

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.26489 of 2015

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondents.

2. An extent of Ac.5.20 cts in Sy. No.354/3 of Maredipudi village, Ankapalli Mandal, Visakhapatnam District was assigned by the then Tahsildar in D.R.No.200/78 on 08-04-1969 to one D.Somulu, an ex-serviceman and possession was also delivered to him. In the year 1984, he sold away the entire extent in favour of one Shaik Azeemuddin and six others under separate sale deeds. Thus, the land ceased to be assigned land.

3. Petitioners contend that Shaik Azeemuddin and others offered to sell an extent of Ac.3.20 cts in Sy. No.354/3 to them and an agreement 23-03-2015 was entered into by them with the petitioners. Petitioners contend that they approached the Tahsildar, Ankapalli and requested to clarify the genuineness of patta of the land issued in favour of D.Somulu and he also clarified that the patta, which was issued under the ex-serviceman quota to D.Somulu in 1969, is genuine. Petitioners contend that as per G.O.Ms.No.1117 Revenue (Assignment-I) dept dt.11-11-1993, an ex-serviceman who was assigned land was entitled to alienate the land

after completion of ten years period from the date of assignment. Petitioners contend that the ten year period, as far as the original assignee D.Somulu is concerned, ended on 07-04-1979 and only thereafter, he sold the extent of Ac.5.20 cts assigned to him to Shaik Azeemuddin and others on 15-05-1984. Petitioners contend that they have presented the agreement of sale entered into by them with Shaik Azeemuddin and others for registration before 2nd respondent, but he refused to entertain the same stating that the land is Government land and he is insisting on petitioners to produce of No Objection Certificate from the respondents. They contend that this is contrary to G.O.Ms.No.1117 dt.11-11-1993.

4. Petitioners contend that the action of 2nd respondent in not receiving and registering document in favour of the petitioner is arbitrary, illegal and contrary to the said G.O. They also placed reliance on the judgment dt.03-02-2009 in W.P.No.21325 of 2007 and judgment dt.07-12-2010 in W.P.No.30568 of 2010 wherein this Court has held that there is no bar to alienate the land assigned to ex-serviceman after expiry of period of ten years prescribed as per G.O.Ms.No.1117 dt.11-11-1993.

5. Counter affidavit is filed by 3rd respondent admitting that there was an assignment in favour of Sri D.Somulu in 1969 but contending that it was done under landless poor category and not ex-service man

category. It is also alleged that an extent of Ac.2.20 cts of the land assigned to D.Somulu was taken over by the Housing Department under Indiramma Housing Phase III, but no material in support of this plea is filed. It is also stated that the petitioners should prove that the original assignee is an ex-serviceman and that he applied for assignment of land under ex-serviceman quota. The 3rd respondent also pleaded that the land is vacant on the ground, that there are no traces of cultivation and in any event petitioners have not purchased the land from the original assignee or his family members. It is also stated that the subject lands are government lands and they would be placed under Section 22-A of the Registration Act,1908 after verification and therefore 3rd respondent has not issued No Objection Certificate to the petitioner. Reference is also made to G.O.Ms.No.307 dt.06-06-2013 stating that the District Collector is competent for issuance of No Objection Certificate in respect of lands after valuation of Rs.50.00 lakhs and that thereafter only the Government is competent to issue No Objection Certificate in respect of ex-serviceman assigned lands.

6. I have noted the submissions of both sides.

7. The fact that the said assignee D.Somulu is an ex-serviceman is certified by the Tahsildar Ankampalli under Ex.P-3. Therefore, it can be taken that petitioners

have established that D.Somulu, the original assignee, is an ex-serviceman.

8. Admittedly the land of Ac.5.20 cts was alienated to D.Somulu in D.R.No.200/78 B.2 by Tahsildar, Anakapalle on 08-04-1969 (Ex.P1). Though the said proceeding indicates that the lands are heritable but not alienable, but the actual D-Form patta issued to D.Somulu (which is filed as Ex.P-2 dt. 21-03-1970) states that the lands assigned to him shall not be sold or otherwise alienated for a period of ten years. The patta does not say that the lands assigned are not alienable. The condition mentioned in the patta Ex.P2 therefore prevails. After the 10 year period expired, admittedly he executed registered sale deeds in favour of Shaik Azeemuddin and five others on 15.5.1984.

9. It is not disputed that by the Government Pleader that G.O.Ms.No.1117 dt.11-11-1993 issued by the Government of Andhra Pradesh permitted ex-serviceman to sell away assigned lands after expiry of ten years from the date of assignment. The said G.O. also refers to the earlier policy to the same effect in G.O.Ms.No.743 dt.30-04-1963 which was in vogue at the time of the first alienation in 1984 by Shaik Azeemuddin and others. Once the sale transaction took place in accordance with the then prevailing policy of the Government, the lands ceased to be Government lands,

and they become private property. Any subsequent change in policy of the State Government cannot invalidate the sale transactions which took place in 1984 between D.Somulu and Shaik Azeemuddin and others.

10. Similar view has been taken in the order dt.03-02-2009 in W.P.No.21325 of 2007 and order dt.07-12-2010 in W.P.No.30568 of 2010 to the effect that G.O.Ms.No.1117 dt.11-11-1993 permitted alienation of land assigned in favour of ex-serviceman after expiry of ten years from the date of assignment and there is no prohibition for alienation of assigned land thereafter.

11. The allegation of the respondents that an extent of Ac.2.20 cts of the land assigned to D.Somulu was taken over by the Housing Department under Indiramma Housing Phase III cannot be accepted since no material in support of this plea is filed.

12. In this view of the matter, I hold that the action of 2nd respondent in insisting that petitioners produce No Objection Certificate from respondents on the pretext that the original assignment in favour of D.Somulu is not under the ex-serviceman category, is not tenable.

13. Therefore, the Writ Petition is allowed and the respondent no.2 is directed to receive the document presented by the petitioners in respect of the land admeasuring Ac.3.20 cts in Sy. No.354/3 of Maredupudi

village,Ankapalli Mandal, Visakhapatnam District and register it, if it is otherwise in conformity with the provisions of Registration Act, 1908 and the Stamp Act, 1899 and release it to the petitioners. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-04-2016

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