

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 15601 of 2011

ORDER:

1) Aggrieved by the order passed by the fourth respondent in dismissing the revision filed by the petitioner vide G.O.Ms.No.616, Revenue (Assn.IV) Department, dated 02.06.2011, confirming the order passed by respondent Nos.2 to 4 dated 13.07.2009, 27.06.2008 and 28.01.2008 respectively, the present writ petition came to be filed.

2) One Mudu Venkat Reddy and China Thimma Reddy were said to be the owners of the land admeasuring Ac.6.74 cents in Sy.No.1089/ 2 situated at Tatiguntapally Revenue Village of Vayalpadu Taluq, Chittoor District. The said property came to be divided by the brothers, by way of un-registered partition deed on 30.12.1999 followed by registered partition deed dated 24.05.1929 vide document No.969 of 1929. Thereafter the property was sold by way of different sale deeds. Fourth petitioner herein claims to have purchased part of the property vide document Nos.452 of 2007, 508 of 2007 and G.P.A.No.1 of 134 of 2007 from petitioner Nos.1 to 3 herein. Since then he claims to be in possession of the property and also developed the land. While things stood thus, the fourth respondent issued a show-cause notice dated 24.12.2007 under Section 2 (b) (ii) of A.P. Assigned Lands P.O.T.Act, 2007 (for short "the Act 8 of 2007") treating the land as assigned land, thereby prohibiting transfer by way of alienation. Pursuant to the said notice the fourth petitioner herein submitted his explanation along with the sale deeds. According to him, the land is shown as private patta land in the revenue records and the same was purchased by him. Without considering the explanation given, the fourth respondent

passed an order dated 28.01.2008, resuming the land to the Government. The said order was confirmed by the first respondent by way of impugned order. Challenging the same, the present writ petition came to be filed.

3) The only ground urged by the learned counsel for the petitioners is that the land in dispute is a private land and as such the authorities could not have resumed the same by invoking the provisions of the Act 8 of 2007. He placed on record the sale deeds said to have been executed in his favour in support of his plea.

4) By an order dated 10.06.2011, this Court while admitting the writ petition, granted interim direction as prayed for.

5) A counter came to be filed by the Tahsildar disputing the averments made in the affidavit filed in support of the writ petition. According to him, merely because there are sale deeds in favour of the petitioners, that by itself does not make the said land a patta land. He placed on record the documentary evidence to show that as per A-Register of the Village, the subject land was shown as assigned land vide A.M.No.1204/ 1326 F. When once it is shown as assigned land, any alienation of the same is improper and illegal. It is stated that as per 10-1 Account, the names of Mulinti Narsi Reddy, Desireddy Yella Reddy and Desireddy Raja Reddy were entered as pattadars by effecting patta transfer. The patta was issued in 1326 F. It is pleaded that since the said land is classified as a D.K.T. land the sale transaction in the above schedule property is prohibited. It is also to be noted here that the Government has introduced Act 8 of 2007, bringing in amendment to Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 and it directed the revenue officials to verify all the assigned lands and if

there are any violations, to resume the land to the Government for public purpose or assign the same to some other landless poor persons under Section 2 (b) (ii) of the Act 8 of 2007. Since the petitioners are not landless poor persons and as they are businessman, who have ventured to lay plots in the said lands, the benefit cannot be extended to them. It is to be noted that except stating that it is settlement patta and producing the partition deed dated 30.12.1919, written by Village elders, no other documentary evidence is placed on record.

6) Learned counsel for the petitioners would submit that though all the forums have concurrently held that it is an assigned land, but no material has been placed before the Court to show that it is assigned land. On the other hand, the petitioners placed reliance on a registered partition deed executed and registered in the year 1929 to show that it is a patta land. Even assuming that it was an assigned land and as the assignment was made prior to 1954, the same is transferable in view of G.O.Ms.No.1142 dated 18.06.1954. Hence, urged that alienation of land made from 1941 to 2007 by way of six registered sale deeds, the genuinity of which are not doubted in the counter, confers right and title of the petitioners over the land.

7) A perusal of the record would show that the Revenue Divisional Officer, in his order has stated that the land in question is a Government land and Government is paramount owner of the land and the very purpose of assignment of Government land is for agricultural purpose. It is stated that the said land is now sought to be used for non agricultural purpose, which amounts to violation of conditions prescribed in DKT Rules and the Tahsildar was justified in initiating proceedings under the A.P. Assigned Land (Prohibition of Transfer) Act,

1977. Accordingly, the action of the Tahsildar was confirmed by the Revenue Divisional Officer. But it is to be noted here that the operative portion of the order nowhere says as to when the land was assigned and also in whose favour the assignment was made. Apart from that the Tahsildar initiated proceedings on the basis of entries made in 'A' register. The order itself indicates that the said register is silent as to who the assignees are. When the order which was supposed to have been passed basing on the original record, is silent as to who the original assignees are and as to when the assignment, if any, was made, the Revenue Divisional Officer erred in holding that there was a violation of condition in putting the land to use for which it has not been assigned.

8) On the other hand, the case of the petitioners is that their vendor's vendor's vendor have been in possession of the property since 1941 and number of transactions, by way of registered sale deeds, took place thereafter. The documents evidencing such transaction are placed on record.

9) Coming to the order of the Joint Collector dated 13.07.2009, it is to be seen that, he also called for report from the very same Tahsildar, who stated that the said land is classified as UAW as per 'A' register. The report not only states that the original assignment file was misplaced but also states that in 10(1) account, the land was registered as a patta land. But however, states that land is a Government DKT land. It is to be noted here that when the assignment file, relating to this land in dispute is missing from the office, it is very strange as to how the Tahsildar would have sent a report stating that the said land is UAW land, more so, when the 10(1) account indicates that it is a patta

land. Further, if it is a DKT patta, the same would be recorded in the A.M. Register, which is a permanent book. Further, the list communicated to the Sub-Registrar, Kalakuri, does not show the said land as a DKT land. The Chief Commissioner, Land Administration and the Commissioner of Appeals, confirmed the said findings, on the ground that as per the certificate of adangal, produced by the Tahsildar, there was no crop book for the Fasli 1326. It is to be noted here that all the orders are basing on the report of the Tahsildar. Even accepting the case of the respondents, the land was assigned long long back, it is very strange to say now that the entries do not indicate about the crop being raised in the said land, more so, when the file itself is not available. On the other hand, the registered sale deeds showing transactions from 1941 onwards indicate otherwise. Even assuming it to be an assigned land, cancellation of it after 33 years on the ground of violation of terms of patta ie. not raising the crop within the period prescribed cannot be accepted.

10) In *V.Santha Kumari and others v. The District Revenue Officer/Additional District Magistrate and others*¹ a Division Bench of this Court held as under:

“The Government though having power to resume the land, it has to be done within a reasonable time and the reasonable time should not exceed more than one year.”

11) Therefore, I am of the view that the orders came to be passed with out having any records, more so, in view of the findings given by all the authorities that the assignment files are missing from the office. Hence the orders under challenge are set aside.

¹ (2003) 2 ALT 361

12) Accordingly, the Writ Petition is allowed, giving liberty to the authorities to avail common law remedy to prove their title. *Status quo* as on today shall be maintained for a period of six (06) weeks, from the date of receipt of a copy of the order.

13) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

12.09.2017

gkv/ kvrm



