

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 23884 of 2004

ORDER:

1) The present writ petition came to be filed with the following prayer:

“issue a writ, order or direction, one particularly in the nature of Certiorari to call for the records pertaining to the orders passed by respondent No.2 in D.Dis.No.6505/ 95/ E3, dated 11.09.2004 and to set aside the orders of respondent No.2 dismissing the revision and confirming the orders of respondent No.3 in Rc.No.376/ 94 dated 31.03.1995 and the proceedings of respondent No.4 in D.Dis.No.208/ 93A dated 24.12.1993 as arbitrary, illegal and against the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (for short “the Act”) and principles of natural justice; and direct the respondent to treat the lands as Jeroyati lands of the petitioner.”

2) The averments in the affidavit filed in support of the writ petition would show that respondent No.1 assigned Ac.4.72 cents in Sy.No.355/ 2, Ac.1.13 cents in Sy.No.359/ 1 and Ac.3.05 cents in Sy.No.353.2 of Kunchangi Village, Anakapalli Mandal, Visakhapatnam District to Pentareddy Laxmanna, S/o. Pothuraju and Polamarasetty Suryanarayana, as they are landless poor, prior to commencement of the Act. The assignees sold away the said lands to Smt.N.Butchamma under a Registered Sale Deed dated 04.09.1973, for a valuable consideration, who inturn alienated the same in favour of Maddala Appalaratnam and Smt. Patnam, under

a registered sale deed dated 30.10.1980. They inturn sold the same to Konathala Srinivasa Rao vide registered sale deed dated 03.08.1989. The petitioner and one Chetan Kare purchased the said property from Konathala Srinivasa Rao vide document No.731 of 1992, dated 07.04.1992 for a valuable consideration of Rs.1,33,500/- and since then they are in physical possession and enjoyment of the said property. Thereafter, they raised a coconut garden in the said land by digging bore wells and the respondent No.3 has been collecting land revenue from the petitioner. It is also stated that in the adangals, the name of Maddela Appalaratnam was shown as pattadar. On 19.06.1993, the respondent No.4, issued a notice in Form-I under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 1977 (for short "the Rules") stating that the petitioner is in possession of assigned lands. The petitioner submitted his explanation by producing the sale deeds, but the respondent No.4 ordered resumption of the land to the government vide proceedings Rc.No.208/ 93 dated 24.12.1993. Challenging the same, the petitioner filed an appeal before respondent No.3. Pending appeal, when respondent No.4 tried to remove the coconut garden, the petitioner filed W.P.No.3354 of 1994. By an order dated 09.03.1994, this Court disposed of the writ petition directing respondent No.3 to permit the petitioner to enter into the subject land. On 31.03.1995 respondent No.3 dismissed the appeal confirming the order passed by respondent No.4. Aggrieved by the same, the petitioner filed a revision before

respondent No.2. As respondent No.2 did not grant any stay, the petitioner filed W.P.No.22449 of 2002 before this Hon'ble Court. By an order dated 26.11.2002, this Court disposed of the said writ petition directing respondent No.2 to dispose of the revision within two months and also ordered status quo. Thereafter, respondent No.2 dismissed the revision vide proceedings D.Dis.No.6505/ 95/ E3 dated 11.09.2004. Challenging the same, the present writ petition came to be filed.

3) A counter came to be filed by the respondents denying the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that the assignees sold away the assigned land contrary to the provisions of the Act. Since the assignees violated the conditions of patta, the land was resumed to Government, as per the provisions of the Act, by following due process of law. It is also stated that the provisions of Act are retrospective in nature and assigned land continues to be non-alienable even if several transactions took place. While denying the plea of the petitioner with regard to possession, it is stated that after resumption, the land was handed over to Assistant Director, Horticulture in the month of April, 1994 and since then the land is in possession of Horticulture Department. Auction is being conducted by the said Department from the years 1995-96 till 2006-2007, for the produce raised and a sum of Rs.1,69,400/- was deposited through D.D.'s in the account of Secretary, Horticulture Department.

4) Learned counsel for the petitioner mainly submits that the notice in form-I issued under Rule 3 of the Rules is totally contrary to law and the judgments of this Court. According to him, since the notice is silent as to the date of assignment, the allegation that the assignee has violated the terms and conditions of the assignment by alienating the same, is illegal and improper. Apart from that, it is contended that he has purchased the said land from one Konathala Srinivasa Rao on 07.04.1992. It is his case that in the year 1973, one Buchamma purchased the said property from the original assignees, and sold it to Maddala Appalaratnam on 30.10.1980. Thereafter, Maddala Appalaratnam sold it to Konathala Srinivasa Rao and subsequently the petitioner purchased the same from said Srinivasa Rao on 07.04.1992. According to him, there is any amount of doubt whether it is assigned land or a patta land. He further submits that even if it is presumed to be an assigned land, the same was assigned prior to 1954 as such there cannot be any restrictions on sale. In support of his plea, he took me through the sale deeds to show that it was a patta land.

5) On the other hand, the Government Pleader for Revenue opposed the same contending that the plea of the petitioner that notice is bereft of details or that it was not in accordance with law was never raised in any of his pleading before the appellate or revisional authority nor even before this Court. The petitioner never pleaded that the land was assigned to him prior to 1954. He further refers to a copy of the sale deed dated 04.09.1973

wherein it was mentioned that the lands were assigned lands and the transferees are in possession and enjoyment of the said lands.

6) It may not be necessary to go into all those aspects except as to whether the issuance of Form-I notice was in accordance with law or not. It is true that the plea with regard to issuance of Form-I notice and assignment being made prior to 1954, were not taken in the writ petition. But it is being a legal one which goes to the root of the matter, this Court is of the view that the same can be entertained, when there is no dispute with regard to manner and contents of Form-I notice issued to the petitioner.

7) In *Sudalagunta Sugars Limited v. Joint Collector, Chittoor and another*¹ a learned Single Judge of this Court while dealing with the similar issue observed as under:

“23. Plain and literal construction of Rule 3 leads to the following results:

- i) The District Collector or authorized officer shall issue notices in Form-I and Form-II before taking action under clauses (a) and (b) of sub section (1) of Section 4 of the Act to persons who have transferred and also to the persons who have acquired any assigned land in contravention of sub section (2) of Section 3 of the Act.
- ii) The notices are directed to be served by delivering a copy on transferor and transferee or on some adult person etc. as stated therein.
- iii) The District Collector or authorized officer is under obligation to consider the representation,

¹ (2017) 1 ALT 499

if any, with reference to the said notice and pass such order as he thinks fit and proper.

- iv) iv) The copy of order is also directed to be communicated to the Village Officer.
(emphasis added)

24. The Act as evident from statement of objects and reasons is enacted to prohibit alienation of assigned land, and restoration of assigned land to original assignee or in accordance with Section 4 of the Act. The special enactment as held in *Dasari Narayana Rao and another v. The Deputy Collector and the Mandal Revenue Officer, Serilingampally*² is concerned with the transfer of assigned land and restoration to assignee or in accordance with Section 4. The proceedings under the Act are treated as civil proceedings. The District Collector or the competent authority under the Act enjoys authority or jurisdiction in respect of transfer of assigned land. Therefore, the fundamental fact clothing the District Collector or the authorized officer to exercise the jurisdiction under the Act is whether the subject matter of the notice in Forms I and II is an assigned land or not. Secondly the attraction of jurisdiction is further conditioned by the clause of non-alienability as one of the conditions of assignment. In other words, even though the assignment was by the Government of Government land, if the assignment is not with the condition of non-alienability or the assignment for market value or the assignment of agricultural land was made prior to 1954, assignment made under special and privileged categories namely, freedom fighters, armed personnel, societies etc. the jurisdiction against transfer of such land is not brought under the Act. Section 3 succinctly renders transfer of assigned land has never been transferred, prohibits assignee from transferring assigned land and also the transferee from acquiring

² (2010) 4 ALT 655

assigned land in one or the other form as stated under Section 3(2) of the Act. Sub-section (3) of Section 3 goes a step further and renders any transfer effected notwithstanding the rigor of sub sections 1 and 2 of Section 3 null and void. Section 4 deals with consequences of breach of provisions of Section 3. It is to give effect to the consequences contemplated under Section 4, Rule 3 provides for procedure for taking care of consequences referred under Section 4 of the Act. Rule 3 as already summarized has made it obligatory to issue a notice before taking any action under clauses (a) and (b) of sub section 1 of Section 4 of the Act. Rule 3 further directs the District Collector or the authorized officer to issue notices in Form-I and Form- II to the persons who have transferred and also to the persons who have acquired assigned land in contravention of provisions of sub section 1 of Section 3 of the Act. The Government in its wisdom and by keeping in view the composite scheme of Sections 3 and 4 of the Act, has used the plural expression for the word Notices in Form-I and Form-II to be served on both the transferor and transferee of assigned land. The plural word Notices is again repeated while dealing with the manner of service of notice on the transferor/transferee or the adult member as the case may be. Section 4 is intended to give effect to the consequences provided by Section 3 of the Act for transfer of assigned land. Prohibition under Section 3 of the Act or the consequences of Section 4 is attracted, only if transfer of assigned land with condition of non-alienability has taken place and not to all transfers. Therefore, the issue of notices in Form-I and Form-II both to transferor and transferee of assigned land cannot but be natural, legal to achieve the object sought to be achieved by Sections 3 and 4 of the Act. The transferor or transferee as already noted, if the circumstances available can take one or the other defences namely that the assignment is prior to

1954; assignment made in favour of special class of persons with a restriction for specific period and transfer is effected beyond the restricted period etc.

26. Unless and until this jurisdictional fact is decided with reference to assignment, order of assignment, conditions on which assignment made, the mere issuance of notice in Form-II to transferee will not serve the purpose of hearing or considering the objections. The forms under the Rules cannot guide literal meaning of Rule 3 of the Rules. On the other hand, if a restricted meaning as sought to be canvassed by the learned Government Pleader is accepted, then transferee is heard only on the eviction but not on the valuable defences available to him in the enquiry conducted by the District Collector or authorized officer. After considering the totality of scheme of Act, Rules and the content of notices in Form-I and Form- II, this Court is of the view that whenever action under Section 4 of the Act is initiated by the District Collector or authorized officer, the authority is required to issue notices in Form-I and Form-II to the assignee and the transferee from the assignee.

27. The authorities are required to have practical and realistic approach in passing order under Section 4 of the Act. With the transfer of assigned land the assignee may or may not evince interest in the enquiry conducted by the District Collector or authorized officer. Further being the person interested in the property covered by notice issued in Form-I or Form-II the transferee, if heard, before considering the consequences stipulated under Section 4 of the Act, the same satisfies scope and purpose of special statute enacted for prohibiting transfer of assigned lands and restoring the assigned land in accordance with Section 4.”

8) Challenging the same, Writ Appeal No.372 of 2017 came to be filed before a Division Bench of this Court. By its order dated 07.08.2017 passed in WAMP No.801 of 2017 in W.A.No.372 of 2017, the Division Bench held as under:

“On the first issue the learned Single Judge was, *prima facie*, justified in holding that the impugned notice was bereft of the required particulars such as the date and the document through which the subject lands were assigned and whether such assignment stipulated a condition for non-alienation. The other question, whether the transferee is entitled to be issued a notice both in Forms I and II, necessitates examination in this appeal.

It is made clear that pendency of this appeal shall not preclude the appellants herein from taking action in accordance with the directions issued by the Learned Single Judge in the order under appeal, without prejudice to their contention that the declaration of law by the Learned Single Judge, that the transferee is entitled to be served copies of notices both in Forms I and II, suffers from a patent error.”

9) From the judgments referred to above, it is clear that the authorities while issuing the said notice should have indicated the date of assignment and also as to how it has been violated, so as to enable the transferee to put forward his defence in the enquiry to be conducted by the District Collector or the authorized officer.

10) In view of the judgments referred to above and as the notice issued under Form-I is silent with regard to date of assignment and particulars of assignees and transferees, the orders under

challenge are set aside and the matter is remitted to respondent No.4, to proceed in accordance with law. Consequently, in the enquiry to be taken up under Section 4 of the Act, the District Collector or authorized officer shall issue notices in Form-I and Form-II to the transferor and transferee in accordance with law laid down, consider their objections and pass appropriate orders, in accordance with law as early as possible.

11) With the above directions, the writ petition is disposed of.
No order as to costs.

12) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

24.08.2017
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JUSTICE C. PRAVEEN KUMAR