

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.31121 of 2011

ORDER:

Heard Mr. A.K. Narasimha Rao for petitioner and Mr. Durga Reddy, learned Government Pleader for Assignment.

2. The petitioner challenges proceedings Rc.No.A2/130/2007 dated 12.07.2007 passed by third respondent under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act 9 of 1977').

The subject matter of the writ petition is as follows:

"land admeasuring 0.42 cents in R.S.No.897/5, 0.43 cents in Sy.No.897/9 and 0.43 cents in Sy.No.898/5 in Nandigama Village, Krishna District."

3. The third respondent through the proceedings impugned in the writ petition ordered resumption of land from petitioner to Government. The proceedings are substantially challenged on the ground of lack of jurisdiction to third respondent and also that the provisions of the Act 9 of 1977 are not applicable. The circumstances relevant for considering and deciding the proceedings impugned on these two grounds are stated thus:

The petitioner, admittedly, is in possession of subject matter of the writ petitioner and claims to have purchased the same from one Gudiwada Yonok. According to petitioner, the subject matter of the writ petition, even assuming to be assigned land, was assigned in favour of Bejawada Yohan, Smt. Kuraganti Sudarsanamma and Saliketi Guravaiah on 27.06.1940. According petitioner, the assignment was not made with a condition of non-alienability.

Therefore, the case of petitioner is that even if the assignee has sold the land in favour of a third party and thereafter, the petitioner or the predecessor-in-interest of petitioner has purchased the same, Act 9 of 1977 is not applicable, therefore, the petitioner prays for setting aside the proceedings as illegal and without jurisdiction.

4. Adverting to the circumstances of the case, it is stated that on 10.04.2007, the third respondent issued notice to petitioner and a further notice in Form-I on 01.05.2007. Thereafter, the order resuming the petitioner's land is passed. The operative portion of the order reads thus:

"The Original assignee has not submitted any explanation to this office.

Smt. Gudivada Cheeranjivi has submitted explanation stating that she purchased the land. Request for regularize the land as he is a poor and belongs to Hindu-Madiga (S.C.). If she evicted, she will sustain heavy loss and injury.

In this case Smt. Gudivada Cheeranjivi has purchased an extent of Ac.0.43 Cts., of assigned land in R.S.No.898/5 of Nandigama Village & Mandal from the original assignee. It is therefore a clear case of acquiring assigned land by purchase from the original assignee and therefore according to Sub-Sec.(1) of Sec.3 of the said Act, 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 and according to Sub-Section (2) & (3) of Sec.3 of the said Act. It shall be deemed to be NULL AND VOID.

Therefore, I hereby order u/s 4(1) (a) of the Act to take possession of the assigned land measuring Ac.0.43 Cts., in R.S.No.898/5 of Nandigama Village & Mandal. After evicting the person in possession and removing the crop raised on the land, any building or other construction erected or any deposited therein shall be forfeited to Government.

The above said lands vest with Government from the date of issue of these orders.”

5. Third respondent filed counter affidavit and the circumstances admitted by third respondent are as follows:

R.S.No.595 admeasuring Ac.52.29 cents of Nandigama originally classified as Tank Poramboke (Ambarupet Cheruvu). In the year 1940, an extent of Ac.33.12 cents from out of Ac.52.29 cents was carved out and converted as assigned waste dry land. The carved out portion was assigned Sy.Nos.896, 897 and 898. It is further admitted that in 1940 assignment was made in favour of Bejawada Yohan, Smt. Kuraganti Sudarsanamma and Sri Saliketi Guravaiah etc. in the newly carved out survey numbers. According to respondents, in the verification undertaken for finding out the enjoyment of assigned lands, it transpired that the subject matter of writ petition is in possession of petitioner herein. Notices for cancellation and resumption have been issued, explanation received, order impugned in the writ petition is passed. According to third respondent, the order does not suffer from material irregularity or illegality and prays for dismissing the writ petition. The third respondent further contends that against the proceedings impugned in the writ petition, the remedy of appeal is provided and without availing the remedy of appeal, the instant writ petition has been filed and prays for dismissal of writ petition on this ground as well.

6. The Assistant Government Pleader contends that the remedy of appeal is appropriate and effective and the petitioner ought to be directed to work out the reliefs against the proceedings impugned in

the writ petition by filing an appeal. Counsel for petitioner replies by contending that the proceedings are challenged on the ground of lack of jurisdiction and inapplicability of Act 9 of 1977 to cancel assignment and resume possession. The third respondent neither in the proceedings impugned nor in the counter affidavit is in a position to show that there is a fact in issue for consideration by the appellate authority and the remedy of appeal in such case could be stated as an effective remedy. On the other hand, according to petitioner, the jurisdiction and the applicability of Act 9 of 1977 are the questions for consideration and from the admitted fact situation, this Court can consider and pass appropriate orders. Therefore, the objection raised by respondents is rejected and this Court is of the view that after keeping the writ petition pending for more than five years, relegating the party to remedy of appeal, particularly, there exists no fact in issue, ought to be avoided. Hence, the case considered on merits and disposed of.

7. I have taken note of submissions of learned counsel appearing for parties, perused the pleadings as well as the proceedings impugned in the writ petition. Now the point for consideration is whether the proceedings in the writ petition are illegal and the alienation, in favour of petitioner or predecessor-in-interest of petitioner, has attracted the prohibition prescribed under the Act 9 of 1977.

8. To avoid repetition, I am not proposing to advert to the undisputed and admitted circumstances leading to the passing of the proceedings impugned. Section 2(1) of the Act 9 of 1977 defines assigned land as follows:

“2. Definitions:-

In this Act, unless the context otherwise requires,

- (1) “*assigned land*” means lands assigned by the Government to the landless poor persons 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;

x x x

x x x “

(emphasis added)

9. The burden is on third respondent to show that the subject property was firstly assigned and secondly the assignment was subject to the condition of non-alienability. In the case on hand, the third respondent admits assignment made in favour of the individuals, referred to above, in the year 1940 but does not place on record whether the assignment is subject to the condition of non-alienability or not. This Court in *N. RAMA DEVI v. DISTRICT COLLECTOR, KRISHNA*¹ (Para 7) and *A.P. STATE ELECTRICITY BOARD EMPLOYEES UNION v. JOINT COLLECTOR, CHITTOOR*² (Para 11) held as follows:

“7. ... Further the definition of ‘assigned land’ makes it clear that lands assigned to the landless poor persons 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. From the above, it has to be construed that if there is a condition of non-alienation while assigning the lands or the land is assigned under the lands or the land is assigned under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973,

¹ 1996 (4) ALT 325 (DB)

² 2008 (4) ALT 638

then only it is deemed as assigned land under Act No.IX of 1977. In the case on hand, there is no condition barring alienation of lands. On the other hand the note appended to Condition No.1 of 'D' form patta specifically says that "this condition will not apply to cases of assignment made on collection of market value under para (18) of G.O.Ms.No.1142 of 18-6-1954". By that condition, it is evident that there is no bar for alienation of lands. Therefore, it cannot be said that the lands are assigned lands. When the lands are not assigned lands, the Act No.1X of 1977 has no applicability to the assignments made to the assignees. In *Ravuri Tulisamma v. Mandal Revenue Officer* [1991 (1) An.W.r. 533] a learned single Judge of this Court held that cancellation of assignment of land and grant of 'D' form patta on receiving consideration, on the ground of alienation, is illegal."

"11. 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."

10. Keeping in view the admitted facts and circumstances, the principle of law laid down in the decisions referred to above, the proceedings impugned in the writ petition are set aside as illegal and without jurisdiction.

The writ petition is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

September 20, 2016
DSK