

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.24536 of 2006

ORDER:

This Writ Petition is filed by petitioner assailing the proceedings dt.17-06-2006 in Rc.No.1007/2006/A of the 1st respondent (Revenue Divisional Officer, Visakhapatnam) confirming the order dt.10-02-2006 in Rc.No.27/2005/A of the 2nd respondent (Mandal Revenue Officer (Rural), Visakhapatnam).

2. The subject matter of this case is an extent of 1820 sq. yards forming part of Ac.2.45 cents in Sy.No.159/7 Kommadi village, Visakhapatnam Rural Mandal, Visakhapatnam District.

3. The petitioner is a company registered under the Companies Act, 1956. It purchased this extent from M/s.Parimala Cashew Processing and Allied Products ICS Limited under 4 registered sale deeds bearing Doc.No.640/99 dt.06-05-1999, Doc.No.643/99 dt.06-05-1999, Doc.No.650/99 dt.22-05-1999 and Doc.No.651/99 dt.22-05-1999.

4. M/s.Parimala Cashew Processing and Allied Products ICS Limited was started by one K.Seetharama Raju in the subject land after purchasing this land under sale deeds doc.No.500/91 dt.24-07-1991 and Doc.No.1657/92 dt.28-09-1992 from P.Ramachandra Raju and one Demullu.

5. Petitioner contends that this 1820 sq. yards forms part of Ac.2.45 cents in Sy.No.159/7 of Kommadi Village and that it originally belong to Rachamalla Chittamma, W/o.late Govinda Swamy and forms part of Vizianagaram Zamindari Estate; that Survey and Settlement operations were conducted from 1956 onwards; the land was recorded as Zamindari dry and patta No.200 was issued in her favour; and this is corroborated by the Adangal for fasli 1410, Settlement Fair Adangal, 10(1) Account and Ryot Passbook issued to her. It alleged that after her demise, her husband and sons sold it under registered sale deed bearing Doc.No.13647/1983 dt.28-11-1983 to P.Ramachandra Raju and Demullu. It also contends that the Classification Certificate issued on 28-06-1988 by the Mandal Revenue Officer shows that the land is not a poramboke or Banjar or D.Form patta land.

6. Petitioner contend that after the petitioner purchased the land on 06-05-1999, it constructed a factory for cashew processing by spending Rs.40 lacs.

7. On 14-10-2004, the Mandal Revenue Officer (Rural), Visakhapatnam issued a show cause notice dt.14-10-2004 under the provisions of A.P. Assigned lands (Prohibition of Transfer) At, 1977 (for short "the Act") asking the petitioner to show cause why it could not be summarily evicted from this land.

8. The petitioner then submitted an explanation dt.11-11-2004 contending that the land in question is a patta land and not assigned

land and so the provisions of the Act cannot be invoked. It pointed out that the sale transactions relating to the land took place even in 1983 and therefore sought for dropping of all further proceedings.

9. On 10-02-2006, by proceedings Rc.No.27/2005/A, the Mandal Revenue Officer (Revenue), Visakhapatnam (2nd respondent) resumed 1920-1 sq. yards of land from the petitioner though show cause notice had been issued on 14-10-2004 for resumption of only 1820 sq. yards.

10. In the said order, after recording the contention of petitioner that the land is private land, the 2nd respondent states that this contention is not correct since the land is classified as Assigned Waste Dry (Government land) and it had been assigned to Smt.Rachamalla Chittamma originally. He held that transfer of such assigned land is null and void under the provisions of the Act, that it is situated in the midst the developed area and in an Urban Agglomeration Mandal, which is adjacent to N.H.5, that petitioner changed the land use by constructing buildings and that the land is not fit for cultivation.

11. Assailing the same, the petitioners preferred an appeal under Section 4-A of the Act to the 1st respondent. The said appeal was numbered as Rc.No.1007/2006-A by the 1st respondent.

12. The said appeal was dismissed by 1st respondent on 17-06-2006 mentioning that the land measuring Ac.2.45 cents in Sy.No.159/7 was carved out from Sy.No.114 of Kommadi village, that it was assigned through D-Form patta to Smt.Rachamalla

Chittamma in 1961 as landless poor person; necessary changes were incorporated in the village Account No.10(1) under patta No.200 and the name of the assignee was also brought to Village Account No.3; that the land was assigned for agricultural purpose; the petitioner had produced the certificate dt.28-06-1988 issued by the then Mandal Revenue Officer certifying the land to be Ryotwari dry land; but on verification of record, the said certificate is found to be forged; that land use of the land could not be changed unauthorisedly since it had been assigned to a landless poor person for agricultural purpose and was alienated in violation of provisions of the Act.

13. Assailing the same, this Writ Petition is filed.

14. On 22-11-2006, the Writ Petition was admitted and an interim order was granted restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the land until further orders.

15. Counter-affidavit is filed by 2nd respondent admitting that the village Kommadi village was taken over under the provisions of the A.P. Estates (Abolition and Conversion into Ryotwari) Act, 1948 and stating that Settlement operations were conducted and Settlement Pattas were granted. However, it is reiterated that out of Ac.60.85 cents in Sy.No.114, which had been classified as poramboka, Ac.10.60 cents was carved out and given Sy.No.159 and was assigned in favour of 3 individuals. It is stated that Smt.Rachamalla Chittamma was given D-Form patta vide D.R.No.257/61 for Ac.2.45

cents. It is stated that the Government land would always be Government land even if it was assigned, and Government is at liberty to resume it for violation of conditions by the assignees. It is contended that there is violation of assignment conditions in the present case and action initiated under the provisions of the Act is valid. It is not disputed that the petitioner applied for copy of the patta issued in 1961 under the Right to Information Act, 2005 on 15-04-2006 and it is admitted that such copy was not furnished because of non-tracing of the connected file, since the office was shifted from Visakhapatnam Urban to Chinagadili village. It is stated that the petitioner should have challenged the order passed by the 1st respondent by way of Revision before the Joint Collector instead of filing the Writ Petition under Article 226 of the Constitution of India.

16. No material papers have been filed along with the counter-affidavit by the 2nd respondent.

17. Learned counsel for petitioner contended that the land of 1820 sq. yards purchased by the petitioner under sale deeds dt.22-05-1999 in Sy.No.159/7 of Kommadi village is private patta land; that in response to application under Right to Information Act, 2005, the 2nd respondent had furnished the true extract of Settlement fair Adangal in Sy.No.159 of Kommadi village, 10(1) Account, true extract of the said Survey Number as well as copy of adangal. According to him, the Settlement Fair adangal, which was prepared in 1956 after the Village was taken over under the A.P. Estates (Abolition and

Conversion into Ryotwari) Act, 1948 shows Sy.No.159/7 consisting of Ac.2.45 cents was granted patta to Smt.Rachamalla Chittamma vide patta No.200. According to him, if the claim of the 2nd respondent that the land was assigned to Smt.Rachamalla Chittamma in 1961 is correct, then her name would not have appeared in the Settlement Fair Adangal of the year 1956 and she could not have been shown as pattadar of the land. He also contended that if the land is Government land as claimed by 2nd respondent, it should have been noted as Government land but she was shown as the pattadar. According to him, pattadar passbooks were also issued in her favour and this falsifies the claim of the 2nd respondent that the land is a Government land. He further contended that neither the 2nd respondent nor the 1st respondent had referred to the contents of the assignment patta/D-form patta allegedly given to Smt.Rachamalla Chittamma or produced the same in order to establish that there is a condition prohibiting alienation therein, and therefore the 2nd respondent had no jurisdiction to initiate proceedings under the Act at all. He contended that the notice in Form-I issued by 2nd respondent did not disclose who the assignee was, when the assignment was made or mentioned that there was a condition prohibiting alienation in the assignment patta issued to the assignee. Therefore, the notice itself was defective. He contended that without adverting to these fundamental facts, which go to the root of the case, the order was passed by 1st respondent against the petitioner. He also contended that the order passed by 1st respondent is solely based on

the fact that certificate dt.28-06-1988 produced by petitioner was not proved, but the 1st respondent ought to have focused on the question whether the land was actually assigned or not, and whether there was condition prohibiting alienation in respect of such land. He relied upon the decisions of this Court in **Muppalaneni Srinivasa Rao Vs. Government of Andhra Pradesh and others¹** and **V.Subbayamma Vs. Joint Collector, Additional District Magistrate, Guntur and others²**.

18. Learned Government Pleader appearing for respondents sought to sustain the orders passed by both the 2nd and 1st respondents by contending that there was no assignments in 1961 without the conditions prohibiting alienation, that since the land is Government land and since it was held by both respondent Nos.2 and 1 to have been assigned to Smt.Rachamalla Chittamma in 1961, such concurrent findings of fact cannot have been interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

19. I have noted the contentions of both sides.

20. The point for consideration is:

Whether, in the facts and circumstances of the case, the orders passed by respondent Nos.2 and 1 are liable to be sustained?

21. The Act prohibits transfer or alienation of assigned lands and empowers the authorities of the Revenue Department to annul the

¹ 2013 (2) ALD 343

² 2013 (6) ALD 46

transfer in case it is found to be in contravention of the provisions of the Act. For the statute to apply, the land must be assigned by the Government to a landless poor person, there has to be a condition in assignment prohibiting the alienation of assigned land and lastly, the assigned land must have been transferred in favour of another person.

22. The proceedings under the Act are initiated by issuing a notice. Notice in Form-I is to be issued to the person who transferred the assigned land and notice in Form-II is to be issued to the transferee of the assigned land under Rule 3 of the Rules framed under the Act. These notices have to specify the details regarding the patta issued to the assignee and the date of such patta.

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.

24. In the present case, the notice in Form-I, which was issued to the petitioner, does not mention who the assignee was, when the assignment was made and whether or not condition prohibiting alienation exists in the assignment patta. Thus, the notice itself is vague and this constitutes violation of principles of natural justice.

Unless the above details are furnished to assignees with supporting material, the respondents have no jurisdiction to initiate proceedings under the Act.

25. In the order dt.10-02-2006 passed by the 2nd respondent, though it is mentioned that the land was assigned to Rachamalla Chittamma, when such assignment was made, and what were the conditions of assignment, are not mentioned. No effort is made to deal with the contentions of the petitioner in the explanation that the land is a private land, except stating that it is shown as assessed waste dry (Government land).

26. Though in the order passed by the 1st respondent it was mentioned that there was D-form patta issued to the Rachamalla Chittamma as landless poor person, no contents of the patta are referred to therein. In fact, the said patta has not seen the light of the day till date even in this Court since no material documents have been filed along with the counter-affidavit filed by respondents.

27. In **V.Subbayamma** (2 supra), this Court has held that unless the land is shown to be assigned land and the assignment is shown to contain a clause prohibiting alienation, the competent authority under the Act cannot exercise jurisdiction. It therefore held that the burden lies on the competent authority under Section 4 of the Act to prove that that the land was transferred in violation of the conditions of assignment/allotment.

28. In the present case, this burden has not been discharged by respondent Nos.2 and 1 on the basis of any material since both their orders were passed without production of D-form patta allegedly given to Rachamalla Chittamma.

29. That apart, the Office of the 2nd respondent had issued true copy of the Settlement Adangal under the Right to Information Act, 2005 to the petitioner. This indicates that for khata No.200 in respect of Ac.2.45 cents in Sy.No.159/7, Rachamalla Chittamma is pattedar. Had the land been assigned land, the Settlement Fair Adangal would show the Government as the owner of the land. 10(1) account in regard to patta No.20 also shows that Rachamalla Chittamma is pattedar for patta No.200 of land consisting of Ac.2.45 cents in Sy.No.159/7. These documents have not been disputed by respondents. No additional counter has been filed disputing the contention of petitioner that contents of the Settlement Fair Adangal issued to petitioner by the office of the 2nd respondent, is not correct.

30. Since the 2nd respondent is a Tribunal of limited jurisdiction, its jurisdiction is limited by the provisions of the 1977 Act and the 2nd respondent is required to *prima facie* record a correct conclusion on the preliminary or jurisdictional fact as to the land being 'assigned land' within the meaning of expression as defined in Section 2(1) of the 1977 Act. Neither the show cause notice dt.10-01-2004, nor the order of the 2nd respondent dt.10-02-2006 or order of 1st respondent dt.17-06-2006 approach anywhere near this minimul

forensic discipline required of a statutory Tribunal of limited jurisdiction.

31. In these circumstances, the only possible conclusion is that respondents, without a scrap of paper to show that the land is assigned to Rachamalla Chittamma, had initiated proceedings against petitioner and have passed the orders of resumption under the Act without jurisdiction and in gross violation of the procedure prescribed under the said statute.

32. Therefore, the Writ Petition is allowed, the order of the 2nd respondent in Rc.No.27/2005/A dt.10-02-2006 as well as order of the 1st respondent in Rc.No.1007/2006/A dt.17-06-2006 are both set aside and respondents are restrained from interfering with the possession and enjoyment by petitioner of the subject land. No costs.

33. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2017

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