

THE HONOURABLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.9536 OF 2006

ORDER:

This writ petition is filed to declare the proceedings in Rc.No.27/ 05/ A, dated 16.05.2005, issued by the 3rd respondent, as illegal and arbitrary and consequently, direct the respondents not to dispossess the petitioner from the residential house situated in an extent of 651 square yards of land in Sy.No.159/3 of Kommadi Village of Visakhapatnam (Rural) Mandal, Visakhapatnam.

2. The case of the petitioner is that one Uppada Gurayya S/o.Lakshmayya was the owner of the land of an extent of Acs.2.50 cents covered by Patta No.114 in S.Y.No.159/3 of Kommadi Village, Chinagadili Mandal, Visakhapatnam District. The said land was part of Zamin Estate and was Ryotwari. Said Uppada Gurayya sold the land to one Manthina Seethamma W/o.Narasimha Raju by a registered sale deed dated 21.06.1971 and she was in possession and enjoyment of the said land for some time and thereafter, by registered sale deed dated 10.11.1976, she sold the land to S.Gurunadha Rao S/o.Sanyasayya. The said Gurunadha Rao made the said land into plots and sold an extent of 615 square yards to the petitioner through registered sale deed dated 30.03.1991 for a valuable consideration of Rs.24,600/- which was the prevailing market rate. It is the further case of the petitioner that he does not own or possess any land except the above plot. In the year 1992, after obtaining the permission from the Gram Panchayat, the petitioner constructed a house and residing there. The Gram Panchayat was collecting property tax from the year 1996 onwards. Thereafter, Kommadi Village has been merged in the Greater Visakhapatnam Municipal Corporation and the Corporation issued notice dated

18.06.2006 to the petitioner directing payment of Rs.142/- as property tax. The petitioner is continuing in possession and enjoyment of the said property.

3. While so, the 3rd respondent issued notice dated 24.01.2005 under Rule 3 of the A.P. Assigned Lands (Prohibition of Transfer) Rules 1977 (for short 'the Rules, 1977') to S. Gurunadha Rao calling for explanation as to why the land of an extent of Acs.2.50 cents covered by S.No.159/3 of Kommadi Village should not be resumed as it is assigned land and that he acquired the land in contravention of provision of the Act 9 of 1977. Thereafter, the 3rd respondent issued proceedings, dated 16.05.2005 stating inter alia that S.No.159/3 of Kommadi Village of Visakhapatnam Rural Mandal was classified as Assessed Waste Dry (Government Land) as per records and was assigned to Uppada Gurrayya S/o.Lakshmayya and that S.Gurunadha Rao purchased an extent of Acs.2.50 cents vide document No.2508/1976 dated 10.11.1976 from Smt.M. Seethamma W/o.Narasimha Raju, that the said land is Government land and therefore, the transfer was null and void. It is further stated that a show cause notice in Form 1 under Rule 3 of the Rules, 1977 was issued to S. Gurunadha Rao and the explanation submitted by him was not satisfactory, and as per Rules no landless poor person shall transfer any assigned land and no person shall acquire any assigned land either by lease, gift, mortgage, purchase, exchange or otherwise as such the transaction was null and void and that that the land was situated midst of the developed area and also in Urban Agglomeration.

4. The 3rd respondent filed counter on behalf of the other respondents also, stating that the Village Kommadi was taken over under the provisions of Estate Abolition Act, 1948, along with other villages of

Vizianagaram Estate. After the abolition of the Estate, regular survey and settlement were conducted and were completed in the year 1958. During the course of settlement operations, the settlement authorities entertained all the claims and determined the new rights under the Estate Abolition Act. They prepared the settlement Fair Adangal and other records such as S.F. VII and S.F. VIII. The settlement Fair Adangal is a document of title showing individual ownership rights as determined or settled under the Administrative law. In 1959 the Survey and Settlement records have been introduced in Kommadi Village. As per the Settlement Fair Adangal Sy.No.114 of Kommadi village is classified as Assessed Waste Dry (Government Land). The land in Sy.No.159/3 admeasuring Acs.2.45 cents of Kommadi Village of Visakhapatnam Rural Mandal is classified as Assigned Waste Dry (Government Land) and recorded as such in Revenue Records. Sy.No.159/3 carved out from Sy.No.114. On an application, the then Tahsildar granted patta in favour of Sri Uppada Guruvulu subject to the usual conditions as specified in BSO-15. Some of the main conditions of the grant are as follows:

- i) the lands assigned shall be brought under direct cultivation within three years from the date of assignment.
- ii) The cultivation shall be done by the assignee or by the member of the family of the assignee.

5. The counter further states that as per the Rules of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977, no landless poor shall transfer any assigned land and no person shall acquire any assigned land either by purchase, gift, lease, mortgage, exchange or otherwise. The petitioner acquired the Government land by purchase which is irregular and the transfer is

null and void under Section 3(3) of A.P. Assigned Land (Prohibition of Transfers) Act, 1977 i.e. Act 9 of 1977.

6. Heard the learned counsel for the petitioner and the learned Government Pleaders for Revenue and Assignment.

7. Learned counsel for the petitioner contended that the petitioner before purchasing the land in question, made enquiries and was informed that Kommadi Village was part of Vizianagaram Zamin Estate. The Survey and Settlement operations were conducted from 1956 onwards and the Settlement Rights were introduced with effect from 01.07.1959 and that one Uppada Gurayya had Ryotwari Patta No.114 in Sy.No.159/3 of Kommadi Village, Visakhapatnam Rural Mandal, Visakhapatnam District to and extent of Acs.2.50 cents and he sold the said land to M.Seethamma on 21.01.1971. Later said Seethamma sold the said land to S. Gurunadha Rao on 10.11.1976 which was prior to commencement of Act 9 of 1977. The said Gurunadha Rao also paid land revenue. He made the said land into plots and sold and extent of 615 square yards to the petitioner. From 1971 onwards, said Gurunadha Rao was in possession of the said land and thereafter, the petitioner himself is in possession and enjoyment of the land. It is further contended by the learned counsel for the petitioner that there is no justification for resuming the land after lapse of 34 years on the basis of alleged violations of provisions of the Act committed by the original assignee in the year 1971. He further contended that the respondents have issued Ryotwari passbook in favour of Gurunadha Rao and recognized his right and title over the land.

8. It is further contended by the learned counsel for the petitioner that the respondents also issued circular memo No.B1/78-1, dated 06.03.1979 to the effect that the sales made prior to the commencement of the Act 7/1979 should not be affected as the same was averred in additional affidavit of the petitioner. He placed reliance on the order passed by this Court in W.P. No.24536 of 2006, dated 06.03.2017, wherein it is held in paragraph-23 as under:

“23. In Muppalaneni Srinivasa Rao (1 supra), a learned Single Judge of this Court held that the particulars of assignee and the date of assignment are required to be mentioned in such notice. In V.Subbayamma (2 supra), it has been held that proceedings under the Act can be initiated only if the competent authority under the Act is able to satisfy that there is assignment, that assignment is subject to a condition of non-alienation and that there is transfer of land in violation of such condition.”

9. He further contended that in the notice Form 1 which was issued to the vendor of the petitioner does not mention who was the assignee and when the assignment was made and that the said notice itself is vague and constitutes violation of principles of natural justice. Unless the above details are furnished to the assignee with supporting material, the respondents have no jurisdiction to initiate proceedings under the Act. He also placed reliance on the decision of this Court reported in K. Sriramachandra Murthy Raju vs. State of Andhra Pradesh¹ and contended that under Section 3(5) of the Act if the vendee being a landless poor person *bona fide* purchases assigned land, the sale shall not be effected, as he purchased a land in good faith and for valuable consideration. Learned counsel further relied on the decision of this Court reported in Raavi Satish vs. State of

¹ 1997(1) ALD 564 (D.B.)

Andhra Pradesh², wherein this Court held as follows in paragraph Nos.20 and 21:

“20. It is conceded by the learned Government Pleader for Revenue that in all these cases which pertain to lands situated in the non-Telangana Area, assignments were made either prior to the issuance of G.O.Ms.No.1142, dated 18-6-1954, or no evidence exists as to the actual dates of assignment. It is not in dispute that in respect of the lands situated in the Andhra Area (non-Telangana Area), a condition prohibiting transfer of lands was incorporated for the first time under G.O.Ms.No.1142, dated 18-6-1954. In respect of the lands situated in the Telangana Area, such a condition was first incorporated under G.O.Ms.No.1406, dated 25-7-1958. Dealing with the lands situated in the Telangana Area, a Division Bench of this Court in Letter sent from Plot No.338, Parvanth Nagar, Borabanda, Hyderabad and others Vs. Collector & District Magistrate, Ranga Reddy District, Hyderabad and others [8], on an exhaustive consideration of the legal position held that unless the patta granted to the assignee contained a condition against non-alienation, the land covered by such patta does not fall within the definition of “assigned land” under Section 2(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977). The Division Bench has also taken note of the fact that the assignments are of two types, namely, assignment on payment of market value, and assignment to landless poor persons, and that only in the latter category of cases that the bar imposed on alienation under the provisions of Act 9 of 1977 would apply.

21. In Akkem Anjaiah Vs. Deputy Collector and Tahsildar, Saroornagar Mandal, Ranga Reddy District [9] , I had an occasion to consider a similar issue as was dealt by the Division Bench in Letter sent from Plot No.338 (8- supra). In the said case, this Court held that as the assignment patta was granted prior to the issuance of G.O.Ms.No.1406, dated 25-7-1958, the initial burden lies on the Revenue officials to show that the patta contained a condition against alienation of the land and that unless the Revenue officials are first satisfied that the land is an “assigned land” within the meaning of sub-section (1) of Section 2 of the Act 9 of 1977, no proceedings for cancellation of the assignment for alienation of the assigned land can be initiated.”

10. Learned Assistant Government Pleader would contend that the land in the Kommadi Village was taken over under the provisions of

² 2013 (2) ALD

the Estate Abolition Act, 1948 along with other villages and after abolition of estate, regular Survey and Settlements were conducted and completed in the year 1958. During the course of the settlement operations, the settlement authorities entertained all the claims and determined the new rights under the Estate Abolition Act 1948. The Survey and Settlement records have been introduced in respect of the village with effect from 01.07.1959. As per the Settlement Fair Adangal, the Sy.No.114 of Kommadi Village is classified as Assessed Waste Dry Government Land. The land in Sy.No.159/3, admeasuring ACs.2.45 cents of Kommadi village is classified as "Assessed Waste Dry" (Government Land) and recorded as such in Revenue Records. They Sy.No.159/3 carved out from Sy.No.114. One Uppada Guruvulu granted patta by the then Tahsildar on an application subject to the conditions specified in BSO-15. The petitioner purchased an extent of 615 square yards of land in sy.No.159/3 of Kommadi Village from Gurunadha Rao, who purchased the disputed lands from third parties and who is also not the original assignee. The petitioner acquired the Government assigned land by purchasing which is irregular and transfer is null and void under Section 3(3) of the Act 9 of 1977, therefore, the respondents issued the impugned proceedings preceded by Form 1 notice and resumed the land and hence, there is no illegality and irregularity in passing the impugned order.

11. In these circumstances, after perusing records, it is concluded that the land purchased by the petitioner is an estate land and Ryotwari, and the petitioner's vendors in title purchased the land through registered sale deed dated 21.06.1971. Thereafter, Gurunadha Rao made the said land into plots and sold an extent of 615 square yards in the said survey through registered sale deed for a valuable

consideration of Rs.24,600/- to the petitioner. Thereafter, the petitioner constructed a house after obtaining permission from the Gram Panchayat and the Gram Panchayat also collected property tax from the year 1996 onwards. Kommadi Village has been merged in Greater Visakhapatnam Municipal Corporation and the Corporation also issued notice demanding payment of Rs.142/- as property tax and the petitioner is in continuous possession and enjoyment of the property and the 3rd respondent issued notice dated 24.01.2005 under Rule 3 of the Act 9 of 1977 to S. Gurunadha Rao, calling explanation from him as to why the land of an extent of Acs.2.50 cents covered by Sy.No.159/3, Kommadi Village should not be resumed as it is assigned land and he had acquired the land in contravention of provisions of Act 9 of 1977. But, said Gurunadha Rao sold the land by making it into plots and therefore, he is not showing any interest in pursuing the matter and it appears that he has submitted any reply to the impugned notice. However, the notice in Form 1 issued by the 2nd respondent did not disclose who is the assignee, when the assignment was made and mentioned that there was a condition prohibiting alienation of the said land issued to the assignee. The notice itself was defective and the authorities failed to produce any record to show that the land is an assigned land and there was a condition prohibiting alienation. In view of the judgment in *Muppalaneni Srinivasa Rao v. Government of Andhra Pradesh and others*³ and *V. Subbayamma vs. Joint Collector, Additional District Magistrate, Guntur and others*⁴ it has been held that proceedings under the Act can be initiated only if the competent authority under the Act is also satisfied that there is assignment and the assignment is subject to condition of non-alienation and the transfer of land is in violation of

³ 2013 (2) ALD 343

⁴ 2013 (6) ALD 46

such condition. But, the notice in Form-1 which was issued to the petitioner's vendor does not mention who was the assignee, and when the assignment was made and whether or not the condition of prohibition of alienation existing in the assignment patta. Unless the above details are furnished to assignees with supporting material, the respondents have no jurisdiction to initiate proceedings under the Act. Neither the show cause notice nor the order of the 2nd respondent dated 16.05.2005 is as per the provisions of the Act 7 of 1979. It is therefore held that the burden lies on the competent authority under section 4 of the Act to prove that the land was transferred in violation of the conditions of assignment/allotment. In these circumstances, it could easily be concluded that the respondents, without any evidence much less legal evidence, came to the conclusion that the land is assigned land and initiated the impugned proceedings without jurisdiction and in gross violation of the procedure prescribed under the statute. Hence, the impugned order is liable to be set aside. Accordingly, the impugned order Rc.No.27/ 05/ A, dated 16.05.2005 of the 3rd respondent is set aside.

12. Accordingly, the Writ Petition is allowed and the impugned proceedings are set aside. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

December 27, 2017
KTL

M. GANGA RAO, J