

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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WRIT PETITION No. 4233 of 2011

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ORDER:

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Heard learned counsel for the petitioner and learned Government Pleader for Revenue. With the consent of both the parties, this Writ Petition is heard at the admission stage itself.

One Smt. Kamuni Pushpa claiming herself to be the owner and possessor of the land admeasuring 847 sq. yards situated in Sy.No.967 of Mittapally village, Siddipet Mandal, Medak District, filed the present writ petition seeking issuance of writ of mandamus, declaring the action of the respondents in interfering with her possession, without initiating proceedings under the Andhra Pradesh Lands (Prohibition of Transfers) Act, 1977, as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India.

The averments in the affidavit filed in support of the Writ Petition would show that the petitioner purchased the above said land from Grams Pharma, Rangadhampalli and others. The petitioner's vendor purchased the above said land from one Vanga Shanker Reddy vide Doc.No.5292 of 1997. It is averred that since the land is a patta land, the respondents have no authority to interfere with her possession. It is further averred that if the authorities are intending to take away the land, they have to initiate proceedings under the Land Acquisition Act or under any other Law for the time being in force and that they cannot interfere in a high handed manner. It is stated that even assuming for a moment that the land is a Government land, the respondents viz., the District Collector, Revenue Divisional Officer and Tahasildar have to follow due process of law either under the Assigned Land Prohibition of Sale Act or under the Land Encroachment Act.

The third respondent filed his counter denying the averments made in the Writ Petition. According to him, the land in Survey No.967 which is to an extent of Ac.6.05 gts situated at Mittapally village, is a Government land (Kariju Katha)

and the same was assigned to Sri Thimmaipally Lingaiah and Vanga China Lingaiah. It is said that the assignees violated the conditions of assignment and entered into the sale transaction with Sri Vanga Narayana Reddy, Smt. Vanga Nagalaxmi W/o. Rajireddy, Thimmapally Shanker Reddy, Vanga Durga Redy, Vanga Anjireddy and Vanga Karuna. It is said that during the course of physical inspection of the Government lands, it was found that the assignees have violated the assignment conditions by entering into a sale transaction and put the land into non-agriculture use by dividing the same into plots. Noticing the same, the land was resumed in favour of the Government after following the due process of law vide office Proc.No.B/27682/2009 dated 20.12.2009. It is stated that house site patta certificates were issued to BPL families and some permanent structures have also come up in the said place. It is categorically stated that the petitioner is not in possession of the land and that he has purchased a Government land from an unauthorized person in violation of Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 with an intention to grab the valuable land. In view of the above, it is stated that there are no merits in the Writ Petition and the same is liable to be dismissed.

The learned counsel for the petitioner urges that even assuming that it is a Government land and that the petitioner has purchased the land belonging to the Government, the Authorities have to follow the procedure contemplated under Rule 3 of A.P. Assigned Lands (Prohibition of Transfers) Act 1977. In support of his contention he relies upon the judgments of this Court in **M.LAXMIKANTHAIAH V. GOVERNMENT OF ANDHRA PRADESH AND OTHERS** and in **AKKEM ANJIAH AND ANOTHER V. DEPUTY COLLECTOR AND TAHSILDAR, SAROORNAGAR MANDAL, RANGA REDDY DISTRICT AND OTHERS**. Apart from that the learned counsel for the petitioner strenuously contends that as there is a sale deed in her favour the entire proceedings stand vitiated.

The learned Government Pleader would submit that the argument of the learned counsel for the petitioner that no procedure has been followed is incorrect. He placed on record the entire original file to show that notice were not only issued to the assignees, and purchasers from the original assignees in Form Nos. I and II but also to the Gram Panchayat before resuming the land.

Before proceeding further, it would be useful to refer to the Rule 3 of the Andhra Pradesh Assigned Land (Prohibition of Transfers) Rules 2007 (for short “the Rules 2007”), which is as under :

“3. Procedure for eviction of the transferee and taking possession and restoration of assigned lands:-

“The District Collector or the Authorized Officer shall, before taking action under clauses(a) and (b) of sub-section (1) of Section 4 of the Act, issue notices in Form No.1 and Form II to the persons who have transferred and also to the persons who have acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. The notices shall be served by delivering a copy on transferor and transferee or some adult male member of the family of such transferor or transferee at their usual place of abode or to their authorized agent or by affixing a copy thereof at some conspicuous place of their last known place of residence or on some conspicuous part of the assigned land. After the expiry of (fifteen) 15 days specified in the notice, the District Collector or the Authorized Officer shall consider the representation, if any, received with reference to the said notice and pass such orders as he thinks fit and proper. If it is held that the provisions of sub-section (1) and (2) of Section 3 of the Act, have been contravened in respect of any assigned land, a copy of the order shall be communicated to the Village Officer concerned under whose territorial jurisdiction the land is situated for taking possession of the land and thereupon the land shall be disposed of in accordance with the provisions of Section 4 of the Act.”

Under Section 4(1)(a) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short “the Act”) the competent authority may, by order, take possession of assigned land, after evicting the person in possession in such manner as may be prescribed. The Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 2007 prescribes a procedure for eviction of a transferee from the assigned lands. Under Rule 3 of the Rules, 2007, a notice should be given in Form No.1 and Form II to the persons who acquired any assigned land in contravention of the provisions of sub-section 2 of Section 3 of the Act. It is to be noted that irrespective of number of transactions taking place in respect of the assigned land, the person who acquired the assigned land and is in possession of the same is entitled to a notice in Form No.I

(M.LAXMIKANTHAIAH V. GOVERNMENT OF ANDHRA PRADESH AND OTHERS).

Relying upon the judgment referred to above, the learned counsel for the petitioner submits that in the absence of any notice being given in Form No.I or in Form No.II and as the material on record does not show taking possession of the land, the entire proceedings are void ab-initio.

The original file, which has been placed before the Court by the learned Government Pleader, shows that Form No.I (Notice under Rule 3 of "The Rules 2007") was issued to the original assignees by name Thimmapally Lingaiah and Vanga China Lingaiah on 17.11.2009. On the same day, notice to some of the purchasers of the said assigned land viz., Smt. Vanga Narayan Reddy, Smt. Vanga Nagalaxmi, Sri Thimmaipally Shanker Reddy, Sri Vanga Durga Reddy, Sri Vanga Anjireddy and Smt. Vanga Karuna was given. Thereafter on 10.12.2009 assumption proceedings were initiated by the Tahasildar. The said proceedings show that the Mandal Revenue Inspector, Mandal Surveyor and Village Revenue Officer, Mittapally, were directed to take over possession of the above lands under the proper panchanama and report compliance immediately. Pursuant thereto, the Mandal Revenue Inspector, Siddipet conducted panchanama on 05.01.2010. A reading of the panchanama indicate the intimation received by him about handing over of the land to the V.R.O., for safe custody.

The learned counsel for the petitioner would submit that if really the land was handed over to the V.R.O., Mittapally for safe custody, no explanation is forthcoming as to why the same was not mentioned in the counter-affidavit. It is true that there is no reference to preparation of a panchanama on 05.01.2010, in the counter filed, but the original record which is placed before this Court shows existence of a panchanama which was signed by the V.R.O., Mittapally and attested by witnesses. But a reading of panchanama neither indicate land being taken from the possession of the petitioner nor does it indicate taking over of the land from the individual plot owners. It only speaks of taking possession of land to an extent of Ac.3.05 gts., out of Ac.6.05 gts., which was assigned to Thimmaipally Lingaiah and Vanga China Lingaiah. But the memo No.B/27682/2009 dated 16.11.2010 issued to the V.R.O. by the Tahsildar, Siddipet, indicate that the entire extent of Ac.6.05 gts., situated in Sy.No.967 was resumed and handed over to the Village Revenue Officer, Mittapally on 05.01.2010, itself and for the same land house site certificates under

Indiramma Programme were distributed. As the Village Revenue Officer failed to hand over the possession of the said land to the housing authorities for leveling and planting of stones to the plots, a memo was issued asking him to explain as to why disciplinary action should be initiated against him.

From the perusal of the original record, it is clear that the panchanama was prepared on 05.01.2010 and on the same day land was resumed and handed over to the Village Revenue Officer, but there is a discrepancy with regard to the extent of land which was resumed. As seen from the record, more particularly the panchanama, resumption of land was to an extent of Ac.3.05 gts., where as the memo issued by the Tahsildar, Siddipet, shows as if the entire extent of land i.e. Ac.6.05 gts., was resumed. Be that as it may, one fact which remains un-disputed is no notice was given to the petitioner, who is said to have purchased the land by way of registered sale deed from Grams Pharma, who inturn purchased the said property from Vanga Shankar Reddy.

Under Section 4 (1) (a) of the Act, the competent authority may, by order, take possession of assigned land, after evicting the person in possession in such manner as may be prescribed. The Rules prescribes a procedure for eviction of transferee of assigned lands. Under Rule 3 of the said Rules a notice should be given in the Form No.1 and Form II to the persons who acquired any assigned land in contravention of the provisions of sub-section 2 of Section 3 of the Act. Irrespective of number of transactions taking place in respect of the assigned land, the person who acquired the assigned land and is in possession of the same is entitled to a notice in Form No.I. The record does not anywhere indicate notices being given under Form No.I either to the vendor of the petitioner or to the vendor's vendor of the petitioner. Even assuming for a moment that notice under Form No.I was issued, but Rule 3 of the Rules, 2007, prescribed a mode and the manner in which the notice has to be issued and served. It says that it shall be served by delivering a copy on a transferee or to some adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence or on some conspicuous part of the land acquired by him. The counter affidavit does not anywhere refer to following the procedure contemplated under Rule 3 of the

Rules, 2007. In fact the record does not anywhere indicate service of notice on the petitioner.

One another ground which has been urged by the learned counsel for the petitioner is that under Section 4 (1) (b) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Amendment Act, 2007), the District Collector or any person authorized by him if he is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, may restore the assigned land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose to the original assignee if he or she is eligible as per the norms fixed in this behalf, as on the date of restoration for one time or assign to other eligible landless poor person. Therefore, the amended provision renders the transferee eligible for assignment.

The counter affidavit filed on behalf of the Tahsildar, states that in spite of notice neither assignees nor occupants submitted their explanations within the stipulated time and as such resumption orders were passed. It is further stated that the petitioner never submitted any evidence to show that the land is a patta land and that she is in possession of the land. As held earlier, the record does not anywhere indicate notice under Form No.I being issued either to the petitioner or to her vendor or vendor's vendor of the petitioner. Therefore, the averment that notice was issued to the petitioner appears to be incorrect. If really the conditions of assignment are violated, a notice needs be served on the person who is in possession of the property more so when the petitioner claims to have purchased the land under a registered document. Hence, the respondents are directed to follow the procedure contemplated under the Act by serving a notice either on the petitioner or on the persons referred to in Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 2007, inviting objections to the said notice within the time prescribed and later necessary orders may be passed in accordance with law. Till such time no steps of dispossession shall be taken against the petitioner, if she is in possession of the property.

With the above direction, the writ petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ

Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

03.09.2015

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