

**In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh**

WRIT PETITION No. 26908 of 2008

Between:

Yeeravalli (Veeravalli) Varalakshmi Devi

... Petitioner

and

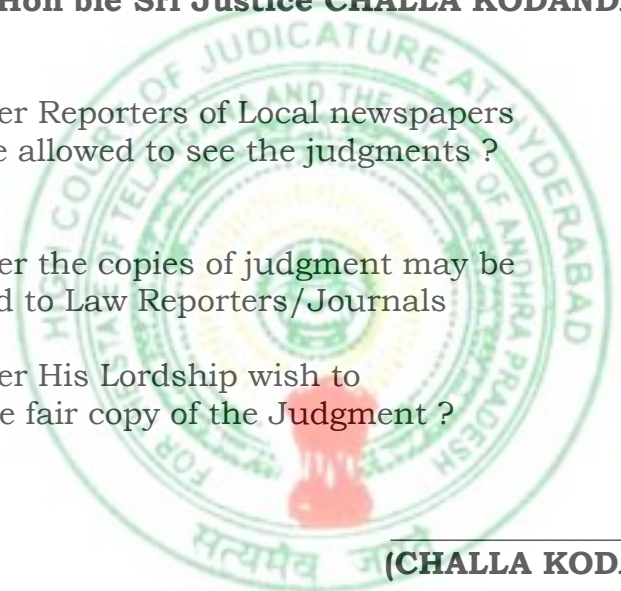
The Guntur Municipal Corporation & others

...Respondents

Date of Judgment Pronounced: 04-10-2018

Submitted for Approval:

The Hon'ble Sri Justice CHALLA KODANDA RAM

- 
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 His Lordship wish to see the fair copy of the Judgment ? Yes/No

(CHALLA KODANDA RAM, J)

*** The Hon'ble Sri Justice CHALLA KODANDA RAM**

WRIT PETITION No. 26908 OF 2008

% Dated 04.10.2018

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Yeeravalli (Veeravalli) Varalakshmi Devi

... Petitioner

and

The Guntur Municipal Corporation & others

...Respondents

! Counsel for the petitioners : Sri Posani Subba Rao

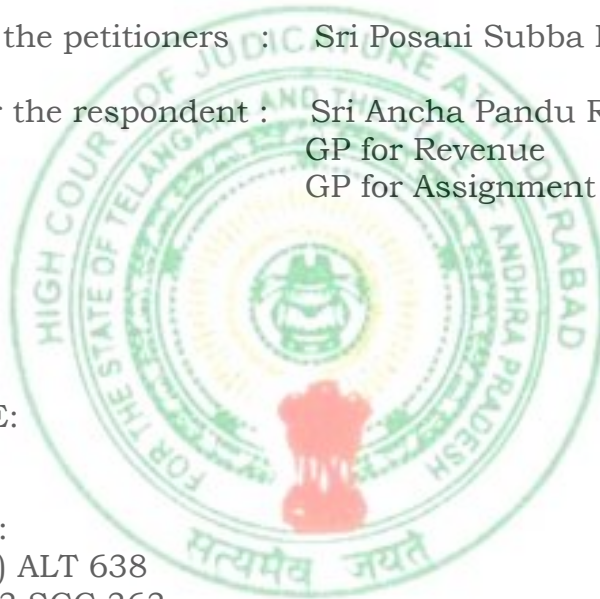
^ Counsel for the respondent : Sri Ancha Pandu Ranga Rao
GP for Revenue
GP for Assignment

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>HEAD NOTE:

? Cases cited:

1. 2008(4) ALT 638
2. (2011) 3 SCC 363
3. AIR 1958 SC 86



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 26908 OF 2008

ORDER :

This Writ Petition is filed seeking a *mandamus* to declare the action of the respondents in proposing to construct a multi-storied building in the land of the petitioner admeasuring Acs.2.49 situated in Survey No. 529/2 of Chowdavaram Village, Guntur Rural Mandal, treating the same as government land and further proposing to allot the same to third parties, as illegal and contrary to law.

The petitioner claims to be the owner and possessor of the subject land through registered sale deed dated 11.07.1981 and that her name was mutated in the revenue records also. However, she came to know that on 04.12.2008, the 1st respondent Corporation issued letters/notices to public intimating that they should make Applications for allotment of house flats in multi-storied building to be constructed under *Indiramma Phasee-II* in Survey Nos. 529/2, 149/535-2 to 6 (near R.V.R. Engineering College). On the same day, the petitioner states, she noticed a board by the side of her land, got put up by the 2nd respondent District Collector, cautioning the public that '*trespassers of the land belongs to government admeasuring Acs.13.94 cents situated in Survey Nos. 529/2, 149/535-2 to 6 shall be prosecuted*'. On the next day, she approached Respondents 1 and 4, pointing out that Acs.2.49 cents in Survey No. 529/2 belongs to her, but not to the government, however, the same was not considered. It is her further case that so far, neither notice was issued nor is there any

enquiry in respect of the said property. The respondent authorities, without acquiring her land and without following due process, trying to deprive her of the land.

On behalf of the 1st respondent Municipal Corporation, the Commissioner filed the counter-affidavit denying the averments made in the Writ Petition. It is further stated that Respondents 2 to 4 had communicated that the land in Survey No. 529 is government poramboke, that they had taken steps to construct multi-storied building and requested the Corporation to follow-up the same and provide amenities as the construction process was handed over to the Andhra Pradesh State Housing Corporation, Hyderabad. It is also stated that except that, this respondent does not know anything.

The 4th respondent Tahsildar also filed a counter-affidavit on behalf of Respondents 2 to 4. It was stated therein that the petitioner is an alienee in respect of the land measuring Acs.3.31 cents in Survey No. 529/1 and Acs.2.49 cents in Survey No. 529/2 of Chowdavaram Village by purchasing the assigned land through registered deeds. It was further stated that in terms of the policy of the government, the cases where the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 were violated, were taken up and it came to light that the land in Survey No. 529/2 of Chowdavaram Village was one such. The land was resumed after observing the formalities under the said Act. Since the petitioner, knowing that the land was assigned, purchased the same from the assignee, she ought to have approached the authorities under the Act rather than rushing to this Court. It is

further asserted that the land is Assigned Waste Dry (AWD) and is not ryotwari patta land. An extent of Acs.3.31 was assigned to one Jarugumalli Ellamanda in D.K. No. 75/37 on 23.12.1927. When queried, learned Assistant Government Pleader Sri Delhi Babu confirms that the date mentioned in the counter is 23.12.1927. Inasmuch as the petitioner purchased the assigned land, the same is hit by the provisions of Act 9 of 1977. It is further asserted that on noticing violation of the conditions of the assignment, a notice in Form I was issued to the alienee *vide* office proceedings Rc.No. 412/2007, dated 22.02.2007 and the same were served on 26.02.2007. The petitioner, in her explanation, dated 13.03.2007, which was received in the Office on 24.03.2007, admitted that she purchased the land admeasuring Acs.3.31 cents in Survey No. 529/1 of Chowdavaram Village from the sons of Jarugumalli Ellamanda on 27.07.1981 and since then, her daughters are enjoying the land. She finally requested the Tahsildar, Guntur to withdraw the notice issued to her as she gave an extent of Ac.0.81 cents to RVR & JC College for road purpose and an extent of Ac.2.50 cents is with her. The petitioner herself admitted that she purchased the assigned land, which was resumed under the provisions of the 1977 Act.

Taking into consideration the assertion in the counter-affidavit, this Court directed the learned Government Pleader for Revenue (Andhra Pradesh) to produce the record relating to the proceedings, dated 20.04.2007. The learned Government Pleader was also directed to specifically ascertain whether any notice was issued to the petitioner. On verification of the record, the learned

Government Pleader fairly submits that the petitioner was not issued any notice and the notice was issued to Patibandla Samrajyam. In those circumstances, it is evident that neither the petitioner nor the original allottee Ellamanda was issued any notice.

Once it is admitted that the original assignment was prior to 1954, as held by this Court in a large number of cases, particularly the one reported in ***A.P. State Electricity Board Employees Union v. Joint Collector, Chittoor***¹, wherein G.O.Ms.No. 1142, dated 18.06.1954, under which the terms and conditions of assignment were promulgated by the State Government for the first time, was referred to, the provisions of Act 9 of 1977 have no application and the same cannot be invoked. Further, when it is admitted that the petitioner was in possession of the land and the said fact was entered in the revenue records and that she was admittedly, issued the pattadar passbooks, least that is expected of the respondent authorities is to issue a notice to the petitioner. It may be noted that Act 9 of 1977, while prohibiting sale of assigned lands, provided an exception, whereunder the purchaser, if is a small farmer, is entitled to make an Application to consider his / her case and the individual can retain the land.

In view of the said legal position and in view of the fact that admittedly, no notice was issued to the petitioner, the stand of the respondents that the subject land is the government land and the resumption order made on 20.04.2007 would disentitle the petitioner to retain the land, is not sustainable. Further, as noted

¹ 2008(4) ALT 638

supra, the notice is alleged to have been issued to one Patibandla Samrajyam, but not to the original assignee or any of his legal heirs or to the petitioner, hence, the resumption order dated 20.04.2007 does not bind the petitioner in any way. The contention of the learned Government Pleader that even assuming that the resumption order is void, unless the same is challenged, it is binding. To support his contention, the learned Government Pleader places reliance on the judgment of the Supreme Court in **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**². Though this Court does not dispute the legal principles stated therein, it may be noted that the petitioner was never a party to the said proceedings. One can understand if the petitioner was party to the said proceedings and he had failed to challenge the same. Hence, the contention of the learned Government Pleader cannot be accepted.

Further, this is a case which squarely falls within the exception for issuance of a writ of *mandamus*, as held by the Supreme Court in **The State Of Uttar Pradesh vs Mohammad Nooh**³ to the effect that where an order is made without authority of law or in violation of the principles of natural justice, a writ of certiorari would lie. Though the petitioner has prayed for a writ of *mandamus*, in the case on hand, even a writ of certiorari would be an appropriate one for quashing the proceedings dated 20.04.2007. Apart from that, as stated supra, as this Court has already settled that for the assignments made prior to 1954, the provisions of Act 9 of 1977 do not apply, interference of the

² (2011) 3 SCC 363

³ AIR 1958 SC 86

respondents with the petitioner's possession and enjoyment of the property which was acquired for a valuable consideration is unsustainable. Hence, this Court is of the view that the petitioner is entitled to a writ of certiorari.

The learned Government Pleader has also placed on record the order dated 02.03.2012 of this Court in Writ Petition No. 5849 of 2012. In the said Writ Petition, the petitioner had challenged the action of the respondents in not furnishing the information with respect to the land in Survey No. 529/1 and 529/2 on the ground that the land in those survey numbers is mentioned in the list of assigned lands. This Court disposed of the said Writ Petition directing the petitioner to submit a representation before the Revenue Divisional Officer, Guntur with a request to furnish the particulars of assignment of the land in the above survey numbers. The said order instead of supporting the case of the respondents, as a matter of fact, supports the case of the petitioner.

In those circumstances, viewed from any angle, the petitioner is entitled to a writ of certiorari. The proceedings, dated 20.04.2007 is hereby quashed. The Writ Petition is accordingly, allowed. No costs.

Miscellaneous Applications, if any shall stand closed, consequently.

CHALLA KODANDA RAM, J

04th October 2018

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