THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.9900 OF 2011

ORDER:

The present writ petition has been filed by one K.Satyanarayana seeking issuance of writ of Mandamus declaring the action of the 1st respondent in dealing with the appeal filed by the 2nd respondent against the orders passed by the then Tahsildar, Bhogapuram in Rc.No.444/2009, dated 10-10-2010 in respect of the lands in Sy.Nos.21/2, 21/5, 27/1A and 27/1B of Polipalli Village, Bhogapuram Mandal, Vizianagaram District as illegal and arbitrary.

The petitioner herein purchased land to an extent of Ac.01-43 cents in Sy.No.21/2 from Dandamudi Ramakrsihna Prasad for valid consideration through a registered sale deed. The vendor of the petitioner purchased the same from original assignee i.e.Pachipala Narasimhulu vide registered document No.2518/07. The petitioner also purchased land to an extent of Ac.01-52 ½ cents in Sy.No.21/5 from Dandamudi Ramakrishna Prasad for valid consideration vide registered sale deed dated 17-08-2007, who inturn purchased the same from Smt.Dukka Appalanarsamma widow of Dukka Rajole, an ex-service man. It is stated that the land to an extent of Ac.01-50 cents in Sy.No.27/1A and an extent of Ac.01-52 cents in Sy.No.27/1B was also purchased by the petitioner from original assignees i.e. Oduru Appalaswamy and Rali Annaji Rao vide registered documents Nos.2495 dated 07-06-2006. It is not dispute that all the lands were allotted to the assignees under ex-service men quota and they were granted D-Form patta in the year 1993 and 1997 respectively. Since the date of granting patta, they were said to be in possession of the land. The 2nd respondent also issued pattadar passbook and title deeds in favour of the petitioner. While things stood like thus, the 2nd respondent issued proceedings in Rc.No.444/2009/A, dated 27-01-2010. Challenging the same, the petitioner preferred an appeal before the

1st respondent who allowed the said appeal on 24-07-2010 setting aside the orders of the 2nd respondent and directed the 2nd respondent to cause fresh enquiry by taking into consideration the relevant facts, apart from conducting field enquiry in pursuance of the said enquiry and the matter was remanded back. The 2nd respondent after conducting detailed enquiry passed the order in proceedings Rc.No.444/2009, dated 10-10-2010 holding that the assignment granted to the assignees are in the category of Ex-servicemen quota and permission was also granted to assignees to sell the lands. It was further held that the provisions of Sections 3 (1) and (2) of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977(for short "the Act") will apply to the proceedings and again after passing the order, the 2nd respondent herein initiated proceedings on the very same allegations by preferring the appeal before the 1st respondent against his own order dated 10-10-2010. Basing on the appeal filed, the 1st respondent issued notice to the assignees. In the writ petition, the action of 2nd respondent in filing an appeal against his own order is challenged in the present writ petition.

No counter is filed by learned Government Pleader for Revenue.

From the averments in the affidavit filed, it is clear that the land was assigned to the Ex-Servicemen in the year 1993 and cancellation is sought to be made after 17 years. The issue as to whether the land which was assigned to Ex-serviceman can be cancelled after 10 years of its assignment is no more *res integra*
in view of judgment of ***Shaik Bade v. District Collector, Visakhapatnam*** wherein a learned Single Judge of this Court held as under:

> "An assignee who is an ex-serviceman is not prohibited to sell the assigned lands after ten years from the date of issuance of patta."

Having regard to the judgment of this Court referred to above, it cannot be said that the sale of assigned land to the petitioner is contrary to the provisions of the Act. Apart from that, the appeal is said to be filed under Section 4-A(1) of the Act. Section 4-A (1) of the Act reads as under:

> " *any person aggrieved by an order passed by the Mandal Revenue*

Officer under Sub-section (1) of Section 4, may, within ninety days from the date of receipt by him of such order appeal to the Revenue Divisional Officer".

In the instant case, the then M.R.O. passed an order in favour of the petitioner on 10-10-2010 holding that there is no illegality in alienating the land. Again the present M.R.O. preferred an appeal before the Revenue Divisional Officer on 10.03.2011. In the said circumstances, definitely, the M.R.O. cannot be said to be a person aggrieved by his own order.

Viewed from any angle, this Court is of the view that the appeal filed by the 2nd respondent before the 1st respondent-Revenue Divisional Officer cannot be sustained. Accordingly, the writ petition is allowed.

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

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C.PRAVEEN KUMAR,J

04-09-2015

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