

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.14014 OF 1999

ORDER:

The case of the petitioner is that the 3rd respondent assigned land admeasuring Ac.4.89 cents to the petitioner in Survey No.381/1, Vittalam Village, Vayalpad Mandal, Chittoor District, much prior to the commencement of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 i.e., Act 9 of 1977 (*for short 'the Act'*) vide proceedings A.M.No.511/85, dated 19.11.1975, and since then the petitioner is in possession without any objection from anybody. The 3rd respondent before assigning the aforesaid land to the petitioner had originally assigned the same to the 4th respondent herein and subsequently, cancelled the assignment on the ground that the 4th respondent violated the DKT Patta conditions by selling the said land to the third parties. Subsequent to the cancellation in favour of 4th respondent, the 3rd respondent assigned the same land to the petitioner and the petitioner has not violated any terms and conditions and Rules of the Act 9 of 1977 and was in possession of the said land for more than 24 years. The petitioner was also issued pattadar pass book under the provisions of ROR Act in respect of the subject land. While so, when the 4th respondent started troubling the petitioner, the

petitioner filed OS.No.35/93 for permanent injunction along with IA.No.233/93 seeking temporary injunction and the said suit was decreed on 02.05.1994. Aggrieved by the same the 4th respondent filed AS.No.48/95 and also obtained interim suspension in IA.No.613/1995 by raising frivolous grounds. Aggrieved by the same the petitioner preferred CRP.No.3397/1995 before this Court and this Court in CRP.MP.No.15140/1995 suspended the interim order granted by the appellate Court in IA.No.613/1995 in AS.No.48/95. Subsequently, this Court disposed of the CRP.No.3397/1995 on 03.07.1996 directing to maintain status quo till the disposal of appeal i.e. AS.No.48/1995. While so, basing on the representation made by the 4th respondent's wife, again petitioner was issued show cause notice dated 24.12.1993 by the 1st respondent under Board Standing Order 15(18) read with G.O.Ms.No.912, dated 28.08.1995, for which the petitioner submitted reply and also filed written arguments before the 2nd respondent stating that he is a land less poor having three daughters. But, without considering the same, the 2nd respondent, basing on the report of the 3rd respondent, ordered for cancellation of the assignment made in favour of the petitioner in respect of land admeasuring 4.89 cents vide his proceedings No.B4/17087/93, dated 18.12.1995. Aggrieved by the same, the petitioner preferred

appeal before the 1st respondent and the 1st respondent vide order dated 10.12.1997 partly allowed the appeal. Aggrieved by the same present writ petition is filed.

Counter is filed by the respondents 1 to 3 admitting that initially the subject land was assigned to the 4th respondent in the year 1968 and that as the 4th respondent violated the conditions of DKT patta, the said land was resumed and assigned in favour of the petitioner on 19.11.1975. It is also stated that the 4th respondent made representation requesting for restoration of the subject land; that in pursuance of the same the MRO conducted enquiry and in the enquiry it is revealed that the petitioner owns an extent of Ac.1.28 dry and Ac.0.35 cents wet land at the time of assignment and that the petitioner obtained the subject land by misrepresenting the facts. As such, the MRO submitted a report to the District Collector recommending for cancellation of the assignment in favour of the petitioner and that thereafter the Joint Collector after following due process of law has cancelled the assignment vide proceedings dated 18.12.1995. It is also stated that when the petitioner filed appeal before the 1st respondent the 1st respondent allowed the appeal in part directing to assign Ac.2.37 cents to the petitioner out of the total extent of the subject land and the

remaining land to the landless poor person. Thus, finally sought for dismissal of the writ petition.

Learned counsel for the petitioner submits that after enactment of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 i.e., Act 9 of 1977, initiation of proceedings under Board Standing Orders is not permissible and the same is without jurisdiction. She also submits that initiation of proceedings cancelling the assignment in favour of the petitioner, which was made in the year 1975, after a long lapse of time i.e nearly about twenty years, is not permissible.

On the other hand, learned Assistant Government Pleader for Revenue submits that initiation of proceedings under Board Standing Orders is not on the ground of violation of conditions of patta or violation of Section 3(2) of the Act, but it is only on the ground of mistake of fact. As such, the Board Standing Orders apply. He also submits that period of three years limitation provided under Order 15(18) of Board Standing Orders is amended vide G.O.Ms.No.192, dated 02.08.1985.

Though notice is served on the 4th respondent, there is no appearance on behalf of 4th respondent.

It is to be seen that the Division Bench of this Court in ***Y.Bhaskar Rao and P.Ramakrishnam Raju***¹ dealt with the question whether the transfer of assigned land by the petitioner, who perfected his title by adverse possession by the date of commencement of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, is amenable to the jurisdiction of the Joint Collector under the Act. In the present case admittedly, show-cause notice was not on the ground that petitioner transferred the assigned lands in violation of Section 3(2) of the Act, but on the ground of mistake of fact that petitioner was owning lands at the time of assignment and thus he is not a landless poor person.

Order 15 (18) of the Board Standing Orders reads as follows:

Revision:- (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is presented is final and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order

¹ 1997 (2) ALD 177 (D.B.)

passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Board of Revenue may set aside, cancel or in any way modify the decision of an officer subordinate to it within three years if it is satisfied that the decision was grossly inequitable; it may also exercise similar powers without any limit of time where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. All revision petitions in darkhast cases should be stamped with a Court fee label to the value of two rupees.

Learned counsel for the petitioner relied on the Judgment rendered by this Court in WP.Nos.18870 and 18898 of 1987 dated 28.03.1994 wherein the Order 15 of the Board Standing Order fell for consideration and this Court held that the same is barred by limitation. In the said Judgment this Court also considered the effect of amendment made to period of limitation and held that initiation of proceedings at any time would be unreasonable and unequitable.

In the present case also the assignment was made to the petitioner in the year 1975 and the initiation of proceedings canceling the assignment was in the year 1995 i.e., almost

after a lapse of 20 years. On this ground alone the impugned order is likely to be set aside.

The other aspect which goes to show that the petitioner is having land less than the specified under Section 2(3) of the Act. As such, he comes under the definition land less poor person. On that grounds also the initiation of proceedings are erroneous.

Learned counsel for the petitioner further submits that the first appeal AS.No.48 of 1995 filed by the 4th respondent against the Judgment and Decree in OS.No.35/93 was also dismissed.

In view of the above facts and circumstances, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

06.12.2016
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