

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.17117 of 2007

ORDER:

Heard Mr.Kolluri Arjun Chowdary holding for Mr.C.Ramachandra Raju and the 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 petitioner challenges undated notice served on petitioner on 20.06.2007, 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 petitioner is against the action of respondents in trying to dispossess the petitioner, by the undated notice served on petitioner on 20.06.2007 which reads thus:

“To Tellabati Mohana Krishna

Resding in Teegalavancha Village, Chinthalapudi Mandal, West Godavari District.

Whereas you are found to be the transferee of the assigned lands as specified in the schedule below in contravention of the provisions of the Sub-Section (2) of Section 3 of the Andhra Pradesh Assigned lands (Prohibition of Transfers) Act, 1977.

You are hereby directed to show cause within (fifteen) 15 days of receipt of this notice as to why you should not summarily evicted from the said assigned lands and as to why any crop or other product raised on land/lands and any building or other construction erected

Village	Sy.No	Extent	Description of land	Name of the transferor	Nature of transfer & date	Remarks
1	2	3	4	5	6	7
Teegalavancha	218/3	4-25		Gopishetty Tikkayya	sale	

Place:
Date:

Signature
Sd/-
Tahsidlar
Chintalapudi”

The respondent filed counter affidavit and in the counter affidavit, the 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 notice is required to be served on a transferee of an assignee

¹ 2017 (2) ALD 529

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 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
dv



S. V. BHATT, J

