

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.8488 of 2007

Order:

This Writ Petition is filed to declare the action of the respondents in insisting the petitioners to vacate from the lands held by them at Potluru village, pursuant to the notices in RC No.E2/1999/2005, dated 06.06.2005, issued by the 2nd respondent – District Collector, Prakasam District at Ongole and the proceedings of Grama Sabha conducted on 09.03.2007 by the 4th respondent – Tahsildar, Gudlur, Prakasam District, as illegal and violative of the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act').

The brief facts of the case which are relevant for the purpose of disposal of the present Writ Petition are as follows. The petitioners are the absolute owners and possessors of the lands situated in Survey Nos.288/5, 288/8, 288/11, 288/4, 288/10, 288/7, 288/6, 290/4, 290/5, 290/7, 290/6, 288/12, 288/9, 173 and 290/1 of Potluru village, Gudlur Mandal, Prakasam district; they dug bore wells, installed motor pump sets and raised Sapota Groves in the said lands; as the petitioners were eligible landless poor persons and Sivojimadars within the meaning of BSO 15 of the A.P. Board of Revenue Standing Orders, they were granted D-Form pattas by the 4th respondent – Tahsildar in the year 1996 and, thereafter, the 2nd respondent – District Collector issued different notices dated 06.06.2005, under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977, to the petitioners alleging that the petitioners had purchased the said lands contrary to the provisions of the Act and directed them to show cause within 15 days as to why they should not be evicted from the lands; the petitioners submitted their explanations on 29.06.2005 denying the allegation of alienation of the

lands; on 09.03.2007 the 4th respondent - Tahsildar conducted Grama Sabha and released the list of lands wherein the names of the petitioners were shown as occupiers of the said lands and directed them to vacate the lands on or before 24.04.2007; the respondents do not have jurisdiction to issue the notice as the lands are in possession and enjoyment of the petitioners who themselves are assignees; the 2nd respondent also does not have jurisdiction to issue the notice under Rule 3 and a conjoint reading of Sections 3 and 4 of the Act would show that the competent authority to initiate proceedings by issuing notice under Rule 3 is the 4th respondent – Tahsildar, but not the 2nd respondent – District Collector; no enquiry so far has been conducted and straightaway the Grama Sabha was conducted on 09.03.2007.

Learned counsel for the petitioners submits that the pattadar passbooks were also issued to the petitioners. He further submits that the District Collector is not the competent authority to issue the notice under Rule 3 and that it is the Tahsildar who can give such a notice.

On the other hand, learned Assistant Government Pleader contends that the said notice can be issued by the District Collector or by the person authorized by him i.e., the Tahsildar. He produced the written instructions issued by the Tahsildar dated 09.03.2018 and according to the said instructions no final orders have been passed by the Tahsildar so far. It is specifically stated in the written instructions that the connected records are being traced to ascertain finally as to whether they are assigned lands or not. It is also stated that the records will be traced and final orders will be passed after vacation of the *status quo* orders passed by this Court in WPMP No.10885 of 2007 in WP No.8493 of 2007 and there is no proposal to evict the petitioners during the pendency of the above proceedings.

As seen from the record, the impugned notice dated 06.06.2005 was issued by the District Collector in Form-1 under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules 1977. The written instructions issued by the Tahsildar shows that “the connected records are being traced to ascertain finally as to whether they are assigned lands or not”. When they themselves could not ascertain as to whether the lands are assigned lands or not, the issuance of impugned notice is bad, illegal and the same is liable to be set aside. Learned counsel for the petitioners also raised the issue of jurisdiction of the District Collector to issue the impugned notice. It is not necessary to decide the said issue in this case and it will be decided in an appropriate case.

In the facts and circumstances of the case and in view of the categorical statement made by the Tahsildar in the written instructions stating that the records are being traced to ascertain finally as to whether the lands are assigned lands or not, the impugned notice is liable to be set aside.

The Writ Petition is, accordingly, allowed and the impugned notice is set aside. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

Date: 19.07.2018
Nsr