

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

WRIT PETITION No.7393 of 2013

ORDER:

The petitioner has filed this Writ Petition seeking a Writ of Mandamus to direct the 4th respondent (The Tahsildar, Madanapalli Mandal, Madanapalli, Chittoor District) to mutate his name in the revenue records in respect of agricultural land admeasuring Ac.2.03 cents in Sy.No.736 of Kothavaripalle Village, Madanapalli Mandal, Chittoor District under the A.P. Rights in Land and Pattadar Passbooks Act, 1971.

PETITIONER'S CONTENTIONS

2. Petitioner purchased the said land under registered sale deed dt.23-05-2011 from the legal heirs of the original pattedar one Nagadu. The said Nagadu had acquired the land through assignment vide patta No.488 bearing proceedings AM 332 dt.23-01-1926.
3. Copy of his sale deed dt.23-05-2011 and a copy of the Records of Holdings issued by the Sub-Registrar's Office Madanapalli are filed by petitioner in respect of the said contentions.
4. Petitioner alleged that prior to the execution of the sale deed in favour of petitioner, petitioner's father was in possession of the said land for 32 years and contended the same is also recorded in the sale deed executed in favour of petitioner.

5. Petitioner made a representation on 18-06-2011 to the 4th respondent to mutate his name in the revenue records in respect of the subject land. He also made an application on 06-09-2011 to the 4th respondent for grant of No Objection Certificate since the patta of his processor Nagadu was a patta issued in 1926 prior to G.O.Ms.No.1142 dt.18-06-1954 and A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short “the Act”).

6. He again made a request for mutation on 22-08-2012 to the 4th respondent and to issue pattadar pass book and title deed.

7. However, it appears that one S.Chandra Sekhar gave a representation to the District Collector, Chittoor (2nd respondent) not to issue pattadar pass book and title deed for the above land.

8. Though copy of the said representation of S.Chandra Sekhar is not filed, the District Collector addressed proceedings dt.05-06-2011 to the 4th respondent to enquire into the matter and take necessary action. Even thereafter nothing happened.

9. Having waited for some time, the petitioner filed the present Writ Petition challenging the inaction of 4th respondent in mutating his name in the revue records in respect of the said land.

THE STAND OF THE RESPONDENTS

10. Counter-affidavit is filed by 4th respondent stating that since petitioner himself claimed to have purchased the land originally belonging to an assignee Nagadu, the land is an ‘assigned’ land and

transactions in regard thereto attract the provisions of the Act, that he could not have purchased it and his request for mutation therefore cannot be considered. It is further stated that the 2nd respondent vide proceedings dt.24-07-2012 had directed that no No Objection Certificate should be issued by 4th respondent and others until the matter is examined fully and a decision is taken in this regard finally. It is stated that petitioner had several lands in the same village and he is a wealthy person and therefore his request for mutation cannot be acceded to.

THE CONSIDERATION BY THE COURT

11. It is not in dispute that for provisions of the Act to get attracted, there must be an assignment in favour of a person with a condition prohibiting alienation and that there must be a transfer in violation of the said prohibition.

12. On 03-04-2013, after perusing the counter-affidavit, this Court (Justice Ramesh Ranganathan) passed the following order:

“In the counter-affidavit, the respondents would admit that the assignment relates to the year 1926.

Despite several judicial pronouncements of this Court that assignment of land, in the Andhra and Rayalaseema Areas prior to 1954, did not contain a non-alienation clause, and such assigned lands could therefore be sold, it is surprising to note that, in each and every case, it is only on a direction from this Court that action is being taken to record the name of the purchaser, of such assigned lands, in the revenue records. The law declared by this Court, in its judicial pronouncements, is binding on the Statement Government also. It is a matter of

concern that, in each and every case, a person who has purchased lands from an assignee, who was assigned land before the year 1954, should be forced to approach the Court seeking relief when the law declared by this Court is clear that there is no prohibition for such alienation unless the assignment deed specifically contains a non-alienation clause.

While I was initially inclined to direct the appearance of the Principal Secretary to ascertain why his subordinates were not taking action for recording the purchaser's name in the revenue records despite the law declared by this Court, learned Government Pleader for Revenue (Andhra and Rayalaseema Areas) would submit that the matter would be examined, and, if need be, a circular would be issued by the Government itself informing the revenue officials of the legal position in this regard.....”

13. Subsequently, when the matter appeared before me on 17-04-2017, I directed the learned Government Pleader for Revenue to produce patta No.488 issued vide proceedings T.K.No.332 dt.23-01-1926 to Nagadu in respect of the subject land and adjourned the matter to 25-04-2017.

14. On 25-04-2017, at the request of the learned Government Pleader for Revenue, the matter was again adjourned to 27-04-2017 and it was made clear that if the patta is not produced, the matter will be decided *ex parte* and adverse inference will be drawn.

15. On 27-04-2017, the patta copy of Nagadu was not produced but a document called ‘A’ Memorandum of the said village described as ‘application/application statement for land for which cist is paid’ is produced by the learned Government Pleader for Revenue.

16. The said document relates to Sy.No.748 of extent Ac.5.11 cents and refers to the application by one Maala Gabriel, r/o.Gudisevari Malapalle in Kothavaripalle village. It bears the date of 28-09-1925 in column No.2, in Column No.15 date 22-10-1925. Thus it does not relate to the subject land at all.

17. Having pleaded specifically in the counter-affidavit that patta was granted to Nagadu vide patta No.488 in T.K.No.332 dt.23-01-1926, it was incumbent on the part of respondents to produce the said patta to establish that there is a condition prohibiting alienation in the said patta. Why the patta granted to Nagadu is not being produced is not explained by the respondents. Therefore adverse inference is drawn against the respondents that if they produced it, it would not support their case. It also indicates that respondents have deliberately withheld the same with *mala fide* intention to grab the land of petitioner.

18. No doubt in Column Nos.17 to 20 of the above document produced by the Govt. pleader relating to Mala Gabriel, there is a reference to a patta granted to Nagadu subject to conditions. What were the conditions subject to which the land was assigned to Nagadu are not mentioned therein. Unless the copy of the patta granted to Nagadu is produced, it cannot be presumed that there is any condition prohibiting alienation therein. Thus there is no evidence that there was any condition therein prohibiting alienation of the assigned land.

19. There is ample authority for the proposition that prior to introduction of G.O.Ms.No.1142 Revenue Dept dt.18.6.1954, there was no condition imposed prohibiting alienation when land was assigned to landless poor.

20. In **A.P. State Electricity Board Employees union v. The Joint Collector, Chittoor**¹, this court considered the definition of the term 'assigned land' in Sec.2 (1) of the Act and held:

“A plain reading of the above definition shows that the land, which was assigned by the Government subject to the condition of non-alienation can only be treated as an assigned land for the purpose of Act 9 of 1977. As a natural corollary, the prohibition of transfer as contained under Section 3 of Act 9 of 1977 is attracted only in cases where the land is assigned subject to the condition of non-alienation. In the case on hand, the specific case of the petitioner is that the assignment in favour of K.Obulappa in the year 1933 was not subject to the condition of non-alienation. To substantiate the said plea, the learned counsel for the petitioner has relied upon the instructions issued by the Government of Andhra Pradesh in G.O.No.1142, Revenue Department, dated 18.06.1954, under which, the terms and conditions of assignment were promulgated by the State Government for the first time.

Clause 5 of G.O.No.1142, dated 18.06.1954, is as under:

The assignment of lands shall be subject to the following conditions: “1) Lands assigned shall be heritable but not alienable.”

It is submitted by the learned counsel for the petitioner that since the assignment in favour of K.Obulappa was made much prior to G.O.No.1142, dated 18.6.1954, the said assignment was not subject to the condition of non-alienation.

¹ Order dt.14.9.2007 in W.P.19258 OF 1998

I find force in the submission of the learned counsel for the petitioner, since, admittedly, the condition that the land assigned shall not be alienable was not in force in the year 1933 when the assignment was made in favour of K.Obulappa.

Nothing has been placed before this Court to show that the Order promulgated in G.O.Ms.No.1142 dated 18.4.1954 has retrospective application, muchless any material is produced to show that the 'D Form Patta' granted in favour of K. Obulappa contained such a condition. As a matter of fact, even the impugned order dated 12.6.1998 did not reflect that the second respondent had taken any steps to verify as to whether the assignment granted to K.Obulappa in the year 1933 contained any such condition prohibiting alienation.

Hence, the impugned order of cancellation of assignment is vitiated by nonapplication of mind to the relevant aspects and liable to be set aside on that ground alone.”(emphasis supplied)

21. In **P.V.Rajendra Kumar v. Govt. of Andhra Pradesh**², it was held :

“The provisions of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977(for short, "the Act") prohibit the transfer of assigned lands. The term 'assigned land' is defined by Section [2\(1\)](#) of the Act to the effect that the 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.

In order to attract the bar of registration, the land must be an assigned land within the above mentioned definition. Unless the patta under which the assignment is made contains a condition of non-alienability, such land cannot be treated as assigned land within the provisions of the Act.

² (2011) 3 ALD 571 = MANU/AP/0717/2010

It is not the pleaded case of the Respondents that the assignment made in favour of Neeruganti Yerranna prior to 1942 contained any condition of non-alienation.

The fact that several registered transactions were allowed to take place raises a presumption in favour of absence of such non-alienability.

For the first time, the Government by G.O. Ms. No. 1142, dated 18-6-1954, in respect of Andhra Area, introduced the condition of non-alienability of assigned lands and the assignments made there after invariably contained such a condition.

Inasmuch as the land was admittedly assigned prior to the year 1942 and in the absence of any record to show that such assignment contained the condition of non-alienability, it is not permissible for the Respondents to presume the existence of such a condition and refuse registration of the land.”(emphasis supplied)

22. In **K.M. Kamallula Basha and others Vs. District Collector, Chittoor District, Chittoor and others**³ also it has been held that conditions prohibiting alienation were incorporated by the State Government for the first time vide G.O.Ms.No.1142 dt.18-06-1954 and that such a condition imposed under this G.O. cannot operate in respect of assignments made long prior thereto.

23. In **G.Satyanarayana v. Govt. of A.P**⁴, it was reiterated:.

*“The ratio that could be culled out from the slew of authorities of this Court is that assignments made prior to issue of **G.O.Ms.1142**, dt. 18-6-1954 in Andhra Area and that were made prior to issue of G.O.Ms. No. 1406, dt. 25-7-1958 in Telangana Area, did not contain prohibition on alienation that the assignees are entitled to exercise all the rights including transfer of lands; that the initial burden lies on the Government and its functionaries to show*

³ 2009(3) ALD 385

⁴ (2014) 4 ALD 358

that the assignments contain a condition against alienation of the land and that unless the revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated.”

24. In **Boya Ramappa v. Joint Collector and Ors**⁵, also it was reiterated that as per **G.O. Ms. No. 1142**, dated 18.6.1954, non-alienation of assigned lands was introduced only in 1954; by virtue of the said G.O., the Government has introduced the condition of non-alienation of assigned lands; and when once the assignment was made prior to that date initiation of proceedings under the Act of 1977 is without jurisdiction, as the provisions of the Act have no application in respect of lands assigned prior to 1954.

25. From the above decisions, it is clear that before 1954 there was no condition prohibiting alienation of assigned lands at all.

26. So there was no condition prohibiting transfer in the assignment granted to Nagadu and so petitioner could validly purchase it from the legal heirs of Nagadu.

27. So I am of the view that respondents cannot take the plea that purchase of land by petitioner is contrary to the provisions of the Act, is void and therefore they are not obliged to mutate his name and issue him pattadar pass book and title deed.

28. Therefore, the inaction of 4th respondent in mutating the name of petitioner and issue pattadar pass book and title deed to the

⁵ (2017)2 ALD 214

petitioner is clearly arbitrary, illegal, *mala fide* and violative of Articles 14 and 300-A of the Constitution of India and the A.P. Rights in Land and Pattadar Passbooks Act, 1971.

29. Therefore the Writ Petition is allowed and a Writ of Mandamus is issued to the 4th respondent to mutate the name of petitioner in revenue records in respect of Ac.2.03 cents in Sy.No.736 of Kothavaripalle village, Madanapalli Mandal, Chittoor District within six (06) weeks from the date of receipt of a copy of this order. The 4th respondent shall also pay costs of Rs.3,000/- (Rupees Three Thousand only) to the petitioner.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2017
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