

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1604 OF 2018

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

Heard the learned Government Pleader (Assignment) for appellants and Mr.K.Durga Prasad for respondents 1 to 18.

Respondents 1 to 18 filed W.P.No.27626 of 2007 challenging proceedings of the 2nd appellant in Rc.B.No.2054/2007 dated 30.11.2007, as illegal, arbitrary and contrary to the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act').

The learned Single Judge through the order under appeal set aside the order of 2nd respondent dated 30.11.2007. The order is assailed primarily on two grounds viz., that the order dated 30.11.2007, if could not be sustained for not following the procedure prescribed by the Act in issuing notices etc., the order dated 30.11.2007 ought to have been set aside and the matter remitted to 2nd appellant herein for consideration and disposal in accordance with law. The findings on the entitlement of respondents 1 to 18 as legal heirs of the original assignees are also without proper pleadings and evidence. Therefore, Mr.K. Subba Rao contends that ultimately it is for the 2nd appellant to find out whether the assigned land is actually enjoyed by the assignee or that the prohibition under Sections 3 or 4 of the Act is attracted to a given set of circumstances and add in a way to further the object, duties and functions assigned to the 2nd appellant under the Act. Through the order under appeal, all options are foreclosed.

The transactions, if are otherwise void, by virtue of the order of this Court, the enjoyment or transfer of transferee would become legitimate. Mr.K.Durga Prasad resisted the appeal by contending that nothing is stated by the learned Single Judge. Respondents 1 to 18, if have either done or refrained from doing anything, which can be construed as prohibition coming within the fold of the Act, the 2nd appellant could have certainly taken action in accordance law. According to him, there is no need to interfere with the order under appeal.

We have perused the record and noted the submissions made by the counsel appearing for the parties. We are *prima facie* of the view that the order under appeal when is interdicted for want of following the procedure prescribed under the Act, the learned Single Judge is right in setting aside the order, without even relegating the party to work out the remedy of appeal before the Revenue Divisional Officer. But allowing the writ petition without preserving the right to which otherwise the appellants are entitled certainly forecloses further consideration of the issue by 2nd appellant in accordance with law.

The order under appeal to the said extent is modified and the appeal is allowed-in-part. The appellants are given liberty to proceed in accordance with the provisions of the Act on the alleged violation in enjoyment of assigned land. The writ petitioners/respondents 1 to 18 are directed to appear before the Tahsildar on 10.01.2019. The Tahsildar/2nd appellant on the appointed date serves notices on all the writ petitioners, gives them reasonable time and completes the enquiry within two months thereafter. Respondents 1 to 18, if

are aggrieved by the order passed in this behalf by 2nd appellant, can certainly work out remedies in accordance with law. No order as to costs.

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

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

06th December, 2018
Lkm

