

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.220 OF 2014

ORDER:

The petitioner challenges proceedings Rc.B 244/2007 dated 09.05.2008 of 1st respondent as illegal and unconstitutional. The petitioner further prays that he has right and title to an extent of Acs.0-98 Cts in Sy.No.137/2A and Acs.0-66 Cts in Sy.No.138/1 of Chapirevula Village, Nandyal Mandal, Kurnool District.

The issue arises under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act').

The 1st respondent issued show cause notice Rc.B 244/2007 dated 15.03.2008 calling upon the petitioner to explain why the agricultural land in an extent of Acs.0-98 Cts in Sy.No.137/2A and Acs.0-66 Cts in Sy.No.138/1 of Chapirevula Village be not resumed to Government on the ground that petitioner is in possession of assigned land contrary to the conditions of assignment and Act. The petitioner submitted explanation explaining the history of assignment and relied upon earliest sale transaction made on 14.12.1944 to contend that the petition land is not an assignment or assignment burdened with the condition of non-alienability. The 1st respondent not being satisfied with the explanation dated 09.05.2008 ordered resumption of petition land.

The petitioner availed the remedy of appeal and revision and they were dismissed on 16.08.2008 and 16.12.2013 respectively. Hence, the writ petition.

Mr.K.Murali Krishna, appearing for petitioner, contends that the resumption order passed under the Act is illegal, and without jurisdiction. He relies upon the findings of 2nd respondent to demonstrate that the conclusions recorded by 2nd respondent *prima facie* show that the petition land is not an assigned land. According to him, the subject survey number does not satisfy the definition of assigned land under Section 2(1) of the Act, which reads thus:

"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"

According to him, unless assignment was made with the condition of non-alienability, the prohibition contemplated under Section 3 or the consequence under Section 4 of the Act is attracted to alienation. In support of his contentions, he places strong reliance upon the admitted circumstances referred in the orders of 2nd and 1st respondents. He contends that firstly the respondents failed to discharge the burden in showing that the land covered by notice is assigned land and secondly, the assignment was with the condition of non-alienability. In the absence of such proof, the respondents do not get jurisdiction to pass order under the Act. He places reliance upon the decisions:

1. P.V.Rajendra Kumar and another v. Government of Andhra Pradesh and others¹

¹ 2011(3) ALD 571

2. Syed Munaf and others v., Revenue Divisional Officer, Kadapa and others²; and
3. Madiga Papanna v. State of A.P.³

Learned Government Pleader contends that the Act has retrospective operation. Therefore, even the sale transactions if have taken place prior to coming into force of the Act, still the respondents have jurisdiction to issue notice, cancel assignment and resume possession of assigned land. He contends that 2nd and 1st respondents have jurisdiction to enquire into alienations made by assignees and pass appropriate orders, including assignment.

By way of reply, Mr. Murali Krishna contends that the petitioner is not challenging the orders impugned in the writ petition on the ground of prospective or retrospective application of the Act, but is challenging that the respondents failed to discharge the burden cast on them to prove firstly that the subject matter is assigned land and secondly that assignment was made with the condition of non-alienability.

The orders impugned in the writ petition accept that the assignment of subject matter of the writ petition was in the year 1944. To attract the prohibition under Section 3 and consequences under Section 4 of the Act by employing the definition of assigned land and the ratio of decisions referred to above, there should be assignment and also with the condition of non-alienability, the burden is on respondents to demonstrate that the assignment in favour of Boya Gadekari Pedda Kambaiah was with the condition of

² 2011 (1) ALD 137

³ 2011(2) ALT 2

non-alienability. Admittedly, the said vital circumstance is not established by respondents. The respondents, on the other hand, have proceeded on the interpretation that once it is admitted or accepted that petition land is assigned land, alienation of assigned land is prohibited and consequences are attracted resulting in resumption. For the above reasons, the findings recorded by the respondents are untenable and illegal. Further, the findings recorded are contrary to the law laid down by this Court in the decisions referred to above.

For the above reasons, I am satisfied the proceedings Rc.B 244/2007 dated 09.05.2008 are set aside as illegal and beyond the jurisdiction of 1st respondent under the Act.

The writ petition is ordered accordingly. There shall be no order as to costs.

Consequently, pending miscellaneous petitions stand closed.

S.V.BHATT, J

22nd June, 2017

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