

HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HONOURABLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1069 OF 2017
&
CONTEMPT APPEAL Nos.21 & 22 OF 2017

COMMON JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard the learned Advocate General for appellants, Mr.K.G.Krishna Murthy, learned Senior Counsel and Mr.Vedula Sinivas for respondents.

The writ appeal and contempt appeals arise from the common order dated 02.06.2017 in W.P.No.12960 of 2016 and C.C.No.1459 of 2016.

Respondent Nos.1 to 4 filed W.P.No.12960 of 2016 substantially in the nature of Certiorari to call for the record in proceedings of the Tahsildar in Rc.B/509/2015 dated 25.01.2016 and quash the proceedings as illegal.

The issue arises under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977.

The 4th respondent/appellant in exercise of power and jurisdiction conferred on him by Sections 3 and 4 of the Act held as follows:-

In the instant case i.e., assigned lands in RS Nos.106/1 and 2, neither the original assignees nor their vendees of initial transactions or of later transactions didn't obtain permission from the District Collector, Krishna. Thus this case comes under the purview of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977.

Thus it is amply clear that the following persons bought assigned lands in RS.Nos.106/1, 2 as mentioned against their names each in contravention of Section 3(2) of the Act, hence I am satisfied that the purchasers contravened the provisions of sub-section (1) of Section 3 of the Act.

RS No.106/1 – Sd.Hussain Khaja Mohiddin - Ac.0.45 cts
 RS No.106/1 – Sk.Abdul Kalam Azad - Ac.0.71 cts
 RS No.106/1 – Saladi Naraiah/Gatti Appalaswamy- Ac.0.55 cts
 RS No.106/1 – Athili Appalaswamy - Ac.1.35 cts
 RS No.106/2 – Sd.Hussain Khaja Mohiddin - Ac.0.55 cts
 RS No.106/2 – Saladi Naraiah/Gatti Appalaswamy - Ac.1.70 cts
 RS No.106/2 – Koppisetty Kanakaiah - Ac.1.72 cts

Therefore, under the powers vested in me u/s 4(1)(a) of the Act, I, Sri R.Siva Rao, Tahsildar, Vijayawada Urban Mandal do hereby order to evict the following persons/their family members or any other enjoyers on the lands from the lands (survey numbers as quotes against their names each)and take possession of the land. Any construction erected or deposited on the land is hereby forfeited to the Government.

RS.No.106/1	Smt.Rahemunnisa w/o (late) Sd.Hussain Khaja Mohiddin	Ac.0.45 Cts
	Syed Azeez Ahmed s/o (late) Hussain Khaja Mohiddin and	
	Syed Mateen Ahmed s/o (late) Hussain Khaja Mohiddin	
	Sk.Abdul Kalam Azad	Ac.0.71 Cts
	Saladi Naraiah/Gatti Appalawamy (Their family members)	Ac.0.55 Cts
	Athili Appalaswamy	Ac.1.35 Cts
RS.No.106/2	Smt.Rahemunnisa w/o (late) Sd.Hussain Khaja Mohiddin	Ac.0.55 Cts
	Syed Azeez Ahmed s/o (late) Hussain Khaja Mohiddin and	
	Syed Mateen Ahmed s/o (late) Hussain Khaja Mohiddin	
	Saladi Naraiah/Gatti Appalawamy (Their family members)	Ac.1.70 Cts
	Koppisetty Kanakaiah (Their family members)	Ac.1.72 Cts

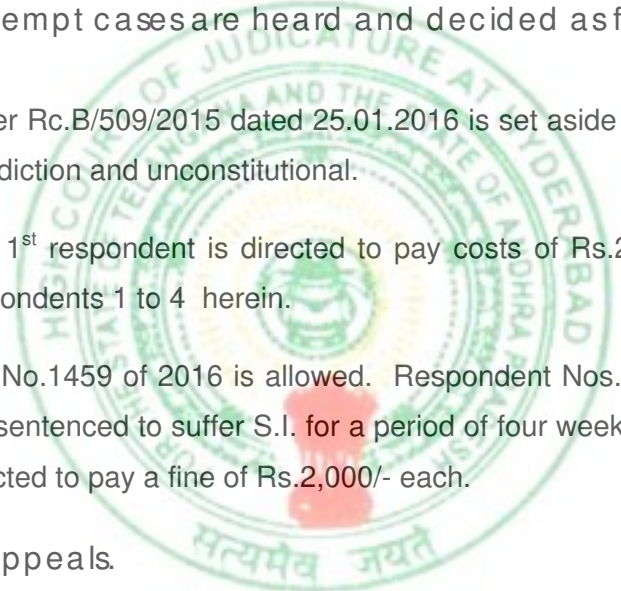
The Special Revenue Inspector-1, Vijayawada Urban is hereby directed to take action to evict the persons on the land and take the possession of the property as ordered. An appeal against this resumption order lies for the purchasers before the

Sub-Collector, Vijayawada within 90 days from the date of receipt of this order if they are aggrieved with”.

The respondents herein availed the remedy of appeal before the 3rd appellant. The 3rd appellant was not passing orders in fear of eviction from the subject matter. The respondents filed W.P.No.12960 of 2016.

The appellants filed counter and also petition to vacate the interim order.

Through the order impugned in the appeal, writ petition and also the contempt cases are heard and decided as follows:-

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- (a) Order Rc.B/509/2015 dated 25.01.2016 is set aside as without jurisdiction and unconstitutional.
 - (b) The 1st respondent is directed to pay costs of Rs.25,000/- to respondents 1 to 4 herein.
 - (c) C.C.No.1459 of 2016 is allowed. Respondent Nos.2, 3 and 4 are sentenced to suffer S.I. for a period of four weeks and also directed to pay a fine of Rs.2,000/- each.

Hence, the appeals.

The learned Advocate General, at the outset, submits that respondents 1 to 4 have restored possession of the subject matter of the writ petition in favour of petitioners and also made his submissions against the order in W.P.No.12960 of 2016 and C.C.No.1459 of 2016.

This Court proposes to examine the merits in the appeals in the same manner in which the submissions are made on behalf of the appellants.

- (a) Appellants contend that entertaining writ petition and disposing of the subject matter while on the very same issue an appeal is pending before the 3rd appellant ought to have been avoided by the order under appeal.
- (b) The Act has comprehensive procedures against any grievance right at the stage of issuing notice under the Act till orders are passed by the primary authority and provision of appeal etc.

According to appellants, the matter requires examination of disputed questions of fact and the parties would have been allowed to work out their grievances firstly in accordance with the procedure under the Act and thereafter approached this Court for judicial review under Article 226. Having noticed the said submission and taking note of the detailed consideration by the learned Single Judge in the order under appeal, we were persuaded not to entertain the appeal on objections which do not go to the substance of the matter. Therefore, we directed the appellants to produce the record in subject file and the revenue records if any in support of the claim of appellants that the subject land comes within the purview of the Act.

The record in the impugned file is produced. The revenue record or copies of patta granted prior to 1954 could be relied on to crutch at the jurisdiction conferred on 2nd appellant by Sections 3 and 4 of the Act, however, as a fact this jurisdictional fact is placed before this Court.

Having regard to the Scheme of Sections 3 and 4 and also the principle laid down by this Court in DASARI NARAYANA RAO AND ANOTHER v. DEPUTY COLLECTOR AND MANDAL REVENUE OFFICER,

SERILINGAMPALLI, R.R. DISTRICT AND OTHERS¹, we have perused the record and are convinced that appellant Nos.3 and 4 failed to prove that jurisdictional facts, which are essential for invoking the power under the Act, are not available for proceeding to resume the subject land as if a violation of prohibition of alienation has arisen. Further, the notice issued to respondents 1 to 4 does not satisfy the ratio laid down by this Court in DASARI NARAYANA RAO case (supra) and secondly the notice in Form 1 and 2 are not issued to respondents 1 to 4.

For the above additional reasons noted by us, we are of the view that the order in W.A.No.1069 of 2016 does not warrant interference and the writ appeal fails.

Adverting to the findings recorded by the order under appeal in C.C.No.1459 of 2016, the learned Advocate General submits that the commission or omission, if any, during pendency of the writ petition does not amount to wilful disobedience and the appreciation of disputed questions of fact by the order under appeal does not satisfy the requirements of law. According to him, the learned Single Judge punished all the appellants without examining disobedience of these respondents with reference to definite averment made in this behalf. The disobedience, if any, said to have been committed by each one of the officers, he requests the Court to take note of the subsequent developments and set aside the order of punishment imposed in C.C.No.1069 of 2016.

¹ 2010 (6) ALD 536

Mr.K.G.Krishna Murthy and Mr.Vedula Sinivas firstly submit that the appellants ought not to be shown indulgence, for the appellants acted without regard to the basic requirements of rule of law or fair play in action; when the citizens are cornered by might of the State, the citizen and his rights are trampled and the order imposing punishment is justified. According to them, the Contempt of Courts Act, 1971 not only ensures implementation of orders of the Court but also upholds the dignity of Constitution under Article 215 of the Constitution and the orders of the Court. Finally, they submit that the contempt is always between the Court and the contemnors, and the above submission is made only to assist the Court.

After perusing each one of the sentences in C.C.No.1459 of 2016, we are of the view that the Tahsildar-appellant No.4 ought to have been objective and correct not only in implementing the function assigned by an enactment but also while advising his superiors where the Court cases are pending. The approach of the Tahsildar cannot be said as without blemish.

The aforesaid complicity of other appellants is again a matter of examination on alleged misconduct, keeping in view well settled position of law and a finding is recorded accordingly.

This Court is compelled to observe that it is not only the duty and function of Constitutional and Civil Courts to protect the right of a citizen under the Constitution of India and also different laws, but such obligation is fastened on the authorities discharging various duties and functions in the hierarchy of State administration under

the statute. After perusing the record, we are satisfied that the case of appellants merit favourable consideration for exoneration of any misdeed against which a finding is recorded in the order under contempt appeals.

The writ appeal is dismissed. Contempt Appeals are allowed by taking a holistic view of the matter and also how the alleged disobedience already purged, after the writ petition is allowed when the writ appeal is pending before this Court. It is made clear that the findings recorded either by the learned Single Judge or by us while disposing of writ appeal or contempt appeals are recorded having regard to the peculiar facts and circumstances of the case, and the view taken in the writ petition and the appeals cannot be treated as a general proposition of law to be applied as a precedent on any issues arising under the Act.

Thus, the writ appeal is dismissed and contempt appeals are allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

20th December, 2018
Prv