

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No. 38641 of 2017

ORDER:

Heard counsel for petitioner and the Government Pleader for Assignment appearing for respondents.

2. Petitioner has assailed proceedings dt.16.10.2017 in Roc.No.DT/571/2013 of the 4th respondent holding that petitioner has violated the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 and directing resumption of the land to the government.

3. An extent of Acs.2.68 cents in survey No.747 of Kothavaripalli village, Madanapalle Mandal, Chittoor District was originally assigned in favour of one P.B.Khan S/o K.P.M.Mahaboob Khan, resident of Madanapalle, by the then Tahsildar Madanapalle vide proceedings dt.28.05.1973. At that time, the assignee was working in the Indian Army and such assignment is permissible as per G.O.Ms.No.743 Revenue (B) Department dt.30.04.1963. Similar provision is also contained in BSO 15 para 11(2)(ii)(4) also.

4. The said assignee retired from Army in 1975 and subsequently died. His widow, P.Jubeeda Begum, inherited the property and made an application in 2007 to 4th respondent to grant NOC for selling the property and on

18.10.2007 the 4th respondent permitted her to sell the property.

5. Thereafter, said P.Jubeeda Begum sold the said property to the petitioner under registered sale deed dt.20.10.2007. This was accepted by 4th respondent also and pattadar passbook was issued to the petitioner and mutation was also done in the revenue record.

6. However, on the basis of a notice issued by the Lokayukta to the District Collector and on instructions of the District Collector, a Notice in Form-II was issued to the petitioner on 02.08.2014 alleging that there could not have been any assignment in favour of a serving Armed Force Personnel, that the very assignment of the land to the original assignee is not valid and to show cause why the original assignment itself cannot be cancelled. It was also mentioned therein that the assignment in favour of the original assignee on 28.05.1973 was under 'Normal Dharkast Rules' when he was in service and that the land was not alienable.

7. Petitioner gave explanation thereto denying the allegations and stating the facts referred to above and contending that the original assignment to the assignee was valid in law and no case is made out for taking action under the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977.

8. However, the impugned order has been passed by the 4th respondent holding that the land is inalienable, that the petitioner who purchased it was not a farmer, but was a jeweler, that he had purchased it only for real estate purpose and that under the provisions of the Act, the transfer of the land to him is null and void.

9. Counsel for petitioner contends that having regard to G.O.Ms.No.743, dt.30.04.1963 as well as the NOC granted by the 4th respondent himself on 18.10.2007, there was a valid assignment in favour of the original assignee and his legal heir was entitled to sell it as per G.O.Ms.No.1117 Revenue (Assignments I) Department dt.11.11.1993 after a period of 10 years from the date of assignment, and the fact that the petitioner is not a farmer is totally irrelevant and could not have been a ground for passing an adverse order against him under the Act and resuming the land.

10. The above legal position that even serving Armed Force Personnel and their dependents are entitled to assignment of land as per G.O.Ms.No.743 dt.30.04.1963 as well as under BSO 15 para 11(2)(ii)(4), is not disputed by the Government Pleader for Assignment.

11. Once the assignment in favour of the original assignee is legal and valid, and he is also entitled to sell the same after he

retired from service and after ten years from the date of assignment, no objection can be taken for sale by the assignee's legal heir to the petitioner. In fact NOC had been issued by the 4th respondent himself on 18.10.2007 for sale by the legal heir of the original assignee to the petitioner. Therefore, the impugned order cannot be sustained.

12. Accordingly, the Writ Petition is allowed and the impugned order is set aside. No costs.

13. Miscellaneous petitions, pending if any, shall stand closed.

17th November, 2017.
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M.S.RAMACHANDRA RAO, J

