

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.C.No.1459 of 2016

and

WVMP.No.401 of 2017 in WPMP.No.16230 of 2016 in WP.No.12960 of 2016;
WVMP.No.3359 of 2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016
&
WP.No.12960 of 2016

COMMON ORDER :

WP.No.12960 of 2016 :

The petitioners have filed this Writ Petition to call for the records relating to the proceedings of the Tahsildar, Vijayawada Urban Mandal, Krishna District, Andhra Pradesh in Rc.B/509/2015 dt.25.01.2016; and to quash the same by issuance of *Writ of Certiorari*.

2. The 1st respondent in the Writ petition is the State of Andhra Pradesh; the 2nd respondent is the District Collector, Krishna district; the 3rd respondent is the Sub-Collector, Vijayawada; the 4th respondent is the Tahsildar, Vijayawada Urban; and the 5th respondent is the Commissioner, Vijayawada Municipal Corporation.

THE CASE OF PETITIONERS

3. One Syed Hussain Khaja Mohiddin, who is the father of respondent nos.2, 4 and 5 and husband of 3rd respondent, purchased an extent of Acs.3.06 cents under a registered sale deed dt.17.07.1969 from one Saladi Kanaka Rao. The 1st petitioner is his elder brother.

4. The said extent comprises, according to the petitioners, Acs.0.05 cents in R.S.No.105/1; Ac.0.24 cents in R.S.No.105/2; Acs.1.16 cents in R.S.No.106/1; Acs.0.28 cents in R.S.No.106/2, Acs.0.27 cents in R.S.No.106/2B of Bhavanipuram Village, Vijayawada, apart from Acs.0.87 cents in the New Town Survey (NTS) No.10; Acs.0.06 cents in NTS No.11P; Acs.0.13 cents in NTS No.12P; and Acs.0.57 cents in NTS No.12P.

5. Petitioners contend that this land is patta land and that the vendor, Sri Saladi Kanaka Rao, had acquired the property through a partition deed dt.14.12.1951 to which the said vendor, one Gattu Appala Swamy and one Saladi Naraiah were parties.

6. Petitioners contend that 1st petitioner purchased Ac.0.5 cents in R.S.No.105/1; Ac.0.24 cents in R.S.No.105/2 and Ac.0.71 cents in R.S.No.106/1 from one Syed Hussain Khaja Mohiddin, who is his elder brother. The petitioners have stated in detail how the lands had changed hands over a period of time prior to purchase by Syed Hussain Khaja Mohiddin.

THE SHOW-CAUSE NOTICE DT.2.12.2015 OF TAHSILDAR, VIJAYAWADA URBAN UNDER ACT 7 of 1977

7. A show-cause notice was issued by the 4th respondent on 02.12.2015 to the petitioners invoking Section 3 (2) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act') alleging that they are transferees of assigned lands and that the 1st petitioner had bought Ac.0.71 cents in Survey

No.106/1 and petitioner nos.2 to 4 are purchasers of Ac.0.45 cents in R.S.No.106/1 and Ac.0.54 1/3 cents in R.S.No.106/2, and to show-cause why they should not be evicted from the said land.

EXPLANATION DT.21.12.2015 OF PETITIONERS

8. The petitioners submitted an explanation thereto on 21.12.2015 stating that they are *bona fide* purchasers of the land; that the land was assigned on 24.06.1919 by the then District Collector, Krishna district in proceedings R.C.No.384 of 1917 to one Abdul Jaleel; that several sale transactions were entered into in respect of the land much before the commencement of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977; that the said Abdul Jaleel was in fact a sepoy in the British Military Government (Ex-Serviceman); that the assignment policy of the State Government itself permits ex-servicemen to alienate after enjoying the land for 10 years; that G.O.Ms.No.743, dt.30.04.1963 issued by the then State Government had clarified that ex-servicemen were free to sell away their assigned lands after a period of 10 years; that the sale of the land in their favour is valid; and the respondents have no jurisdiction to interfere with the land in their occupation, and there is no violation of the provisions of the Act.

THE IMPUGNED ORDER DT.25.1.2016 OF TAHSILDAR

9. But the 4th respondent passed orders in Rc.B/509/2015 dt.25.01.2016, declaring that the petitioners are transferees of assigned

lands and that the transfer in their favour is in violation of Section 3 (2) of the Act. In the said order, he stated that the land in R.S.No.106/1 and 106/2 was assigned land, that it was so mentioned in the RSR itself and that the assignees were Abdul Jaleel and Mohammad Agbaru, and even if they were ex-servicemen, the sales by them are not valid. While admitting that ex-servicemen, who were assigned Government land, could sell the same 10 years after the grant, it was observed that permission from the District Collector should be obtained for selling or alienating the assigned land irrespective of the fact whether it is ex-serviceman or freedom fighter or political sufferer. It was observed that neither the original assignees nor their vendees have obtained permission from the District Collector, Krishna for the several transactions in respect of the land, and therefore, the alienations in their favour are not valid. He, therefore, directed the Special Revenue Inspector-I, Vijayawada Urban to evict the petitioners from the land and take possession of the property.

10. Challenging the same, petitioners filed Appeal No.2 of 2016 on 2.2.2016 before the 3rd respondent, i.e., the Sub Collector, Vijayawada, Krishna District. They also filed a stay application along with the said appeal.

11. But the Sub-Collector kept the stay application pending without passing any orders therein till 18.3.2016.

THE PRESENT WRIT PETITION

12. Alleging the Sub Collector was not passing any orders in the stay application in the said appeal, they filed the present Writ Petition challenging the order dt.25.01.2016 in Rc.B/509/2015 passed by the 4th respondent apprehending that the respondents would deprive them of use of the said land and render their appeal infructuous.

13. Petitioners contend that the land in their occupation is private land and the provisions of the Act cannot be invoked against them and the order of the Tahsildar is without jurisdiction.

14. According to them, a portion of the land purchased by Syed Hussain Khaja Mohiddin was acquired by the Vijayawada Municipal Corporation and an Award dt.23.09.1986 in Award No.9/1986 was passed and compensation was paid; that an extent of Acs.1.71 cents consisting of Acs.1.16 cents in R.S.No.106/1, Ac.0.28 cents in R.S.No.106/2 and Acs.0.27 cents in R.S.No.106/2P (in which Ac.0.71 cents belonged to the 1st petitioner and Ac.1.00 belonging to petitioner nos.2 to 5) was, though not acquired, being utilized by the Endowment Department of the State Government illegally without acquiring the same under law.

15. Apprehending that the land will continue to be used by the respondents without paying any compensation for the ensuing *Krishna Pushkarams* in July, 2016, petitioners filed WP.No.31314 of 2015 in September, 2015 before this Court and sought a direction against the

respondents herein not to utilize Ac.1.71 cents consisting of Acs.1.16 cents in R.S.No.106/1, Ac.0.28 cents in R.S.No.106/2 and Acs.0.27 cents in R.S.No.106/2P situate at Bhavanipuram, Vijayawada by the Endowment Department.

16. On 09.10.2015, in WP.No.31314 of 2015, this Court passed the following order :

“According to the learned Senior Counsel, the respondent-temple and other Authorities shall not use the land of the petitioners in R.S.Nos.106/1 Ac.1.16 cents; 106/2 Ac.0.28 cents; and 106/2B Ac.0.27 cents, totalling Ac.1.71 cents, situated at Bhavanipuram, Vijayawada, Krishna District without following due process.

The learned Standing Counsel submits that the Executive Authority of the temple has taken a decision not to utilize the lands in the survey numbers mentioned by the petitioners in the prayer sought in the writ petition.

The respondents are directed not to utilize the lands in R.S.Nos.106/1 Ac.1.16 cents; 106/2 Ac.0.28 cents; and 106/2B Ac.0.27 cents, totalling Ac.1.71 cents, situated at Bhavanipuram, Vijayawada, Krishna District.”

17. Petitioners contend that in spite of the said interim order, no action was taken and that the Endowment Department continued to use the land without paying any compensation to them under the provisions of the Land Acquisition Act, 1894 or the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and that this action of the respondents violated Articles 14 and 300-A of the Constitution of India.

WPMP.No.16230 of 2016 and WPMP.No.16231 of 2016

18. They also filed WPMP.No.16230 of 2016 to suspend the operation of the impugned proceedings of the 4th respondent, pending disposal of the Writ Petition; and WPMP.No.16231 of 2016 directing respondent nos.1 to 5 not to interfere with the land admeasuring Acs.1.16 cents in R.S.No.106/1, Ac.0.28 cents in R.S.No.106/2, Ac.0.27 cents in R.S.No.106/2B, totalling to Acs.1.71 cents; and not to take up any activities in the said land, pending disposal of the Writ Petition.

19. On 19.04.2016, the Writ Petition was admitted and there was an interim suspension granted in WPMP.No.16230 of 2016 in WP.No.12960 of 2016; and an interim direction in WPMP.No.16231 of 2016 in WP.No.12960 of 2016.

WVMP.No.401 of 2017 and WVMP.No.3359 of 2016

20. WVMP.No.401 of 2017 is filed by respondent nos.1 to 4 to vacate the said order dt.19.04.2016 in WPMP.No.16230 of 2016 in WP.No.12960 of 2016.

21. WVMP.No.3359 of 2016 is filed to vacate the order dt.19.03.2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016.

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22. Petitioners contend that the interim orders of this Court were supplied by them through a representation dt.27.4.2016 to Tahsildar,

Vijayawada Urban (3rd respondent in CC) on 27.4.2016, to Sub-Collector, Vijaywada Urban (2nd respondent in CC) on 28.4.2016, to the Municipal Commissioner, Vijayawada Municipal Corporation (4th respondent) on 30.4.2016, and to District Collector, Krishna District (1st respondent in CC) on 3.5.2016, but the respondents deliberately and wilfully violated the same by levelling their land between 03.05.2016 to 21.05.2016 for construction of *Pushkar ghats* for the Krishna Pushkarams (which was to start from 12.08.2016), petitioners filed C.C.No.1459 of 2016.

23. They contended that in spite of being aware of the Court orders, the respondent nos.1 to 4 wilfully and deliberately violated the same, and therefore, they should be punished under the provisions of Sections 10 to 12 of the Contempt of Courts Act, 1971.

24. The petitioners filed photographs showing the construction activity taken up by the respondents in the subject land and also copies of representation dt.27.4.2016 with acknowledgments of respondent no.s 1-4 in the Contempt Case as well as copy of legal notice dt.23.05.2016 issued by them informing the respondents about the interim orders of the Court in WPMP.No.16231 of 2016 in WP.No.12960 of 2016.

25. On 19.08.2016, 'Notice Before Admission' was ordered to the respondents in the Contempt Case.

26. I will deal with the Contempt Case separately.

27. However, suffice it to mention that the land admeasuring Acs.1.71 cents which was forcibly taken from the petitioners in violation of the interim order granted by the Court on 19.04.2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016, was restored to petitioners under a *panchanama* by handing over the possession certificate on 22.02.2017 after a notice dt.18.02.2017 was issued by the 4th respondent to them.

THE CONSIDERATION BY THE COURT OF THE WVMPS

28. Heard Sri K.G.Krishna Murthy, Senior Advocate for Sri K. Rama Mohan, for petitioners; and the learned Advocate General for the State of Andhra Pradesh, the learned Government Pleader for Revenue (Assignment) for respondent nos.1 to 4 in the Writ Petition / Respondent nos.1 to 3 in the Contempt Case; and Sri R.Sudheer, Standing Counsel for Vijayawada Municipal Corporation (Respondent no.5 in W.P. / respondent no.4 in the CC).

29. The matters were heard on 20.1.2017, 6.2.2017, 14.2.2017, 2.3.2017, 20.3.2017, 21.3.2017, 4.4.2017, 18.4.2017 and 21.4.2017.

30. In the vacate stay application / counter-affidavits filed by respondent nos.1 to 4, the Tahsildar (4th respondent) took a stand that the land is assigned land and the sale by the original assignees, viz., Abdul Jaleel and Mohammad Agbaru or their legal heirs is in violation of the provisions of the Act which has retrospective effect. It was reiterated that even if Abdul Jaleel was an ex-serviceman 'No

Objection Certificate' from the District Collector should have been obtained as per G.O.Ms.No.307 Revenue dt.06.06.2013. It was further contended that the appeal filed by the petitioners before the 3rd respondent challenging the orders passed on 25.01.2016 in Rc.B/509/2015 of the 4th respondent was pending, and so the petitioners could not have filed the present Writ Petition. It was further contended that certain negotiations took place between the petitioners and the 2nd respondent – District Collector, and the District Collector had directed the respondents to treat the petitioners' land as private land and acquire it under the land pooling scheme. It was further contended that petitioners had also expressed their willingness to part with their land under the land pooling scheme.

THE POINTS FOR CONSIDERATION

31. The following points arise for consideration in this Writ petition:

- (a) *Whether the Writ Petition is maintainable when appeal filed by petitioners before Sub-Collector challenging order of Tahsildar was pending?*
- (b) *Whether petitioners had given consent to the respondents to give their land for land pooling?*
- (c) *Whether the Tahsildar/4th respondent had jurisdiction under the A.P.Assigned Lands (Prohibition of Transfer) Act, 1977 to pass the impugned order dt.25.1.2016 directing eviction of petitioners?*

Point (a):

32. I will first deal with the question of maintainability of the Writ petition.

33. Admittedly, the petitioners had filed the appeal on 2.2.2016 before the Sub Collector challenging the order dt.25.1.2016 of the Tahsildar. They had also filed a stay application along with it.

34. It was incumbent on the part of the Sub-Collector to pass reasoned orders in the stay application/appeal as soon as possible. But she deliberately did not do so till 18.4.2016, for almost 2 ½ months. This conduct on part of the sub-Collector is not *bona fide* but *mala fide*.

35. The respondents cannot be allowed to raise the plea about the maintainability of the Writ petition because it would amount to permitting them to take advantage of their own wrong in not deciding the stay application in the appeal/appeal before the filing of the Writ petition.

36. In **Kusheshwar Prasad Singh v. State of Bihar**¹, the Supreme Court of India applied this principle and held that the State cannot be allowed to take advantage of its own default in following the law:

“13.The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the

¹ (2007) 11 SCC 447

appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.

14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in **Mrutunjay Pani v. Narmada Bala Sasmal**² wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim *commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong).

15. In **Union of India v. Major General Madan Lal Yadav**³ the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to **Broom's Legal Maxims** (10th Edn.), p. 191 wherein it was stated:

“It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure.”

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-

² AIR 1961 SC 1353

³ (1996) 4 SCC 127

performance he has occasioned. To put it differently, “a wrongdoer ought not to be permitted to make a profit out of his own wrong”.

37. Thus apprehending immediate dispossession, and having waited for 2 ½ months for their stay application in the appeal to be taken up, petitioners were fully justified in filing the present Writ petition.

38. I am also of the opinion that petitioners need not have waited for the disposal of the appeal by the 3rd respondent against the order in Rc.B/509/2015 dt.25.01.2016 passed by the 4th respondent to file the Writ Petition since the 4th respondent’s order itself is totally without jurisdiction (as held below) since it is settled law that if an order is passed without jurisdiction existence of an alternative remedy is not a bar to invoke the jurisdiction under Article 226 of the Constitution of India. (See **Whirlpool Corporation v. Registrar of Trademarks**⁴).

39. Therefore, the contention of the learned Advocate-General that in view of the fact that the appeal filed by petitioners before the Sub-Collector / 3rd respondent was pending, this Court ought not to have entertained the Writ Petition, is rejected.

40. In any event, once the possession of the land was delivered back to the petitioners by the respondents on 22.02.2017, the said appeal became infructuous.

41. Point (a) is answered in favour of petitioners and it is held that the Writ petition filed by petitioners was maintainable

⁴ (1998) 8 SCC 1

notwithstanding the pendency of appeal filed by them before the 3rd respondent.

Point (b):

42. I will now consider the question whether petitioners had given consent to the respondents to give their land for land pooling or not.

43. No material in support of the alleged consent given by petitioners for parting their land under the land pooling scheme has been filed by the respondents. In fact, the petitioners' counsel vehemently denied that any such consent was given by petitioners. Thus, clearly this is a false plea on part of respondents.

44. Thus point (b) is answered in favour of petitioners and it is held that they did not give any consent for giving their land under land pooling scheme.

Point (c):

45. I shall now consider whether the Tahsildar had any jurisdiction to pass the impugned order dt.25.1.2016 directing eviction of petitioners.

46. Sec.2 (1) of the act defines the term 'assigned land' in so far as it relevant for our purpose as under:

“(1) “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”

47. Thus 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.

48. In order to examine whether the land in question admeasuring Acs.1.71 cents referred to above is, in fact, land assigned subject to a condition prohibiting alienation or not, I directed on 21.03.2017 the learned Advocate General, State of Andhra Pradesh appearing for respondents, to produce the D-Form patta / assignment patta issued to the original assignee so that it could be verified whether the assignment to the original assignee Abdul Jaleel and Mohammad Agbaru contained a condition prohibiting alienation. The matter was adjourned to 04.04.2017 for the said purpose.

49. On 04.04.2017, at the request of the office of the Advocate-General, the matter was adjourned to 17.04.2017.

50. On 18.04.2017, when the matter reached, it was represented on behalf of the Office of the Advocate-General that the assignment patta for the said land is not traceable. Though request for further adjournment was sought, the same was rejected and the matter was directed to be posted on 21.04.2017 under the caption ‘For Judgment’.

51. On 21.04.2017, it was informed that the learned Advocate-General, appearing in the matter, was out of station. Alternative arrangements should have been made by the respondents to submit arguments in the cases if the learned Advocate General was unavailable.

52. Though time was sought again by the Special Government Pleader, the same was refused since cases were already part heard, two of the petitioners were Senior citizens and ample time had been granted to the State to argue and produce documents in support of the order dt.25.1.2016 of the Tahsildar, which they failed to do.

53. Orders in both the Contempt Case and the Writ Petition were reserved on 21.4.2017 stating that the matter will be considered in the light of the fact of non-production of the assignment patta by the respondents.

54. There have been several judicial pronouncements of this Court (they will be referred to *infra*) that assignments of land in the Andhra area prior to issuance of G.O.Ms.No.1142 Revenue Dept dt.18.6.1954 did not contain a non-alienation clause, and such assigned lands could therefore be sold.

55. So if the respondents insist that the provisions of the Act apply to the land, they ought to produce the assignment patta copy granted to Abdul Jaleel and satisfy the Court there was a condition prohibiting alienation therein. The failure of the respondents to produce the same

thus justifies the drawing of adverse inference against them that if they produced the patta, it would not support their case.

56. It is difficult to believe that the Tahsildar had not perused the Patta granted to Abdul Jaleel before issuing the show cause notice dt.dt.2.12.2015 to the petitioners. I therefore hold that the action of respondents is *mala fide* and they have deliberately withheld the patta in order to grab the land of petitioners.

57. It is not in dispute that the assignment in favour of the original assignee Abdul Jaleel is said to be on 24.06.1919 in R.C.No.384 of 1917. The 4th respondent also in his order accepted it.

58. I shall refer to the case law laying down that prior to introduction of G.O.Ms.No.1142 Revenue Dept dt.18.6.1954, there was no condition imposed by the State prohibiting alienation by the assignees when land was assigned to landless poor.

59. In **A.P. State Electricity Board Employees union v. The Joint Collector, Chittoor**⁵, 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

⁵ Order dt.14.9.2007 in W.P.19258 OF 1998

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.

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 non-application of mind to the relevant aspects and liable to be set aside on that ground alone.”(emphasis supplied)

60. In P.V.Rajendra Kumar v. Govt. of Andhra Pradesh⁶, 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.

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)

⁶ (2011) 3 ALD 571 = MANU/AP/0717/2010

61. In K.M. Kamallula Basha and others Vs. District Collector, Chittoor District, Chittor and others⁷ 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.

62. In G.Satyanarayana v. Govt. of A.P⁸, 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 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.”

63. In Boya Ramappa v. Joint Collector and Ors⁹, 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.

⁷ 2009 (3) ALD 385

⁸ (2014) 4 ALD 358

⁹ (2017) 2 ALD 214

64. From the above decisions, it is clear that before 1954 there was no condition prohibiting alienation of assigned lands at all. No decision taking a different view was cited by the respondents before me.

65. Since the original assignment to Abdul Jaleel is in 1919 and the above decisions categorically hold that there was non-alienation clause in the assignments granted prior to 1954, and since the patta granted to Abdul Jaleel has not been produced by the respondents, it is held that there was no prohibition for Abdul Jaleel to sell the lands or their successors to alienate the lands and for the Syed Hussain Khaja Mohiddin, predecessor in title of petitioners, to purchase the same.

66. The Tahsildar/4th respondent cannot confer jurisdiction on himself under the Act by wrongly presuming that the original assignment to Abdul Jaleel was subject to a condition prohibiting alienation (when there is no evidence in support of the same) and seek to evict the petitioners from the land on the said basis. Thus, he has acted totally without jurisdiction.

67. That apart, it is un-understandable how a statutory authority like the Sub-Collector, Vijayawada, Krishna District [3rd respondent in the Writ Petition, and 2nd respondent in the Contempt Case] kept the appeal filed by petitioners on 02.02.2016 as well as the stay application filed therein pending since 02.02.2016 without taking up the stay application forcing the petitioners to approach this Court on

8.4.2016. This action of the 3rd respondent in the Writ Petition [who is 2nd respondent in the Contempt Case as well] is clearly *mala fide* and it is obvious that the said official deliberately kept the stay petition pending without passing any orders therein, to facilitate the grabbing of petitioners' land by the respondents.

68. Therefore, the Writ Petition is allowed. The order in Rc.B/509/2015 dt.25.01.2016, passed by the 4th respondent, is set aside on the ground that it is without jurisdiction, violative of Articles 14 and 300-A of the Constitution of India; and the 1st respondent is directed to pay costs of Rs.25,000/- to the petitioners.

69. Consequently, WVMP.No.401 of 2017 in WPMP.No.16230 of 2016 in WP.No.12960 of 2016, and WVMP.No.3359 of 2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016 are dismissed.

C.C.No.1459 of 2016 :

70. As stated above, this Contempt Case is filed alleging wilful disobedience of the order dt.19.04.2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016.

71. In the said interim order, this Court had directed the respondents not to interfere with the land admeasuring Acs.1.16 cents in R.S.No.106/1, Ac.0.28 cents in R.S.No.106/2 and Ac.0.27 cents in R.S.No.106/2B; totalling to Acs.1.71cents and not to take up any activities in the said land situated at Bhavanipuram, Vijayawada, Krishna District, pending disposal of the Writ Petition.

72. According to petitioners, the respondents dispossessed them between 03.05.2016 and 21.05.2016 for construction of Ghats for the ensuing Krishna Pushkarams which were to start from 12.08.2016. This fact is not disputed in the counter affidavits filed by respondents.

73. It is not in dispute that the said interim order was passed after hearing the learned Government Pleader for Revenue for respondent nos.1 to 4 and the Standing Counsel for 5th respondent-Municipal Corporation, Vijayawada. It is settled law that notice to counsel is notice to party.

74. Also the petitioners had given representation dt.27.4.2016 to respondent nos.1 to 4 in the Contempt Case which were received by them on 3.5.2016, 28.4.2016, 27.4.2016 and 30.4.2016 respectively. Proof of service of the orders by the petitioners on the respondents has been filed along with the Contempt Case. This is not disputed by respondents.

75. The respondents have also not pleaded that they are not aware of the order dt.19.04.2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016 restraining them from interfering with the possession of the said land in occupation of petitioners and not to take up any activities therein, pending disposal of the Writ Petition.

76. While the Commissioner of Vijayawada Municipal Corporation (who is arrayed as 4th respondent in the Contempt Case) alleged that the Corporation had not interfered with the possession of petitioners'

land and it was done by the departments of the State Government, respondent nos.1 to 3 in the Contempt Case blame the Commissioner of the Vijayawada Municipal Corporation for the said activity. They contend that the Commissioner of the Vijayawada Municipal Corporation took oral consent of the majority of the land holders alongside the river Krishna for construction of the lengthy bathing Ghat to facilitate pilgrims taking a hassle-free holy dip in the river Krishna.

77. The Municipal Commissioner (4th respondent) has not placed any material to show that respondent no.s 1-3 in the CC have dispossessed the petitioners; and the respondent no.s 1-3 have not placed any material to show that respondent no.4 in the CC has dispossessed the petitioners and that they have nothing to do with it. This material is available with them but they have not chosen to produce it.

78. So adverse inference is drawn against both that if such material is produced it would show that they dispossessed the petitioners jointly. In my opinion, the respondent nos.2,3 as well as respondent no.4 in the Contempt Case are all equally responsible for dispossessing the petitioners from the subject land of Ac.1.71 cents belonging to them in gross violation of the interim order granted by this Court on 19.4.2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016.

79. It was stated by respondents that petitioners' lands were also decided to be taken under the land pooling scheme since they were in possession for more than two decades on par with private lands and that majority of the land owners alongside the river Krishna had given their consent under the land pooling scheme.

80. However, no material is placed on record by any of the respondents to show that the petitioners had given their consent for giving the land under the land pooling scheme. Thus, it is clear that the respondents have taken a false plea that petitioners had given their consent to give the land under the land pooling scheme.

81. That apart, it is un-understandable how a statutory authority like the Sub-Collector, Vijayawada, Krishna District [3rd respondent in the Writ Petition, and 2nd respondent in the Contempt Case] kept the appeal filed by petitioners on 02.02.2016 as well as the stay application filed therein pending since 02.02.2016 without taking up the stay application forcing the petitioners to approach this Court. This action of the 3rd respondent in the Writ Petition [who is 2nd respondent in the Contempt Case as well] is clearly *mala fide* and it is obvious that the said official deliberately kept the stay petition pending without passing any orders therein to facilitate the grabbing of petitioners' land by the respondents.

82. In this view of the matter, I hold that the respondent nos.2, 3 and 4 in C.C.No.1459 of 2016 have wilfully and deliberately violated

the order dt.19.04.2016 in WPMP.No.16231 of 2016 in WP.No.12960 of 2016.

83. Therefore, the Contempt Case is allowed. The respondent nos.2, 3 and 4 are sentenced to suffer simple imprisonment for a period of four (04) weeks and also directed to pay a fine of Rs.2,000/- each.

84. The petitioners in the Contempt Case shall deposit subsistence allowance at the rate of Rs.300/- per day for each of the respondents within a period of four (04) weeks from to-day.

85. The sentence of imprisonment imposed on respondent nos.2 to 4 in the Contempt Case is suspended for a period of six (06) weeks.

86. As a sequel, miscellaneous petitions, pending if any in the Writ Petition as well as in the Contempt Case, are closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.06.2017

Ndr/*