HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 946 of 2017

ORDER:

1) Assailing the order passed by the second respondent in File No.REV-ESECOLAS(APL)/3/2016-JA(E3)-KCO, in confirming the orders passed by the third respondent in Appeal No.RC.B.3401/2015, dated 01.02.2016 and fourth respondent in Rc.B/747/2009 dated 22.07.2015, the present writ petition came to be filed.

2) The facts in issue are as under:

The petitioner herein claims to be absolute owner, possessor and enjoyer of the land admeasuring Ac.1.90 cents in Sy.Nos. 49/1B and 81/2 situated at Pothepalli Village, Machilipatnam Mandal, Krishna District, having obtained a regular sale deed, through a decree passed in O.S.No.272 of 2000, which was filed for specific performance of agreement against one Smt. Vemula Satyavathi, who obtained her title through registered gift deed dated 22.06.1985, executed by her husband Vemula Satyanarayana. Originally, the husband of the vendor of the petitioner was assigned the subject land on payment of land value vide patta dated 25.04.1985. Since all the instalments were paid and as the assignment was made on payment of land value, there is no prohibition of alienation. While things stood thus, the fourth respondent issued Form-II notice dated 13.02.2015, under Rule-3 of the Andhra Pradesh Assigned Land (Prohibition of Transfer) Rules, 2007, stating that the transfer of land was in contravention of the provisions of the said enactment. An explanation came to be submitted to the said notice narrating the factual and legal aspects, but without appreciating the same an order, dated 22.07.2015 came to be passed holding that the sale is in contravention of the enactment. Aggrieved by the said order, the petitioner preferred an appeal before the third respondent, which was dismissed on 01.02.2016. Challenging the same, the petitioner preferred a revision before the second respondent, who inturn dismissed the same on 24.12.2016, which is impugned in the present writ petition.

3) Learned counsel for the petitioner mainly submits that the material on record more particularly the order of the civil Court amply established that the petitioner herein is the owner of the land and that the government cannot claim it as an assigned land. He took me through the various orders of the civil Court, more particularly the order passed in E.A.No.942 of 2008 in E.P.No.21 of 2008 in O.S.No.272 of 2000, to show that the land which is claimed as assigned land is a patta land.

4) On the other hand, a counter came to be filed by the Government disputing the contents of the affidavit filed in support of the writ petition. While admitting that the land was assigned to Vemula Satyanarayana, who inturn gifted it to his wife Vemula Satyavathi, through registered gift deed and thereafter, Vemula Satyavathi, entered into a oral agreement with Rajulapati Venkateswaramma and took some advance and also about the orders passed by the civil Court, would contend that the fact that it was an assigned land was not brought to the notice of the Civil Court as such, the findings of the Joint Collector and Revenue Divisional Officer cannot be found fault with. It is further stated that the subject land which was a surplus land, was taken over under Andhra Pradesh Land Reforms (Ceiling and Agricultural Holdings) Act, 1973 and later allotted to landless poor. The allotment order was regularized and D-form patta was also issued by the then Mandal Revenue Officer, after collecting the amount from him. It was pleaded that since the land was assigned to V.Satyanarayana, who inturn gifted the land to his wife, any transaction entered into by her cannot be accepted, since the same is heritable, but not alienable. Therefore, it is pleaded that the proceedings issued under land Assignment (Prohibition of Transfer) Act, 1977 and the

entries made effecting changes in the revenue records cannot be said to be illegal, improper and incorrect.

5) The short question that arises for consideration is whether the orders passed by the revenue authorities ie., Tahsildar, Revenue Divisional Officer and Joint Collector in rejecting the request of the petitioner warrants interference.

6) As seen from the record, more particularly from the averments in the counter, surplus lands were taken possession under the Andhra Pradesh Land Reforms (Ceiling and Agricultural Holdings) Act, 1973, and was allotted to landless poor person by name V.Satyanarayana, by the then Tahsildar, in his proceedings dated 31.10.1976. Subsequently the allotment order was regularized and D-form patta was also issued. The said V.Satyanarayana, gifted the said assigned land to his wife Vemula Satyavathi, through a registered gift deed, pursuant to the same, the name of Satyavathi, was incorporated in the revenue records against the above mentioned land. After the death of her husband, Vemula Satyavathi, proposed to sell the land to one Rajulapati Venkateswaramma and accordingly took some amount. As the said Venkateswaramma expired, her legal heir filed O.S.No.272 of 2000. By its judgment dated

20.12.2011, the I Additional Junior Civil Judge, Machilipatnam, directed the defendant-Vemula Satyavathi, to execute a registered sale deed in respect of the plaint schedule property in favour of the plaintiff, within two months from the date of judgment and further directed the defendant to vacate the plaint schedule property within two months from the date of judgment. As the said directions were not complied with, E.P.No.21 of 2008 came to be filed, pursuant to which, the said property was delivered to the writ petitioner on 22.08.2009. A reading of the affidavit filed in support of the E.P. would show that the decree holder ie., the petitioner herein has approached the Sub-Registrar, Machilipatnam on 21.08.2018 for engrossing the sale deed, who inturn issued a certificate to that effect vide annexure-II, dated 22.08.2008. In column No.3 of the said certificate, the said property was shown as Government Land and in Column No.5, the market value was shown as "O". On 23.08.2008, another appeal before the Joint Sub-Registrar, came to be made along with case number and documents namely Exs.A8, A9 and A10, showing that the E.P.schedule property is not a government land and accordingly requested to issue market value certificate. A reply came to be issued by the Joint Sub-Registrar on 27.08.2008, directing the petitioner to submit the documents before the Anamoly Committee headed by Joint Collector, Krishna District, through concerned Registrar.

7) In spite of the above orders being in force, proceedings under the Act came to be issued on the ground that it is an assigned land and that the petitioner has no right or title over the property.

8) As stated earlier, the main ground urged by the learned Government Pleader appears to be that the petitioner has not brought to the notice of the civil Court about the assignment which was granted to V.Satyanarayana and the manner in which the property came into his possession. The alleged suppression of material fact is now made the basis to show that the orders under challenge require no interference.

9) It is to be noted here that the question of suppression of fact would not arise for more than one reason. Firstly O.S.No.203 of 1991 was filed by Vemula Satyavathi against the Government before the Principal District Munsif, Machilipatnam, seeking the following relief:

> "Suit for a decree directing the defendant ie. State of A.P., rep. by the Collector, Krishna, Chilakalapudi, to alter the No. 10 (1) account and mutate the names of plaintiffs relating R.S.No.49/1-B, Ac.1.10 cents and R.S.No.812

> Ac.0.80 cents of Pothepalli Village, Bandar Mandal, Krishna District, after declaring the plaintiffs' title therein and for costs."

10) By its judgment dated 10.08.1994, the said suit was decreed directing the defendant to mutate the name of Vemula Satyavathi in revenue records and 10 (1) register with regard to land referred to above. In the said suit itself, a specific plea was taken by Vemula Satyavathi (vendor of the writ petitioner) the land was initially assigned to V.Satyanarayana. The plaint also refers D-Form patta being issued by the Mandal Revenue Officer. It is said that the said Satyanarayana carried out the repairs, improved the said land and died on 26.12.1987. The schedule land devolved on the plaintiffs. It would be appropriate to extract the findings in O.S.No.203 of 1991, which are as under:

> "Admittedly, the schedule land is a dry land and there is no water facility. So, only dry crops can be raised in the schedule land and not for wet crops. The evidence of PWs.1 and 2 is clear that the schedule land was cultivated by late Satyanarayana and after his death PW.1 is cultivating. More, the value of the land was also paid by late Satyanarayana to the Government. Under such circumstances, the Government has no power to cancel the patta. PW.1 sent a registered notice to Government under Section 80

of C.P.C. for mutation in the revenue records. There is no cancellation proceedings issued by the Government, if at all the governments wants the schedule land, they can acquire the land from the plaintiff.

The Government failed to establish whether there are any other heirs to Vemula Satyanarayana. More so, the "D" form patta and other documents are in possession of PW.1. I can safely come to a conclusion that PW.1 and second plaintiff are alone the legal heirs of late Satyanarayana, in the absence of any positive material about other legal heirs. The Government has no right to deny the request of the plaintiff to effect mutation in the revenue records. More so, the plaintiff sent representation to the Government under Ex.A.16 and also sent registered notice requesting for effecting mutation in revenue records. The Government has not so far effected the mutation in the revenue records. The schedule land is shown as assigned waste dry, so the government is bound to effect the mutation and the plaintiff is entitled for decree."

11) From the findings given in the said O.S., it is clear that late V.Satyanarayana, acquired right over the property since the assignment was on payment of market value. As held by the Apex Court in *Ravuri Tulisamma v. The Mandal Revenue Officer, Nandigama Mandal, Nandigama, Krishna*

District[1] the authority can cancel the assignment on the ground of alienation only when the assignment is granted without consideration, but not when the assignment is after receipt of consideration.

12) In the instant case, the assignment was by way of consideration, which is evident from the judgment of the civil Court. Apart from that the plea taken by the revenue authorities in this writ petition is that the petitioner has suppressed the fact of assignment also appears to be incorrect for the reason that in O.S.No.203 of 1991, the vendor of the petitioner, specifically pleaded and referred to the assignment made in favour of her husband and in the said suit, the Government of Andhra Pradesh was a party. Therefore, they cannot now say that the petitioner has suppressed the fact of assignment before the civil Court. The suit filed by V.Satyavathi was decreed earlier in point of time and the same was confirmed in the appeal. That being the position, it cannot be said that the petitioner has suppressed the fact of assignment in subsequent suit, since the findings in O.S.No.203 of 1991 have become final by then. Having regard to the above, the question of non-disclosure of the said fact in O.S.No.272 of 2000 would not arise. In view of the findings of the civil Court, the findings

[1] (1991) (I) An.W.R. 533

of the authorities appear to be *prima facie* incorrect. Hence, the findings given by the Joint Collector that the order in execution petition in O.S.No.272 of 2000 as null and void cannot be accepted.

13) Accordingly, the writ petition is allowed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

26.10.2018
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