

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.15326 of 2016

ORDER :

Heard the counsel for petitioner, and the learned Government Pleader for Assignment, for respondents.

2. The petitioner has assailed in this Writ Petition order dt.30.07.2015 (**for short, ‘the impugned order’**) passed by the 3rd respondent under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (**for short, ‘the Act’**).

3. A notice dt.07.07.2015 was issued to petitioner without mentioning when the land was assigned to him, and whether there was any condition prohibiting alienation in the said assignment.

4. The petitioner herein filed explanation dt.15.07.2015 to the said show-cause notice stating that the subject land is assigned land, that he purchased the said land under a registered sale deed dt.13.08.1982, and he has been in possession and enjoyment of the property since then for more than 30 years. He also claimed to be a landless poor person belonging to a minority community, and requested to drop further action.

5. Thereafter, the impugned order was passed on 30.07.2015 by the 3rd respondent in proceedings Rc.B.431/2015. Even the said order does not indicate when the assignment was made and whether there was a condition prohibiting alienation in the assignment, though it is

stated that assignment was made to one Sri Kante Somaiah of the subject land.

6. The counsel for petitioner contended that in the absence of any material placed by respondents to show that the subject land is assigned land, and that there was a condition in the assignment prohibiting alienation, the very initiation of proceedings under the said statute by the 3rd respondent is wholly without jurisdiction; and that the impugned order cannot be sustained.

7. The learned Government Pleader for Assignment, appearing for respondents, however supported the order passed by 3rd respondent and contended that the subject land is assigned land; under Section 4(3) of the Act there is a prohibition to transfer it; the 3rd respondent has acted in accordance with law while passing the said order; there is an appeal provision in the statute against the impugned order; and petitioner cannot maintain the present Writ Petition without availing himself of remedy of appeal. He, however, did not dispute the fact that the date of assignment has not been mentioned anywhere in the impugned order or in the show-cause notice issued to petitioner.

8. I have noted the submissions of both sides.

9. It is settled legal position that in the Andhra Area, G.O.Ms.No.1142 Revenue Department dt.18.06.1954 introduced the condition prohibiting alienation for the first time, and there was no such condition in assignments made prior thereto.

10. Therefore, the date of assignment is of critical importance which is conveniently suppressed by 3rd respondent not only in the show-cause notice but also in the impugned order.

11. In **Dasari Narayana Rao and another v. Deputy Collector and Mandal Revenue Officer, Serilingampalli, R.R. District and others**¹, this Court has held that before taking action under the provisions of the Act it was incumbent on the Tahsildar to record conclusion that the land in question was an assigned land, and that there was a condition prohibiting alienation in the assignment deed. It held that it is a jurisdictional fact and is a condition precedent for exercising jurisdiction under the Act. It observed that when a show-cause notice issued to a party does not state who the original assignee is, does not specify the date of deed of assignment and does not assert that the deed of assignment incorporated a clause prohibiting alienation, then it cannot be said that there is any violation of the provisions of the Act.

12. It observed as under :

“24. The minimum requirement of a show-cause notice, in the context of an action initiated under the provisions of the 1977 Act is (a) it should assert that there was an assignment of land either under the provisions of the 1977 Act or under any Rules for the time being in force subject to a condition of non-alienation; that such “assigned land” was transferred by such assignee in contravention of the prohibition of alienation clause contained in the deed of assignment; (b) it should assert that the respondents to the show-cause notice had entered upon possession of “assigned land” under a deed of transfer which is invalid under the

¹ 2010 (6) ALD 536

provisions of Section 3 of the 1977 Act. The show-cause notice must of necessity contain such factual assertions to enable the recipient (of the notice) to rationally respond and submit his objections, if any, to the proceedings initiated against him under the provisions of the 1977 Act. Issuance of a show-cause notice is not an empty ritual. It should provide a reasonable and fair opportunity to the recipient of the show-cause notice to defend his title and possession of, the valuable right to property.”

13. It also referred to the Division Bench judgment of this Court in **Nimmagadda Rama Devi v. District Collector, Machilipatnam and another²**, and held that where the assignment is without any condition prohibiting alienation it would not be assigned land under the Act and the Act itself would not apply.

14. This legal position is not disputed by the learned Government Pleader for Assignment.

15. When the 3rd respondent has suppressed the date of assignment and did not state even in the notice issued to the petitioner that there is a condition prohibiting alienation in the original assignment, he clearly acted without jurisdiction in issuing the said notice as well as passing the impugned order. When such is the position, the petitioner is entitled to approach this High Court under Article 226 of the Constitution of India and is not bound to avail himself of the remedy of appeal under the Act since the action of the 3rd respondent is wholly without jurisdiction. (See **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors³**).

² 1996 (4) ALD 572 (D.B.)

³ (1998) 8 SCC 1

16. Accordingly, the Writ Petition is allowed with costs of Rs.10,000/- to be paid by the 3rd respondent to petitioner within four (04) weeks from the date of receipt of copy of the order; the impugned order dt.30.07.2015 passed by 3rd respondent is set aside; the respondents are directed to restore possession of the subject land to petitioner forthwith; and the 1st respondent is directed to initiate disciplinary proceedings against 3rd respondent for invoking jurisdiction under the Act without any material in his possession as to the date of assignment or condition in the assignment prohibition alienation.

17. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-12-2017

Ndr/*

