

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.11106 of 2007 and 10994 of 2008 & 20201 of 2009

COMMON ORDER:

Since the subject matter of these writ petitions is one and the same, these writ petitions are being disposed of by this common order.

W.P.Nos.11106 of 2007 and 20201 of 2009 are filed challenging the notices issued by the Tahsildar, Shaikpet Mandal, Hyderabad District, under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 to the individual purchasers of the plots allotted by the Women's Cooperative Housing Society, Jubilee Hills, Hyderabad (for short 'the Society') and to the legal representatives of the original assignees.

When the District Collector issued proceedings, dated 16.06.2006, intimating to the Sub-Registrar, Banjara Hills, Hyderabad not to register the documents in respect of the lands of the Society, W.P.No.10994 of 2008 is filed.

This case has a chequered and long history.

In 1953, the Tahsildar assigned different pieces of land in Survey No.403 of erstwhile Shaikpet Village of former Hyderabad West Taluk, presently part of Golconda Taluk of Hyderabad District, to 11 persons under the Laoni Rules, 1950 and the

names of the assignees and the extents of the land are as follows:

Sl.No.	Name of the assignee	Extent of land Acs.Gts
1.	Sri Yellaiah	10.00
2.	Sri Makkala Sayanna	9.00
3.	Sri Gowlikari Eraiah	6.35
4.	Sri Gowlikari Erraiah	3.00
5.	Sri S.H.Ramaiah	6.20
6.	Sri S.H.Ramaiah	3.20
7.	Sri Mukkala Sayanna	0.37
8.	Sri Sevali Sayana	9.39
9.	Sri Secalla Balaiah	8.35
10.	Sri Sevala Mallaiah	8.36
11	Sri Sivala Mallaiah	1.05

The assignees, in turn, sold the lands through registered sale deeds to different persons during the period 1963-67 and there were subsequent sales also. When the District Collector, Hyderabad passed an order, dated 18.12.1984, under Section 166-B of the Andhra Pradesh (Telanana Area) Land Revenue Act, 1317 Fasli cancelling the assignments made in favour of the following persons, several writ petitions were filed.

Sl.No.	Sy.No. as per Survey records	Sy.No.as per Revenue records	Extent Ac.Gts.	Name of the Assignee under Special Laoni Rules
1.	403/120/3	403/4P	10.00	Sri Yellaiah S/o.Mallaiah
2.	403/120/7	403/8P	9.03	Sri Makkala Sayanna S/o.Siddaiah
3.	403/120/6	403/7P	6.35	Sri Gowlikari Eraiah S/o.Rajaiaj
4.	403/120/8	403/9P	6.20	SriS.H.Ramaiah S/o.Balaiah
5.	403/151/2	403/13P	3.20	SriS.H.Ramaiah S/o.Balaiah
6.	403/120/11	403/12P	0.37	Sri Mukkala Sayanna S/o.Siddaiah
7.	403/120/9	403/10P	9.39	Sri Sevali Sayanna S/o.Ramanna

A learned Single Judge of this Court in W.P.Nos.6120 of 1986 and 13097 of 1987 held that various contentions raised by the petitioners therein have to be considered by the District Collector afresh after affording an opportunity to them. Accordingly, the learned Single Judge by his order, dated 04.04.1989, quashed the order, dated 18.12.1984, of the District Collector and the petitioners therein were given liberty to submit their objections within a period of two months from 04.04.1989. Among the petitioners therein, there were legal representatives of the original assignees as well as the subsequent purchasers. Against the order passed by the learned Single Judge, the petitioners filed W.A.No.860 of 1989 and batch. A Division Bench of this Court *vide* judgment, dated 25.09.1995, allowed the same by setting aside the order of the learned Single Judge dated 04.04.1989, and quashed the orders passed by the District Collector dated 18.12.1984 and 17.07.1985. Aggrieved by the same, the Government preferred Civil Appeal Nos.13010-19 of 1996 with Civil Appeal Nos.2692-93 of 1997 before the Hon'ble Supreme Court, which, in turn, disposed of the appeals by remanding the matter to the Division Bench with the following observations:

“We find that all the relevant aspects have not been considered by the Division Bench which confined its consideration only to the question of delay. The explanation now offered by the appellants and the stand regarding non-applicability of the Prohibition Act as raised by the respondents have not been considered by the learned Single Judge or the Division Bench. It would, therefore, be appropriate to remit the matter back to the High Court for a fresh consideration by the

Division Bench. Normally, the question relating to valid initiation of action or otherwise is to be decided by the Original authority which was the direction given by the learned Single Judge. But, at this length of time we do not think it proper to send the matter back to the original authority. With a view to shorten litigation, we remit the matter back to the Division Bench as noted above. The parties shall be permitted to place all relevant facts in respect of their respective stands before the High Court which shall consider them in their proper perspective and render its decision. We make it clear that we are not expressing any opinion on the merits of the case. The appeals are disposed of accordingly. Parties shall bear their respective costs.”

After remand, the Division Bench of this Court considered the cases once again and after observing the contentions of the parties, the only question remained and examined by it was with regard to validity of exercise of *suo motu* power by the Collector under Section 166-B of the Tenancy Act after more than 30 years. Before considering the said question, the contentions of the Government were considered with the following observations:

“After the affidavits were filed by the State and others, after the case had been remanded by the Supreme Court, we did not find from the pleadings that the Government had taken any action under the Prohibition Act. In order to be sure whether the impugned orders were passed under the Tenancy Act, or under the Prohibition Act, the case was listed on 11.11.2005. The learned Special Government Pleader was asked specifically as to whether they want to defend the impugned order on the strength of the Prohibition Act, or under Section 166-B of the Tenancy Act, 1317 Fasli. The learned Government Pleader fairly conceded that no action was taken by the Government in terms of the Prohibition Act, but the action has been taken only under Section 166-B of the Tenancy Act.

We have perused the copy of the petition filed before the Supreme Court, which is on record. In para 2, the

following question was framed in the memo of leave to file appeal--

‘The petitioners at the outset submit that a substantial question of law arises in the matter as to whether the District Collector has the *suo motu* power to revise and cancel assignments under Section 166-B of the A.P. (T.A.) Land Revenue Act, 1907, and the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 having regard to the facts and circumstances of the case and provisions of the Acts.’

Since a ground had been taken before the Supreme Court that whether the Collector could have exercised *suo motu* jurisdiction under the Prohibition Act, the Supreme Court remanded the matter, as the High Court had not considered the impact of the Prohibition Act. In fact, the State had never taken recourse to the Prohibition Act, when the writ petitions were earlier decided. Even after remand from the Supreme Court, the State has not relied on the Prohibition Act and even the learned Special Government Pleader has conceded that no power was exercised by the Collector under the Prohibition Act. It will be profitable to again quote few lines from the Supreme Court orders, which has been quoted hereinabove-

‘The explanation now offered by the appellants and the stand regarding non-applicability of the Prohibition Act as raised by the respondents have not been considered by the Learned Single Judge or the Division Bench. It would, therefore, be appropriate to remit the matter back to the High Court for a fresh consideration by the Division Bench.’

In this view of the matter, we are not going into the question of applicability or non-applicability of the Prohibition Act.

Now, the only question remains is, whether the Collector would have exercised *suo motu* power under Section 166-B of the Tenancy Act, after more than 30 years.”

The Division Bench accordingly allowed the writ appeals and the writ petitions by quashing the orders, dated 18.12.1984 and

17.07.1985. Feeling aggrieved by the same, the Government filed SLP Nos.9354, 16545 and 9353 of 2006 and the Hon'ble Supreme Court dismissed the SLPs., by order, dated 19.08.2011 at the stage of admission.

After dismissal of the SLPs., the Government filed Rev.WAMP No.1023 of 2012 in W.A.No.860 of 1989. The Division Bench of this Court dismissed the said review petition on 11.09.2012 with the following observations:

“It appears that the review petition has been filed against the order dated 17.02.2006. It is not in dispute that the SLP was filed before the Supreme Court from the said order and it is also not in dispute that the matter had travelled twice to the Supreme Court and after dismissal of the appeal, which was filed from the other, dated 17.02.2006 the order had already reached finality.

After six years almost, this application has been filed for review of the order so passed at that point of time. IN our opinion, when the appeal was filed from the order and has already been dismissed by the Supreme Court there is no reason to entertain any review petition from the said order, since the order has already merged with the order passed by the Supreme Court. If any review is required, it is the necessity for the State authorities to apply before the Supreme Court and not before the High Court.

The review petition is dismissed.”

After disposal of the writ appeals and the writ petitions by the Division Bench after remand by the Supreme Court on the first occasion, the present action under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') was taken by the Tahsildar, Shaikpet Mandal in spite of not availing such a remedy when an

opportunity was given by the Supreme Court in its order, dated 28.02.2003, and when the Division Bench specifically considered the stand of the Government after remand. This action of the Tahsildar, Shaikpet Mandal is clearly an abuse of his power and without understanding the purport of the previous judgments of this Court in relation to the same land.

As stated above, the Government did not avail the opportunity of taking the stand of violations of the provisions of the Act before it when the Division Bench considered the case after remand by the Hon'ble Supreme Court. The above observations made by the Division Bench make it very clear. The action of the Tahsildar can also be found fault with as it was initiated after unsuccessful attempt made by the District Collector cancelling the assignments by invoking the power under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli.

It appears, this is a clear case of harassment of the purchasers of the land from the original assignees which changed the hands several times. There is no clear finding anywhere with regard to the violation of condition of prohibition of alienation. In the absence thereof, the provisions of the Act are not applicable.

At this stage, learned counsel for the petitioners relied upon a decision of this Court reported in **GVK Rama Rao Vs. Bakelite Hylam Employees Cooperative House Building Society Limited,**

wherein this Court while considering the facts of the case observed in paragraphs 13 to 16 and 18 as follows:

“13. I have carefully perused the Laoni Rules of 1950 as well as the rules of Revised Assignment Policy in G.O.Ms.No.1406 Revenue, dated 25.07.1958. It is true that in the Laoni Rules of 1950, there is no rule imposing a restriction upon the assignee from transferring or alienating the assigned land and the same has been introduced in the Revised Assignment Policy. The relevant Rule in G.O.Ms.No.1406 Revenue, dated 25.07.1958, is in the following terms:

VI.Terms and conditions of assignment:

(ii) xxxxxxxxxxxx

(ii) Lands assigned shall be heritable but not alienable;
(emphasis supplied).

14. It can therefore be held that there could not have been any condition of the assigned land being non-alienable in 1953 when Balaiah was granted patta, for the simple reason that the above rule was enforced in 1958.

15. In this context, it is necessary to refer to previous litigation arising from cancellation of patta by Collector, Hyderabad in proceedings, dated 17.07.1985 which was challenged by the plaintiffs in W.P.No.13097 of 1987. The writ petition was allowed by a learned Single Judge on 04.04.1989 and the said order dated 17.07.1989 was quashed and the matter was remanded to the Collector for fresh enquiry. Ex.A5 is a copy of the order. The plaintiffs filed Writ Appeal No.1015 of 1989 assailing the order of remand to the Collector. A Division Bench of this Court allowed the writ appeal on 25.09.1995 and set aside the Judgment in W.P.No.13097 of 1987 dated 04.04.1989 and quashed the impugned order of the Collector dated 17.07.1985 and confirmed the assignment made on 04.01.1953 in favour of the plaintiff-vendor. Ex.A6 is the copy of the judgment in W.A.No.1015 of 1989. It is noteworthy that this very provision relating to a condition of non-alienation of the assigned land was canvassed before the Division Bench.

16. However, the writ appeal has been allowed accepting the first contention that the District Collector had no jurisdiction to revise the order of Tahsildar after a lapse of nearly thirty years and no other contention was gone into.

17. xxxxx

18. The question is whether an assigned land without a condition of non-alienability falls within the mischief of Section 3 of Act 9 of 1977 or not. Section 2 (1) of Act 9 of 1977 defines “assigned land” as under:-

“assigned land” – means lands assigned by the Government to the landless poor person 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 work ‘assigned; shall be construed accordingly.”

It is evident from the above definition that the condition of non-alienation is an essential ingredient of the assigned land for the purpose of Act 9 of 1977. As the suit land which was assigned to Balaiah in the year 1953 went the condition of non-alienation was not contemplated by the Laoni Rules, 1950 as then in force, I am satisfied that the provisions of Act 9 of 1977 are not applicable to the suit land and hence Ex.A1 sale deed is not hit by the provisions of Act 9 of 1977. Question No.1 is answered accordingly in favour of the plaintiffs.”

It is the case of the parties that the assignment made to the original assignees was under the provisions of the Laoni Rules where there was no condition of prohibition of alienation. The burden is on the Government to show that there was a prohibition of alienation and if any transfer of the land took place violating the said condition, the provisions of the Act would be applicable. In the absence of the same and as the entire litigation is from 1984 onwards, this Court is satisfied that the action of the Tahsildar, Shaikpet Mandal in invoking the provisions of the Act and issuing notices to the legal representatives of the original assignees and the individual purchasers of the plots allotted by the Society is bad in law and accordingly, the notices are hereby quashed.

W.P.Nos.11106 of 2007 and 20201 of 2009 are accordingly allowed.

A reading of the proceedings, dated 16.06.2006, shows that the District Collector requested the Advocate on record, Supreme Court of India, to file SLP against the judgment, dated 17.02. 2006 passed in W.A.No.860 of 1989 and batch and stated that they are initiating action under the provisions of the Act. In view of the same, he requested the Sub-Registrar not to register any document in respect of the Society till further communication from his Office. As stated above, the Hon'ble Supreme Court dismissed the SLPs filed against the judgment in W.A.No.860 of 1989 and batch.

In view of the above, it is clear that the provisions of the Act are not applicable to the purchasers of the land from the original assignees, as such, there cannot be any prohibition with regard to the registration of the lands. Therefore, the proceedings, dated 16.06.2006, of the District Collector are liable to be set aside.

Accordingly, W.P.No.10994 of 2008 is allowed by setting aside the proceedings, dated 16.06.2006.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO,J

Dt:20.07.2017
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