

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.21752 OF 2004

ORDER:

This writ petition under Article 226 of Constitution of India is filed to set-aside the order passed by the first respondent in Memorandum No.11603/Asn.l92)/2004-2 dated 20.08.2004 confirming the orders of the third respondent in Rc.No.1947/03/E2 dated 10.03.2004, while confirming the order of the fourth respondent vide proceedings Rc.No.577/95 dated 28.08.2002 and to declare the same as arbitrary and consequently to direct the respondents to redeliver the property of an extent of Ac.2.19 cents in Sy.No.17-26, 30, 32, 35, 37, 40, 22/10, 12,13,15 of Somayajulu Palem Village, Jami Mandal, Vizianagaram District, after granting patta in favour of the petitioners.

During pendency of the writ petition, Soundi China Seetaramayya, S/o Dalaiah, the petitioner before this Court died and his sons were brought on record as legal representatives as petitioners 2 to 6 herein vide order dated 28.01.2015 in WPMP No.37930 of 2014.

The facts of the case are that the first petitioner purchased land of an extent of Ac.2.17 cents in Sy.No.17-26, 30, 32, 35, 37, 40, 22/10, 12,13,15 of Somayajulu Palem Village, Jami Mandal, Vizianagaram District under registered sale deed for valuable consideration from Sri Nethala Pydithalli. Thereupon, the first petitioner was in possession and enjoyment of the property till his death, without any interruption from anybody. As the first petitioner was suffering from paralysis, he was getting the land cultivated with the help and aid of his kith & kin or with the help of hired labour. Thus, the first petitioner and his wife were alone cultivating the land and cultivation was the only source of income of their livelihood. The name of the first petitioner was mutated in the revenue records and thus, he was in possession and enjoyment

of the property.

While the matter stood thus, the fifth respondent issued notice in Form No.1 dated 11.06.2002 under The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, (for short, hereinafter referred to as 'Act') and notice dated 18.08.2002 informing that the first petitioner purchased the assigned land, which is prohibited as per the provisions of the Act. It is also informed that the survey numbers mentioned in the sale registers are not tallying with the survey numbers mentioned in the two notices and the vendor was shown as assignee of the land in the said notices. Further, the fifth respondent issued similar notice on 10.06.1991 and the same was questioned before the fourth respondent vide Rc.No.5808/91 by way of an appeal. Pending disposal of the appeal before the fourth respondent, the revenue authorities tried to dispossess the petitioner from the property. Thereupon, the petitioner filed W.P.No.8871 of 1991 before this Court and the same was disposed of on 16.07.1991 granting stay of dispossession, pending disposal of the appeal before the fourth respondent. Complying with the directions of the High Court, the fourth respondent disposed of the appeal on 30.05.2001, setting-aside the order of the fifth respondent while observing that the assigned land and the land covered by the notice are different and distinct and directed the fifth respondent to issue fresh notice for the lands originally assigned to Nethala Pydi Talli. In spite of the directions issued by the fourth respondent, the fifth respondent issued notices dated 11.06.2002 and 18.08.2002 without conducting any further enquiry. On receipt of the said notices, the petitioner submitted his explanation. Thereupon, the first petitioner filed W.P.No.17412 of 2002 for direction to respondents 4 & 5 to grant patta to the said land and this Court while disposing of the said writ petition, directed the fifth respondent not to interfere with the petitioner's peaceful possession and enjoyment of the land till orders are passed considering the

explanation submitted by the petitioner to the show cause notice issued to him on 11.06.2002. However, the first petitioner was dispossessed by the fifth respondent without affording any opportunity, for resumption of the land to the government before passing final order vide Rc.No.577 dated 28.08.2002, which provided under the Act.

Aggrieved by the order passed by the fifth respondent dated 28.08.2002, the first petitioner filed an appeal before the Revenue Divisional Officer and the same was dismissed vide proceedings in Rc.No.2739/02/L dated 05.12.2002.

Again, aggrieved by the orders of the fourth and fifth respondents, the petitioner filed W.P.No.618 of 2003 before this Court and the same was dismissed as withdrawn, reserving liberty to prefer an appeal to the Appellate Authority. In pursuance of the liberty given to the first petitioner, he filed an appeal before the Joint Collector i.e. the third respondent herein and the said appeal was dismissed. Thereafter, the first petitioner filed revision before the Government and the same was dismissed while confirming the order passed by the respondents 3,4 & 5.

The specific contention of the learned counsel for the petitioner is that, the first petitioner purchased the assigned land in good faith and for valuable consideration. As he is a landless poor person, he is entitled to claim patta for the land and the government cannot cancel the patta and resume the land and such transaction is saved by the provisions of the Act. But the respondents without applying their mind and without considering the principles laid down by various Courts, including Apex Court, passed a routine order and prayed to set-aside the same.

Learned counsel for the petitioner contended that the first petitioner is a landless poor person belonging to Scheduled Caste Community and purchased the property in good faith for valuable

consideration from the assignee of the land and that the respondents did not consider the circular instructions No.B-1/2/2003 dated 03.03.2003 issued by the Chief Commissioner of Land Administration, A.P. Hyderabad. According to the circular, if the alienation of land is made in favour of SC/ST beneficiary, it is safe to presume that the transferee is eligible landless poor and it further says that if such transferee is in possession and enjoyment of the said land, action may be taken to cancel the original assignment, D-Form patta to be issued to the transferee/person in possession of the land. But in utter disregard of the circular, the respondents dismissed the appeals. Hence, the present writ petition.

The respondents filed counter affidavit denying material allegations of the petition, *inter alia* contending that the property in dispute is an assigned land and the transaction is not saved by Section 3(5) of the A.P.Act No.9 of 1977, as the petitioner failed to prove that the sale transaction was done in good faith for valuable consideration. In paragraph 3 of the counter affidavit, it is stated that the first petitioner is not a landless poor and in fact, all his family members including sons are all well placed in the government and quasi-government services. His elder son is working as Junior Lecturer and younger son is working as Mandal Surveyor, therefore his family is financially sound. It is stated that the writ petitioner though belongs to Scheduled Caste Community, is not economically poor. Therefore, he is not entitled to claim any benefit under the provisions of the Act referred supra or under the circular. It is also submitted in paragraph 4 of the counter affidavit that the transaction between the first petitioner and the original assignment beneficiary cannot be considered as bonafide, as the said transaction does not create any right, as it was made in contravention to Section 3(1) of the A.P.Act No.9 of 1977.

Further, the counter affidavit also spelt out that mere possession and enjoyment of the assigned land acquired in contravention to Subsection (1) of Section 3 of the Act, does not confer any right and title and such transaction is deemed to be null and void and hence the first petitioner is not entitled to claim any relief in the writ petition.

The respondents in their counter affidavit have stated that the first petitioner does not belong to depressed class and he acquired the suit land in contravention of the provisions of the A.P.Act No.9 of 1977 and as the beneficiary under original assignment or his next legal heir being landless poor and belonging to Scheduled Caste is eligible to avail any of the benefits of restoration under Section 4, but not the first petitioner herein. Therefore, the writ petitioner is not entitled to claim any patta and restoration of possession and claim any relief in the petition, setting aside the order passed by the first respondent, confirming the order passed by the respondents 3 to 5.

In paragraph 8 of the counter affidavit, it is stated that the first petitioner is not entitled to claim the benefits under the circular issued by the Chief Commissioner of Land Administration, as he is financially sound and his family members are employees and at best, the benefits of circular can be availed by the legal heirs of original assignee/beneficiary, if they are able to prove that they are landless poor. The first petitioner was not a landless poor person and his legal heirs who were brought on record are well placed in government services are not entitled to claim any benefit and therefore, prayed to dismiss the writ petition.

During hearing the learned counsel for the petitioner Sri Ravi Cheemalapati, while reiterating the contentions urged in the representations, pointed out about the discrepancy in the survey number mentioned in the first notice, as pointed out by the fourth respondent in the appeal vide order dated 30.05.2001, but the

same was not rectified in the subsequent notices and moreover the first petitioner having purchased the assigned land is entitled to claim the benefit under Section 3(5) of the A.P.Act No.9 of 1977, since he is a bonafide purchaser for valuable consideration, being landless poor, but the respondents 1 to 5 did not consider his specific contention in proper perspective and dismissed the appeals confirming the orders passed by the fifth respondent. Therefore, the order under challenge is liable to be set-aside.

Learned counsel for the petitioner, in support of his contention, drawn attention of this Court to the judgment of this Court reported in **Madamaneni Chinnaswamy (died) per LRs vs. Joint Collector, Chittoor and others**^[1]. The learned counsel relied upon the principle laid down in the paragraph 25 of the above judgment, which is as follows:

“From the material discussed supra, I am of the view that the case of the petitioner squarely falls within the provisions of Section 3(5) of the Act as he was a landless poor person and bonafide purchased the property for valuable consideration. I further hold that respondent No.2 ought not to have initiated action on the stale representation of respondent Nos.3 to 6 after long lapse of time.”

Finally, it is prayed to set-aside the order passed by the first respondent, confirming the orders of the respondents 3,4 & 5.

Per contra, learned Government Pleader for Revenue (A.P) would contend that the benefit under Section 3(5) of the Act can be availed by a landless poor person, who purchased the property bonafidely for valuable consideration prior to commencement of A.P.Act No.9 of 1977 and the transactions subsequent to passing of A.P.Act No.9 of 1977 are not saved under Section 3(5) of the Act, therefore, the petitioners 2 to 6 even though are landless poor persons

belonging to Scheduled Caste Community, are not entitled to claim benefit under Section 3(5) of the Act. Further, it is contended that, the orders passed by the respondents 3 to 5 are in accordance with law and they do not suffer from any legal infirmity warranting interference by this Court while exercising power of judicial review under Article 226 of Constitution of India and prayed to dismiss the writ petition confirming the orders passed by the respondents 1, 3 to 5.

Considering rival contentions and perusing the material available on record, the sole point that arises for consideration is:

whether the first petitioner is a landless poor person who purchased the property and he is a bonafide purchaser of the assigned land for valuable consideration from his vendor Sri N. Paidi Thalli, the original assignee. If so, whether he is entitled to claim protection under Section 3(5) of the A.P.Act No.9 of 1977.

At one stage, the first petitioner declared in the affidavit that the property in survey number mentioned in the notice dated 10.06.1991 and the survey number of the land purchased by the first petitioner are different. But at later part of the entire affidavit, he admitted that he purchased the assigned land under registered sale deed. Therefore, there is no dispute that the land allegedly purchased by the first petitioner from Nethala Pydithalli is an assigned land and he was in possession of the said property till the fifth respondent dispossessed the first petitioner from the land in Sy.No.17-26, 30, 32, 35, 37, 40, 22/10, 12,13,15 of Somayajulu Palem Village.

Strangely, the first petitioner though contended that he purchased the property for valuable consideration, he did not produce the sale deed under which he purchased and executed by Nethala Pydithalli, through which the property was conveyed to the first

petitioner for valuable consideration. In the absence of any such sale deed executed by Nethala Pydithalli in favour of the first petitioner, it is difficult to believe that he purchased the property for valuable consideration and he is a bonafide purchaser of the assigned land. From the beginning, it is the case of the fifth respondent that the first petitioner was in unauthorized occupation of the assigned land, assigned in favour of Nethala Pydithalli, it is specifically mentioned in Form No.1 notice dated 11.06.2002 and notice dated 13.08.2002, the respondents never admitted that the first petitioner purchased assigned land under registered sale deed under which the property was conveyed by Nethala Pydithalli for valuable consideration, who failed to produce such sale deed. In the explanation dated 20.08.2002 submitted to the show cause notice dated 13.08.2002, while referring his representation dated 03.06.2002, he made a bald allegation that he purchased the land under registered sale deed and he did not know that it is an assigned land. Both in the explanation and in the representation, the first petitioner conveniently avoided to disclose the date of registered sale deed and document number by which Nethala Pydithalli conveyed the property to the petitioner. If the document is produced before the authorities or atleast before this Court, this Court would have gone into the recitals of the document, more particularly, the nature of acquisition of the property purchased by the petitioner mentioned in the schedule which is a part of the sale deed. In the absence of production of registered sale deed, purchase of the property by the first petitioner is suspicious. Therefore, the contention that the first petitioner is a bonafide purchaser of land for valuable consideration cannot be sustained, on this ground alone. Moreover, the first petitioner did not approach the Court with clean hands and suppressed the alleged sale deed by which Nethala Pydithalli, the original assignee/beneficiary conveyed the property in favour of the first petitioner, without disclosing the nature of the property acquired by

him. Since the first petitioner failed to disclose the details regarding the sale consideration and document number, the same was suppressed, which is a material fact. On this ground alone, the writ petition is liable to be dismissed.

There is a fine distinction between material fact and material particular. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Material Particulars' on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Material Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise. All 'Material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with. In the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, will entail dismissal of suit or petition. (vide **Virender Nath Gautham vs. Satpal Singh & ors.**^[2]).

It is specifically contended in paragraph 2 of the writ affidavit that the first petitioner is a bonafide purchaser of assigned land for valuable consideration in the year 1984. If the petitioner belongs to Schedule Caste community and he is able to prove that he is a landless poor person, having allegedly purchased the land in the year 1984 under registered sale deed, he is not entitled to claim protection under Section 3(5) of the A.P.Act No.9 of 1977, for the reason that, Section 3(5) saved only the purchase of the property from the original assignee by any landlords or poor person bonafidely for valuable considerable. But, now, in the present facts, the petitioner did not produce the

alleged sale deed from Nethala Pydithalli, enabling this Court to find out whether there was any mention or reference about the nature of execution of sale deed from Nethala Pydithalli, the original assignee, to believe that first petitioner is a bonafidee purchaser for valuable consideration without notice of the nature of acquisition of land by his vendor Nethala Pydithalli (original assignee) and further, did not mention the details of document, total consideration paid, etcetera. All the more, the alleged transaction took place in year 1984, but whereas, the Act came into force on 21.01.1977, much later to the alleged purchase. Therefore, transfer or alienation of schedule property, which took place subsequent to the enactment of the A.P.Act No.9 of 1977, is not saved by Section 3(5) of the Act.

The Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977" Act No.9 of 1977 is a beneficial legislation for the benefit of poor and deprived class persons. The land assigned to the landless poor persons are for their enjoyment and for their upliftment, as such, the government passed the legislation to save the landless poor persons from the clutches of rich and resourceful persons, who deprived them of their precious title of the assigned land by the government, which alone provided them occupation and source of livelihood.

In such a case, the burden is upon the person claiming the benefit of exception in Sub-section (5) of Section 3 and demonstrate that he purchased the assigned land prior to commencement of the Act for valuable consideration. When such a person failed to discharge the burden, the legislative presumption enacted in Subsection (3) of Section 4 can be drawn and such grant can be cancelled and the land can be resumed by the government.

The first petitioner in utter disregard of the legislative intention, allegedly purchased the property in the year 1984. Therefore, the

protection under Section 3(5) is not available to the purchaser of assigned land subsequent to commencement of A.P.Act No.9 of 1977.

Learned counsel for the petitioners would contend that the first petitioner is a landless poor, who purchased the property bonafidely for valuable consideration and the date of purchase is not relevant to save such transfer and would place reliance on a judgment of this Court in **Madamaneni Chinanswamy's case**, and this Court held that the petitioner therein was a landless poor person and purchased the property bonafidely for valuable consideration and such transaction was saved by Section 3(5) of the Act. In the facts of the above judgment, the purchase took place on 06.11.1967 from Venkat, Raju Goud and Gangulayya i.e. much prior to commencement of A.P.Act No.9 of 1977. Since, the purchase took place prior to commencement of the Act, and the purchaser proved that he is a landless poor person and he bonafidely purchased the property for valuable consideration. Such transactions are saved by Section 3(5) of the Act. Therefore, the principle laid down in the judgment and relied on by the learned counsel for the petitioners has no application to the present facts of the case, since the alleged purchase by the first petitioner was subsequent to commencement of the Act.

In **Gadde Suryakumari vs. Mandal Revenue Officer and Anr.**^[3], this Court held that in order to claim benefit under Section 3(5) of A.P.Act No.9 of 1977 to prove the following four conditions:

1. ***That the petitioner who purchased the property is a landless poor person.***
2. ***That the alleged sale took place for valuable consideration***
3. ***The petitioner is a bonafide purchaser of assigned land in good faith and for valuable consideration.***
4. ***That the transaction must be prior to commencement of Act***

No.9 of 1977

In the facts of the above judgment, the first petitioner though claiming that he purchased the property under registered sale deed, failed to produce registered sale deed same before any of the respondents and even before this Court and thereby concluded that the first petitioner therein was not a bonafide purchaser of assigned land for valuable consideration and that such transactions are not saved by Section 3(5) of the Act. The facts of the present case are also identical to the facts of the above judgment.

According to Section 3(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. Thus, there is a clear bar from sale of assigned land or acquiring the said land in any modes referred in Subsection (2) of Section 3. According to Subsection (3) of Section 3, any transfer or acquisition made in contravention of the provisions of sub-section (1) and (2) shall be deemed to be null and void.

According to Section 4(1)(a) of the Act, the Government has to take possession of the assigned land after evicting the person in possession duly by serving a written notice by the Collector or Mandal Revenue Officer as they may deem reasonable and re-assign the said land to any landless poor person.

In view of the clear bar under the Act from alienating the assigned lands, contained under Sections 1 to 3 of the Act, the first petitioner who allegedly purchased the assigned land from Nethala Pydithalli, under a registered sale deed, which is not produced before this Court is not entitled to claim any benefit under Section 3(5) of the Act, as the Act came into force subsequent to the date of purchase.

The first petitioner claiming benefit under Section 3(5) of the Act, he did not raise any other contention regarding procedural violations or principles of natural justice. At best, this Court while exercising power under Article 226 of Constitution of India may interfere, if there is violation of principles of natural justice or passing of order in violation of statutory provision or rule. In the absence of any such contention, this Court need not examine the compliance of statutory provisions or rules made thereunder or the principles of natural justice. At the same time, this Court cannot issue *Mandamus* directing the respondents to issue patta in favour of the petitioner for the land of an extent of Ac.2.17 cents in Sy.No.17-26, 30, 32, 35, 37, 40, 22/10, 12,13,15 of Somayajulu Palem Village, Jami Mandal, Vizianagaram District, while exercising power of judicial review under Article 226 of Constitution of India. Since the power is conferred only to set-aside the orders on the ground of violation of any of the statutory provisions or rules made thereunder. Therefore, the order passed by the fifth respondent which is confirmed by the third and the first respondents suffers from no legal infirmity to set-aside the same by exercising the power of judicial review under Article 226 of the Indian Constitution. Therefore, I find no ground to set-aside the order under challenge and I also find no ground to issue a direction for issuance of patta in favour of the petitioner by the respondents. Hence, the writ petition is liable to be dismissed.

In the result, the writ petition is dismissed, however without costs.

Consequently, miscellaneous applications pending if any shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Dated 26.07.2016

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[\[1\]](#) 2009 (1) ALT 424

[\[2\]](#) AIR 2007 SUPREME COURT 581

[\[3\]](#) 1992 (3) ALT 691