

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.14745 of 2007

ORDER:

Heard Mr.Kolluri Arjun Chowdary holding for Mr.C.Ramachandra Raju and the learned Assistant Government Pleader for Revenue.

Counter was served on 02.06.2015. The request for filing reply is rejected. However, he is heard on merits.

The petitioners challenge proceedings in ROC.No.128/2007 A, dated 25.06.2007, served on petitioners on 05.07.2007, as illegal, arbitrary, unconstitutional and violative of principles of natural justice.

This Court is relieved of the responsibility of referring to averments made in the affidavit and also the counter affidavit for the grievance of the petitioners is against the action of respondents in trying to dispossess the petitioners, by the impugned order which reads thus:

“An extent of Ac.1.44 cts in R.S.No.220/1 of Teegalavancha Village of Chintalapudi Mandal has been assigned to Sri Allam mutyalu S/o.W/o_____in the year_____. It is noticed that Smt Muddukuri Bhagya laxmi, W/o.Ramesh Babu R.S.No.220/1, Doc.No.1516/2006 dt.13-4-06 Extent Ac.1.44 cts of Teegalavancha Village of Chintalapudi Mandal is now under occupation. Hence notices have been issued i.e., Form-I to Original Assignee and Form-II to present occupier under Sec.3 of A.P.Assigned Lands Act

(POT) rules, 2007. Though 15 days of statutory period is over. The original Assignee/present occupier failed to attend before Tahsidlar Chintalapudi and filed any objections or documents. Hence, under Sec.3 Sub Section (1) and of A.P.Assigned Lands (POT) Act.1977 as amended by Act 8 of 2007 an extent of Ac.1.44 cts in R.S.No.220/1 of Teegalavancha Village of Chintalapudi Mandal was resumed to Government.

The Mandal Revenue Inspector II Chintalapudi is directed to take possession of the land from Assignee/Transferee and handed over to Village Revenue Officer Teegalavancha Village for safe custody and report compliance immediately.”

The 4th respondent filed counter affidavit and in the counter affidavit, the 4th respondent admits that notice in Form-II was issued to petitioners and issuing notice under Form-II satisfies the requirement of law.

At this point, to assail the proceedings impugned in the writ petition, the counsel for petitioners relies on ***Sudalagunta Sugars Ltd., Chittoor District, A.P. v. Joint Collector, Chittoor, Chittoor District and another***¹ for the proposition that the notice issued under A.P.Assigned Lands (POT) Act firstly ought to contain all the details showing alleged breach of condition of assignment and secondly, the notice is required to be served on a transferee of ans assignee both in Form-I and II. In other words, the contention is that

¹ 2017 (2) ALD 529

the notice is bereft of details and secondly, the 4th respondent admittedly served notice in Form-II on the petitioners and without opportunity of enquiry or participation, the eviction order is passed, which is illegal, arbitrary, unconstitutional and violative of principles of natural justice.

The counsel places strong reliance on the following paragraphs:

“19. Now the points for consideration are (I) Whether the impugned Notice contains sufficient details to formulate an issue for decision or not and (II) Whether the notice in Form-II would suffice the requirement of Rule 3 for passing an order under Section 4 of the Act or not?

23. This Court in [A.P. State Electricity Board Employees Union v. Joint Collector, Chittoor](#), 2008 (1) ALD 29 = 2008 (4) ALT 638, has considered the definition of assigned land in Section 2(1) of the Act and held as follows:

“A plain reading of the above definition shows that the land, which was assigned by the Government subject to the condition of non-alienation can only be treated as an assigned land for the purpose of Act 9 of 1977. As a natural corollary, the prohibition of transfer as contained under Section 3 of Act 9 of 1977 is attracted only in cases where the land is assigned subject to the condition of non-alienation.”

24. Unless and until this jurisdictional fact is decided with reference to assignment, order of assignment, conditions on which assignment made, the mere issuance of notice in Form-II to transferee will not serve the purpose of hearing or considering the objections. The forms under the Rules cannot guide literal meaning of Rule 3 of the Rules. On the other hand, if a restricted meaning as sought to be canvassed by the learned Government Pleader is accepted, then transferee is heard only on the eviction but not on the valuable defences available to him in the enquiry conducted by the District Collector or authorized officer. After considering the totality of scheme of Act, Rules and the content of

notices in Form-I and Form- II, this Court is of the view that whenever action under Section 4 of the Act is initiated by the District Collector or authorized officer, the authority is required to issue notices in Form-I and Form-II to the assignee and the transferee from the assignee.

25. The authorities are required to have practical and realistic approach in passing order under Section 4 of the Act. With the transfer of assigned land the assignee may or may not evince interest in the enquiry conducted by the District Collector or authorized officer. Further being the person interested in the property covered by notice issued in Form-I or Form-II the transferee, if heard, before considering the consequences stipulated under Section 4 of the Act, the same satisfies scope and purpose of special statute enacted for prohibiting transfer of assigned lands and restoring the assigned land in accordance with Section 4.”

The learned Assistant Government Pleader contends that the petitioners ought to have availed the remedy of appeal. Further, the proceedings impugned in the writ petition can be treated as show cause notice and the liberty can be granted to 4th respondent to proceed for resuming the lands under the Act.

In view of the ratio laid down by this Court in **Sudalagunta Sugars** case, I am not persuaded or convinced by the submission of the Assistant Government Pleader.

In view of the undisputed and admitted circumstances, it is in fitness of things of this case that the enquiry ought to be objective and conforms to the requirements of law.

The proceedings impugned in the writ petition, by following the ratio laid down in ***Sudalagunta Sugars case*** are set aside, the matter remitted back to 4th respondent. If the circumstances warrant, issue notices in Form-I and II, afford opportunity to petitioners and proceed in accordance with law.

Writ petition is ordered as indicated above. No order as to costs.

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

Dt: 12.03.2018
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S. V. BHATT, J

