

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

+ WRIT PETITION No.886 OF 2006

% Dated 12.07.2018

Sabbella Venkata Reddy & 7 others

....Petitioners

VERSUS

\$ State of Andhra Pradesh rep. by
the District Collector, Visakhapatnam & 2 others

... Respondents

! Counsel for Petitioners : Sri T.Lakshminarayana

^ Counsel for Respondent Nos.1&2: Govt. Pleader for Assignment(AP)

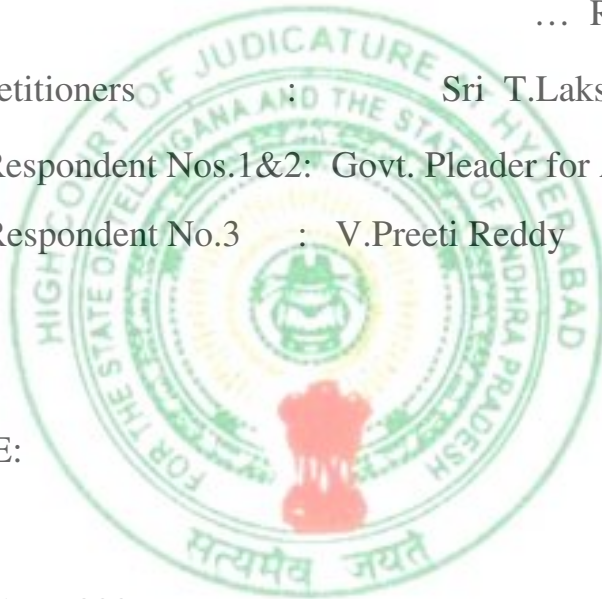
Counsel for Respondent No.3 : V.Preeti Reddy

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> HEAD NOTE:

? CITATIONS:

1. 1999(6) ALT 322
2. 1997(1) ALT 185 (D.B.)



**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION No.886 OF 2006

Between :

Sabbella Venkata Reddy & 7 others

....Petitioners

VERSUS

State of Andhra Pradesh
rep. by the District Collector,
Visakhapatnam & 2 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 12.07.2018

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.886 of 2006

ORDER:

This writ petition is filed to declare that the house plots of the petitioners in Sy.No.294/1 situated at Madhurawada, Chinegadili Mandal, Madhurwada Panchayati, Visakhapatnam are saved by Section-3 (5) of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for brevity "the Act") and a consequential direction was sought to set aside the proceedings of the third respondent-Visakhapatnam Urban Development Authority in Rc.No.580/06/HDT, dated 29.01.1998, resuming the plots of the petitioners, as illegal and arbitrary.

The brief facts of the case, so far as they are relevant for disposal of the writ petition are that a piece of Government land in Survey No.294/1, admeasuring an extent of Acs. 3-96 cents situated at Madhurawada village in Visakhapatnam District was assigned to one K.Rudra Prasad Reddy, in the year 1982; the said assignee K.Rudra Prasad Reddy sold away the said land to one G.Hanumantha Rao under the registered sale deed, dated 27.3.1985; the said Hanumantha Rao prepared a private lay out and divided the said land into 60 plots of house sites and sold few of them in the year 1994-95 and executed

a G.P.A. in favour of one M.Venkatapathi Raju for selling the remaining plots; the petitioners purchased the said plots from G.Hanumantha Rao in good faith for a valuable consideration; the Mandal Revenue Officer, Visakhapatnam (Rural) issued a notice on 4.4.1997 in Form-I under Rule 3 of the A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977 to the petitioners directly, to show cause as to why the petitioners should not be evicted from the said land; the petitioners filed a representation to the Collector, Visakhapatnam requesting to regularize their constructions; aggrieved by the inaction of the Mandal Revenue Officer, Writ Petition No.19928 of 1997 was filed and the same was disposed of on 1.10.1997 directing the Mandal Revenue Officer to consider the objections/replies submitted by the petitioners and pass appropriate orders; pursuant to the said directions, the petitioners approached the Mandal Revenue Officer and adduced oral as well as documentary evidence; and the Mandal Revenue Officer, without considering their objections passed the impugned orders, dated 29.1.1998 resuming the lands of the petitioners.

The writ petition was admitted on 9.3.2006 and the writ petition was dismissed as against the Fourth respondent, G.Hanumantha Rao, for non service of notice on 11.8.2011. No petition was filed seeking restoration of the writ petition against the 4th respondent.

No interim direction whatsoever has been passed in the writ petition.

Counter affidavit has been filed by the Tahsildar, Visakhapatnam (Rural) *inter alia* stating that Sy.No.294 admeasuring to an extent of Acs. 7.80 Cents is originally classified as Gayalu; subsequently the said survey numbers is further sub divided into two sub divisions; as per the office records, the Sy.No.294/1 is having an extent of Acs. 3.76 cents and is originally assigned to K.Rudra Prasad Reddy under landless poor category; the original assignee of the Sy.No.294/2 sold away the assigned land to other persons, by violating the provisions of the Act; the original assignees have violated the conditions of the assignment, namely; “ i) the lands assigned shall be brought under direct cultivation within three years from the date of grant, (ii) the cultivation shall be done by the members of the family of the assigned, (iii) the lands assigned to beneficiaries is heritable but not alienable”; in view of the same, the Tahsildar, Visakhapatnam (Rural) cancelled D-patta by following the assignment rules; any transactions of the assigned lands by way of sale, lease, gift and mortgage are void under Section 3 (2), 3(3) of the A.P. Assigned Lands (POT) Act, 1977; the said transactions were effected after introduction of the Act; in accordance with

the orders of this Court in W.P. No. 19928 of 1997, sufficient opportunity was given to the petitioners to file additional explanation/information; after examining the explanation filed by the petitioners, the Tahsildar issued the proceedings dated 29.1.1998; the assigned land was changed from agricultural to non agricultural land which defeats the very purpose of enactment of the Act, 1977; the transactions were not made in good faith; the said lands were converted into plots without the approval of the VUDA; the petitioners purchased the house plots without verifying whether the lay out is approved or not; notice was issued to the seller of the land; the said land was resumed by canceling pattas and that the writ petition is liable to be dismissed.

Heard Sri T.Lakshminarayana, learned counsel for the petitioners and the learned Assistant Government Pleader.

Learned counsel for the petitioners contend that the show cause notice was issued to the petitioners by the Mandal Revenue Officer; even though the petitioners are bona fide purchasers for value, in good faith.

The learned counsel for the petitioners relied upon the Judgment of this Court in the case of **B.Adinarayana**

Murthy vs. Collector, Ananthapur District and another¹

and also the Judgment in the case of ***K.Sriramachandra Murthy Raju and others vs. The State of Andhra Pradesh rep. by the District Collector, Visakhapatnam and others***² and submits that the word 'good faith' occurring in Section 3 (5) of the Act should be understood in the context, whether there are *bona fides* in the transactions. He contends that the petitioners have applied for regularization of those lands and that no orders have been passed by the respondents herein, on their applications.

The learned Assistant Government Pleader contends that notices have been given to the writ petitioners, pursuant to the directions in the earlier writ petition and that the transaction is clearly prohibited under the Act.

The learned Assistant Government Pleader relies upon Sub Section-5 of Section-3 and submits that sub section-5 shall not apply to the case of the petitioners, because, the sub section 5 of Section 3 applies 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 the purpose of

¹ 1999(6) ALT 322

² 1997(1) ALT 185 (D.B.)

cultivation or as a house-site on the date of such commencement. She contends that the said transaction was entered into by the petitioners subsequent to the Act of 1977 and hence, the saving Clause under Section-3(5) does not apply to the case of the petitioners.

Now the point for consideration is whether the relief sought for by the petitioners for a declaration that, house plots of the petitioners are saved by Section 3 (5) of Andhra Pradesh Assigned Lands (Prohibition and Transfers) Act 1977 can be granted?

To appreciate the contention of the writ petitioners, it is necessary to extract sub Section-5 of Section 3 of the Act, which is as follows:

“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 purpose of cultivation or as a house-site on the date of such commencement”.

For application of sub section 5 of Section-3, the following conditions should be satisfied:

- i) The land should be assigned land,
- ii) It should be purchased by a landless poor person in ‘good faith’ for a valuable consideration from the original assignee or its transferee
- iii) Prior to the commencement of the Act.

Admittedly, the said land was assigned to the landless poor person in the year 1982, namely, K. Rudra Prasad Reddy and he sold this land to G.Hanumantha Rao in the year 1985 and G.Hanumantha Rao sold the said land to the petitioners in the year 1994-95. Hence, sub Section 5 of Section 3 of the said Act does not apply to the facts of the present case. The resumption made by the MRO *vide* proceedings dated 29.01.1998 cannot be found fault with. If the petitioners had purchased the said land prior to commencement of the Act, 1977, the question of examining the word 'good faith' would arise. As the sub Section 5 itself does not apply to the purchase made by the petitioners, it may not be necessary to examine the aspect of 'good faith'. As seen from the counter affidavit, the petitioners purchased the house site plots from the transferee, without even examining whether the lay out has been approved or not.

The Judgment relied upon by the learned counsel for the petitioners in the case of ***B.Adinarayana Murthy vs. Collector, Ananthapur District and another***, does not apply to the facts of the case in hand. In the said case the resumption of land was done after lapse of 35 years on the ground that the said land has been kept fallow. In those circumstances, it was held that the power of resumption has to be exercised within a reasonable period after

assignment, say, five to six years, and that too only after ascertaining that the land has not been cultivated and has been kept fallow all these years.

The other Judgment relied upon by the learned counsel for the petitioners, is the case of **Sri K.Sriramachandra Murthy Raju and others vs. The State of Andhra Pradesh rep. by the District Collector, Visakhapatnam and others.** In that case, it was held that “the word ‘good faith’ occurring in Section 3 (5) of the Act should be understood in the context whether there are bona fides in the transactions. In other words, the test should be whether the transaction is genuine, whether the sale consideration passed, whether possession was delivered, whether the transaction is not sham and nominal and is not benami, or a make-believe affair”. The said Judgment does not apply to the facts of the case, as Sub Section-5 of Section-3, itself does not apply to the facts of the case, as the petitioners purchased the house site plots, much later to the enactment of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. Hence, the plots of the petitioner are not saved by Section 3 (5) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977.

For the reasons explained above, I do not see any reason to interfere with the resumption order passed by the Mandal Revenue Officer in Rc.No.580/06/HDT, dated 29.01.1998. Hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

DATE: 12/07/2018
slk



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



WRIT PETITION No.886 of 2006
Dated 12.7.2018

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