

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.12327, 13029, 13042 & 13056 OF 2013

COMMON ORDER:

Heard Mr.P.Roy Reddy for petitioners and Mr.Korrapati Subba Rao, learned Government Pleader (Assignments) for respondents.

In these writ petitions, the point for consideration arises under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act').

The petitioners in these writ petitions challenge the following proceedings of 2nd respondent/RDO confirming the order of resumption of agricultural land passed by 3rd respondent/Tahsildar:

In W.P.No.12327 of 2013

Proceedings Rc.No.190/2013 dated 12.04.2013 in an extent of Acs.1-64 cents in Sy.No.792 of Kondamanjuluru Village, J.Pangulur Mandal, Prakasam District

In W.P.No.13029 of 2013

Proceedings Rc.No.189/2013 dated 12.04.2013 in an extent of Acs.7-55 cents in Sy.No.792 of Kondamanjuluru Village, J.Pangulur Mandal, Prakasam District

In W.P.No.13042 of 2013

Proceedings Rc.No.192/2013 dated 12.04.2013 in an extent of Acs.5-58 cents in Sy.No.791 of Kondamanjuluru Village, J.Pangulur Mandal, Prakasam District

In W.P.No.13056 of 2013

Proceedings Rc.No.191/2013 dated 12.04.2013 in an extent of Acs.7-55 cents in Sy.No.726 of Kondamanjuluru Village, J.Pangulur Mandal, Prakasam District

The counsel appearing for parties agree to refer to the averments or proceedings in W.P.No.12327 of 2013 as sufficient for disposing of these four writ petitions.

The petitioner claims to be owner and possessor of an extent of Ac.01.64 cents in Sy.No.792 of Kondamajuluru Village, J.Panguluru Mandal, Prakasam District. The petitioner through registered sale deed Nos.2141 and 2142 of 2004 dated 23.11.2004 purchased the above extent from Sarimella Mary Kamamma and others and Chandolu Nagaiah and others. The 3rd respondent accepting the change of ownership, it is alleged, issued pattadar passbook and title deed to petitioner. While the matter stood thus, the 3rd respondent issued notice Rc.B/381/12 dated 12.07.2012 under Section 4 of the Act for resuming the land on the ground that the transfer in favour of petitioner is in breach of Section 3 of the Act. The petitioner contested the notice by filing detailed explanation to the notice dated 12.07.2012.

Briefly stated, the allegation against petitioner is that the petitioner purchased assigned land contrary to prohibition of alienation prescribed under the Act. Therefore, the sale is void and assigned land resumed to Government. The explanation of petitioner is that the assignment of subject land was made in the year 1921; prescription is not attracted; and action under Section 4 of the Act is unavailable. Therefore, he prayed for dropping all proceedings pursuant to notice dated 12.07.2012. The 3rd respondent refers to the alleged assignment of subject matter of notice as 1921 and on the ground that the Act has

retrospective operation, cancelled the assignment and directed restoration of subject matter of notice in favour of Government. The petitioner filed appeal before the 2nd respondent and the appeal is taken on file as Rc.No.190/2013. The 2nd respondent, broadly stated, dismissed the appeal by holding that there is ambiguity in establishing title of land by writ petitioner and that the local scheduled caste people strongly contended to handover subject matter of notice in their favour.

The 2nd respondent, having regard to the grounds urged by the petitioner and the citations relied upon to contend that initiation of action under the Act is without jurisdiction, has called for opinion of the Government Pleader, Ongole. The undisputed circumstance by the 2nd respondent is that the assignment of subject matter of the writ petition was made in the year 1921. Even before this Court, the respondents could not place material to establish that the assignment was made after 18.06.1954 to contend that the assignment of subject matter is with the condition of non-alienability.

Mr.P.Roy Reddy, on the very conclusions recorded by 2nd respondent, contends that the resumption order passed under the Act is illegal, and without jurisdiction. According to him, the subject survey number does not satisfy the definition of assigned land under Section 2(1) of the Act, which reads thus:

"Assigned land" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor

persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly"

According to him, unless the assignment of subject land was made with the condition of non-alienability, the prohibition contemplated under Section 3 of the Act is not attracted or the consequences under Section 4 of the Act. In support of his contentions, he places strong reliance upon the admitted circumstances referred in the orders of 2nd and 3rd respondents. He contends that firstly the respondents failed to discharge the burden in showing that the subject matter of notice is assigned land and secondly, the assignment was with the condition of non-alienability. In the absence of such proof, the respondents do not get jurisdiction to pass any order under the Act. He places reliance upon the decisions reported in:

1. P.V.Rajendra Kumar and another v. Government of Andhra Pradesh and others¹
2. Syed Munaf and others v., Revenue Divisional Officer, Kadapa and others²; and
3. Madiga Papanna v. State of A.P³

Learned Government Pleader contends that the Act has retrospective operation. Therefore, even if the sale transactions have taken place prior to coming into force of the Act, still the respondents have jurisdiction to issue notice, cancel assignment and resume possession of assigned land. He contends that 2nd and

¹ 2011(3) ALD 571

² 2011 (1) ALD 137

³ 2011(2) ALT 2

3rd respondents have jurisdiction to enquire into alienations made by assignees and pass appropriate orders.

By way of reply, Mr. Roy Reddy contends that the petitioner is not challenging the orders impugned in the writ petitions on the ground of prospective or retrospective application of the Act, but is challenging on the ground that the respondents failed to discharge the burden cast on them to prove that even assuming that the subject matter is assigned land, still it should be shown that the assignment was made with the condition of non-alienability.

The orders of 2nd and 3rd respondents refer to assignment of subject matter as made in the year 1921. It cannot be assumed either by this Court or by respondents 2 and 3 that the assignment made in the year 1921 satisfied the definition of 'assigned land' under the Act. Section 2(1), as already considered by this Court in a catena of decisions, defines what assigned land is and under what circumstances Sections 3 and 4 of the Act are attracted. As the principle of law is well settled and reiterated in many a case, I do not want to burden this order with duplication of the very same principles, but conclude that the orders of 2nd and 3rd respondents are illegal and without jurisdiction. It is held that respondents failed to demonstrate that the subject matter of the notice or orders under challenge deals with assigned land with the condition of non-alienability and petitioners purchased such assigned land.

For the above reasons, the writ petitions are ordered as follows:

“The proceedings Rc.No.190/2013 dated 12.04.2013 of RDO/2nd respondent in W.P.No.12327 of 2013, proceedings Rc.No.189/2013 dated 12.04.2013 of RDO/2nd respondent in W.P.No.13029 of 2013, proceedings Rc.No.192/2013 dated 12.04.2013 of RDO/2nd respondent in W.P.No.13042 of 2013 and proceedings Rc.No.191/2013 dated 12.04.2013 of RDO/2nd respondent in W.P.No.13056 of 2013 are set aside. There shall be no order as to costs”.

Consequently, pending miscellaneous petitions, if any, stand closed.

22nd June, 2017

Lrkm



S.V.BHATT, J