

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A.No.1 of 2014 (WVMP.No.2771 of 2014) in
WPMP.No.15929 of 2013 in WP.No.12959 of 2013
and
WP.No.12959 of 2013

COMMON ORDER :

Heard the counsel for petitioners and the learned Government Pleader for Revenue and Assignment in the Writ Petition.

WP.No.12959 of 2013 :

2. The petitioners have filed the Writ Petition challenging proceedings A/1738/2002 dt.01.01.2004 of the 4th respondent directing resumption of the extent of Acs.3.00 guntas in Survey No.233/19 (Old 233) situate at Nizampet Village, Qutbullapur Mandal, Ranga Reddy District by invoking powers under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 1977 and Act 9 of 1997 and Rules made therein.

3. The petitioners claim to have purchased plots of different dimensions under sale deeds executed in the year 2003 from one D. Annapurna.

4. According to petitioners, the above plots of land were originally assigned to one Chenigala Mallaiah S/o. Chenigala Sayanna (**for short, 'Mallaiah**) and that he had purchased the same in an open auction conducted by the then Tahsildar, Medchal, Ranga Reddy District under Rule 9 of Laoni Rules, 1950 framed under Section 172

of the Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli.

5. It is their contention that a Laoni certificate was granted to the said Mallaiah by proceedings TQ.No.A3/6148/1960; that the same was entered in the Faisal Patti during the year 1962-63 and he was recorded as the pattadar and possessor of the land from 1965-66.

6. It is contended that the said Mallaiah was holding Acs.10.11 guntas of the land including the subject land in the village and pattadar pass book was also issued by the 4th respondent to the said Mallaiah.

7. It is contended that the said Mallaiah sold along with his legal heirs an extent of Ac.0.28 guntas to Smt. Dantuluri Annapurna under a registered document No.2838/1989 dt.10.03.1989 and Acs.2.12 guntas to Sri D.Venkata Subbaraju vide registered document No.2840 of 1989 dt.10.03.1989; that a layout was also got approved from the Gram Panchayat Nizampet Village on 10.04.1976 by Mallaiah before he sold it to Smt. D. Annapurna and D.Subbaraju; and the petitioners bona fidely purchased the plots in the said layout.

8. They contend that when they wanted to construct residential houses in the plots and approached the Hyderabad Metropolitan Development Authority for grant of house-building permission, they were informed that the impugned proceedings had been issued canceling the land allotment to Mallaiah in exercise of powers conferred under Section 4 of the Andhra Pradesh Assigned Land

(Prohibition of Transfer) Act, 1977 and Andhra Pradesh Assigned Land (Prohibition of Transfer) Rules, 1977; that they have obtained the copy of the said order and have challenged it; that the impugned order dt.01.01.2004 shows that no notice was issued to the transferees and the procedure contemplated under Act 7 / 1977 has not been followed; and so the said order was liable to be set aside as being in violation of principles of natural justice. It is contended that there is no condition restraining alienation of the subject land, that the Laoni Patta was granted to Mallaiah under Laoni Rules, 1950, and so the very provisions of Act 7 of 1977 have no application.

9. On the basis of the above pleadings, on 29.04.2013, the Writ Petition was admitted and an interim order was granted in WPMP.No.15929 of 2013 staying all further proceedings pursuant to the impugned order.

I.A.No.1 of 2014 (WVMP.No.2771 of 2014) in WPMP.No.15929 of 2013 in WP.No.12959 of 2013 :

10. WVMP.No.2771 of 2014 was filed to vacate the above interim order.

11. In the above vacate stay application / counter-affidavit, the 4th respondent contended that the total extent of land in Survey No.233 is admeasuring total extent of Acs.112.27 guntas and it was classified as 'Poramboke' land; and out of this land, Acs.93.11 guntas was assigned in favour of 25 assignees in the year 1963-64; and subsequently, sethwar was issued; and that Acs.3.00 in Survey

No.233/19 was assigned to Mallaiah during 1963-64 as per Faisal Patti and his name was recorded as assignee in the pahanies from the year 1965-66 onwards.

12. It is contended that after the death of Mallaiah, his legal heirs sold Ac.0.28 guntas contrary to the assignment conditions to Smt. Dantuluri Annapurna and D. Venkata Subba Raju and since such sale was contrary to conditions of assignment, proceedings under Act 7 of 1977 were initiated and the land was resumed under the impugned proceedings dt.01.01.2004 after a *panchanama* was conducted on 16.01.2004. It is contended that since the date of resumption, it is under the custody of the Government.

13. It is also contended that one Sai Ganesh Colony Welfare Association, where petitioners were members, filed a representation to the Hon'ble Minister for Revenue seeking regularization of the resumed land in Survey No.233/19 in Nizampet Village; that the Government passed *status quo* orders on 12.01.2008; and the land continued to be under the possession of the Government and was reserved for future public utilization.

14. The learned Government Pleader appearing for respondents further stated that in proceedings Lr.No.LC3/49/03 dt.15.11.2003, addressed to the Chief Commissioner of Land Administration, it was stated that the original file No.A3/6148/60 in which assignment was granted to Sri Chanigala Mallaiah was not traceable in the office of the Mandal Revenue Office; but even otherwise, since

G.O.Ms.No.1406 Revenue dt.25.07.1958 superseded all previous policy orders of assignment in Telangana Area and made all lands assigned only heritable but not alienable vide Clause (vi)(ii); and since the file of assignment of Mallaiah itself is of the year 1960 after the said G.O. was issued, Mallaiah had no authority to alienate the land and any such alienation is hit by Act 7 of 1977 and is void and the petitioners cannot seek any benefit of such alienation. He also pointed out that if the petitioners claim to be bona fide purchasers of the property, they ought to have verified whether Mallaiah's Laoni Patta permitted him to alienate the property to Smt. D. Annapurna from whom the petitioners had purchased, and since the petitioners are also unable to produce any *prima facie* proof that the assignment to Mallaiah did not contain any condition prohibiting alienation, the Writ Petition should be dismissed.

15. I have noted the contentions of both sides.

16. The short question which arises for consideration is '*whether the order A/1738/2002 dt.01.01.2004 passed by the 3rd respondent is valid and sustainable in law*'.

17. The said order refers to notices issued under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 1977 to the assignee, i.e., Mallaiah and purchasers of the land of Acs.3.00 in Survey No.233/19 at Nizampet Village. The notice in Form-III had been filed by the petitioners themselves and it indicates that notices were issued not only to Malaiah and his family members but also to

Sri D. Venkata Subba Raju and Smt. D. Annapurna for alienating the land which was assigned to Mallaiah. Since the petitioners had not purchased any plots in the said land by the date of issuance of notice, petitioners cannot contend that they also ought to have been issued notices by the 3rd respondent before passing of the impugned order.

18. In fact, it was incumbent on the part of petitioners, who claimed to be bona fide purchasers for valuable consideration, to verify whether Mallaiah could have alienated the assigned land to Smt. D. Annapurna from whom they purchased different plots in Survey No.233/19 of Nizampet Village. In fact, the petitioners ought to have kept a copy of the assignment patta having obtained it from their predecessor and filed a copy thereof before this Court to prove their contention that the assignment of land to Mallaiah did not contain any prohibition to alienate the land.

19. Even according to petitioners, Laoni Certificate was granted to Mallaiah vide proceedings in TQ.No.A3/6148/1960, though it is sought to be contended that the assignment itself is prior to 1960. But, in the absence of the file relating to the said proceedings, it is not possible to verify what conditions were there in the patta certificate issued to Mallaiah. As indicated earlier it was incumbent on the petitioners to file a copy of the patta at least along with the Writ Petition to establish that Mallaiah was empowered to alienate the land and there was no prohibition in the conditions of assignment of the patta to him preventing him from alienating the land.

20. Once G.O.Ms.No.1406 Revenue dt.25.07.1958 was issued introducing new Rules for assignment under Section 172 of the Andhra Pradesh Telangana Area Land Revenue Act, 1317 Fasli specifically mentioning a condition in Clause (vi) that the assignment of lands would only be heritable but not alienable, any Laoni Certificate granted after 1958 including the subject certificate is presumed to be having the said condition of non-alienability, unless proved otherwise by the petitioners.

21. Therefore, in this view of the matter, I see no error of jurisdiction in the 3rd respondent invoking the provisions of Act 7 of 1977 and canceling the assignment made to Mallaiah and resuming the land to the Government.

22. In this view of the matter, the interim order dt.29.04.2013 passed in WPMP.No.15929 of 2013 in WP.No.12959 of 2013 is vacated; and I.A.No.1 of 2014 (WVMP.No.2771 of 2014) in WPMP.No.15929 of 2013 in WP.No.12959 of 2013 is allowed.

23. For the aforesaid reasons, I do not find any merit in the Writ Petition and it is accordingly dismissed. No order as to costs.

24. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21.12.2018

Ndr/*

