

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.26585 OF 2009

ORDER:

Heard Mr. M.P. Chandramouli, for the petitioner and Sri K. Subba Rao, learned Government Pleader for Assignment (AP).

The petitioner prays for *mandamus* declaring the Notice bearing Roc.A/99/09 dated 05.10.2009 in Form-II and the consequential orders in Roc.B/99/2009 dated 25.11.2009 passed by the 2<sup>nd</sup> respondent, as arbitrary, illegal, without jurisdiction, violative of principles of natural justice and are void.

The 2<sup>nd</sup> respondent through proceedings dated 25.11.2009 and in exercise of the jurisdiction under Section 4 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'), cancelled the assignments of agriculture land and directed resumption of these lands to Government.

The petitioner assails the notice dated 05.10.2009 issued in Form-II and the resumption orders dated 25.11.2009 as illegal and violative of statutory scheme of the Act.

The point for consideration in the admitted circumstances of the case, is whether in purported exercise of jurisdiction under Section 4 of the Act, is a transferee of alleged assignee is entitled to Notices in Form-I and Form-II or service of notice in Form-II would suffice the requirement of Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules 2007 (for short 'the Rules').

The circumstances are in a narrow compass and are not in dispute.

The petitioner is a sugar factory, established in the year 1997. The petitioner has established a captive power plant of 8 M.W. capacity and has obtained Distillery Licence with 120 KLPD from the Government of Andhra Pradesh. The petitioner, with an intention to expand the existing operations and to start the Distillery, was interested to purchase lands in the neighbourhood of the existing company of the petitioner. The neighbouring land owners/ryots offered to sell land held by them to the existing company of petitioner. The petitioner enquired in the office of the Sub-Registrar, on the valuation and the nature of the lands viz., whether these lands agreed to be sold by neighbouring ryots can be alienated or not. According to petitioner, the purchasers stated that these lands agreed to be sold are patta lands and are not included in the list of assigned lands, communicated by respondents under Sec. 5 of the Act to Sub-Registrar. Therefore, the petitioner purchased several survey numbers and extent of land and on 05.07.2006 got the lands registered in its favour. While matters stood thus, on 19.10.2009 the petitioner received notice in Form-II dated 05.10.2009 from the 2<sup>nd</sup> respondent stating that the lands purchased by the petitioner on 05.07.2006 are assigned lands, therefore, show cause within 15 days why the petitioner should not be disposed from subject land and shall not be land resumed to Government. On 02.11.2009, the petitioner requested time for filing explanation. The letter of petitioner requesting time was acknowledged by 2<sup>nd</sup> respondent on 09.11.2009. On 21.11.2009, the petitioner submitted explanation, which was received by the 2<sup>nd</sup> respondent on 23.11.2009. The 2<sup>nd</sup>

respondent on 25.11.2009 passed the order under Section 4 of the Act and on 28.11.2009 affixed the order at the factory premises of the petitioner. Now in this undisputed scenario, the case of the petitioner is that the 2<sup>nd</sup> respondent did not refer to the explanation dated 21.11.2009 and has arrived at a conclusion on nature of land extensively basing on the report of the Revenue Inspector. The report is submitted basing on discreet enquiries made by the Revenue Inspector. The order impugned in the writ petition has not referred to revenue records to determine whether the lands are assigned lands or not. The conclusion that the subject matter of the writ petition is assigned land is based on wrong information furnished by the lower staff due to extraneous reasons. The 2<sup>nd</sup> respondent gets jurisdiction, if and if only the subject matter of enquiry is recorded as government land at any point of time in 'A' register (Diglot), No.4 Register, DKT and land included as such No.10 account. Therefore, unless and until, the jurisdictional fact is decided, passing orders or cancellation of assignment or resumption under the Act is impermissible and totally illegal. Further, show cause notice dated 05.10.2009 covers an extent of Ac.41.67 cents in Thangellapuram village, where as through the impugned order resumption of Ac.52.90 cents is directed. An extent of Ac.1.20 cents in Sy.No.316/3 is included and the petitioner has nothing to do with the land in Sy.No.316/3. The order impugned deals with an extent of Ac.8.40 cents in Peddapalavedu village. S.Nos.5 to 10, 13 and 16 in the order impugned, are shown as patta lands, but still resumption order is passed. The failure of the 2<sup>nd</sup>

respondent to refer to year and number of assignment etc. vitiates the entire exercise and amounts to assuming jurisdiction under the Act and consequently, erroneous findings are recorded by 2<sup>nd</sup> respondent. Enquiry under the Act is a mandatory requirement and petitioner was not informed of date of enquiry and for that matter no enquiry was conducted before passing the order impugned in the writ petition. It is further stated that the order of resumption is passed by 2<sup>nd</sup> respondent as directed by the Joint Collector but not pursuant to examining the case independently. Therefore, filing an appeal against the order impugned in the writ petition before the Joint Collector would be a futile exercise. Hence, the writ petition.

On 05.12.2009, this court granted stay of all further proceedings, pursuant to order dated 25.11.2009 in Roc.No.B/99/09. The respondents filed counter-affidavits and WV MP No.434 of 2010 to vacate the interim order dated 05.12.2009. The stand of respondents is that the petitioner under registered-sale deeds purchased Ac.44.50 cents and Ac.8.40 cents of Thangellapuram and Peddapalavedu villages, respectively. The petitioner purchased the lands from 25 landless poor person, assignees of Government land. The purchase of assigned land is in violation of the Act and Rules. Therefore, the 2<sup>nd</sup> respondent issued notice in Form-II bearing Roc.A/99/09 dated 05.10.2009 and was received by the petitioner on 19.10.2009. On 02.11.2009, the petitioner requested fifteen days time to file explanation and the time sought by the petitioner was over by 17.11.2009. As no explanation was forthcoming from the petitioner, on 18.11.2009, another notice was

issued. Similarly, a remainder was sent on 20.11.2009 to petitioner. Since the petitioner choose not to respond to these notices, the order impugned in the writ petition under Section 4(1) of the Act was passed. The respondents contest that explanation dated 21.11.2009 was not received before 25.11.2009, but the explanation was received on 02.12.2009. The 2<sup>nd</sup> respondent denies that the order impugned in the writ petition is passed at the behest of the 1<sup>st</sup> respondent. It is further stated that Thangellapuram and Peddapalavedu villages are estate lands and 'A' Register is not maintained for Estate villages. In the Fair *Adangal*, these lands are classified as un-assessed waste. The petitioner though purchased the subject land, pattadar passbooks are not issued so far, for the assigned lands vest in Government. The 2<sup>nd</sup> respondent denies violation of principles of natural justice, or statutory requirement. The 2<sup>nd</sup> respondent admits that notice in Form-II alone was issued to the petitioner, notice in Form-I issued to assignee of land. The 2<sup>nd</sup> respondent prays for dismissal of the writ petition.

Mr. M.P.Chandramouli, for the petitioner, challenges the notice dated 05.10.2009 and the order dated 25.11.2009 by contending that the 2<sup>nd</sup> respondent acted without determining the jurisdictional fact viz., whether the subject matter of the writ petition is assigned land or not. According to him, the Act provides for prohibition of transfers of assigned lands and also acquisition of assigned land in contravention of sub-sections (1) and (2) of Section 3 of the Act. Section 4 deals with consequences for breach of Section 3 of the Act. According to him, Rule 3 provides for

procedure for eviction of the transferee, taking possession and restoration of assigned lands as the circumstances require. Rule 3 mandates the District Collector or the Authorised Officer to issue notices in Form-I and Form-II to the persons who have transferred i.e., the assignee and also to the persons who acquired assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. The purpose of this procedural requirement is to enable the transferee of a land to participate in the enquiry conducted by the District Collector or Authorised Officer on all fundamental aspects, namely, whether the matter under enquiry deals with assigned land, that the assignment is made prior to 1954 or not, and whether assignment was made with a condition of non-alienability. He further contends that assuming the notice was issued in respect of the assigned land, still defence available under sub-section (5) of Section 3 of the Act can't be denied by respondents by not issuing notice in Form-I. Therefore, according to him, mere issue of notice under Form-II to petitioner does not and will not satisfy the requirement of Rule 3 of Rules transferee is entitled to simultaneous participation in enquiry into transfer of assigned land. According to him in all cases, where enquiry under Sections 3 and 4 of the Act is undertaken, the Competent Authority issues to transferor and transferee notice in Form-I state sufficient details, the name of assignee, date of assignment etc. and proceed to exercise the jurisdiction under the Act. In support of his submission for the contention that the notice contains sufficient details or is rendered defective, he relies upon the decision reported in '*Dasari Narayana*

*Rao & another vs. The Deputy Collector and the Mandal Revenue Officer, Serilingampally, Ranga Reddy District & others*<sup>1</sup>.

On the remedy of appeal against the order impugned in the writ petition, he contends that the order is in complete violation of scheme and also principles of natural justice. The order impugned in the writ petition is stayed by this court on 05.12.2009 and the same is subsisting as on date, instead of relegating the petitioner to remedy of appeal, he requests the court to dispose of the writ petition on the legal objections raised against the notice, the order impugned in the writ petition. Therefore prays for deciding the writ on merits instead of availing the remedy of appeal.

Per contra, learned Government Pleader contends that the complaint of the petitioner that sufficient opportunity to petitioner was not given is incorrect and untenable. Basing on the admitted circumstances, it is stated that the Notice (Form-II) dated 05.10.2009 was served on petitioner on 19.10.2009. On 02.11.2009, the petitioner requested fifteen days time to file explanation. Even assuming the request dated 02.11.2009 was not replied by the 2<sup>nd</sup> respondent, the petitioner did not file explanation by 17.11.2009 i.e., before the expiry of fifteen days. Therefore, the 2<sup>nd</sup> respondent issued notice/reminders on 18.11.2009 and 20.11.2009, in spite of issuing reminders, on 25.11.2009 the order impugned in the writ petition was passed but reply was not received from petitioner. Learned Government Pleader after perusing the original record admits that as a matter of fact, notice in Form-I was not issued to

---

<sup>1</sup> 2010(4) ALT P.655

petitioner and Notice in Form-II alone was issued. According to him, issue of notice in Form-II would suffice the requirement of Rules and the principles of natural justice and prays for dismissing of the writ petition.

Now the points for consideration are (I) Whether the impugned Notice contains sufficient details to formulate an issue for decision or not and (II) Whether the notice in Form-II would suffice the requirement of Rule 3 for passing an order under Section 4 of the Act or not?

Point No.I: The Notice dated 05.10.2009 refers to alleged assignee but does not state the year and number or name of assignee in the notice. There are hardly any details on the jurisdictional facts, the notice is defective and liable to be set aside. In *Dasari Narayana Rao's* case, while considering the requirements of a notice under the Act, it is held as follows:

"15. Section 4 of the 1977 Act empowers the District Collector or any other Officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, if satisfied that the provisions of Sec.3(I) have been contravened in respect of any assigned land, to take possession of the assigned land after evicting the person in possession; and to restore the assigned land to the original assignee or his legal heir....." Sec.4(3) enacts a presumption of a contravention of the provisions of Sec.3(I), when an assigned land is in possession of person other than a original assignee. Sec.4-A(I) provides an appellate remedy to a person aggrieved by an order passed under Sec.4(I); and a further appellate remedy to the District Collector [Sec. 4-A(2)] and Sec.4-B provides a revisional remedy to the State government.

16. As is apparent from the text and context of the provisions of the 1977 Act, in particular the provisions of Sec.4, 4-A and 4-B, the Mandal Revenue Officer, the Revenue Divisional Officer, the Collector or the State Government as the case may be, as primary, appellate or revisional authorities are statutory Tribunals of a limited jurisdiction. They are created by and under the Act subject to specified limitation on their powers and jurisdiction. Their powers are limited and conditioned by the limits specified by the Act. These Tribunals therefore cannot arrogate to themselves jurisdiction, by a wrong decision on the facts or a wrong conclusion as to the conditions upon which their jurisdiction depends, according to the terms and conditions of the statute.

17. In *Vatticherukuri Village Panchayat v. Nori V.Deekshithulu* (1) 1991 Supple (2) SCC 228 the Supreme Court explained the principle:-

"23. The jurisdiction of a tribunal created under statute may depend upon the fulfillment of some condition precedent or upon existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try and the determination whether it existed or not is logically temporary prior to the determination of the actual question which the tribunal has to consider. At the inception of an enquiry by a tribunal of limited jurisdiction, when a challenge is made to its jurisdiction, the tribunal has to consider as the collateral fact whether it would act or not and for that purpose to arrive at some decision as to whether it has jurisdiction or not. There may be tribunal which by virtue of the law constituting it has the power to determine finally, even the preliminary facts on which the further exercise of its jurisdiction depends; but subject to that, the tribunal cannot by a wrong decision with regard

to collateral fact, give itself a jurisdiction which it would not otherwise have had."

18. Much earlier, a Constitution Bench of the Supreme Court in T.C.Basappa v. T.Nagappa (2) AIR 1954 SC 440 while dealing with the scope of a writ of Certiorari approved the principle evolved in Bunbury v. Fuller (3) (1853) 9 EX. 111 and R v. Income Tax Special Purposes Commissioners (4) (1888 22 QBD 313 and held that when the jurisdiction of the Court depends upon the existence of some collateral fact, the Court cannot by a wrong decision of the fact give itself jurisdiction which it would not otherwise possess.

19. In the light of the above principles as to the jurisdictional limits of a Tribunal of limited jurisdiction, it is clear that a correct conclusion as to the land in the possession of the petitioners being "assigned land" (as this expression is defined in Sec.2(1) of the 1977 Act); and the such conclusion arrived at on the basis of the evidence on record; such evidence having been recorded after due opportunity to the aggrieved petitioners, is a condition precedent to the exercise of power under Sec.4(1) of the Act.

20. In view of the skeletal show cause notice issued by the 1st respondent dated 16.2.2002 and in the context of the petitioner's clear assertion that there was no condition prohibiting alienation in the assignment order in favour of his vendor, this court is required to consider whether the 1st respondent's order dated 16.5.2002 declaring the sale in favour of the petitioner void under the provisions of the 1977 Act, is valid.

24. In the considered view of this court the show cause notice dated 16.2.2002 is itself invalid. The minimum

requirement of a show cause notice, in the context of an action initiated under the provisions of the 1977 Act is (a) it should assert that there was an assignment of land either under the provisions of the 1977 Act or under any Rules for the time being in force subject to a condition of non-alienation; that such "assigned land" was transferred by such assignee in contravention of the prohibition of alienation clause contained in the deed of assignment; (b) it should assert that the respondent's to the show cause notice had entered upon possession of "assigned land" under a deed of transfer which is invalid under the provisions of Sec.3 of the 1977 Act. The show cause notice must of necessity contain such factual assertions to enable the recipient (of the notice) to rationally respond and submit his objections, if any, to the proceedings initiated against him under the provisions of the 1977 Act. Issuance of a show cause notice is not an empty ritual. It should provide a reasonable and fair opportunity to the recipient of the show cause notice to defend his title and possession of, the valuable right to property.

25. Without stating any facts whatsoever in the show cause notice dated 16.2.2002 the 1st respondent in the order dated 16.5.2002, spelt out an elaborate factual matrix i.e., the classification of the land in the Khasra Pahanis (1954-55); recording of the names of Mahadoba and Udayaman Singh in the Faisal Patti in 1977-78 and in the supplementary sethwar. These facts were not put to the petitioners nor their response elicited on these. These facts were gathered by the 1st respondent without the knowledge of the petitioner, behind his back and without giving the petitioners an opportunity to deny or rebut this factual assertion.

35. The proceedings under the 1977 Act are in the nature of civil proceedings. The conclusion that the land in

question is assigned land may also be arrived at by a compelling inference preponderating from the circumstantial evidence on record. If the assignment in question is under certain Rules for the time being in force (within the meaning of this clause as employed in Sec. 2(1) of the 1977 Act); if such Rules (under which the assignment is made) enjoin a prohibition on alienation; and such statutory prohibition was in operation on the actual date of assignment, it might perhaps be an indicator justifying an inference that the land in question is an "assigned land". For such a presumption to be legitimately drawn, the respondents must establish the date of assignment and the contemporaneous state of the Rules under which assignment was made, to legitimize the conclusion that the Rules did prohibit alienation as on the date of assignment. All these are essentially questions of facts and must first be put to the person aggrieved so as to afford him a reasonable opportunity to explain or defend his possession and ownership of the land in question, a valuable property right. A reasonable opportunity is that which informs a respondent to a show cause notice of the facts that are asserted against him or his interest."

The principle of law laid in the above decision applies to the case on hand in all forms, the notice in Form-II does not contain details worth dealing with jurisdiction under the Act and the point is answered in favour of petitioner and against the respondents.

Point No.II: For brevity the contentions noted in the preceding paras are not stated in detail. Briefly summarised the contention of petitioner is that issue of Notice in Form-II would not satisfy the statutory requirement and Notices in Form-I & II should be issued to transferee also to conform to the requirement of Rule 3. On the other hand the reply of respondents is that Form-I is issued to

assignee and Form-II is issued to transferee and such procedure, if followed, would satisfy principle of natural justice and requirement of Rule 3 of the Rules. Let me consider the question by first examining the statement of objects and reasons (SOR) of the Act. Object of the Act is prohibition of alienation of assigned lands, provides for punishment to persons, who purchase assigned lands and further provides for restoring assigned lands to assignees. Likewise deals with prohibition to acquire assigned land.

According to Section 2, '*assigned land*' means lands assigned by the government to the landless poor person(s) under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly.

Section 3 reads thus:

3. Prohibition of transfer assigned lands:-

(1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned

land, either by purchase, gift, lease, mortgage exchange or otherwise;

(3) Any transfer or acquisition made in contravention of the provision of sub-section (1) or sub-section (2) shall be deemed to be null and void;

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court of any award or order of any other authority;

(5) 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 the possession of such person for purposes of cultivation or as a house-site on the date of such commencement”.

Under sub-section (1) of Section 3, the transfer of assigned land is treated as never transferred, and by such transfer no right or title in assigned land shall vest in transferee of assigned land. Sub-section (2) of Section 3, prohibits landless poor person from transferring assigned land, and imposes restriction on a person from acquiring assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. Sub-section (3) of Section 3 declares legislative intent declares that transfer or acquisition notwithstanding the rigour of sub-sections (1) and (2) of Section 3 is treated as null and void. Sub-section (3) of Section 3 extends to transfer of assigned land in execution of a decree or order of a civil court or any award or order of any other authority. Therefore, voluntary or compulsive transfer by court etc. is brought within the purview of prohibition envisaged under Section 3 of the Act. Under

sub-section 5, if the assigned land is purchased by landless poor person, the transfer is protected from the consequences of breach sub-section 1 to 3 of Section 3.

In *K.Dattaiah v. Tahsildar, Hayathnaar*<sup>2</sup> while considering the scope and ambit of sub-section 5 of Section 3 of the Act, it has been held as follows:

“So, if the requirements of sub-section (5) are satisfied, the operation of section 3 which is a pivotal provision and virtually the entire Act itself has no application, i.e. the prohibition of transfer of assignment of lands contained in section 3 is excluded if the conditions of sub-section (5) are satisfied. In order to attract the provisions of sub-section (5) of section 3 the following conditions must be satisfied.

- (1) The purchaser must be landless poor.
- (2) He purchased the land in good faith and for valuable consideration.
- (3) The said purchase is either from the original assignee or from the transferee.
- (4) The land so purchased is in his possession for cultivation or as house site on the date of the commencement of the Act.

As the sub-section excludes the jurisdiction of the authority to apply the provisions of the Act it is incumbent on the authorities to record the finding necessary as contemplated under sub-section (5) to order resumption and evict the purchasers in possession of the property. Admittedly the show cause notice and the impugned order do not fulfill these requirements of law and the proceedings are liable to be interdicted.”

Section 4 deals with consequences of breach of Section 3. Sub-section (1) of Section 4 empowers the District Collector or any officer not below the rank of Mandal Revenue Officer, if satisfied that the prohibition under sub-section (1) of Section 3 is attracted to

---

<sup>2</sup> 1983 1 AWR 177

a transaction of agriculture land, he may by order take possession of the assigned land after evicting the person in possession after giving such written notice as the Collector or the Mandal Revenue Officer deems reasonable. Section 4, sub-section 1 and Clause (a) reads thus:

4. Consequences of breach provisions of Section 3:- (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order-

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed.

The Government through G.O.Ms.No.208 Revenue (Assn.-POT) dated 22.02.2007 framed the A.P. Assigned Lands (Prohibition of Transfers) Rules, 2007. Rule 3 has laid down the procedure for eviction of the transferee and taking possession and restoration of assigned lands. Rule 3 reads thus:

“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) 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 19<sup>th</sup> 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 order as he thinks fit and proper. If it is held that the provisions of sub-sections (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 that land is situated for taking possession of the land and thereupon the land shall be disposed of in accordance with the provisions of Section 1 of the Act.”

*(emphasis added)*

The answer to the point under consideration firstly depends on interpretation of Rule.3

Plain and literal construction of Rule 3 leads to the following results:

- i) The District Collector or authorized officer shall issue notices in Form-I and Form-II before taking action under clauses (a) and (b) of sub section (1) of Section 4 of the Act to persons who have transferred and also to the persons who have acquired any assigned land in contravention of sub section (2) of Section 3 of the Act.
- ii) The notices are directed to be served by delivering a copy on transferor and transferee or on some adult person etc. as stated therein.
- iii) The District Collector or authorized officer is under obligation to consider the representation, if any, with reference to the said notice and pass such order as he thinks fit and proper.

- iv) The copy of order is also directed to be communicated to the Village Officer. *(emphasis added)*

The Act as evident from statement of objects and reasons is enacted to prohibit alienation of assigned land, and restoration of assigned land to original assignee or in accordance with Section 4 of the Act. The special enactment as held in Dasari Narayana Rao's case (1 supra) is concerned with the transfer of assigned land and restoration to assignee or in accordance with Section 4. The proceedings under the Act are treated as civil proceedings. The District Collector or the competent authority under the Act enjoys authority or jurisdiction in respect of transfer of assigned land. Therefore, the fundamental fact clothing the District Collector or the authorized officer to exercise the jurisdiction under the Act is whether the subject matter of the notice in Forms I and II is an assigned land or not. Secondly the attraction of jurisdiction is further conditioned by the clause of non-alienability as one of the conditions of assignment. In other words, even though the assignment was by the Government of Government land, if the assignment is not with the condition of non-alienability or the assignment for market value or the assignment of agricultural land was made prior to 1954, assignment made under special and privileged categories namely, freedom fighters, armed personnel, societies etc. the jurisdiction against transfer of such land is not brought under the Act. Section 3 succinctly renders transfer of assigned land has never been transferred, prohibits assignee from

transferring assigned land and also the transferee from acquiring assigned land in one or the other form as stated under Section 3(2) of the Act. Sub-section (3) of Section 3 goes a step further and renders any transfer effected notwithstanding the rigor of sub sections 1 and 2 of Section 3 null and void. Section 4 deals with consequences of breach of provisions of Section 3. It is to give effect to the consequences contemplated under Section 4, Rule 3 provides for procedure for taking care of consequences referred under Section 4 of the Act. Rule 3 as already summarized has made it obligatory to issue a notice before taking any action under clauses (a) and (b) of sub section 1 of Section 4 of the Act. Rule 3 further directs the District Collector or the authorized officer to issue notices in Form-I and Form- II to the persons who have transferred and also to the persons who have acquired assigned land in contravention of provisions of sub section 1 of Section 3 of the Act. The Government in its wisdom and by keeping in view the composite scheme of Sections 3 and 4 of the Act, has used the plural expression for the word 'Notices' in Form-I and Form-II to be served on both the transferor and transferee of assigned land. The plural word "Notices" is again repeated while dealing with the manner of service of notice on the transferor/transferee or the adult member as the case may be. Section 4 is intended to give effect to the consequences provided by Section 3 of the Act for transfer of assigned land. Prohibition under Section 3 of the Act or the consequences of Section 4 is attracted, only if transfer of assigned land with condition of non-alienability has taken place and not to

all transfers. Therefore, the issue of notices in Form-I and Form-II both to transferor and transferee of assigned land cannot but be natural, legal to achieve the object sought to be achieved by Sections 3 and 4 of the Act. The transferor or transferee as already noted, if the circumstances available can take one or the other defences namely that the assignment is prior to 1954; assignment made in favour of special class of persons with a restriction for specific period and transfer is effected beyond the restricted period etc.

This Court in *A.P. State Electricity Board Employees Union v. Joint Collector, Chittoor*<sup>3</sup> has considered the definition of assigned land in Section 2(1) of the Act and held as follows:

“A plain reading of the above definition shows that the land, which was assigned by the Government subject to the condition of non-alienation can only be treated as an assigned land for the purpose of Act 9 of 1977. As a natural corollary, the prohibition of transfer as contained under Section 3 of Act 9 of 1977 is attracted only in cases where the land is assigned subject to the condition of non-alienation.”

Unless and until this jurisdictional fact is decided with reference to assignment, order of assignment, conditions on which assignment made, the mere issuance of notice in Form-II to transferee will not serve the purpose of hearing or considering the objections. The forms under the Rules cannot guide literal meaning of Rule 3 of the Rules. On the other hand, if a restricted meaning as sought to be canvassed by the learned Government Pleader is accepted, then transferee is heard only on the eviction but not on the valuable defences available to him in the enquiry conducted by the District

---

<sup>3</sup> 2008 (4) ALT638

Collector or authorized officer. After considering the totality of scheme of Act, Rules and the content of notices in Form-I and Form-II, this Court is of the view that whenever action under Section 4 of the Act is initiated by the District Collector or authorized officer, the authority is required to issue notices in Form-I and Form-II to the assignee and the transferee from the assignee.

The authorities are required to have practical and realistic approach in passing order under Section 4 of the Act. With the transfer of assigned land the assignee may or may not evince interest in the enquiry conducted by the District Collector or authorized officer. Further being the person interested in the property covered by notice issued in Form-I or Form-II the transferee, if heard, before considering the consequences stipulated under Section 4 of the Act, the same satisfies scope and purpose of special statute enacted for prohibiting transfer of assigned lands and restoring the assigned land in accordance with Section 4.

For the above reasons, the point is answered in favour of petitioner and against the respondents. Consequently, it is held that in an enquiry taken up under Section 4 of the Act, the District Collector or authorized officer shall issue notices in Form-I and Form-II to the transferor and transferee, consider their objections and pass orders as he thinks fit and proper.

Adverting to the impugned notice and proceedings, having regard to the above discussion and the findings recorded on Point No.II, the impugned notice and the order are set aside, matter

remitted to respondent No.2, if circumstances warrant to proceed in accordance with law.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

---

S.V.BHATT,J

Date:29.09.2016

Note:

L.R. Copy to be marked

B/o.

Bss/Sp

