.No.1201 of 2022 are dismissed as infructuous. No order as to costs.

12. As regards the other two Writ Petitions, i.e., W.P.No.2470 of 2020 and W.P.No.40600 of 2022, the learned counsel for the petitioners submitted that the land in Survey Nos.170, 171 and 172 admeasuring Ac.6.07 gts., situated at Sitharampuram Village, Mulakalapalli Mandal, Bhadrachalam District originally belonged to one Sunnam Rajulu, S/o Yarrappa. The said property was sold by Sunnam Rajulu, S/o Yarrappa to Vunnam Purnaiah and Vunnam Venkateshwarulu vide sale deed executed on 26.01.1961. Subsequently, Mohd. Ibrahim and his son-in-law Shaik Madhar Saheb purchased the said land from Vunnam Purnaiah and Vunnam Venkateshwarulu under a registered sale deed dt.24.03.1975. Shaik Madhar is the husband and father of the petitioners (non-tribals) in W.P.No.2470 of 2020 and W.P.No.40600 of 2022. On information that the land was transferred to non-tribals and therefore it was in violation of Regulation 1 of 1959, a case was taken up suo motu by the Special Grade Deputy Collector (Tribal Welfare), Khammam and the same was registered as Case No.474 of 1974. On issuance of notice, both parties appeared. The respondents therein, i.e., Vunnam Purnaiah and Vunnam Venkateshwarulu produced the sale deed executed by Sunnam Rajulu in their favour and also produced land revenue receipts from 1961 onwards. During the enquiry, the tribal Sunnam Rajulu admitted the said transfer of the land long back. He also testified and recognised the sale deed. Recording the deposition of Sunnam Rajulu and also on perusal of the documents produced, the Special Grade Deputy Collector (Tribal Welfare) held that the transfer of the scheduled land took place

before promulgation of the A.P. (Scheduled Area) Land Transfer Regulation 1 of 1959 and he did not see any reason to interfere with the possession of the respondents therein and accordingly the case was dismissed. No appeal was filed against the said order dt.06.07.1974.

13. Thereafter, another case was initiated against Mohd. Ibrahim and his son-in-law Mohd. Madar Saheb on the report of the Tahsildar, Kothagudem complaining that non-tribal respondents are in occupation of tribal lands in contravention of Regulation 1 of 1959. Thereafter, show-cause notices under Rule 7(2) of the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 were issued to the parties. Both parties appeared and Sunnam Yerrappa, the grandson of the petitioner therein, had attended the Court and deposed that he does not know when the suit lands were sold to the respondents therein. One of the respondents therein Mr. Mohd. Ibrahim attended the Court and deposed that he and his son-in-law purchased the suit land and that the same was already considered by the Court in Case No.474 of 1974. Having gone through the order, the Special Deputy Collector, (Tribal Welfare) held that the subject matter had been disposed of in favour of Vunnam Purnaiah and Vunnam Venkateshwarulu and that no further action was necessary. He accordingly dropped the proceedings.

14. Subsequently, another case was initiated on the report of the Special Deputy Revenue Inspector dt.01.12.1988 against Mohd. Ibrahim and Shaik Madhar and on issuance of notices, both the parties attended and after going through the decision of previously decided case in Case No.181 of 1979, the proceedings were again dropped vide orders dt.25.09.1990. Subsequently, one Kesari Venkateswarlu, S/o Mallaiah had filed a petition before the Special Deputy Collector (Tribal Welfare), Paloncha that a non-tribal was in possession of a land in the scheduled area. Again, a notice was issued to Sri Shaik Madhar, the husband and father of the petitioners in W.P.Nos.40600 of 2022, 22656 of 2020 and 2470 of 2020, and after going through the earlier proceedings, the proceedings therein were dropped. In the year 2019, on the representation of some of the villagers along with S. Mallaiah and others, a direction was given to the Tahsildar, Mulakalapalli on 30.11.2019 to look into the representation of S. Mallaiah and others and to enquire into it in detail with reference to field and record and submit a report. This direction was challenged by the wife and sons of Shaik Madhar in W.P.No.2470 of 2020 and this Court vide orders dt.13.02.2020 had granted interim stay of the said direction.

15. While the matter stood thus, Sunnam Chanti (i.e., petitioner in W.P.No.1201 of 2022, respondent No.3 in W.P.No.40600 of 2022, respondent No.5 in W.P.No.2470 of 2020 and respondent No.7 in W.P.No.22656 of 2020) has filed O.S.No.93 of 2021 before the Agency Court at Kothagudem alleging that the petitioners in the above three Writ Petitions are non-tribals and are in illegal occupation of the lands in agency area.

16. Sri T. Sharath, learned counsel for the petitioners (non-tribals) submitted

that the issue of the right of the petitioners who are non-tribals has already been considered by the Authority on four earlier occasions and it has been held that the transaction had taken place between the tribals and non-tribals much prior to the promulgation of Regulation 1 of 1959 and that since no appeals have been filed against the said orders at any point of time, the said orders have become final and entertaining a suit again on the very same issue is nothing but violation of principles of res judicata. It is submitted that Sunnam Chanti, respondent No.3 in W.P.No.40600 of 2022, has filed the suit only with a malafide intention to harass the petitioners herein (non-tribals). The learned counsel for the petitioners has placed reliance upon the following decisions in support of the argument that a transfer, which has been effected through an agreement of sale prior to the Regulations coming into force, is not hit by the Regulations and the transfer has become final.

(1) Kalagari Anasuya Vs. The District Collector, Tribal Welfare, Eluru, West Godavari District W.P.No.15322 of 2000 dt.30.09.2005 of A.P. High Court.

(2) Kola Mahalaxmi and another Vs. Agent to Government, Khammam and others 1999 (6) ALT 174 (S.B.).

(3) Dy. Collector and another Vs. S.Venkata Ramanaiah and another (1995) 6 SCC 545.

17. Sri M.M.M. Srinivasa Rao, learned counsel for the unofficial respondent No.3 in W.P.No.40600 of 2022, submitted that respondent No.3 belongs to Scheduled Tribe community and that he is the absolute owner and in continuous possession of the land to an extent of Ac.8.37 cents in Survey Nos.170, 171 and 172 of Sithapuram Village, Mulakalapalli Mandal, Bhadradri-Kothagudem District having acquired the same through inheritance from his great grandfather, grandfather and father. He argued that the Writ Petitions filed by the non-tribals are not maintainable as there is an alternative remedy of filing an I.A. before the same Court under Order VII Rule 11 CPC seeking rejection of plaint, if so advised. It is further submitted that since the impugned proceeding dt.15.12.2019 is only a notice, the petitioners can always file a reply to the said notice along with documents, but instead, the petitioners (non-tribals) have filed the present Writ Petitions and therefore, the Writ Petitions are liable to be dismissed.

18. Having regard to the rival contentions and the material on record, this Court finds that the issue relating to the right of the non-tribals over the subject land in Survey Nos.170, 171 and 172 of Sithampuram Village, Mulakalapalli Mandal, Bhadradri-Kothagudem District, Telangana had come up on a number of occasions in the suo motu actions initiated by the authorities and after verification of the earlier record, the cases have been dropped. Therefore, the right of the parties, i.e., non-tribals over the subject land in tribal area before the promulgation of Regulation 1 of 1959 has been established. However, on the application filed by S. Mallaiah and others, LTR proceedings were initiated in LTR Case No.86/2019/MKP and subsequently, the unofficial respondent Sunnam

Chanti has filed O.S.No.93 of 2021 before the Agent to the Government at Kothagudem. But no action has been taken thereon till date.

19. The Land Transfer Regulations are directed at protecting and safeguarding the scheduled areas, homeland of the tribals, so as to perpetuate and propagate their unique customs and distinct style of living. The yeoman objective of these Regulations has to be kept in mind while dealing with the exercise of jurisdiction by the authorities under these Regulations. The factual matrix urged in O.S.No.93 of 2021 need to eschew from this adjudication as this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not undertake an enquiry into the factual aspects therein or adjudicate thereupon. Such aspects can only be gone into in a forum constituted for deciding the questions in respect of lands in scheduled area. Since the lis before the Special Court in Agency Area is in the nature of suit, i.e., O.S.No.93 of 2021, it cannot be interfered with or set aside under Article 226 of the Constitution of India. It is always open to the petitioners in W.P.No.2470 of 2020 and W.P.No.40600 of 2022 (non-tribals) to submit all the details before the concerned authority who would look into the issue before taking any coercive steps against the non-tribals/the petitioners herein. Therefore, liberty is given to the petitioners (non-tribals) to submit their explanation to the respondent authorities along with all relevant documents and on such furnishing of the details/explanation/written statement, the respondent authorities shall look into the same before taking any action against the petitioners herein (non-tribals). Needless to mention that the petitioners herein (non-tribals) shall be given fair opportunity of hearing in the matter.

20. With the above directions, W.P.No.2470 of 2020 and W.P.No.40600 of 2022 are disposed of. No order as to costs.

21. In the result,

(i) W.P.No.22656 of 2020 and W.P.No.1201 of 2022 are dismissed as infructuous. No order as to costs.

(ii) W.P.No.2470 of 2020 and W.P.No.40600 of 2022 are disposed of. No order as to costs.

Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed.