HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.12811 of 2007

ORDER:

This Writ Petition is filed questioning the proceedings dated 05.01.2007 of the Revenue Divisional Officer, East Division, Ranga Reddy District, wherein he confirmed the proceedings of the Tahsildar dated 02.11.2005 resuming the land admeasuring Ac.4.00 situated in Sy.No.239/Part of Cheeryal Village of Keesara Mandal, Ranga Reddy District, as illegal and arbitrary.

2. The case of the petitioners is that Kanchameedi Narasimha, Patnam Yadaiah, Kanchameedi Pochaiah and Kathi Chandraiah are owners and possessors of the land in Survey No.239/Part admeasuring Acs.4.00 of Cheeryal Village, Keesara Mandal, Ranga Reddy District; they sold the said property to one Smt.Gandhi Anuradha vide sale deed dated 07.01.1993; in the said sale deed, it was mentioned that it is not an assigned land; the said Gandhi Anuradha in turn sold the said property to M/s. Godavari Consultancy Ltd., on 18.06.1997; the said Godavari Consultancy sold the said land to the petitioners; pattadar passbooks and title deeds were also issued in favour of Godavari Consultancy; the Mandal Revenue Officer, Keesara Mandal issued notice to one Sri Dr. Prasad in Form No.1 on 14.07.2005; no notice was issued to the petitioners; as no notice was issued to them, they could not file their objections; Dr. Prasad has nothing to do with the land in question and he did not file any objections to the notice dated 14.07.2005; he is neither owner nor possessor of the land; the Mandal Revenue Officer passed the order on 02.11.2005 resuming the subject land; the petitioners, on coming to know of the said resumption orders, filed an appeal before

the Revenue Divisional Officer; the Revenue Divisional Officer did not pass any order on the stay petition; the petitioners filed W.P.No.10349 of 2006 and this Court disposed of the said Writ Petition on 25.05.2006 staying the impugned order passed by the Mandal Revenue Officer till the disposal of the appeal; the Revenue Divisional Officer dismissed the appeal on 05.01.2007 and confirmed the order of the Mandal Revenue Officer. Aggrieved by the same, they filed the present writ petition.

3. Heard the learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue.

4. The first contention of the learned counsel for the petitioners is that the petitioners purchased the subject lands in good faith and under *bona fide* belief that they are not assigned lands. Secondly, before passing the resumption orders, no notice whatsoever was given to the petitioners and hence, the resumption order is bad and liable to be set aside. Learned counsel for the petitioners also relies upon the judgment in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai[1] and contends that availability of alternative remedy does not bar the jurisdiction of High Court especially where the principles of natural justice have been violated.

5. Learned Assistant Government Pleader on the other hand contends that the subject lands are assigned lands and hence, notice in Form No.1 was issued to one Dr. Prasad on 14.07.2005 and the said Dr. Prasad is none other than the father of petitioner Nos.2 and 4 and husband of the third petitioner. He also submits that as Dr. Prasad was in possession of the said land, notice has been issued to him by the Mandal Revenue Officer before passing the order of resumption, hence,

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[1] **AIR 1999 SC 22**

there are no reason to interfere with the orders passed by the Mandal Revenue Officer and confirmed by the Revenue Divisional Officer.

6. As seen from the proceedings of the Mandal Revenue Officer, notice in Form No.1 was issued to Dr. Prasad on 14.07.2005. It further shows that the subject land was assigned for agricultural purposes to Kanchameedi Narasimha, Patnam Yadaiah, Kanchameedi Pochaiah and Kathi Chandraiah, but they have alienated the subject land to others and since they have alienated the land, enquiry was conducted under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act") and notice has been issued and served on Dr. Prasad on 18.07.2005, but he did not submit any reply whatsoever. The Mandal Revenue Officer exercised his powers under Section 4(1)(a) of the Act and ordered for resumption of the assigned lands on 02.11.2005. Challenging the said order of the Mandal Revenue Officer, the petitioners filed an appeal before the Revenue Divisional Officer. The Revenue Divisional Officer called for records from the Mandal Revenue Officer for perusal and on examination, he observed that the land in Sy.No.239/Part is a government land, which was assigned in favour of landless poor persons, that the said assignees have alienated the land in favour of third parties and Dr. Prasad was found to be in possession and occupation of the subject land; as such notice was issued to Dr. Prasad. After perusing the record, the Revenue Divisional Officer vide order dated 05.01.2007, dismissed the appeal.

7. The first contention of the petitioners is that they purchased the subject lands in good faith for valuable consideration. This contention does not have any legs to stand in view of the prohibition

contained in Section 3(5) of the Act. Section 3(5) of the Act reads 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 purposes of cultivation or as a house site on the date of such commencement."

8. Admittedly, petitioners purchased the subject lands subsequent to the Act. It is only when the transaction is prior to 1977, the other conditions of purchasing in good faith and valuable consideration, would arise.

9. The second contention of the writ petitioners is that no notice whatsoever was given to them and hence, the order of resumption is bad. According to Section 4(1)(a) of the Act before taking possession of the assigned land, the Mandal Revenue Officer has to give a notice, if he is satisfied that the provisions of sub-section (1) of Section 3 of the Act, have been contravened. In the case on hand, admittedly, notice has been issued to Dr.Prasad Rao, who is the father of petitioner Nos.2 and 4 and husband of petitioner No.3.

10. According to Rule 3 of the A.P. Assigned Lands (Prohibition of Transfers) Rules, 2007 (for short '2007 Rules'), the District Collector or the Authorised Officer shall, before taking action under clauses (a) and (b) sub-section (1) of Section 4 of the Act, issue notices in Form No.I and form No.II to the persons, who have transferred and also to the persons who have acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. The said Rule 3 also states that the notices shall be served by delivering a copy on Transferor and transferee or some adult male member of the family of such transferor

or transferee at their usual place of abode or to their authorised agent or by affixing a copy thereof at some conspicuous place of their last known place of residence or on some conspicuous part of the assigned land. A reading of the said Rule shows that the notices can be served by delivering a copy of the said notice even on adult male member of the family. But in this case, notice itself is issued in the name of an adult male member of the family i.e. Dr. Prasad and it was also delivered to him. The sale deeds which are filed along with the writ petition show the names of the petitioners and they are majors at the time of service of notice on Dr.Prasad. The issue of non-service of notice before passing the order was also raised by the petitioners in their appeal filed before the Revenue Divisional Officer. The order of the Mandal Revenue Officer shows that as Dr. Prasad was found to be in possession and occupation of the said land and hence notice was issued in favour of Dr. Prasad. As Rule 3 of the said Rules 2007 clearly contemplate that the notice shall be served on the persons, who have acquired the assigned lands in contravention of the provisions of sub-section (2) Section 3 of the Act, the order passed by the Mandal Revenue Officer is in contravention Section 4 (1)(a) of the Act and Rule 3 of the 2007 Rules.

11. Having regard to the facts and circumstances of the case, both the impugned order dated 05.01.2007 of the Revenue Divisional Officer as well as the order dated 02.11.2005 of the Mandal Revenue Officer, are hereby set aide and the matter is remanded back to the Mandal Revenue Officer to give fresh notice to the petitioners and pass appropriate orders, in accordance with law. The Writ Petitioners are also hereby directed to furnish their present addresses in writing with acknowledgment, within a period of two (2) weeks from the date of receipt of a copy of this order, to the Mandal Revenue Officer, Keesara

Mandal, so as to enable him to serve the notices on them and to pass appropriate orders, in accordance with law.

12. The writ petition is, accordingly, allowed. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition shall stand closed.

*KONGARA VIJAYALAKSHMI, J*

Date: 08.08.2018
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