

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.33717 of 2012

ORDER:

Heard Sri Gade Venkateswara Rao, learned counsel for the petitioners and the learned Government Pleader for Assignment appearing for the respondents.

2. This Writ Petition is filed assailing order dt.25-08-2012 in Appeal Case No.D/1380/12 of 1st respondent confirming order in Reference No.B/800/2012 dt.29-06-2012 of 2nd respondent.

3. The petitioners purchased extent Ac.10.39 gts in Sy. No.106 of Laxmakkapally village, Medak district from one Neeradi Pentaiah and others through registered sale deeds dt.26-12-2005.

2. On a complaint of villagers, a notice under Rule 3 of the A.P. Assigned Lands (Prohibition of Transfers) Rules 2007 dt.04-06-2012 was issued to the petitioners alleging that they are transferees of the lands which had been assigned and that it was in violation of sub Section (2) of Section 3 of the Rules and asking petitioners to show cause why they should not be evicted.

3. In the schedule to the notice, though the survey number is mentioned as 106, extent is shown as Ac.12.39 gts, under the heading “Name of the Transferee”, “Neeradi Pentaiah, S/o.Narsaiah and others” is mentioned. No details of the persons who had been assigned this land, when such assignment was made, and whether

such assignment was subject to the condition of non-alienation are furnished in the said notice.

4. Petitioners submitted an explanation on 16-06-2012 to the said notice stating that they have purchased the land for valuable consideration without knowledge that they are assigned, that they are bonafide purchasers. They requested that the notice be revoked.

5. By proceedings dt.29-06-2012 in reference No.B/800/2012, 2nd respondent, Tahsildar, held that the land Ac.9.34 gts in Sy. No.106 was assigned to landless poor persons including petitioner's vendors and the petitioners have purchased the same in violation of Section 3 (2) of the Act. Even in the order passed by 2nd respondent, no details of the date of assignment to Neeradi Pentaiah and others or the conditions subject to which such assignment was made, are mentioned.

6. Petitioners questioned the same before 1st respondent under Section 4-A of the Act. The said appeal was numbered as Appeal Case No.D/1380/12 by 1st respondent. The appeal was dismissed on 25-08-2012. Even in the appellate order, there is no mention about the date of assignment of the land to the alleged assignees or the conditions subject to which such assignment was made.

7. Learned counsel for the petitioners contended that the definition of assigned land in Section 2 (1) of the Act is such that not

every assigned land will fall under the provisions of the Act and to attract provisions of the Act it must be shown not only that the land is assigned land, but such assignment must have been made subject to condition of non-alienation. He contended that it was incumbent on the part of the 2nd respondent to mention in the notice in Form-III the fact that the land is assigned land, the details of the assignment and whether the assignment contained a clause prohibiting alienation; and in the absence of furnishing all these details, he contends that the entire proceedings are vitiated. He placed reliance on the judgments of this Court in **V.Subbayamma Vs. Joint Collector, Additional District Magistrate, Guntur and others¹** and **Muppalaneni Srinivasa Rao Vs. Government of Andhra Pradesh and others²**.

8. The learned Government Pleader for Assignment appearing for respondents states that even though the notice issued to the petitioners did not contain any details of assignment, since the details have been sufficiently given in the orders passed by respondent Nos.1 and 2 and since the petitioners have not chosen to raise such a contention before 1st respondent, this Court should not grant any relief to the petitioners.

9. In **Muppalaneni Srinivasa Rao** (2 supra), a learned Single Judge of this Court held, after considering the provisions of the Act, that it was necessary for the Tahsildar to mention name of the

¹ 2013 (6) ALD 46

² 2013 (2) ALD 343

assignee as well as date of assignment and he cannot leave out these details in the notice.

10. In **V.Subbayamma** (1 supra), another learned Single Judge of this Court further held:

“16. From the definition of the assigned land, it is evident that it is not every assigned land which falls under the provisions of the Act. To attract the provisions of the Act, the land must be an assigned land and such an assignment must have been made subject to the condition of non-alienation or transfer to landless poor persons under the relevant law for the time being in force relating to land ceilings. Certain exceptions in favour of Central Government or State Government or any local authority or Co-Operative Societies have been made, reference to which is not necessary for the purpose of this case.

17. A proceeding under the provisions of the Act for cancellation of the assignment and resumption of the land can be initiated only if the above-mentioned four requirements exist, namely, that the land must be an assigned land; that the assignment contains a clause prohibiting alienation; that the land must have been assigned or allotted to a landless poor person from out of the ceiling surplus land; and that such land must have been alienated. Unless these requirements are satisfied, the competent authority cannot exercise the jurisdiction.

18. In my opinion, the initial burden lies on the competent authority under Section 4 of the Act to prove that the land was transferred in violation of the conditions of assignment/allotment. Unless this burden is discharged based on the relevant material, the order of resumption cannot be sustained in law.

19. In the instant case, both respondent Nos. 1 and 3 have skirted the issue as to whether the land in question is an assigned land. As noted hereinbefore, respondent No. 3 has shown dots

under the column "Name of assignee". Respondent No. 1 having framed the point, has failed to discuss and render a finding thereon. Therefore, the respondents have failed to discharge their initial burden in proving that the land in question is an assigned land and that the same was sold in violation of the conditions of assignment/allotment. Hence, the very initiation of the proceedings under the Act is without jurisdiction. The orders of the respondents cannot, therefore, be sustained in law and they are, accordingly, quashed."

11. I have already noticed that the notice in Form-II, issued by 2nd respondent did not mention the name of the assignees or the date of assignment or the fact that there was any condition in the assignment prohibiting alienation. In the orders passed by 2nd respondent as well as 1st respondent, the names of the assignees are no doubt mentioned but the details of assignment such as the date of assignment and whether the assignment was subject to condition of non-alienation, are not mentioned. As held by this Court in **V.Subbayamma** (1 supra), all proceedings under the provisions of the Act for cancellation of assignment and resumption of the land can be initiated only if the land is assigned land and the assignment contains a clause prohibiting alienation and there is an alienation of such assigned land. Unless these requirements are satisfied, the competent authority cannot exercise jurisdiction. This is because the initial burden lies on the competent authority under Section 4 of the Act to prove that the land was transferred in violation of conditions of the assignment/allotment. In the present case, both the respondents have neglected the issue as to when the assignment was made and what

were the terms of the assignment. Therefore, 2nd respondent had no jurisdiction to initiate proceedings under the Act.

12. Moreover, the purpose of furnishing a notice to a person in possession of the land under the provisions of the Act is to acquaint him with the fact that the land was assigned and the transfer is in contravention of the provisions of the Act. Non-furnishing of the date of assignment as well as details of assignment would disable the transferee from giving proper explanation to the show cause notice itself. Therefore, such non-furnishing of details would be a violative of principles of natural justice also.

13. The mere fact that such a contention was not raised before the respondents is irrelevant since this goes to the root of the matter. This is question of initial jurisdiction.

14. Accordingly, the impugned orders dt.29-06-2012 of 2nd respondent as well dt.25-08-2012 of 1st respondent are set aside and the respondents are directed to restore possession of the land to the petitioners. It is needless to mention that the petitioners can harvest the mango crop in the subject land. Liberty is granted to 2nd respondent to issue proper notice furnishing all details as mentioned above to the petitioners and then take appropriate action under the provisions of the Act, if so advised.

15. Accordingly, the Writ petition is allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-03-2017
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