

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* * * *

WRIT PETITION No.23508 OF 2007

Between:

C.Suresh Rayudu

....Petitioner

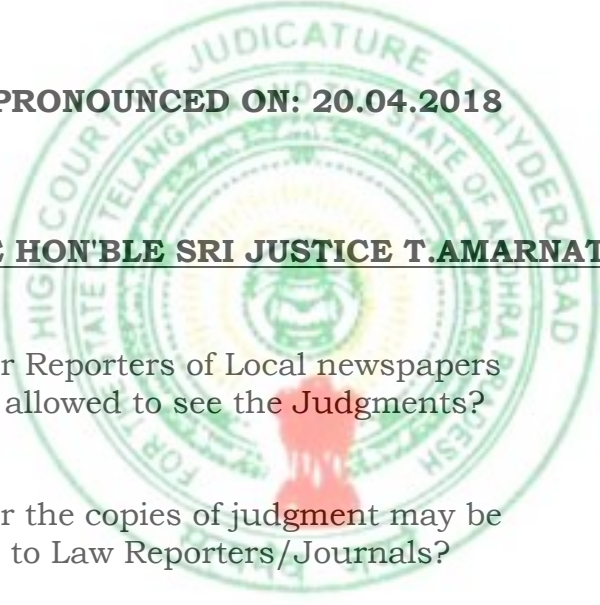
And

The Joint Collector, Ranga Reddy District,
Hyderabad and others

....Respondents

JUDGMENT PRONOUNCED ON: 20.04.2018

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

- 
1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
 2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
 3. Whether His Lordship wishes to see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

*** THE HON'BLE SRI T.AMARNATH GOUD**

+ WRIT PETITION NO.23508 OF 2007

% DATED 20TH APRIL, 2018

C.Suresh Rayudu

.. Petitioner

Vs.

**\$ The Joint Collector, Ranga Reddy District,
Hyderabad and others**

.. Respondents

<Gist:

>Head Note:

! Counsel for the Appellants : Sri B.Vijayasen Reddy

^Counsel for the Respondents : Government Pleader for Revenue

? CASES REFERRED:

1. (2010) 4 ALT 655.
2. (2017) 1 ALT 199.
3. 1999 (1) ALT 535.



THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.23508 OF 2007

ORDER:

This writ petition is filed seeking to declare the order passed in proceedings No.E1/2177/2007 dated 17-07-2007 by the 1st respondent/Joint Collector, Ranga Reddy District, confirming the order in proceedings No.D/1797/2006 dated 22-01-2007 passed by the 2nd respondent/Special Grade Deputy Collector and Revenue Divisional Officer, Chevella Division, Attapur, Rajender Nagar Mandal, Ranga Reddy District and the order passed in proceedings No.B/543/2005 dated 10-11-2005 by the 3rd respondent/Deputy Collector and Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District as illegal, arbitrary and unconstitutional.

2. The facts concise in the case, which led to prefer the writ petition, assailing the above orders are that the land, which is the subject matter herein is admeasuring Ac.1.00 guntas, out of a total extent of Ac.3.31 guntas, situated in Sy.No.31, Kondapur village, Serilingampally Mandal, Ranga Reddy District. It is bounded by: North: Part of Sy.No.31, South: Part of Sy.No.31, East: Village of Kanammet Jagir and West: Land in Sy.Nos.30 and 32.

It was originally assigned to Mr.Mansab Ali Khan, through whom, the petitioner purchased the same vide registered sale deed document No.6715/1995, dated 26.05.1995, registered in the office of the Registrar, Ranga Reddy District. Since then, the petitioner is in peaceful possession and enjoyment of the property.

3. While the matter stood thus, a notice in Form No.1, No.B/543/05, dated 30-05-2005 was issued by the third respondent invoking the powers under Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short “the Act, 1977”), directing the petitioner to show cause within (15) days of receipt of the notice as to why the petitioner should not be summarily evicted from the said land on the ground that the petitioner was found to have assigned lands specified in the schedule and the nature of occupation is by way of purchase and thus it is contravention of the Act, 1977.

4. To the said notice, the petitioner submitted an explanation dated 18-07-2005, stating that the land purchased was from Mr.Mansab Ali Khan, Senior Hawaldar, who is a Military Personnel and he (ex-serviceman) was granted patta in Form No.9 bearing No.E1/11993/96, dated 08-04-1961 to an extent of Ac.3.31 guntas. A Supplementary Sethwar was issued in his name and the same was implemented in the year 1992-93, faisal Patti as “Bandobust Kami” and “Bandobust Izafa”, later his name was entered in the pahani of 1993-94 as pattedar. The petitioner further explained that prohibition of transfers of assigned lands Act and Rules 1977 applies to the lands assigned to the landless poor, but not to the lands assigned to the ex-servicemen as per the clarification issued in Government Memo No.2006/B1/80.2 (Rev.) dated 30.09.1980. Thus, there is no contravention of Section 3(2) of the Act, 1977 and while enclosing the Xerox copy of the documents, the petitioner requested to withdraw the action in pursuance of the notice of the third respondent dated 30-05-2005.

5. The third respondent without appreciating the facts, legal position and without going through the records, passed order No.B/543/2005, dated 10-11-2005, stating that on verification of the revenue records i.e., Kasra for the year 1954-55 and other records, the land in Sy.No.31 in an extent of Ac.3.31 guntas of Kondapur village is classified as Government land and Bandhobasth Izafa was granted to Mr.Mansab Ali Khan (vendor of the petitioner) through faisal patti for the year 1992-93, basing on the supplementary sethwar issued by the Assistant Director, Survey & Land Records in File No.G8/2566/03. It was also held that the petitioner has not filed any documentary evidence to show that the land is assigned to the ex-servicemen, but not to the landless poor and on verification of the office records, no evidence materialized to show that the land is assigned to ex-servicemen. In view of the above, the third respondent, vested with the powers under Section 4(a) of Andhra Pradesh Assigned Lands (POT) Act, 1977 has ordered to resume the land immediately by directing the Mandal Revenue Inspector to take possession forthwith and report compliance.

6. Aggrieved thereby, the petitioner preferred an appeal under Section 4 (A) (1) of the Act, 1977 before the second respondent, assailing the order of the third respondent dated 10-11-2005. The second respondent, having examined the file No.B/543/2005 of the third respondent, held that the said land is Government land. The assignee Mr.Mansab Ali Khan alienated a part of it in favour of the petitioner in violation of Section 3 of the Act, 1977 and the petitioner failed to place the

evidence in support of his contention and thus, the appeal was dismissed vide proceedings No.D/1797/06, dated 22-01-2007.

7. Aggrieved by the said order, the petitioner approached the first respondent under Section 4-A (2) of the Act, 1977. The first respondent passed an order in Case No.E/2177/2007, dated 17-07-2007, holding that the revenue records have been examined and it is clearly evident that the petitioner has purchased the assigned land and he is in possession in contravention of Section 3(2) of the Act, 1977 as there is no evidence to differ from the orders passed by the original and appellate authority and the appeal has been dismissed. Assailing the above orders of the respondents 1 to 3 as stated supra, the present writ petition has been filed.

8. Heard.

9. It is not in dispute that the land belongs to Government and originally, the Government in Form 9, under Rule 9 (G) of Laoni Rules, a written permission to occupy the land was given by the Tahsildar in favour of Mr.Mansab Ali Khan, Senior Hawaldar/Ex-serviceman, vide No.A3/E1/11993/60/196, dated 8.04.1961 in Sy.No.31, admeasuring Ac.3.31 guntas in Kondapur village, Hyderabad West, Hyderabad District and a copy has been marked by the then Tahsildar, Hyderabad to:

- (1) Mr.Mansab Ali Khan,
- (2) Major officer, Commanding,
- (3) The Collector (Land Records) Hyderabad,
- (4) The Revenue Inspector, Ameerpet, Circle,
- (5) The Patwari of Kondapur village.

An inference can be drawn that the land has been given in favour of Mr.Mansab Ali Khan under the category of ex-servicemen as it is evident from the copy marked to the major officer, Commanding and it is not an assignment patta granted under landless poor category. The said Form 9 also contains a clause for cancellation as “the grant is liable to cancellation if it be found that it was grossly inequitable or was made under a mistake fact or owing to misrepresentation or fraud do in excess of limits of authority delegated to the officer granting the land or that there was an irregularity in the procedure”.

10. It is seen from the orders impugned and it has not been disputed that the name of the vendor of the petitioner Mr.Mansab Ali Khan was implemented in the revenue records through faisal patti for the year 1992-93 by granting Bhandhobasth Izafa basing on the supplementary sethwar issued by the Assistant Director, Survey & Land Records vide No.G8/2566/93. The vendor of the petitioner was in peaceful possession and enjoyment of the lands and he executed the registered sale deed bearing document No.6715/1995 dated 26-5-1995 to an extent of Ac.1.00 in favour of the petitioner, declaring that the schedule property is free from all encumbrances and is not an assigned land as defined under Andhra Pradesh Assigned Lands (POT) Act, 1977 and also not covered by Andhra Pradesh Agricultural Land Ceiling Act, 1973. In view of the above, the petitioner being a bonafide purchaser has purchased the subject land for valuable consideration and since then, is in peaceful possession and enjoyment of the property.

11. The notice dated 30-5-2005 issued by the third respondent is a skeletal notice, which do not contain any information to call for the explanation from the petitioner and there are no facts and allegations the petitioner is required to meet.

12. Prima facie the notice proceeded under the premise that the provisions of the Act, 1977 have been contravened and the petitioner has to face the consequences. Though Form 9 dated 8-4-1961 granted in favour of the vendor of the petitioner prescribes a clause for cancellation for the reasons stated therein, the present Form 1 notice dated 30-05-2005 was not issued in the name of the original assignee Mr.Mansab Ali Khan.

13. The petitioner vide his explanation dated 18-07-2005 categorically explained that the said land was originally assigned to the military personnel Mr.Mansab Ali Khan and the said land do not fall under the category of land assigned to landless poor, but it falls under the category of land assigned to ex-servicemen and also enclosed Xerox copy of the documents. It was contended that there is no contravention of the provisions of Section 3 (2) of the Act, 1977 and further the said Act has no application to the facts of the case as it does not fall within the provisions of Act, 1977.

14. The third respondent passed the order in No.B/543/2005 dated 10-11-2005, which was kept pending in the office and it has seen the light of the day on 27-03-2006. The third respondent being the original authority and custodian of the revenue records, on one hand gave a finding, treating that the

subject land attracts the provisions of Section 3 of the Act, 1977, without adjudicating the issue of assigned land and the manner in which it was assigned to Mr.Mansab Ali Khan.

15. The fact and the nature of assignment ought to have been adjudicated by the original authority, who is supposed to be the custodian of the records. The third respondent also failed to note in Form 9 that the copy of written permission dated 8-4.1961 was marked to major officer, Commanding. It is apparent from the same and a reasonable inference can be drawn that except the assignment granted in favour of the ex-servicemen, no other pattas will be forwarded to the military personnel. The third respondent while rejecting the explanation of the petitioner, invoked the power under Section 4(a) of the Act, 1977 and directed the Mandal Revenue Inspector to take over possession of the land forthwith without even waiting for the statutory appeal period of 90 days under Section 4-A (1) of the Act, 1977, assuming that the subject land is assigned land. There is no finding with regard to the written permission in Form 9 dated 8-4-1961, which was issued under Laoni Rules.

16. On 15-4-2006, the petitioner filed an application before the third respondent for inspection of records and also filed another application on 19-2-2007 to furnish the copy of the records. The third respondent vide memo dated 20-6-2006 and 30-3-2007 has replied that the records are not available and the copies cannot be furnished. It is strange, the third respondent with incomplete record and without making any efforts to trace the

records, passed the order dated 10-11-2005 is unjust and in all fairness, it cannot be accepted.

17. The Government of Andhra Pradesh, Revenue Department in Memorandum No.2006-B1/80-2 dated 30-09-1980 and G.O.Ms.No.1117, Revenue (Assignment – I) Department dated 11-11-1993 has clarified that the Act, 1977 has no application to the assignment of lands made to political sufferers and to ex-servicemen and further clarified that the land assigned to the ex-servicemen are alienable after a period of 10 years. Admittedly, in the light of the above memorandum dated 30-9-1980 and G.O.Ms.No.1117, dated 11-11-1993 of the Government, Form 9 written permission was granted in favour of the petitioner on 8-4-1961 and the sale deed in favour of the petitioner has been executed on 26-5-1995, The assignee/vendor of the petitioner has not violated any conditions of Form 9 dated 8-11-1961 and on the basis of the record, no notice was issued to the assignee and without ascertaining the nature of the assignment and without putting the assignee on notice, the bonafide purchaser cannot be penalized for no fault of him. The notice dated 30-5-2005 of the third respondent is laconic and is unsustainable. The order of the third respondent is inconsistent and contrary to law and appears to have been passed in haste. Having allowed the assignment since 8-4-1961, initiating action in May, 2005 is unjust and unwarranted and the order of the third respondent is liable to be set aside.

18. The second respondent in proceedings No.D/1797/06, dated 22-01-2007, dismissed the appeal filed under Section

4(A)(1) of the Act, 1977 by confirming the order dated 10-11-2005 of the third respondent. A fair reading of the order passed by the second respondent appears that it is in gross violation of principles of natural justice as the said order does not indicate as to when the notice was served upon the petitioner to attend the hearing and the details of the service of notice are not indicated in the impugned order and on the other hand, the second respondent has stated that neither the appellant nor his counsel attended the hearing. It is the duty cast upon the quasi judicial authority sitting in a statutory appeal to maintain transparency. The order passed by the second respondent is unilateral as he came to a conclusion that on perusal of the lower Court record and confirms the order, saying that the third respondent has meticulously followed the provisions of the Act, 1977 and there is no flaw. The second respondent has not put any efforts to give the reasons with regard to the availability of records and the nature of assignment of the subject land. The second respondent appears to have ignored that the third respondent under the revenue laws is the custodian of the original records. The order does not indicate that minimum efforts were made while passing the order to trace the record to ascertain the fact and to meet the ends of justice.

19. The first respondent vide case No.E1/2177/2007 dated 17-07-2007, confirmed the order of the second respondent and third respondent in the appeal under Section 4 (A) (2) of the Act, 1977. The first respondent observed that the order is passed by examining the records on one hand and on the other hand, it is stated in the order that the original assignment file is not

available. Further, the first respondent comes to the conclusion that it is evident that the petitioner has purchased the assigned land and he is in possession in contravention of Section 3(2) of the Act, 1977. The first respondent has not appreciated the case on facts and the evidence and the legal position and without deciding the nature of assignment and the order of the third respondent for resumption of the land even without waiting for a period of limitation provided under the statute for filing the appeal and without appreciating the contents of Form 9 dated 8-04-1961 and ignoring the memorandum dated 30-09-1980, G.O.Ms.No.1117, dated 11-11-1993, the first respondent has confirmed the order of 2nd and 3rd respondents. It appears that the respondents have acted in casual manner in dealing with the case and passing orders against the petitioner, without application of mind. Unless and until the nature of assignment is decided, issuance of notice to the purchaser will not serve the purpose of adjudicating the matter of hearing and considering the objections.

20. In the case of **Dasari Narayana Rao and another Vs. Deputy Collector and Mandal Revenue Officer, Serilingampally, R.R.District and others¹** and **M/s.Sudalgunta Sugars Limited Vs. The Joint Collector, Chittoor and another²**, when an identical notice and the consequential orders were passed by the revenue authorities, it was held:

“The proceedings under the 1977 Act are in the nature of civil proceedings. The conclusion that the land in question is assigned land may also be arrived at by a

¹ (2010) 4 ALT 655.

² (2017) 1 ALT 499

compelling inference preponderating from the circumstantial evidence on record. If the assignment in question is under certain Rules for the time being in force (within the meaning of this clause as employed in Section 2(1) of the 1977 Act); if such Rules (under which the assignment is made) enjoin a prohibition on alienation; and such statutory prohibition was in operation on the actual date of assignment, it might perhaps be an indicator justifying an inference that the land in question is an “assigned land”. For such a presumption to be legitimately drawn, the respondents must establish the date of assignment and the contemporaneous state of the Rules under which assignment was made, to legitimize the conclusion that the Rules did prohibit alienation as on the date of assignment. All these are essentially questions of facts and must first be put to the person aggrieved so as to afford him a reasonable opportunity to explain or defend his possession and ownership of the land in question, a valuable property right. A reasonable opportunity is that which informs a respondent to a show-cause notice of the fact that are asserted against him or his interest.”

On the above analysis, the order passed by the third respondent is illegal, without jurisdiction and lacks procedural fairness. The quality of determination depends on the quality of subject matter to be decided and is not dependant upon the capacity of the person determining. In the vastness of its manpower resources, it is the duty of the State to identify an officer who can measure up to the requirements of deciding issues that arise under the provisions of the 1977 Act. The respondents in the above matter have miserably failed in upholding the factual and legal issues.

21. This Court by order dated 21-12-2012 in W.P.No.38504 of 2012 in the matter of Ande Narasiha Rao Vs. State of Andhra Pradesh, represented by its Commissioner and Inspector General of Registration & Stamps, Hyderabad and 5 others, has passed orders in favour of the petitioner relying upon G.O.Ms.No.1117, Revenue (Assignment-I) Department, dated 11-11-1993 and allowed the writ petition in favour of the ex-servicemen for alienating the lands after 10 years.

22. Since the third respondent is the custodian of the records, the burden lies on him to prove that the original assignee who is the vendor of the petitioner has violated the provisions of law and as the consequential action has to be initiated. In the absence of the complete record with the respondents, the bonafide purchaser cannot be deprived.

23. The patta/written permission dated 8-04-1961 was admittedly granted in favour of the vendor of the petitioner and after several decades, the same cannot be cancelled unilaterally as held in the case of **Bandi Nagarju Vs. Mandal Revenue Officer, Garladinne Mandal and others**³.

24. For the reasons stated above, the order dated 10-11-2005 of the third respondent, which is confirmed by the second respondent by his order dated 22-01-2007 and confirmed by the first respondent by his order dated 17-07-2007 are liable to be set aside and are accordingly set aside.

25. The writ petition is allowed accordingly. No order as to costs. As sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 20-04-2018

Note:

L.R.Copy to be marked.

B/o

Shr

³ 1999 (1) ALT 535