

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.23880 OF 2007

ORDER:

This writ petition is filed seeking to declare the order passed in proceedings No.B/543/2005 dated 10-11-2005 by the 3rd respondent/Deputy Collector and Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District as illegal, arbitrary and unconstitutional.

2. The facts concise in the case, which led to prefer the writ petition, assailing the above order is that the land, which is the subject matter herein is admeasuring Ac.1.00 guntas, out of a total extent of Ac.3.31 guntas, situated in Sy.No.31, Kondapur village, Serilingampally Mandal, Ranga Reddy District. It is bounded by: North: Land in Sy.No.36, South: Part of Sy.No.31, East: Village of Kanammet Jagir and West: land in Sy.No.35.

It was originally assigned to Mr.Mansab Ali Khan, through whom, the petitioner purchased the same vide registered sale deed document No.6856/1995, dated 26.05.1995, registered in the office of the Registrar, Ranga Reddy District. Since then, the petitioner is in peaceful possession and enjoyment of the property.

3. While the matter stood thus, a notice in Form No.1, No.B/543/05, dated 30-05-2005 was issued by the third respondent invoking the powers under Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act, 1977"), directing the petitioner to show cause within

(15) days of receipt of the notice as to why the petitioner should not be summarily evicted from the said land on the ground that the petitioner was found to have assigned lands specified in the schedule and the nature of occupation is by way of purchase and thus it is contravention of the Act, 1977.

4. The third respondent without appreciating the facts, legal position and without going through the records, passed order No.B/543/2005, dated 10-11-2005, stating that on verification of the revenue records i.e., Kasra for the year 1954-55 and other records, the land in Sy.No.31 in an extent of Ac.3.31 guntas of Kondapur village is classified as Government land and Bandhobasth Izafa was granted to Mr.Mansab Ali Khan (vendor of the petitioner) through faisal patti for the year 1992-93, basing on the supplementary sethwar issued by the Assistant Director, Survey & Land Records in File No.G8/2566/03. It was also held that the petitioner has not filed any documentary evidence to show that the land is assigned to the ex-servicemen, but not to the landless poor and on verification of the office records, no evidence materialized to show that the land is assigned to ex-servicemen. In view of the above, the third respondent, vested with the powers under Section 4(a) of Andhra Pradesh Assigned Lands (POT) Act, 1977 has ordered to resume the land immediately by directing the Mandal Revenue Inspector to take possession forthwith and report compliance.

5. Heard.

6. It is not in dispute that the land belongs to Government and originally, the Government in Form 9, under Rule 9 (G) of Laoni Rules, a written permission to occupy the land was given by the Tahsildar in favour of Mr.Mansab Ali Khan, Senior Hawaldar/Ex-serviceman, vide No.A3/E1/11993/60/196, dated 8.04.1961 in Sy.No.31, admeasuring Ac.3.31 guntas in Kondapur village, Hyderabad West, Hyderabad District and a copy has been marked by the then Tahsildar, Hyderabad to:

- (1) Mr.Mansab Ali Khan,
- (2) Major officer, Commanding,
- (3) The Collector (Land Records) Hyderabad,
- (4) The Revenue Inspector, Ameerpet, Circle,
- (5) The Patwari of Kondapur village.

An inference can be drawn that the land has been given in favour of Mr.Mansab Ali Khan under the category of ex-servicemen as it is evident from the copy marked to the major officer, Commanding and it is not an assignment patta granted under landless poor category. The said Form 9 also contains a clause for cancellation as “the grant is liable to cancellation if it be found that it was grossly inequitable or was made under a mistake fact or owing to misrepresentation or fraud do in excess of limits of authority delegated to the officer granting the land or that there was an irregularity in the procedure”.

7. It is seen from the order impugned and it has not been disputed that the name of the vendor of the petitioner Mr.Mansab

Ali Khan was implemented in the revenue records through faisal patti for the year 1992-93 by granting Bhandhobasth Izafa basing on the supplementary sethwar issued by the Assistant Director, Survey & Land Records vide No.G8/2566/93. The vendor of the petitioner was in peaceful possession and enjoyment of the lands and he executed the registered sale deed bearing document No.6856/1995 dated 26-5-1995 to an extent of Ac.1.00 in favour of the petitioner, declaring that the schedule property is free from all encumbrances and is not an assigned land as defined under Andhra Pradesh Assigned Lands (POT) Act, 1977 and also not covered by Andhra Pradesh Agricultural Land Ceiling Act, 1973. In view of the above, the petitioner being a bonafide purchaser has purchased the subject land for valuable consideration and since then, is in peaceful possession and enjoyment of the property.

8. The notice dated 30-5-2005 issued by the third respondent is a skeletal notice, which do not contain any information to call for the explanation from the petitioner and there are no facts and allegations the petitioner is required to meet.

9. Prima facie the notice proceeded under the premise that the provisions of the Act, 1977 have been contravened and the petitioner has to face the consequences. Though Form 9 dated 8-4-1961 granted in favour of the vendor of the petitioner prescribes a clause for cancellation for the reasons stated therein, the present Form 1 notice dated 30-05-2005 was not issued in the name of the original assignee Mr.Mansab Ali Khan.

10. The third respondent passed the order in No.B/543/2005 dated 10-11-2005, which was kept pending in the office and it has seen the light of the day on 27-03-2006. The third respondent being the original authority and custodian of the revenue records, on one hand gave a finding, treating that the subject land attracts the provisions of Section 3 of the Act, 1977, without adjudicating the issue of assigned land and the manner in which it was assigned to Mr.Mansab Ali Khan.

11. The fact and the nature of assignment ought to have been adjudicated by the original authority, who is supposed to be the custodian of the records. The third respondent also failed to note in Form 9 that the copy of written permission dated 8-4.1961 was marked to major officer, Commanding. It is apparent from the same and a reasonable inference can be drawn that except the assignment granted in favour of the ex-servicemen, no other pattas will be forwarded to the military personnel. The third respondent while rejecting the explanation of the petitioner, invoked the power under Section 4(a) of the Act, 1977 and directed the Mandal Revenue Inspector to take over possession of the land forthwith without even waiting for the statutory appeal period of 90 days under Section 4-A (1) of the Act, 1977, assuming that the subject land is assigned land. There is no finding with regard to the written permission in Form 9 dated 8-4-1961, which was issued under Laoni Rules.

12. On 15-4-2006, the petitioner filed an application before the third respondent for inspection of records and also filed another application on 19-2-2007 to furnish the copy of the records. The third respondent vide memo dated 20-6-2006 and 30-3-2007 has replied that the records are not available and the copies cannot be furnished. It is strange, the third respondent with incomplete record and without making any efforts to trace the records, passed the order dated 10-11-2005 is unjust and in all fairness, it cannot be accepted.

13. The Government of Andhra Pradesh, Revenue Department in Memorandum No.2006-B1/80-2 dated 30-09-1980 and G.O.Ms.No.1117, Revenue (Assignment – I) Department dated 11-11-1993 has clarified that the Act, 1977 has no application to the assignment of lands made to political sufferers and to ex-servicemen and further clarified that the land assigned to the ex-servicemen are alienable after a period of 10 years. Admittedly, in the light of the above memorandum dated 30-9-1980 and G.O.Ms.No.117, dated 11-11-1993 of the Government, Form 9 written permission was granted in favour of the petitioner on 8-4-1061 and the sale deed in favour of the petitioner has been executed on 26-5-1995, The assignee/vendor of the petitioner has not violated any conditions of Form 9 dated 8-11-1961 and on the basis of the record, no notice was issued to the assignee and without ascertaining the nature of the assignment and without putting the assignee on notice, the bonafide purchaser cannot be

penalized for no fault of him. The notice dated 30-5-2005 of the third respondent is laconic and is unsustainable. The order of the third respondent is inconsistent and contrary to law and appears to have been passed in haste. Having allowed the assignment since 8-4-1961, initiating action in May, 2005 is unjust and unwarranted and the order of the third respondent is liable to be set aside.

14. It appears that the third respondent has acted in casual manner in dealing with the case and passing orders against the petitioner, without application of mind. Unless and until the nature of assignment is decided, issuance of notice to the purchaser will not serve the purse of adjudicating the matter of hearing and considering the objections.

15. In the case of **Dasari Narayana Rao and another Vs. Deputy Collector and Mandal Revenue Officer, Serilingampally, R.R.District and others¹ and M/s.Sudalgunta Sugars Limited Vs. The Joint Collector, Chittoor and another²**, when an identical notice and the consequential orders were passed by the revenue authorities, it was held:

“The proceedings under the 1977 Act are in the nature of civil proceedings. The conclusion that the land in question is assigned land may also be arrived at by a compelling inference preponderating from the circumstantial evidence on record. If the assignment in question is under certain Rules for the time being in force (within the meaning of this clause as employed in Section 2(1) of the 1977 Act); if such Rules (under which the assignment is made) enjoin a prohibition on alienation; and such statutory prohibition was in operation on the actual date of assignment, it might perhaps be an indicator justifying an inference that the land in question is an “assigned land”. For such a presumption to be legitimately drawn, the respondents

¹ (2010) 4 ALT 655.

² (2017) 1 ALT 499

must establish the date of assignment and the contemporaneous state of the Rules under which assignment was made, to legitimize the conclusion that the Rules did prohibit alienation as on the date of assignment. All these are essentially questions of facts and must first be put to the person aggrieved so as to afford him a reasonable opportunity to explain or defend his possession and ownership of the land in question, a valuable property right. A reasonable opportunity is that which informs a respondent to a show-cause notice of the fact that are asserted against him or his interest.”

On the above analysis, the order passed by the third respondent is illegal, without jurisdiction and lacks procedural fairness. The quality of determination depends on the quality of subject matter to be decided and is not dependant upon the capacity of the person determining. In the vastness of its manpower resources, it is the duty of the State to identify an officer who can measure up to the requirements of deciding issues that arise under the provisions of the 1977 Act. The third respondent in the above matter has miserably failed in upholding the factual and legal issues.

16. This Court by order dated 21-12-2012 in W.P.No.38504 of 2012 in the matter of Ande Narasiha Rao Vs. State of Andhra Pradesh, represented by its Commissioner and Inspector General of Registration & Stamps, Hyderabad and 5 others, has passed orders in favour of the petitioner relying upon G.O.Ms.No.1117, Revenue (Assignment-I) Department, dated 11-11-1993 and allowed the writ petition in favour of the ex-servicemen for alienating the lands after 10 years.

17. Since the third respondent is the custodian of the records, the burden lies on him to prove that the original assignee who is the vendor of the petitioner has violated the provisions of law and as

the consequential action has to be initiated. In the absence of the complete record with the respondents, the bonafide purchaser cannot be deprived.

18. The patta/written permission dated 8-04-1961 was admittedly granted in favour of the vendor of the petitioner and after several decades, the same cannot be cancelled unilaterally as held in the case of **Bandi Nagarju Vs. Mandal Revenue Officer, Garladinne Mandal and others**³.

19. Insofar as the land in an extent of Ac.1.00 purchased by one of the family members of the petitioner has been already decided in W.P.No.23508 of 2007, setting aside the impugned orders passed by the respondents 1 to 3 therein and whereas, the present writ petition is filed, challenging the order of the third respondent/Deputy Collector & Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District. Following the same, the present writ petition is also liable to be allowed.

20. For the reasons stated above, the order dated 10-11-2005 of the third respondent is liable to be set aside and is accordingly set aside.

21. The writ petition is allowed accordingly. No order as to costs. As sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 20-04-2018
Shr

³ 1999 (1) ALT 535