

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.22810 of 2014

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief/ s:

“..to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents 1 to 6 taking steps to dispossess the petitioners under the premise that the land in the petitioner's possession are assigned land situated in Sy.No.233/3 of Nizampet village, Quthbullapur Mandal, Ranga Reddy District i.e., Plot Nos.2,9,6,7 and 8 owned by the petitioners 1 to 3 respectively is in contravention of the provisions of the A.P. (T.A) Revenue Act, Rule 9(g), 10 of Lavany Rules and the provisions of A.P. Assigned Land (Transfer of Prohibition Act, 1977), 2) to declare that the provisions of A.P. Assigned land (Prohibition of Transfer) Act in respect of the land purchased by the petitioners has no application and consequently direct the respondents 1 to 6 to decist themselves to takes possession of the land situated in Sy.No.233/3 of Nizampet Village, Quthbullapur Mandal, Ranga Reddy District, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submissions of *Sri N. Subba Rao*, learned counsel appearing for the petitioners, and of the learned Government Pleader for Revenue (TG), appearing for the respondents.

3. The case of the petitioners, as stated in the affidavit filed by the 1st petitioner, and the submissions made on their behalf, in brief, are as follows:

The 1st petitioner purchased, for valuable consideration, the land of an extent of 406 Sq.yards i.e., plot No.2 in Sy.No.233/ 3 under a registered sale deed, dated 25.04.2013. Since then he is continuing in possession of the said property. Before purchasing the said property, he made enquiries with regard to the title of the property. One Kummari Bikshapathy was the original pattedar of an extent of Ac.1.10 guntas. The said Bikshapathy sold the said

land, for valuable consideration, in favour of one Latchi Raju under a registered sale deed, dated 20.12.2004, registered in the Office of Joint Sub-Registrar, Ranga Reddy District. Based on the said sale deed and as already a lay out was approved by the Nizampet Grama Panchayat, the above said plot and other plots were sold in favour of the 1st petitioner and other prospective buyers. The 1st petitioner was also informed by the vendor that in respect of part of the land in Sy.No.233 viz., neighbouring lands, the Government previously claimed that the same are assigned lands and that against the said claim, the land owners approached this Court and that this Court held that the provisions of A.P. Assigned Land (TP) Act has no application. Similarly the 2nd petitioner purchased plot no.9 admeasuring 332 Sq.yards; and, the 3rd petitioner purchased an extent of 986 Sq.yards (plot No.6,7 & 8). The copies of land records, registered sale deeds and ROR entries are filed along with the writ petition. It appears that respondents 1 to 4 instructed respondents 5 & 6 to take possession of the land. Pursuant to the said instructions, the respondents 5 & 6, without issuing any notice and following the procedure contemplated under law, made efforts, on 07.08.2014, to dispossess the petitioners and others from their respective plots. The petitioners and other plot owners resisted the said action. Thereupon, the 5th respondent proclaimed that the plot owners would be dispossessed with the assistance of local police. The original pattedar got the land on transfer. At the time of transfer of the land in favour of the assignee, on payment of consideration, Form G under 1950 Rules was issued; the same does not contain any condition prohibiting alienation of the land. Transfer of land on payment of consideration stands on a different footing than that of the ordinary assignment of land. In respect of similarly situated persons to whom lands were transferred under Rule 9(g) of Laoni Rules, this Court held that the provisions of A.P. Assigned Land (Prohibition of Transfer) Act, 1977 ['Act 9 of 1977', for short] are not attracted. This Court also held that for resumption of the

assigned land under Sections 3 & 4 of the Act 9 of 1977 the following aspects are required to be specified: (a) The nature of occupancy rights granted, namely, whether occupancy rights were granted on collection of market value or free of market value in favour of the landless poor persons; (b) whether the said land falls within the notified area restricting inalienability as per the notification issued under Section 58-A of the Telangana Area Land Revenue Act; (c) Whether Act No.9 of 1977 applies to the nature of occupancy right/assignment granted; (d) If any changes in the revenue records are effected, reasons for change from the original entries in Khasra Pahani of 1954-55 or subsequent to the same. In respect of the subject land in Sy.No.233 when the respondents earlier sought to invoke the provisions of Act 9 of 1977 by issuing resumption proceedings, this Court held that the provisions of the said Act cannot be applied even in cases where the land is assigned without there being any clause for prohibition of transfers and that the rights of purchasers under such transactions cannot be curtailed simply because the land was transferred under the relevant Rules. This Court also held that even if it is assumed that an order of resumption was passed, the writ petition is maintainable as the applicability of the provisions of the Act 9 of 1977 itself bars such action pursuant to the judgment rendered in 2008(5) ALD 626. Act 9 of 1977 has no application to the lands purchased by the petitioners pursuant to the Judgments rendered by this Court in respect of the lands in same survey number viz., Sy.No.233. As on the date of the filing of the writ petition, the petitioners are in possession of the property. The respondents did not issue any notice(s) to the petitioners. The action of the respondents is in violation of not only the settled principles of law but also principles of natural justice. Hence, the writ petition is filed.

4. On 11.08.2014, this Court, while ordering notice before admission, granted the following interim order: '...There shall be interim direction, as prayed for.'

5. Respondents filed IA.No.1 of 2018 requesting to vacate the said interim orders. The case of the respondents as stated in the counter affidavit of the 4th respondent filed along with the vacate petition and the submissions made on their behalf, in brief, are as follows:

Vide G.O.Ms.No.1406, Revenue, dated 25.07.1958, in exercise of the powers conferred by Section 172 of the Hyderabad Land Revenue Act, 1317 Fasali, certain Rules with regard to revised assignment policy are made in Andhra Pradesh and Telangana areas. As such, the said Rules are statutory in nature. The said Rules were issued in super-cession of all the earlier Rules and orders; as such, after the said GO came into force, Laoni Rules and Form-G have no application; and, as such the claim of the petitioners is contrary to the statutory Rules made under Section 172 of the said Act. Therefore, their claim is liable for rejection. The judgment relied upon by the petitioners is not applicable to the claim of the present petitioners as the sustainability of G.O.Ms.No.1406 issued in super-cession of all earlier Rules is not considered in the said judgment. An extent of Ac.112-27 gts., in Sy.No.233 situated at Nizampet village was recorded as 'poramboke sarkari' [Government land] as per Sethwar. Out of the above extent, the Government have assigned an extent of Ac.2.20 guntas in favour of one Kummari Pamaiah, in the year 1963-64; and, a supplementary Sethwar was issued to that effect; and, the same was implemented in Revenue records. While so, during field inspection by the field staff, it was noticed that after the death of the original assignee (Kummari Pamaiah), Kummari Bikshapathi and Kummari Yadaiah, who are the legal heirs (sons) of the assignee, alienated an extent of Ac.1.20 cents in favour of one G. Lachi Raju under a registered sale deed, dated 13.05.2013. The said land is assigned after the above mentioned revised assignment policy came into force. As per the said policy, the assigned lands are heritable but not alienable and assigned lands attract the provisions of Act 9 of 1977. As such Form-I and Form-II notices under Rule 3 of the said Act have been issued to the legal

representatives of the assignee as well as the purchaser, G. Lachi Raju. In response to the said notices, the purchaser submitted a reply *inter alia* stating that he has purchased the land; that he applied for sanction of mutation; that his name has been recorded in the revenue records; that in respect of Ac.1.20 guntas of land in Sy.No.233/ 3, which is heritable and transferable, there is no prohibition of sale imposed; and, requested to examine and drop further proceedings in the matter. On verification of records, it was found that mutation was not sanctioned in favour of the purchaser as stated by him. The purchaser has also failed to produce 9(g) patta certificate said to have been issued in favour of alleged original assignee under Laoni Rules, 1950, in support of his claim. The subject land is an assigned land and entries were made in pahani as 'Laoni pattedar' for the year 1965-66 as they were granted Laoni Izaafa in the year 1964-65 and the same has been recorded in the faisal patti for the year 1964-65; and, all the lands assigned after 1958 are heritable but not transferable. As such, all the assigned lands are prohibited from transfer. Accordingly, the subject property is included in the list of prohibitory properties. After commencement of the afore-said revised assignment policy, all the assignment proceedings pending and arising thereafter shall be disposed of in accordance with the new policy. Therefore, there is no possibility of issuing Form 9(g) certificates under Telangana Laoni Rules, 1950, during the year 1964-65. The Government land in the occupation of the farmers was assessed under Shivai Zama Bandi (Poramboke Dry land cultivation). As per the faisal patti of 1963-64 relating to Shivai Jamabandi it was recorded as 'Survey Nos.88, 90, 96, 233, 268, 270, 310, 319, 325, 339, 344 poramboke; out of which in land admeasuring Ac.92.12 guntas Abadi cultivation has been made and was confirmed by Revenue Inspector and Laoni Certificates were given to the cultivators; and, hence, Rs.144-48 Svaya Jamabandi may be approved'. Accordingly K. Ramaiah was shown as the occupant in Sy.No.233 to an extent of Ac.2.20 guntas under eligible encroacher category in column no.2. Further, as

per the Faisal patti for the year 1964-65 it was recorded that Sy.no.88, 90, 310, 319, 325, 313, 344, 233 & 191 measuring Ac.84.02 guntas is assigned to the persons shown in column no.2 is Laoni and that the Tahasildar proposed to sanction 'Laoni Izafa' for Rs.201-72. Had it been purchased by him in the open auction through 9(g) certificate, it ought to have been mutated under 'Aayani Izafa' as per the patta lands. Therefore, as per the available statutory record, it is clearly established that the land to an extent of Ac.2.20 gts., in Sy.No.233 of Nizampet village was assigned to K. Ramaiah after issuance of revised assignment policy in the afore-stated GO, which bears a condition with regard to non alienation. Therefore, selling of the same is a violation of Section 3 of Act 9 of 1977. In view of the above, in exercise of the powers vested under Section 4 of the Act 9 of 1977, orders have been issued to resume the land to an extent of Ac.1.20 guntas in Sy.no.233/ 3 situated at Nizampet Village from the irregular possessor to the possession of the Government. Accordingly, possession was taken over by the Government under cover of panchanama, dated 17.07.2014, and the said land is under the custody of the Government. The purchase of the respective plots by the writ petitioners is void and not valid under law. Therefore, the writ petition may be dismissed.

6. I have given earnest consideration to the facts and submissions.

7. From the pleadings and submissions, it is indisputable that an extent of Ac.2.20 guntas of land in Sy.No.233/ 3 of Nizampet village is an assigned land and that it was originally assigned to Kummari Ramaiah and that it is heritable and that on the death of said Ramaiah, the said land by inheritance devolved upon his children Kummari Bhikshapathy and Kummari Yadaiah. Admittedly, they alienated portions of the said land to various purchasers.

8. In this backdrop, the case of the Government is that G.O.Ms.No.1406, Revenue, dated 25.07.1958, [hereinafter 'G.O.1406', for short] was issued under Andhra Pradesh (Telangana) Hyderabad Land Revenue of 1317 fasali and

the said Rules, which are statutory in nature, were issued in super-cession of earlier Rules and Orders and that on coming into the force of the said Rules, Laoni Rules and Form-G have no application and that the land that was assigned in the year 1963-64 to the assignee is not alienable and alienation of the said or any other assigned land is prohibited under the provisions of Act 9 of 1977 and that as it is noticed that the lands were alienated contrary to the prohibition against alienation and in violation of the provisions of the said Act, orders have been issued for resumption of the land to an extent of Ac.1.20 guntas out of the assigned land from the possession of the irregular possessor to the possession of the Government *vide* proceedings, dated 16.07.2014, and that Government took possession of the said extent of land under the cover of a panchanama, dated 17.07.2014.

9. However, admittedly, Form I & II notices under Rule 3 of Act 9 of 1977 were issued to the children of the original assignee (since died) and the purchaser, G. Lachi Raju, but notices were not served upon the children of the original assignee; and, that on the service of the notice, the purchaser, G. Lachi Raju, submitted his reply and that thereafter the resumption order, dated 16.07.2014, has come to be passed. As admittedly notices were not served on Kummari Bhikshapathy and Kummari Yadaiah, the legal representatives of the original assignee, it can safely be held that the said resumption order is liable to be set aside and as a sequel the writ petition can be disposed of reserving liberty to the authority concerned to take appropriate action afresh, if so desired, in the matter, in strict accordance with the procedure established by law, however, after due service of notices on the legal representatives of the original assignee and affording an opportunity of hearing to them. Be that as it may.

10. Nevertheless, learned counsel for the petitioners, while requesting to grant the relief as prayed for in the writ petition, contended as follows: - 'The land was assigned to the original assignee on payment of consideration as per

the provisions of the Telangana Area Land Revenue Act, 1317 fasali; that Laoni Rules, 1950, are applicable to the assigned land; that there is no prohibition for alienation; and, that the Rules relating to assignment of Government lands as per revised Assignment Policy issued *vide* G.O.Ms.No.1406, Revenue, dated 25.07.1958, have no application; and, hence the alienations/transfers of the assigned land are valid; that the resumption order is illegal, unjust and unsustainable and the possession of the writ petitioners over the subject land purchased by them was never disturbed; that the writ petitioners are in possession of the subject land; and, that in view of the ratios in the decisions in G. Amrutha Rao and others v. Government of A.P and others¹; and, Letter sent from Plot No.338, Parvant Nagar, Borabanda, Hyderabad and others v. Collector & District Magistrate, Ranga Reddy District, Hyderabad and others², the petitioners are entitled to the reliefs prayed for.'

11. At the outset, it is to be noted that in response to the information sought for by the writ petitioners, under the provisions of the Right to Information Act, with regard to the assignment certificate related to assignment of land made in favour of Kummari Ramaiah and the file bearing No.19/ 3106/ 1995, the Deputy Collector & Tahasildar, Quthbullapur Mandal, by his memo, dated 06.05.2015, informed that the file related to the assignment certificate and file bearing No.19/ 3106/ 1995 are not traceable. However, it is also stated in the said Memo that the subject land is an assigned land and that it can be transferred by way of sale, gift, etcetera. Therefore, the Government are not disputing that there is no prohibition against alienation of the land that was assigned to Kummari Ramaiah. Be that as it may.

12. Adverting to the legal aspect, it can safely be said that the legal aspect relevant to the case on hand is no longer *res integra* in view of the Division Bench decision of this Court in Letter sent from Plot No.338, Parvant Nagar,

¹ 2013(1) ALD 570

² 2008 (5) ALD 626 (DB)

Borabanda, Hyderabad and others v. Collector & District Magistrate, Ranga Reddy District, Hyderabad and others [2 supra]; and, the decision in G. Amrutha Rao and others v. Government of A.P and others [1 supra]. The Division Bench of this Court, while disposing of a batch of writ petitions, considered the following question –whether lands which were granted on patta under Laoni Rules, 1950 can be resumed under the provisions of the Act No.9 of 1977 treating them as assigned lands. The facts of the cited case are - petitioners therein purchased under various sale deeds different extents of lands in Khanamet Village, Serilingampally Mandal; the Deputy Collector & MRO of the said Mandal, having noticed that lands were alienated by the assignees, issued form I notice under Rule 3 (1) of A.P. Assigned Lands (Prohibition of Transfer) Rules, 1977, to the said petitioners including original assignees from whom they purchased the land stating contravention of provisions of subsection 2 (3) of Act 9 of 1977; on filing of the objections stating, *inter alia*, that the provisions of Act 9 of 1977 are not applicable as the lands are not assigned lands covered by the provisions of the said Act and that the lands were assigned under Laoni Rules without any prohibition against alienation, the said MRO, while holding that permission has not been granted by the Collector for alienations, had held that the alienations are not valid as per Revised Assignment Policy vide G.O.Ms.No.1406 and also the Laoni Rules, and passed orders for resumption of the lands; the further appeals were dismissed; therefore, the petitioners in the batch of writ petitions approached this Court; they contended, *inter alia*, that grants under Laoni Rules with or without condition of alienability are not covered by the provisions of Act 9 of 1977 and that grant of patta under Laoni Rules is not an assignment and that the Revised Assignment Policy issued in GO.1406 and the provisions of Act 9 of 1977 have no application. The petitioners, therefore, contended in the batch of writ petitions that resumption orders are illegal and invalid. Per contra, Spl. Government Pleader contended before the Division Bench that Laoni Rules

which were issued in furtherance of Chapter V of Telangana Area Land Revenue Act were super-ceded by policy issued in G.O.Ms.No.1406 and that after 1958, the lands assigned are only heritable but not alienable and that the assignments were made after 1958 and therefore, the petitioners contentions in the batch of writ petitions are untenable. The Division Bench having extensively considered the provisions of Telangana Area Land Revenue Act, the Laoni Rules, the new Rules of Assignment Policy issued in G.O.Ms.No.1406 of 1958 and Act 9 of 1977 disposed of the writ petitions.

13. In Amrutha Rao's case supra, this Court referred to the afore-stated decision of the Division Bench and noted that assignment under Laoni Rules is invariably through auction and that the fact that assignment is made or rights are conferred in form-G would provide a clinching proof to the effect that the assignment was made under Rule 9-G of the Rules and that in view of the Division Bench decision wherein it was held that the lands assigned under the said Rule are not amenable to the proceedings under Act 9 of 1977 held that the rights of a purchaser from an assignee cannot be curtailed simply because a certificate in form-G is issued instead of executing a sale deed in favour of assignee and that invocation of provisions of Act 9 of 1977 in respect of such lands assigned in favour of land less poor persons or others without any condition incorporated prohibiting the alienation is untenable.

14. Reverting to the facts of the case on hand, it is to be noted that the material record produced before this Court shows that the lands are originally assigned to assignees after collecting consideration and on issuance of Form-G and, therefore, from the available material on record, it is possible to hold that the lands are assigned under Laoni Rules and moreover there is no prohibition incorporated against alienations. The fact that the lands are alienable is also stated by the Deputy Collector & Tahasildar, Quthbullapur Mandal, by his memo, dated 06.05.2015.

15. On the above analysis this Court holds that the writ petitioners are entitled to the reliefs claimed under facts and in law.

16. In the result, the Writ Petition is allowed as prayed for.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

05.07.2018
Vjl

