

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

Writ Appeal No.1534 of 2018

JUDGMENT: (per Hon'ble Sri Justice M.Satyanarayana Murthy)

This Writ Appeal is filed by the Government of Andhra Pradesh, Revenue Department, questioning the order, dated 12.07.2018, in W.P.No.33059 of 2017, passed by this Court, whereby the learned Single Judge directed the appellants herein to consider the request for grant of No Objection Certificate, keeping in view of the findings recorded in the impugned order, based on the G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016.

The respondent herein is the petitioner in the Writ Petition, which was filed for issuance of a Writ or direction to the respondents (appellants herein), to issue No Objection Certificate for sale of the property, alleging that the land of an extent of Ac.1.72 cents in Survey No.40 P of Loddipalli Village, Orvakal Mandal, Kurnool District, was granted in favour of her husband, as an ex-serviceman. During his life time, her husband continued in possession till his death. After the death of her husband, she succeeded the entire estate of her husband, being the sole legal heir, and continued in possession and enjoyment of the said property and sought permission of the authorities concerned to sell the property by obtaining No Objection Certificate from the concerned authorities, basing on the G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016. The

appellants herein opposed the Writ Petition on the ground that it was not assigned under BSO 15 and it is an assignment under Rule 10(2) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (for short, “the Rules”) and thereby the G.Os referred above have no application and that the husband of the respondent herein was not an ex-serviceman and no assignment was made in his favour being the ex-serviceman under the provisions of the BSO 15, therefore, conditions contained in Rule 10(1) of the Rules r/w. Section 14 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, “the 1973 Act”), and such assignment was subject to conditions under Section 14 of the 1973 Act and therefore, No Objection Certificate cannot be issued for sale of the property by the respondent herein.

Learned Single Judge did not accept the contention of the appellants, but followed the G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016 and directed the respondents to consider the request of the respondent herein to issue No Objection Certificate.

Aggrieved by the said order, the present Writ Appeal is filed, assailing the said order on the same ground that such grant is not governed by the provisions of the A.P. Act 9 of 1973 Act and BSO 15 has no application to the present case and similarly the provisions of the Andhra Pradesh Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977) have also not applicable and requested to set aside the impugned order.

During hearing, the learned Government Pleader for Revenue appearing for the appellants reiterated the contentions urged in the Writ Appeal, while asserting that the grant was not in favour of the ex-serviceman, even if Section 14 of the Act and Rule 10(2) of the Rules framed thereunder, are considered together, preference shall be given to the ex-serviceman, but the grant is not in favour of the ex-serviceman; a grant can be made only under BSO 15 to the landless poor persons, rural artisans etc; the assignment in favour of the husband of the respondent herein is not under BSO 15 and thereby Section 3 of the Act 9 of 1977 has no application. He placed reliance on the judgment of this Court in **Sabbavarapu Appanna v. R.D.O, Visakhapatnam**¹ in support of his contentions.

Whereas, Sri Challa Siva Sankar, the learned counsel for the respondent, contended that the assignment was made in favour of the husband of the respondent, being an ex-serviceman, and when such assignment was made for consideration, the respondent, being the wife, who succeeded the property after the death of her husband, is entitled to claim No Objection Certificate. He placed reliance on the order, dated 08.08.2012, passed in W.P.No.24448 of 2012, in support of his contentions. Basing on the order, dated 08.08.2012, passed in W.P.No.24448 of 2012, the learned counsel for the respondent, requested this Court to confirm the order passed by the learned Single Judge by dismissing this Writ Appeal.

¹ 2008(2) ALT 744

Considering the arguments of both the learned counsel, the point that arises for consideration is:

Whether the assignment was under the A.P. BSO No.15? If so, whether the condition contained in Section 14 of the 1973 Act is a total bar from alienation of the property? If not, the G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016, permit the revenue authorities to issue No Objection Certificate for sale of the assigned land?

POINT:

It is an admitted fact that this grant was made under Rule 10(2) of the Rules framed under the 1973 Act and the basis for assignment is Section 14 of the 1973 Act. According to Section 14 of the 1973 Act, the lands vested in the Government under the Act shall be allotted for use as house-sites for agricultural labourers, village artisans or other poor persons owning no house or house-sites, or transferred to the weaker-sections of the people dependent on agriculture for agriculture or for purposes ancillary thereto, as may be prescribed. Provided that, as far as may be practicable, not less than one half of the total extent of land so allotted or transferred shall be allotted or transferred to the members of the Scheduled Castes and the Scheduled Tribes and out of the balance, not less than two-thirds shall be allotted or transferred to the members of the backward classes, classes of citizens notified by the Government for purposes of Clause (4) of Article 15 of the Constitution of India. Sub-section (2) says that land allotted to a person for use as house-site or transferred for the purpose of agriculture or for purposes ancillary thereto, shall

assign free of cost, subject to certain conditions contained in the Section itself. Therefore, it is an undisputed fact that the assignment was under Section 14 of the 1973 Act r/w. Rule 10(2) of the Rules framed thereunder and on the face of the document, it is evident that it was under the provisions of the 1973 Act. When there is no dispute about the assignment under the provisions of the 1973 Act and the Rules framed thereunder, such restriction against alienation of the land assigned to the husband of the respondent must be adhered to and it would entail its cancellation if conditions contained in the assignment/grant are violated.

One of the contentions of the respondent is that when the property was allotted on payment of value of the property in installments, it is absolute transfer and the condition referred thereto is void. But, Section 11 of the Transfer of Property Act has no application to the Government grants and it is applicable to transfers inter-vivos. Therefore, Section 11 of the Transfer of Property Act has no application to the present facts of the case, this view is fortified by the Apex Court judgment in **Hajee S.V.M. Mohd Jamaludeen Bros. & Co. v. Tamil Nadu**² and the same is followed in **Tata Steel Ltd. v. State of Jharkhand**³. In both the judgments the Apex Court consistently held that transfer of land or interest therein by State grant by 1895 Act to any person is not governed by Transfer of Property Act. Though the transfer in the

² (1997) 3 SCC 466

³ (2015) 15 SCC 55

present facts was not under 1895 Act (Government Grants Act) same principle is applicable to the grant in question.

Since the assignment was under the provisions of the 1973 Act, the parties are bound to adhere to the conditions contained therein and one of such condition in the grant is that the assigned land is not transferable but heritable. Therefore, alienation is not permitted by the provisions of the 1973 Act, though it was allotted for consideration. But the learned Single Judge relied on G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016, as if the grant was made to an ex-serviceman under the BSO 15. As seen from the grant/assignment, it was not a grant in favour of S. Purushotham, being an ex-serviceman, who died intestate. When this grant was not in favour of an ex-serviceman, G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016, absolutely have no application for issuance of such "No Objection Certificate" permitting the respondent herein to alienate the property. Therefore, directing the appellants herein to consider the request of the respondent herein to issue "No Objection Certificate" for alienation of the property by the respondent, based on the G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016, is illegal and consequently, the impugned order passed by the learned Single Judge can not be sustained.

The learned counsel for the respondent though relied on a judgment of this Court in W.P.No.24448 of 2012, dated 08.08.2012, the said judgment is not applicable to the present

facts of the case on hand. In the above judgment, the Court observed that the assignment was not hit by the provisions of the A.P. Act 9 of 1977, since it has no application and directed to issue No Objection Certificate. But, in the present case, it is not the case of issue of grant/assignment in favour of husband of respondent being ex-serviceman under BSO 15. Consequently, the principle laid down in the above judgment cannot be applied to the present case. When the land is vested on the Government, disposal of the same must be under APBSO No.15 and Section 14 r/w Rule 10(2) of the Rules of A.P. Act 1973, when the land vested on the Government surrendered by declarant under the provisions of A.P. Act, 1973.

On the other hand, the learned Government Pleader for Revenue appearing for the appellants placed reliance on the judgment of this Court in **Sabbavarapu Appanna v. R.D.O, Visakhapatnam**¹, where an identical question came up for consideration, but with reference to A.P. Act 9 of 1977 and Rule 3 of the Rules framed thereunder, coupled with Section 14 r/w Rule 10(2) of the Rules of A.P. Act 1973 was considered and opined that, the grant is governed by Act 9 of 1977, and ultimately, concluded at the end, with the approval of the law declared by this Court in **Vemula Satyavathi v. District Collector**⁴ and **Dammalapati Ramalingam v. District Collector, Khammam District**⁵, concluded that it is not saleable, but heritable and when condition is imposed while assigning the land prohibiting

⁴ 2008 (2) ALT 738

⁵ 2006 (6) ALT 299

transfer whether in respect of surplus holding under A.P. Act 1973 or BSO No.15 or any other law.

By applying the principles laid down in the long line of perspective pronouncements to the present facts of the case, we hold that the impugned order is contrary to the conditions stipulated in Section 14 of the 1973 Act and Rule 10(2) of the Rules framed under the 1973 Act, and consequently, the G.Os referred above are not applicable to the present facts of this case and thereby, the impugned order is liable to be set aside.

In view of our aforesaid discussion, we find that the assignment is governed by APBSO No.15, but, the grant was not in favour of ex-servicemen and thereby, G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.279 dated 04.07.2016 have no application and still, in view of the restraint against alienation, 'No Objection Certificate' cannot be issued and consequently, the order is liable to be set-aside.

In the result, the order, dated 12.07.2018, in W.P.No.33059 of 2017, is hereby set aside and the Writ Appeal is allowed. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

RAGHVENDRA SINGH CHAUHAN, J.

M.SATYANARAYANA MURTHY, J.

Date:03.12. 2018.

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