

HON'BLE SRI JUSTICE S.V. BHATT

W.P. Nos.17191, 17193,17198,17220 AND 17233 OF 2009

COMMON ORDER:

Heard Mr.A.K.Narasimha Rao for writ petitioners and the learned Assistant Government Pleader for respondents.

The writ petitions are filed challenging the orders of resumption passed by 3rd respondent under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'), as illegal, arbitrary and unconstitutional.

The circumstances leading to the filing of the writ petitions are substantially same in the batch of writ petitions. Hence, the counsel appearing for the parties have referred to the allegations and reply filed in W.P. No.17191 of 2009 and have stated that reference to the allegations in this writ petition would be sufficient to disposing of the other writ petitions as well.

W.P. No.17191 of 2009:

The petitioner through registered sale deed dated 21.06.2006 purchased an extent of Ac.0-44 cents in R.S.No.896/9 in Nandigama Village, Krishna District from one Cherukumilli Ranga Rao. The petitioner refers to the registered sale deeds dated 10.02.2005 and 14.12.1961 as the documents through which the petitioner's predecessors-in-interest have acquired right and title to the property. In the case on hand flow of title is not an issue hence all transactions are not referred in detail. While so on 10.04.2007, the 3rd respondent issued notice to petitioner under Rule 3 of the A.P.

Assigned Lands (Prohibition of Transfers) Rules, 1977 (for short 'the Rules') alleging that the petitioner is in possession and enjoyment of assigned land contrary to the prohibition prescribed under the Act. The petitioner had given explanation and contended that the petitioner's predecessors-in-interest have acquired right and title through registered sale deeds and the possession of the petitioner is not contrary to either the Act or the Rules. The 3rd respondent vide order RC/A2/130/2007 dated 12.07.2007 rejected the explanation of the petitioner and ordered resumption. Keeping in view the nature of factual and legal objections raised by the parties and also to consider the admitted circumstances by the respondents themselves, the operative portion in the impugned order is excerpted hereunder:

"Sri Ivaturi Subramanya Vara Prasad has submitted explanation stating that the land purchased vide document No.3866/2007 for house site purpose. He also stating that the land changes from assignee to several hands. He has no knowledge about assigned land. He finally requested for regularize the land to him.

In this case Sri Ivaturi Subrahmanya Vara Prasad has purchased an extent of Ac.0.43 Cts. of assigned land in R.S.No.896/9 of Nandigama Village & Mandal from the original assignee. It is therefore, a clear case of acquiring assigned land by purchase from the original assignee and therefore according to Sub-sec (1) of Sec.3 of the said Act, it shall not be transferred and shall be deemed never to have been transferred and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer and according to Sub-Section (2) & (3) of the said Act. It shall be deemed to be NULL AND VOID.

Therefore, I hereby order u/s 4(1) of the Act to take possession of the assigned land measuring, Ac.0.43

Cts in R.S.No.896/9 of Nandigama Village and Mandal. After evicting the person in possession and removing the crop raised on the land, any building or other construction erected or any deposited therein shall be forfeited to Government.

The above said lands, vest with Government from the date of issue of these orders.

The Mandal Revenue Inspector Nadigama shall take the possession of the land after evicting the person in possession from the subject land.

The Village Revenue Officer concern is directed to make entry in the village records/Adangal to that effect.

An Appeal lies against these orders before the Revenue Divisional Officer, Vijayawada within 90 days from the date of receipt of these orders."

The statutory appeal and revision filed by the petitioner were rejected vide orders dated 12.07.2008 and 30.03.2009. Hence, the writ petition.

Mr.A.K.Narsimha Rao relies on the stand taken in the counter affidavit for two purposes. Firstly, that the assignment in favour of James etc. is admitted as made in the year 1940, secondly, the counter affidavit is very much silent as to whether the assignment was made with one or the other conditions and if violated would attract the prohibition stipulated under the Act 9/1977. He contends that the proceeding initiated under the Act is firstly without jurisdiction, for the assignment in favour of James was made in the year 1940 and that the respondents failed to consider and decide that the assignment made in favour of James contains the non-alienability clause. According to him, unless and until the assignment is shown to have been made with the condition of non-

alienability, the provisions of Sections 3 and 4 of the Act are not applicable. He further submits that in W.P. Nos.31529 of 2011, 31114 of 2011 and 31121 of 2011, this Court has considered the assignment in favour of James and the applicability of the Act to the alienation made by him or his predecessors, set aside the orders of resumption and allowed the writ petitions. Therefore, according to him, the writ prayers are substantially covered by the orders of this Court dated 05.08.2016 and 20.09.2016. Further the orders of learned Single Judges were appealed and appeal dismissed vide order dated 02.12.2016 in W.A. No.1282 of 2016. Hence, he submits that the orders impugned in the writ petition are liable to be set aside for the very same reasons.

The learned Assistant Government Pleader does not dispute the orders referred to above. According to him, the orders relied on by the petitioners have been passed on the assumption that at the time of assignment there was no condition of non-alienability. According to him, the proceedings No.142 dated 20.07.1918 refer to the conditions of non-alienability and is treated as a special condition. Therefore, it cannot as a matter of universal application be held that the assignment in favour of James did not contain non-alienability clause. He submits that the petitioner ought to prove that the assignment did not contain the special condition.

I have perused the record, taken note of the orders relied on by the petitioners and also the reasons recorded by the 3rd respondent for ordering resumption of subject matter of the writ petition.

Let me at the out set refer to the order passed by this Court in W.P. No.31529 of 2011 as confirmed by the Division Bench in W.A. No.1282 of 2016. The petitioner in the said writ petition challenged the resumption order dated 12.07.2007. The petitioner therein is also purchaser of land assigned in favour of James. The view taken by this Court in W.P. No.31529 of 2011 is followed in W.P. No.31114 of 2011 and another writ petition. Firstly, in the case of order dated 05.08.2016, the Division Bench has confirmed the order through for different reasons. Secondly, the respondents did not even challenge the orders in W.P. No.31114 of 2011 dated 20.09.2016. Therefore, the petitioner herein since is similarly situated is expected to be given the same benefit and the reasoning recorded in the said orders apply to the case on hand with equal force. Therefore, it is held that by following the orders referred to above, the writ prayer is accepted. Now let me advert to other objection raised by the Assistant Government Pleader viz. special condition is Board Standing Order. The reply in the counter affidavit reads thus:

“Transfer of such assigned land is prohibited under section 3(b) of A.P. Assigned Lands (Prohibition of Transfers) Act 1977 (POT ACT 9/77). In the event of such transfer, competent authority can take possession of assigned land under section 4 U/s.(1) (a) of POT Act after issuing notice to the person in possession. An extent of Ac.0.87 Cents in R.S. No.896/9 of Nandigama Village and Mandal, was assigned to Kota Yatiria and James Ac.0.87 in R.S.No.896/9P was assigned to Kota Yatiria and James. The subject land covered by writ petition measuring Ac.0.43 cents in R.S.No.896/9P which was assigned to Kota James was found in the occupation of Sri Ivaturi Subramanya Vara Prasad S/o. Ramaiah

during the process of verification of assigned lands by the Tahsildar, Nandigama and his staff in pursuance of the guidelines and instructions in G.O.Ms.No.208 Revenue (Assigned POT) Department Dt.22.2.2007. As the above occupation of assigned land is in contravention of the provisions of Sub-Section (1) and (2) of section 3 of POT Act, notices were issued to both the original assignee (the next legal heir) and the present occupier in form I and II as provided under law. The legal heir of original assignee has not offered any explanation while the present occupier (writ petitioner) Sri Ivaturi Subramanya Vara Prasad has stated that he purchased the subject land through a registered document No.3366/2007 for House site purpose, that the land was changed hands several times and finally he purchased the land on 21.06.2007 from Cherukumalli Ranga Rao and Sai Babu and sons of Sivarama Krishnaiah, that it was assigned one and finally requested to regularize in his favour. Being not satisfied and convinced by his explanation, the then Tahsildar, Nandigama has concluded that such purchase of assigned land was not valid under law and contravened the provisions of Section 3 of POT Act and issued final resumption orders in Rc.A2.130/2007 dated 12.7.2007 with a direction to the Revenue Inspector, Nandigama to take possession by providing appeal provision of 90 days under the law. Similarly 12 cases of such assigned lands in the vicinity were also taken possession under POT Act duly following the procedure under law and possession was taken on 12.7.2007 duly conducting panchanama. Aggrieved by the above resumption orders of Tahsildar Nandigama Dt.12.07.2007, the writ petitioner has filed an Appeal petition before the Sub Collector, Vijayawada and it was dismissed by delivering speaking orders in A10-2741/2007-4 Dt.12.07.2008. Further against the above orders of appellate authority, further appeal was filed U/s.4A(2) of POT Act before the Joint Collector, Krishna and it was also dismissed in D.Dis.E3.3978/2008 Dt.30.3.09. “

The question is not whether the respondents had jurisdiction at that point of time to incorporating the special condition or not? The crux of the matter in invoking the power under the Act the respondents, prima facie have to show that the original assignment was with the condition of non-alienability or any other special condition. The contention of the Assistant Government Pleader that the petitioner has to place before the Court the assignment without the condition of non-alienability is merely noted to be rejected. The jurisdiction is exercised by 3rd respondent, he ought to show that he lawfully exercised the jurisdiction, the pre-requisites are satisfied and thereafter, ordered resumption of land. This test fails and hence this contention is rejected. Both the contentions raised by the respondents are negatived. Hence, the writ petition is allowed by following the orders dated 05.08.2016 etc.

In view of the above, the rest of the writ petitions are also allowed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 25.07.2018

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