

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 8884 of 2012

ORDER:

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Heard learned counsel for the petitioner and Government Pleader for Revenue. With the consent of both the parties, the main writ petition is heard at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the impugned order in Rc.A/445/11, dated 01.12.2011 passed by the third respondent as illegal, arbitrary and against the principles of natural justice; and consequently by setting aside the order dated 01.12.2011 direct the respondents to conduct the enquiry afresh.

The averments in the affidavit filed in support of the writ petition are as under:

Land admeasuring Ac.1.40 cents situated in R.S.No.51/3 of Venkatapuram Village, G.Konduru Mandal, Krishna District was assigned to one V.Pullaiah. The husband of the petitioner entered into an agreement of sale with the original assignee on 10.06.1975 on payment of partial amount and subsequently on payment of entire balance amount, the said V.Pullaiah executed a registered sale deed vide document No.1007 of 1976 dated 23.06.1976. Since then, the petitioner and her husband claim to be in possession and enjoyment of the same. It is stated that the petitioner and her husband developed the land and also paid the cist. Subsequently the third respondent, without verifying the records and payment of cist received, issued a notice for resumption under Section 3 of the Andhra Pradesh Assigned

Lands (Prohibition of Transfers) Act, 1977 (for short “the Act”). A notice was sent to the legal heirs of the original assignee and as there was no reply from any of the legal heirs, the respondents affixed the notice of enquiry in the vicinity of the Gram Panchayat. On coming to know about the same, the petitioner approached the third respondent for information, wherein she was served with a notice on 07.10.2011. Immediately thereafter, the petitioner submitted an explanation stating that she has not violated any of the provisions of Act. Though the petitioner claims to have made a representation showing that she has not violated the provisions of the Act, the third respondent without considering the same passed the impugned order. Though the impugned order discloses that an appeal would lie against the order before the Revenue Divisional Officer concerned within 90 days, the petitioner preferred the present writ before this Court questioning the order of the third respondent.

By an order dated 29.03.2012 this Court granted interim stay of dispossession pursuant to the impugned order for a period of four weeks, which was subsequently extended until further orders on 23.04.2012.

The respondents filed counter opposing the writ petition. It is stated that the land which was purchased by the petitioner is a government assigned land, as such the petitioner is not entitled for any relief. It is stated that notice under Form No.I and II were issued to the legal heirs of the original assignee and subsequent purchaser, calling for their explanation. Notices which were alleged to have been served on 07.11.2012 indicate that their explanations should be offered within 15 days from the date of receipt of the said notice. As there was no response from any of

them, an order under Section 4 (1) (a) of the Act came to be passed resuming assigned land. It is further stated in the counter that there is no illegality or irregularity in the order passed by the third respondent and if the petitioner is really aggrieved by the orders passed by the third respondent, she should have file an appeal before the Revenue Divisional Officer.

Learned Counsel for the petitioner mainly submits that the provisions of the Act would not apply to the case on hand as the transaction took place prior to commencement of Act i.e. 21.01.1977. It is stated that the husband of the petitioner entered into an agreement on 10.06.1975 and thereafter the document was registered in the month of June, 1976 much prior to the Act coming into force. However Section 3 (5) of the Act which deals with prohibition of transfer of Assigned Lands, states that nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in possession of such person for purposes of cultivation or as a house-site on the date of such commencement. He further submits that a reading of provision clearly indicate that provisions of Section 3 (1) would not apply to the case on hand if the subsequent purchaser is a landless poor person and has purchased the said land in good faith.

The Government Pleader for Revenue submits that in the absence of any explanation to the notice issued by the third respondent, it would not proper to decide as to whether the petitioner is landless poor or whether the land was purchased in good faith.

It is true that no explanation was offered by the petitioner to the notice issued by the third respondent explaining as to how she is entitled for the land. Though the counsel for the petitioner placed on record an explanation said to have been submitted to the third respondent but the same does not contain the date or any proof of presentation before the third respondent pursuant to the said notice. In fact, the said explanation also does not contain the date as to when it was sought to be made. Since the issue involves determination of factual aspect namely as to whether the petitioner is landless poor or as to whether the said land was purchased in good faith, it would be proper to direct the petitioner to prefer an appeal before the appropriate authority. As stated earlier, this Court while issuing notice directed the respondents not to dispossess the petitioner pursuant to the impugned order. It is stated by the learned counsel for the petitioner that the petitioner continues to be in possession of the property till date.

The Apex Court in **Commissioner of Income Tax v. Chhabil Dass Agarwal**^[1] held that “ *the High Court will not entertain a petition under Article 226 of Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*”

In view of the judgment referred to above and for the aforesaid reasons, the writ petition is disposed of directing the petitioner to prefer an appeal within six (06) weeks from today in

which event the appellate authority shall pass orders in accordance with law within eight weeks from the date of such filing. Till such time the petitioner shall not be dispossessed pursuant to the impugned order. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

14.09.2015
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[\[1\]](#) (2014) 1 SCC 603