

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.21085 of 2007

ORDER :

The question which arises for consideration in this Writ Petition is whether the respondents were entitled to initiate proceedings under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (**for short, 'the Act'**) against the petitioner.

2. The petitioner herein claimed to have purchased the land admeasuring Acs.13.17 guntas in Survey No.176 in Azeez Nagar Village, Moinabad Mandal, Ranga Reddy District through registered sale deeds dt.24.04.1965, 02.06.1965 and 24.04.1965 from Syed Umar, Sakali Pentiah and Habib Abdul Khader. He contends that the Tahsildar, Hyderabad, West Taluq, through proceedings dt.16.12.1970 declared the sale deeds as valid under Section 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950.

3. The Mandal Revenue Officer, Moinabad (3rd respondent) issued show-cause notice dt.17.10.2001 to the 1st petitioner stating that the land in the occupation of petitioner is Government land and to show-cause why he should not be evicted therefrom since the said land was assigned land.

4. An explanation dt.28.11.2001 was given by the petitioner, enclosing the 50-B patta certificates used by the then Tahsildar,

Hyderabad, West Taluq in the year 1970 regularising the purchase of the above land.

5. Thereafter, the 3rd respondent passed order in proceedings No.B/1250/2001 dt.16.02.2002 stating that the land of extent Acs.220.07 guntas in Survey No.176 of Azeeznagar Village, Moinabad Mandal, Ranga Reddy District, was classified as *Gairan Sarkari*; that this is evidenced from the *Sethwar* and other land records, *pahanies*, etc; that 53 landless poor persons were cultivating this land unauthorisedly, and considering their longstanding *sivaijama* cultivation, the then Tahsildar, Hyderabad, West Taluq, granted Form-9G permission under Laoni Rules, 1950, pending regular assignment, enabling them to occupy the land in 1961; that by the time of issuance of such Form-9G permission under the Laoni Rules, 1950, the said rules themselves has been repealed and Revised Assignment Policy was introduced by the Government in G.O.Ms.No.1406 Revenue dt.25.07.1958, and so the said certificates themselves were null and void. He held that since the certificate holders sold away the lands between 1962-65 violating the conditions, and the petitioner purchased the same, the petitioner is liable to be evicted from the land. He also rejected 50-B certificates issued by the Tahsildar, Hyderabad, West Taluq in favour of petitioner on the ground that provisions of Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 do not apply to Government land.

6. Challenging this order, the petitioner preferred an appeal to the Special Grade Deputy Collector and Revenue Divisional Officer, Chevella Division, Ranga Reddy District (2nd respondent herein).

7. The 2nd respondent dismissed the said appeal on 24.06.2006 in Ref.No.D/599/06 recording that pending regular assignment, petitioners' predecessors were given Form-9G permission by the Tahsildar, Hyderabad, West Taluq, considering their longstanding *sivaijama* cultivation; that such grant was conditional without any power to alienate; that Form-9G permission was issued under the Laoni Rules, 1950, but the said Rules themselves were repealed by the time they were issued in 1961 by the Revised Assignment Policy introduced by the Government vide G.O.Ms.No.1406 Revenue dt.25.07.1958; and therefore, the land was liable to be resumed.

8. Questioning the same, the petitioner preferred a Revision under Section 4-B(3) of the Act to the Joint Collector, Ranga Reddy District (1st respondent herein). The Joint Collector dismissed the Revision on 18.08.2007 in Case No.E1/1981/2002.

9. The Joint Collector while noting that the original assignment file was not available, however relied on *Faisal Patti* for the year 1961-62 and stated that in that *Faisal Patti* it was recorded that the subject land was assigned in favour of 55 beneficiaries. He therefore held that there was an assignment in 1961 after G.O.Ms.No.1406 Revenue dt.25.07.1958 had come into operation; that there was a

condition in the said G.O. prohibiting alienation and since there was an alienation in the present case in favour of petitioner, the land cannot be allowed to be retained by petitioner and was liable to be resumed.

10. Challenging the same, the present Writ Petition is filed.

11. Heard Sri M. Rajamalla Reddy, counsel for petitioner, the learned Government Pleader for Assignment, for respondent nos.1 to 3, and Sri D. Ranganatha Kumar, counsel for 4th respondent.

12. The counsel for petitioner contended that when the very case of the respondent nos.2 and 3 was that there was only a permission to occupy the land given in 1961 pending regular assignment, and when there is no assignment file available, on the basis of some entry in *Faisal Patti* for the year 1961-62, the Joint Collector could not have held that there is an assignment of land in 1961-62; that in the absence of evidence of assignment of the land in favour of petitioners' vendors, there is no jurisdiction conferred on the respondent nos.1 to 3 to invoke the provisions of the Act; and all the orders passed by respondent nos.1 to 3 are without jurisdiction and null and void.

13. The counsel for petitioner relied on the following decisions of this Court in **Muppalaneni Srinivasa Rao S/o. Seshagiri Rao vs. The Government of Andhra Pradesh, Rep. by its Principal Secretary, Revenue (Asn. V) Department, Secretariat, Hyderabad**

and Others¹ and V. Subbayamma vs. Joint Collector, Additional District Magistrate and Two Others², wherein this Court had held that proceedings under the Act can be initiated only if the competent authority under the Act is able to satisfy that (i) there is an assignment, (ii) that such assignment is subject to a condition of non-alienation and (iii) that there is a transfer of land in violation of such condition. He contended that since there is no assignment file at all and there is no evidence of any assignment, the proceedings initiated by the 3rd respondent are null and void and without jurisdiction.

14. On the other hand, the learned Government Pleader for Assignment, appearing for respondent nos.1 to 3, sought to support the order passed by Joint Collector contending that under Clause XIV of the Revised Assignment Policy in G.O.Ms.No.1406 Revenue dt.25.07.1958, there is a power conferred on the Government to evict persons other than landless poor person from occupation of Government land. He also sought to contend that the Joint Collector had rightly held that there was an assignment in favour of petitioner's vendors.

15. Sri D. Ranganatha Kumar, counsel for 4th respondent, sought to support the action of respondent nos.1 to 3 and contended that the State Government alienated the subject land along with other lands on payment of market value vide G.O.Ms.No.1559 dt.19.12.2007 to the

¹ 2013 (2) ALD 343

² 2013 (6) ALD 46

Andhra Pradesh Housing Board, that the said Board had then alienated the same under registered sale deed dt.17.01.2008 to the 4th respondent, and that the said land along with the other land was in the possession of 4th respondent.

16. I have noted the contentions of both sides.

17. The point for consideration is “*whether the orders passed by respondent nos.1 to 3 under the provisions of the Act are valid or not*”?

18. Section 4 of the Act empowers the 3rd respondent to initiate proceedings for possession of assigned land. Assigned land is defined in Section 2 (1) as ‘*land assigned by the Government to landless poor persons under the Rules for the time being in force subject to the condition of non-alienation and in the case of lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceiling*’.

19. The procedure for initiating eviction of a person in occupation is provided in the Rules framed under the Act. The Rules contemplate issuance of a notice in Form No.1 to the original assignee and in Form No.2 to the transferee of the assigned land.

20. In the present case, notice was issued to the petitioner allegedly on the ground that he was a transferee.

21. Column No.5 of the Schedule to the Form No.2 notice requires details of the assignee to be given.

22. The copy of the said notice is not produced.

23. Be that as it may, the order passed by the 3rd respondent or 2nd respondent or 1st respondent do not indicate the date of the assignment or to whom the assignment was made.

24. In fact, both the 3rd respondent and 2nd respondent specifically stated that pending regular assignment 53 persons were accorded Form-G permission under Laoni Rules, 1950 to occupy the land in 1961, and that by 1961 the said Rules were already repealed vide G.O.Ms.No.1406 Revenue dt.25.07.1958. Therefore, according to respondent nos.3 and 2, there was never any assignment in favour of petitioner's vendors.

25. Curiously, the 1st respondent having noted that the original assignment file is not available relies on *Faisal Patti* for the year 1961-62 to come to a conclusion that there was an assignment in favour of 55 beneficiaries in 1961-62, and that the petitioner had purchased from such assignee. In the absence of the original assignment file and in the light of the findings of both the 2nd and 3rd respondent that there was only permission to occupy the land, pending regular assignment, the findings of 1st respondent that there

was in fact an assignment, cannot be accepted and it is accordingly set aside.

26. It is not open to the 1st respondent to conclude that there is a regular assignment without the original assignment file being produced when the dates of assignment or names of the assignee are not disclosed either in the notice issued to petitioner or in the orders passed by respondent nos.3 and 2, respectively.

27. In the two decisions cited by the counsel for petitioner, viz., **Muppalaneni Srinivasa Rao** (1 supra) and **V. Subbayamma** (2 supra), this Court has taken a view that proceedings under the Act can be initiated only if the competent authority under the Act is able to satisfy that there is an assignment, that such assignment is subject to condition of non-alienation, and that there is a transfer of land in violation of such condition.

28. These two decisions have been followed by this Court also in **M/s.Nut Star Foods Private Ltd. v. The Revenue Divisional Officer**³, wherein this Court has held that it goes to the root of jurisdiction of the Tahsildar or Mandal Revenue Officer and in the absence of proof of assignment, he has no jurisdiction to initiate proceedings under the Act.

29. As regards the contention of the learned Government Pleader that under G.O.Ms.No.1406 Revenue dt.25.07.1958 there is power to

³ Order dt.06.03.2017 in WP.No.24536 of 2006

evict occupiers not eligible for assignment under Clause XIV of the said G.O., but the said Rules do not provide any mechanism for eviction. So they have to initiate process for eviction in accordance with law, if they are of the opinion that the land in question is Government land in the occupation of petitioners.

30. In this view of the matter, the Writ Petition is allowed; and the order dt.16.02.2002 in proceedings No.B/1250/2001 of the 3rd respondent, the order dt.24.06.2006 in proceedings No.D/599/06 of the 2nd respondent, and the order dt.18.08.2007 in Case No.E1/1981/2002 of the 1st respondent are all declared to be without jurisdiction, null and void and are accordingly set aside.

31. As regards the 4th respondent, once the order passed by respondent nos.1 to 3 are set aside, the proceedings transferring the subject land to the Andhra Pradesh Housing Board as well as the consequential sale deed dt.17.01.2008 to the extent of the subject land in favour of 4th respondent (which occurred during the pendency of the Writ Petition) are hit by the doctrine of *lis pendens*, and they are also accordingly set aside.

32. Liberty is given to respondent nos.1 to 3 if they so desire to take action against the petitioners in accordance with the applicable law if they are so advised.

33. Accordingly, the Writ Petition is allowed as above. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-04-2017

Ndr/*

