

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.16635 of 2007

ORDER:

Heard Mr.Sita Ram Chaparla for petitioner and the learned Assistant Government Pleader (Revenue).

Counter was served on 29.10.2007.

The petitioner challenges the proceedings in RC.No.56/07, dated 20.04.2007 issued by the 3rd respondent, 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 petitioner is against the action of respondents in trying to dispossess the petitioner, by the impugned order which reads thus:

"Rc.No.56/07

Office of Tahsildar
Ongole

Dt. .04.2007

FORM-2

Notice issued under Rule (3) of the Andhra Pradesh assigned lands [Prohibition of Alienation], rules, 2007.

It is learnt that you resident of Pelluru Village, Ongole Mandal of Prakasham District, acquired the below schedule mentioned assignment lands contrary to the provisions of Section 3(2) of Andhra Pradesh Assigned lands [prohibition of transfers] Act, 1977.

You are hereby directed to show cause why you should not be evicted from the said land by removing the crop or product or

building or goods on the said land and should not be resumed back by the government within 15 days from the date of receipt of this notice.

SCHEDULE

Village : Pelluru
 Survey number &
 Sub-division number : 68/7
 Extent : Ac.0.23 cents
 Nature of land : Gayalu
 Name of the transfer of
 The land/beneficiaries : Thathineni Prameela
 Nature of transfer : purchase

Ongole:

Date:

Smt.Thathineni Prameela,
 Ongole [V], Ongole [M]

Sd/-
 Tahsildar"

The 3rd respondent filed counter affidavit and in the counter affidavit, the 3rd respondent admits that notice in Form-II was issued to petitioner 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 petitioner 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

¹ 2017 (2) ALD 529

notice is required to be served on a transferee of an assignee both in Form-I and II. In other words, the contention is that the notice is bereft of details and secondly, the respondent admittedly served notice in Form-II on the petitioner 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 petitioner 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 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.

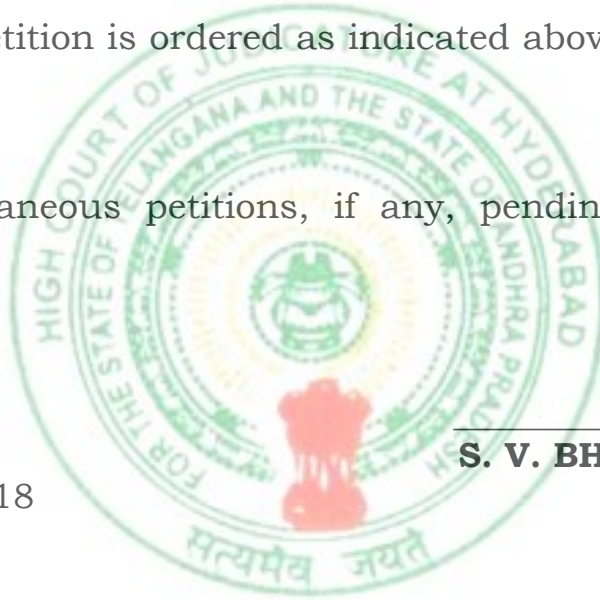
In view of the undisputed and admitted circumstances, it is in fitness of things of this case that the enquiry ought to be objective and conforms to the requirements of law.

The proceedings impugned in the writ petition, by following the ratio laid down in ***Sudalagunta Sugars case*** are set aside and the matter remitted back to 3rd respondent. If the circumstances warrant, issue notices in Form-I and II, afford opportunity to petitioner 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

