

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 22912 of 2016

ORDER:

1) Assailing the order dated 25.06.2016 passed by the Joint Collector, Anantapur in D.Dis.No.E2/ 12871 of 2012, wherein the request of the petitioners for converting the land from agriculture to non-agriculture purpose came to be rejected, the present writ petition came to be filed,.

2) The facts in issue are as under:

The petitioners herein claim themselves to be absolute owners and possessors of land admeasuring Ac.4.70 cents in Sy.No.208-2A and Ac.5.00 in Sy.No.208-2A situated at Chilamathur Village and Mandal, Anantapur District, by virtue of a registered sale deed executed by one Adi Murthappa and legal heirs of Adi Andhra Sree Ramappa. It is said that Adi Murthappa and Adi Andhra Sree Ramappa, were landless poor persons, who purchased the said extent of land under registered sale deeds dated 21.12.1967 and 02.02.1968 from the original assignees Sri Adi Murthappa Reddy and Sri Jayaram Reddy, who were assigned the said land on 12.12.1961. The averments in the affidavit further show that an enquiry was conducted under Section 3 (v) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act") and the Tahsildar was pleased to pass orders on 29.05.1998 in R.Dis.No.137/ 98(A2) holding that the purchasers, who purchased the land from the original assignees are landless

poor persons and they purchased the land in good faith and for valuable consideration. In view of the report of the Tahsildar, the petitioners purchased the lands from Adi Murthappa and legal heirs of Adi Andhra Sree Ramappa and later transferred the same into their names. While things stood thus, the petitioners applied for conversion of land from agriculture to non-agriculture purpose. By an order dated 05.09.2012 the Revenue Divisional Officer rejected the request without considering the report of the Tahsildar dated 29.05.1998. An appeal came to be filed before the Joint Collector, Anantapur. Pending appeal, the petitioners herein filed W.P.No.31142 of 2015, which was disposed of, directing the Joint Collector, Anantapur, to dispose of the appeal in the light of the judgment of the Apex Court in Civil Appeal No.3673 of 2009. Pursuant to the orders of this Court, the Joint Collector, dismissed the appeal, confirming the order of the Revenue Divisional Officer, which is subject matter of dispute in this writ petition.

3) A counter came to be filed by the Joint Collector, disputing the averments made in the affidavit filed and also the grounds raised in the writ petition. In para No.2 of the counter it has been specifically admitted that vide R.Dis.No.137/ 98 dated 29.05.1998, the Tahsildar, Chilamathur has confirmed the sale in favour of the purchasers as per the provisions of Section 3 (5) of the Act, since the land was purchased in good faith and for reasonable consideration. Thereafter, the said lands were purchased by the petitioners vide registered documents dated 21.12.2011 and 21.05.2012. The averments in the counter also show that on an

application made by the petitioners for conversion of the land from agriculture to non-agriculture, the Tahsildar, Chilamathur, has submitted proposals to the Revenue Divisional Officer, Penukonda, for conversion of the land from agriculture to non-agriculture vide R.C.95/ 2012 (A2) dated 21.05.2012. In spite of the report, the Revenue Divisional Officer rejected the proposals on the ground that as per G.O.Ms.No.1142, assigned lands are heritable but not alienable. The said order was confirmed by the Joint Collector.

4) The main ground urged by the learned counsel for the petitioners is that the original assignees transferred the land in favour of landless poor persons by way of registered sale deeds in the year 1967 and 1968. Since the transaction was in good faith and for a valuable consideration, and as the said transfer of land was prior to the Act coming into force, the same is exempted from the provisions of the Act. He placed reliance on the report of the Tahsildar, dated 29.05.1998, to show that the persons, who purchased the land from the original assignees, were landless poor persons and they purchased the same in good faith and for valuable consideration. It is his case that both the authorities failed to consider the judgments of the Apex Court and also the report of the Tahsildar while dealing with the request made by the petitioners.

5) Government Pleader for Revenue would submit that the assignee, who enjoyed the land in the capacity of landless poor persons, cannot alienate the land. It is urged that in view of

G.O.Ms.No.128, Revenue (Assignment-I) Department, dated 04.04.2016, the assigned land should be used for agriculture and other works related to agriculture, horticulture, sericulture, animal husbandry, fisheries and not for any other purpose. Hence, the request of the petitioners for conversion cannot be accepted. Insofar as the judgment of the Apex Court relied upon by the learned counsel for the petitioners, it is urged that the said judgment would not apply to the case on hand since the issue involved was for conversion of the assigned agriculture land into non-agriculture purpose. Relying upon the judgment of this Court in *P.Venkataramana v. District Collector, Visakhapatnam*¹ the Government Pleader would contend that the request of the petitioners cannot be accepted.

6) Before proceeding further, it would be appropriate to refer Section 3 of the Act, which reads as under:

“3. Prohibition of transfer assigned lands:-

(1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

¹ (2003) 3 L.S. 274

- (2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage exchange or otherwise.
- (3) Any transfer or acquisition made in contravention of the provision of sub-section (1) or sub-section (2) shall be deemed to be null and void.
- (4) The provisions of this Section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court of any award or order of any other authority.
- (5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement."

7) A reading of the order of the Mandal Revenue Officer, Chilamathur, dated 29.05.1998, would show that Smt. Gangamma, Sri Adimurthy and Sri Gangappa, have applied for grant of assignment of land to an extent of Ac.4.70 cents in Sy.No.208-2A and Ac.5.00 in Sy.No.208-2B of Chilamathur Village. The said land was assigned in favour of M.Adimurthy Reddy and M.Jayarami Reddy, respectively, who have alienated the said assigned lands to Adiandhra Sreeramappa and Adimurthappa. As the transaction took place prior to commencement of Act, the Tahsildar was of the opinion that the case deserves consideration under Section 3 (5) of the Act, since the purchase was made prior to the commencement of Act and the same was in good faith and for a valuable consideration. Apart from that, it has been categorically held that

the purchasers, who are in possession of the land at the time of commencement of Act, are landless poor. Subsequently, the petitioners made a representation for conversion of the land from agriculture to non-agriculture. The Tahsildar, Chilamathur, submitted proposals to the Revenue Divisional Officer, Penukonda, for conversion of the land from agriculture to non-agriculture vide R.C.95/ 2012 (A2) dated 21.05.2012. In spite of the report, the Revenue Divisional Officer rejected the proposals on the grounds that as per G.O.Ms.No.1142, assigned lands are heritable but not alienable. The said order was confirmed by the Joint Collector, without discussing the orders passed by the Apex Court in Civil Appeal No.3673 of 2009, on the ground that the lands are only heritable and not alienable.

8) Issue identical to the case on hand, came up for consideration before the Apex Court in *State of Andhra Pradesh and K.Varalakshmi and others*². It was a case where the suit schedule property was in possession of one Bangaramma, who was enjoying the same by raising agriculture crops since 1950. By virtue of her possession, the said land was assigned to her in the year 1961. She continued to be in possession and enjoyment of the property as absolute owner. Subsequently, in the year 1970, she sold the said property, by way of registered sale deed, for a valuable consideration to one Durga Ramalingeswara Rao. After the death of Durga Ramalingeswara Rao, his wife Durga Venkata

² (2014) 15 SCC 591

Patnam and her sons succeeded to the schedule property, who, by sale deed, dated 27.01.1972 sold the land to the petitioners therein for valuable consideration and passed on the possession thereof. In the month of March, 1988, the V.U.D.A. fixed boundary demarcations to a part of the land, purporting to act under the directions of the District collector, Visakhapatnam. A notice under section 80 C.P.C. came to be issued requesting the defendants to desist from interfering with the plaintiff's possession. Thereafter, the plaintiffs instituted a suit for declaration of title and permanent injunction. The question that fell for consideration was whether the assignee can transfer the land and the consequences of that sale. In the said case, the Apex Court was dealing with section 3 (5) of the Act. After referring to the said provision, it has been held as under:

“11. A bare perusal of the aforesaid provision would show that sub-sections (1) to (4) applies to all cases where the assignment of lands was made either before or after the commencement of the Act by the Government to a landless poor person for the purpose of cultivation or a house site. However, sub-section (5) of Section 3 makes an exception in cases where the land has been so assigned has been purchased by another landless poor person in good faith or for valuable consideration from the original assignee or the transferee prior to the commencement of the Act.

12. It is the clear case of the respondent that in 1971 their original assignee Sagiraju Bangaramma sold the land for a consideration to Durga Ramalingeswara Rao, who was a landless poor person. The said Ramalingeswara Rao, was in the cultivating possession of the land and growing crop. After his death, his wife Smt. Venkata Patnam and sons succeeded the property and continuously remained in

cultivating possession till 1982 then they sold the land to plaintiff in consideration of Rs.20,000/-.

13. In the back ground of the facts, the Apex Court agreed with the findings given by the High Court that the transactions made in favour of the plaintiff and his predecessors are fully saved by sub-section (5) of Section 3 of the Act.”

9) Though the Government Pleader for Revenue relied upon the judgment of this Court in *P.Venkataramana (1 supra)*, but in the said case, the transfer of land was by way of agreement of sale dated 07.05.1969 and there was no registration of the document.

10) In such a situation, this Court in *B.Karunakar and others v. The Mandal Revenue Officer, Anantapur*³ held as under:

“Sub-section (5) of Section 3 lays down that the prohibition of transfer of assigned lands shall not apply in respect of an assigned land “purchased by landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act.....” The petitioners purchased the lands from the original assignee by registered sale deeds on 06.04.1985. Their plea is that the purchase was pursuant to a common agreement of sale concluded on 04.02.1976. The question is whether a purchase made subsequent to the commencement of the Act (21-1-1977) claimed to be pursuant to an agreement of sale concluded prior to the Act, would attract the provision of sub-section (5) of Section 3 and save the transaction from being invalidated. The meaning of the word “purchase” should be given its full effect. It implies valid transfer of title with all incidents of ownership. If any other meaning is given, the very object of the saving provision incorporated in sub-

³ (1990) 2 ALT 62

section (5) of Section 3 would be defeated. It is easy for any person to create an agreement of sale pertaining to a period prior to the commencement of the Act for the purpose of getting the transfer validated under sub-section (5) of Section 3. Where an assigned land was sold by the assignee validly in accordance with the provisions of the Transfer of Property Act prior to the coming into force of the Act in favour of a landless poor person for valuable consideration and if that land continued to be in possession of the purchaser, the protection engrafted in sub-section (5) of Section 3 comes into play; but not otherwise.”

11) Therefore, the judgment of the learned Single Judge relied upon by the Government Pleader may not be of any help to him.

12) As stated earlier, in the instant case, the original assignees sold the property in favour of Adi Murthappa and Adi Andhra Sree Ramappa, who were landless poor persons, under registered sale deeds dated 21.12.1967 and 02.02.1968 ie. prior to the commencement of the Act. An enquiry came to be conducted under Section 3 (v) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short “the Act”) wherein Tahsildar was pleased to pass orders on 29.05.1998 in R.Dis.No.137/98(A2) holding that the purchasers, who have purchased the land from the original assignees, are landless poor persons and they purchased the said land in good faith and for valuable consideration. It is an admitted case that the property came to be transferred by the original assignees in favour of landless poor persons in good faith and for valuable consideration, who inturn transferred the same in favour of the petitioners.

13) Having regard to the facts in issue, the report of the Tahsildar and taking into consideration the judgment of the Apex Court in State of Andhra Pradesh and another v. K.Varalakshmi and others (2 supra), which is identical to the case on hand, the request of the petitioners has to be accepted. Accordingly, the writ petition is allowed. There shall be no order as to costs.

14) Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C.PRAVEEN KUMAR

20.01.2017
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