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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.23621 OF 2008

ORDER:

Writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondents in applying the provisions of the AP Assigned Lands (Prohibition of Transfers) Act, 1977, Act 9 of 1977, (for short, 'the Act'), in respect of the lands of the petitioners situated in Kadur Village, Varadaiahpalem Mandal, Chittoor District, the details of survey numbers and extents thereof stated in a tabular form, in the affidavit filed in support of the writ petition and the action of the respondents in planting a board indicating the lands as Government lands, as being illegal, arbitrary and to declare the action of the respondents in not granting permission for conversion of the lands for industrial use as violative of Article 14 and 300-A of the Constitution and consequently direct the respondents not to dispossess the petitioners from the lands in question, to direct the respondents to forthwith remove the board planted from the petitioners' lands and also to direct the respondents to consider granting permission for conversion of the lands for industrial use. By way of amendment in WPMP No.28574 of 2011, it was also prayed to declare the proceedings dated 18-09-2008 of the 4th respondent as being illegal, arbitrary and violative of Article 14 and 300-A of the Constitution and consequently to set aside the same.

2. Facts stated are:-Petitioners purchased the subject lands in

the year 1998 under registered sale deeds on different dates and that even their vendors have purchased the subject lands under registered sale deeds and the lands have been changing hands from 1961. Initially in the year 2005, a notice dated 16-05-2005 in Form-I under Rule (3) of AP Assigned Lands (Prohibition of Transfer) Rules, 2007, (for short, 'the Rules') was issued by the 4th respondent-MRO to the petitioners requiring them to file explanation within 15 days as to why they should not be evicted from the lands in question on the ground that the lands in their possession were assigned lands and the assignees violated the conditions of assignment. Petitioners assailed the said notice in writ petition being WP No.12060 of 2005 and this Court by order dated 9-06-2005 disposed of the writ petition directing the 4th respondent to pass orders considering the explanation submitted by the petitioners after affording opportunity of personal hearing to them. It is stated that without passing any orders on the explanation submitted by the petitioners, the 4th respondent again issued notice dated 15-09-2007 in Form-I and II of the Rules calling for explanation of the petitioners and legal heirs of the original assignees of the lands in question, to which the petitioners filed explanation on 18-08-2007 stating that they have already filed explanation to earlier notice dated 16-05-2005, but no orders could be passed pursuant to the explanation submitted by them to the earlier notice. That the purpose of purchasing the lands in question by them was to establish industries and in fact the petitioners have obtained

permissions from various statutory and local authorities for establishment of industries and in that connection they have already approached the 2nd respondent-District Collector, Chittoor District, seeking permission for conversion of the lands to industrial use willing to pay the necessary conversion charges. That the lands in question are patta lands and the provisions of the Act will not apply.

That the petitioners herein have submitted an application on 02-08-2007 to the District Revenue Officer, Chittoor District, under Right to Information Act, to furnish proof that lands in question to be Government lands, to which it was replied that records beyond Survey No.689 were not available with the office. Petitioners stated that if really the lands in question are Government lands, when information was sought under the Right to Information Act, the authorities should have stated that the lands in question are Government lands. That even in the *website* maintained by the department, the lands in question have been shown as patta lands. That from year 1961 several sale transactions took place and at no point of time, the concerned sub-Registrar took objection for registration of the lands as being Government lands. That at the time of filing the present writ petition, petitioners were not served with the impugned order dated 18-09-2008 passed by the 4th respondent and they filed it only along with the counter affidavit in the writ petition and, therefore, by way of amendment of the prayer it was sought to include the relief to set aside the said proceedings dated 18-09-2008, which was ordered by this Court. That the action

of the 4th respondent in purportedly applying the provisions of the Act is illegal, arbitrary as the vendors of the petitioners from whom the petitioners purchased the lands were already issued with Ryotwari Pass Books and title deeds in accordance with the provisions of the AP Record of Rights in Lands and Pattedar Pass Books Act, 1971. Hence, petitioners seek to allow the writ petition.

3. Counter affidavit is filed by the 4th respondent-MRO on his behalf and also on behalf of other respondents. It is stated that the village accounts of Kadur Village of Varadaiahpalem mandal, Chittoor District, the lands in Sy.Nos.703/5 are originally Government lands conditionally assigned to the poor people for agriculture purpose. That an extent of 81.16 cents was originally classified as gap area block No.V Extension No.2, Reserve Forest.

During the year i.e., 10-11-1926 the land was taken over to Revenue Department and was subsequently assigned conditionally after sub-dividing the gap area as Sy.Nos.692 to 730 in the year 1933. That on verification of village accounts and R.O.R records it is found that the after several sale transactions, the original assigned lands are under enjoyment of ineligible persons and they have obtained pattadar pass books and title deeds fraudulently suppressing the facts that they are assigned lands and are not alienable. It is further submitted that on verification of the sales statistics gathered from the Sub-Registrar's office, Satyavedu, from the year 1962, and also during the field inspection, it was noticed that the original assignees have alienated the assigned lands to the various persons through registered sale deeds and in turn the

present petitioners have purchased the lands from the concerned.

4. That as there was violation of conditions of assignment, notices were issued to the writ petitioners on 16-05-2005. Petitioners filed WP No.12060 of 2005 to declare the said notice in Form-I as illegal and without jurisdiction and consequently set aside the same, which was disposed of directing to pass appropriate orders in accordance with law within a time frame. That as there was change of the officer and also staff members of the MRO's office of Varadaiahpalem Mandal, the connected papers were misplaced and, therefore, no final orders could be passed on the explanation submitted by the petitioners. But, as no final orders could be passed within reasonable time of issuing notices under Rules, fresh notices in Form-I and Form-II were issued to the petitioners and to the persons in possession of the lands under Rule (3) of the Rules on 13-08-2007 calling for the explanation of the purchasers of the lands so also the legal heirs of the original assignees. That in pursuance of the said notice dated 13-08-2007, the purchasers (petitioners) of the lands in question have filed a common explanation dated 18-8-2007 stating that they have already filed their explanation to the earlier notice and as no final orders were passed, they already made application to the 2nd respondent-District Collector, Chittoor District, for conversion of land into industrial use. That the 4th respondent after examining the explanations of the petitioners who are purchasers of the assigned lands and on being found there was contravention of Section 3(2) of the Act

resumed the lands to Government under Section 4 (1) (a) of the Act vide the impugned proceedings dated 18-09-2008 and erected board indicating that the subject lands are Government lands. That in pursuance of the instructions issued by the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, vide Lr.No.B1/2506/06, dated 15-12-2006 all the DKT lands, including the subject lands, existing in the mandal have been furnished to the Sub-registrar, Satyavedu, under acknowledgment and no one has challenged the said list furnished to the Sub-registrar, Satyavedu. That the assignment made in respect of the subject lands have been cancelled by duly following the process of law and resumed to the Government, the question of change of classification from agriculture to non-agriculture purpose as claimed by the petitioners, does not arise and the writ petition is liable to be dismissed.

5. Heard learned counsel for the petitioners and the learned Government Pleader for Revenue.

6. Learned counsel for the petitioners strenuously contended that the petitioners are bona-fide purchasers of the lands under registered sale deeds in the year 1998 and now the 4th respondent cannot resume the lands to the Government on the ground that those lands as assigned lands and the assignees have violated the conditions of assignment by alienating the lands. Learned counsel further contends that the lands are not at all Government lands and they are patta lands, as their vendors' vendors have been issued with ryotwari pass books and title deeds in accordance with the

provisions of the ROR Act. Learned counsel also contended that the 4th respondent did not pass any orders on the explanation submitted to the notice issued in Form-I of the Rules, but once again issued notices in Form-I & II and passed the impugned order resuming the lands in favour of the Government, and the same is illegal, arbitrary and liable to be set aside. Learned counsel also contended that since alienation of the lands in question taken place much before the commencement of the Act, the lands cannot be resumed to Government. Learned counsel lastly submitted that condition prohibiting alienation in case of assigned lands was introduced for the first time by GO Ms.No.1142, dated 18-06-1954 in Andhra Area and GO Ms.No.1406, dated 25-07-1958 in Telangana Area and therefore assignments made prior thereto not prohibited from alienation. In support of his contentions, learned counsel relied on the decisions in ***JOINT COLLECTOR, RANGA REDDY DISTRICT vs. P. HARINATH REDDY***,^[1] ***LETTER SENT FROM PLOT NO.338, PARVANT NAGAR, BORBANDA, HYDERABAD vs. COLLECTOR & DISTRICT MAGISTRATE, RANGA REDDY DISTRICT, HYDERABAD***,^[2] ***KM KAMALLULA BASHA vs. DISTRICT COLLECTOR, CHITTOOR DISTRICT***,^[3] ***PV RAJENDRA KUMAR vs. GOVERNMENT OF ANDHRA PRADESH***^[4] & ***NUTHAKKI VENKATA PURNACHANDRA RAO vs. GOVERNMENT OF ANDHRA PRADESH***^[5]

7. On the other hand, learned Government Pleader for Revenue

contended that inasmuch as the lands in question was resumed in favour of the Government for violation of conditions of assignment and the Act has retrospective operation, it covers the transfer of lands assigned not only prior to the Act but also later. In support of his contentions, learned counsel relied on the decisions *in DHARMA REDDY vs. SUB-COLLECTOR, BODHAN, NIZAMABAD DISTRICT,*^[6] *D. GANGADHRA vs. CH.CHAKKARA REDDY*^[7] & *NARAPAREDDY BUJJAMMA vs. DISTRICT COLLECTOR, NELLORE.*^[8]

8. Lands in question situated in Kadur Village, Varadaiahalem Mandal, Chittoor District, purchased by the petitioners are resumed by the Government for alleged contravention of conditions of grant of assignment to the assignees. It has come on record that the lands in Kadur village including the subject lands situate in Varadaiahpalem Mandal originally belonged to Government and the lands were assigned to the landless poor people conditionally for agriculture purpose. It is the case of the 4th respondent-MRO that on verification of the village accounts and ROR records it is found that the original assigned lands are under the enjoyment of ineligible persons and they have obtained pattadar pass books and title deeds fraudulently suppressing the facts that they are originally classified as assigned lands. In this case, it is pertinent to note that no grievance is made either by the original assignees or their legal heirs nor is there any application by them for restoration of the

lands. None of the original assignees or their legal heirs have chosen to file explanations to the notices issued by the 4th respondent in Form-I & II, except the petitioners.

9. Admittedly, the 4th respondent could not furnish the details as to whom the lands in question were assigned and their extents, the conditions of grant of such assignment. It has come in the impugned order of the 4th respondent that after the land in Kadur Village, Varadaiahpalem Mandal, was taken over by Revenue department in the year 1933, the land in question was assigned conditionally after caving out Sy.Nos.692 to 730 during the year 1933. There are no details as to the exact date of assignment of the said lands to the landless poor persons and the names of the original assignees.

10. But in this case, the process of finding out for any contravention of the grant of assignment of lands in question was first set in motion only during the year 2005 by issuing notice in Form-I, dated 16-05-2005 under Rule 3 (2) of the Act. The petitioners submitted explanation stating that they are bona-fide purchasers under registered sale deeds and their vendors have also purchased the lands under registered sale deeds from the pattadars of the lands. It is the case of the petitioners that as on the date of the purchase of the lands by them, no objection was taken by anybody including the sub-Registrar for transfer of the lands in their favour and in fact the revenue records does not reflect the lands as assigned lands, and no person has come forward claiming to be an

assignee or as legal heirs of the assignee in respect of the said lands. When the revenue records, as on the date of transactions entered into by the petitioners, the lands were shown as patta lands and not as assigned or Government lands, as contended by the petitioners' counsel, the petitioners bona-fide purchased the lands and there is no suppression of facts on the part of the petitioners.

It is also a matter of fact that the petitioners have submitted their explanation to first notice issued in Form-I dated 16-05-2005, but no orders could be passed in spite of the direction of this Court in WP No.12060 of 2005 and the only plausible reason assigned is that there was a change of officer including the staff in the office of the 4th respondent and, therefore, no orders could be passed. The respondent-authorities cannot unsettle the settled things at their convenience, at this length of time. The impugned order does not reflect as to whom the assignment was granted, in which year and its extents.

11. Admittedly, in this case there is no condition of non-alienation clause in the alleged assignment granted in favour of the assignees in respect of the subject lands. Division Bench of this Court in ***P. Harinath Reddy's case*** (1 supra) held that unless the land assigned is subject to a condition of non-alienation, the provisions of the Act are not applicable to the land assigned without such condition. In ***Letter sent from Plot No.338, Hyderabad's case*** (2 supra) the Division Bench of this Court held that provisions of the Act cannot be made applicable to all cases and lands cannot be

resumed merely basing upon revenue entries without furnishing occupants/assignees particulars and as to the nature of occupancy rights granted, condition of inalienability, applicability of the Act.

12. In ***KM Kamallula Basha's case*** (3 supra) this Court held that conditions prohibiting alienation imposed for the first time in 1954 would not apply for assignments made earlier thereto and the purchasers of the assigned lands acquired ownership rights by *prescription* if he enjoys possession of said lands for 30 years. To the same effect is the decision in ***Nuthakki Venkata Purnachandra Rao's case*** (5 supra).

12. In ***PV RAJENDRA KUMAR's case*** (4 supra) while dealing with a similar fact situation, this Court at para 4 held as thus:

“.....It is not the pleaded case of the respondents that the assignment made in favour of *Neeruganti Yerranna* prior to 1942 contained any condition of non-alienation. The fact that several registered transactions were allowed to take place raises a presumption in favour of absence of such non-alienability. For the first time, the Government by G.O.Ms.No.1142, dated 18-6-1954, in respect of Andhra Area, introduced the condition of non-alienability of assigned lands and the assignments made thereafter invariably contained such a condition. Inasmuch as the land was admittedly assigned prior to the year 1942 and in the absence of any record to show that such assignment contained the condition of non-alienability, it is not permissible for the respondents to presume the existence of such a condition and refuse registration of the land.”

13. In an un-reported decision of this Court in WP No.27217 of

2003 this Court dealing on the subject matter held thus:

“Section 2 (1) of the 1977 Act defines ‘assigned land’ to mean 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 the land ceilings; and the word ‘assigned’ shall be construed accordingly. (*Emphasis supplied*)

From an interactive analysis of Section 2 (1) and Section 3 of the 1977 Act, the conclusion is compelling and clear that the provisions of the 1977 Act do not apply to all lands assigned. The assignment should be with a clog on alienation or on condition of ‘non-alienability’. The copy of the Karanam’s copy of Re-settlement Adangal of village of Chirala’ presented by the third respondent along with his counter affidavit as the trump card for the respondents’ claim that the land is ‘assigned land’ does not even spell out the conditions subject to which the land in an extent of Ac.01-41 cents in survey No. 352/2B and 2C was conditionally assigned to G. Venkata Subbaiah. As is clear from the legislative presents, to be assigned lands the assignment must be with a condition of ‘non-alienability’. Learned Government Pleader for Revenue states that except the copy of ‘Karanam’s copy of Re-settlement Adangal of village of Chirala’ there is no other document in the possession or custody of the respondents with regard to assignment in 1928 in favour of G. Venkata Subbaiah.”

14. In the instant case, the petitioners purchased the lands in question in the year 2008 and their vendors have also purchased under registered sale deeds from the year 1961 and original assignment even according to respondents in their counter affidavit is in the year 1933 and the petitioners have obtained statutory approvals and permissions from the Government to run the company in the subject lands. As such the ratio laid down by this

Court in ***KM Kamallula Basha's case*** (3 supra) applies to the facts of the present case. In another un-reported decision of this Court in WP No.2380 of 2012 also it was held thus:

“From the aforesaid discussion, it is clear that the condition of prohibiting alienation of the assigned lands was introduced in the year 1958 and all the assignments made earlier thereto did not contain such condition of non alienation. Therefore, the prohibition contained under Section 22-A of the Registration Act or Sections 3 to 5 of the Act do not operate vis-à-vis the lands that were assigned earlier to 1958, as was rightly held by this Court in the cases referred supra.”

15. As contended by learned Government Pleader for Revenue Section 3 (2) of the Act applies to transfer of assigned lands made even prior to coming into force of the Act, as held by Full Bench of this Court in ***Dharma Reddy's case*** (6 supra) & ***D.Gangadhra's case*** (7 supra). But in the present case, the respondents could not prove that the assignment of lands in question made in the year 1933 contained 'non-alienable clause' attracting definition of assigned land within the meaning of Section 2 (1) of the Act, as such it does not come within the preview of Section 3 (2) of the Act and the above judgments (6 & 7 Supra) relied on by the learned Government Pleader has no application to the facts of the case.

16. In view of the above, the issue involved in this case is squarely covered by the decisions relied on by learned counsel for the petitioners referred to above and therefore the impugned order dated 18-09-2008 passed by the 4th respondent is unsustainable in

law and the same is set aside. The writ petition is allowed.
Miscellaneous petitions, if any, pending in this Writ Petition shall stand disposed of. No order as to costs.

A.RAJASHEKER REDDY, J

Dated: 07-06-2016
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THE HON’BLE SRI JUSTICE A.RAJASHEKER REDDY

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WRIT PETITION No.23621 OF 2008

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Dated: 07-06-2016

[\[1\]](#) 2009 (4) ALT 1 (DB)
[\[2\]](#) 2008 (5) ALT 313 (DB)
[\[3\]](#) 2009 (3) ALD 385
[\[4\]](#) 2011 (3) ALD 571
[\[5\]](#) 2015 (1) ALD 527
[\[6\]](#) AIR 1987 AP 160
[\[7\]](#) 1996 (1) ALT 672 (DB)
[\[8\]](#) 2005 (6) ALT 235