

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.34916 of 2017 & C.C.No.2390 of 2017

COMMON ORDER:

Heard Sri C.Naresh Reddy, learned counsel for the petitioner and the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner claims to be owner of an extent of Ac.1.00 gts in Sy. No.812/20 and Ac.2.00 gts in Sy. No.817/22 at Karthal village, Soan Mandal, Nirmal District, having purchased the same through unregistered sale deed dt.07-11-2008 from one Venotham Reddy. Petitioner contends that his name was mutated in revenue records through proceedings bearing No.ROR/457/1997 and pattadar passbook was also issued to the petitioner. Petitioner contends that the subject land had always been a private land and that on an application made by the petitioner for conversion of Ac.1.00 gts out of Ac.3.00 gts owned by him into non-agriculture land, the Revenue Divisional officer, Nirmal Division (3rd respondent) issued proceedings No.B/498/2010 dt.25-02-2010 permitting conversion of said extent for non-agriculture use after conducting detailed enquiry.

3. Admittedly a notice dt.27-02-2017 was issued to the petitioner by Tahsildar, Soan Mandal, Nirmal District (4th respondent) under Rule 3 of the Rules framed under A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act') asking petitioner to show cause why he should not be evicted from the above

land. In that notice, in the column titled “description of land”, it was mentioned “assigned land” ; in the column titled “nature of the transferor/assignee”, it was mentioned “purchased”; and in the column titled “nature of transfer and date”, it is mentioned as “purchase”.

4. Since the notice was vague, petitioner gave a reply dt.14.3.2017 stating that the above notice is vague without any particulars, that he is *bona fide* purchaser of the subject land and 4th respondent ought to furnish particulars about the assignment so as to enable the petitioner to give a detailed reply.

5. However, without furnishing any details to the petitioner about the assignment, on 20-03-2017, the 4th respondent passed an order in proceedings No.B/37/2017 to resume petitioner’s land. In the said order, it was recorded that petitioner himself admitted that he purchased the land; and that there was assignment of Government land to landless poor for use for agricultural purpose, but petitioner put it to non-agricultural use; that purchase of Government land by petitioner is illegal and in violation of conditions laid down; and so his explanation was unacceptable. It is also mentioned that the Government of Telangana aimed to provide 2BHK houses in rural areas to provide shelter to the poor who do not have houses, that petitioner’s land of Ac.3.00 gts is proposed for the said purpose, and since he had violated the conditions of assignment, his land is liable to be resumed and used for the said public purpose.

6. Petitioner questioned the same before this Court in W.P.No.13973 of 2017. The said Writ Petition was allowed on 28-04-2017. This Court allowed the said Writ Petition relying on the judgment in **Dasari Narayana Rao and another Vs. Deputy Collector and Mandal Revenue Officer, Serilingampalli, R.R. District and others**¹ and held that since particulars of assignment have not been furnished in the notice given to the petitioner under the Act, the impugned order is set aside; but it's order would not preclude the respondents from issuing notice with all particulars as to what is the nature of assignment, when the assignment was granted and in whose favor the assignment was granted.

7. Thereafter, 4th respondent issued another notice in Form-II on 04-08-2017 to the petitioner.

8. In the said notice also, there are no details of the nature of assignment, the date of the assignment, and the name of the assignee. In the column titled 'description', it is noted "*assigned land under revised assignment policy, G.O.Ms.No.146 Revenue dt.25-07-1958*"; in the column titled "nature of transfer/assignee", it is mentioned "*violation of Condition No.6 of the said G.O.*"; and in the column titled "nature of transfer and date", it is mentioned "*patta transferred on 30-12-2009 with file number*"; and under the 'remarks' column, it is mentioned "*assignees have violated the condition as laid in the assignment condition No.6 of the said G.O.*".

¹ 2010 (6) ALD 536

9. The petitioner again gave a reply on 18-08-2017 stating that the said notice was contrary to the order passed by the High Court on 28-04-2017 in W.P.No.13973 of 2017, that the notice is totally vague and no particulars of assignment have been furnished, and that the action of 4th respondent is illegal, arbitrary and unconstitutional. He also pleaded that he himself was a landless poor person and his land was already submerged in the Sriram Sagar Project and his house was acquired for widening of National Highway No.7, and 4th respondent having admitted that the land is patta land in the impugned notice has issued the impugned notice only with an illegal intention to resume the land.

10. The 4th respondent then passed the impugned order in proceedings No.B/37/2017 dt.04-10-2017.

11. In the impugned order, firstly, the 4th respondent states that the Sarpanch of the Kadthal village had given a representation to him on 09-01-2017 for allotment of land in Sy. No.817 for providing 2BHK houses at the said village and that the Collector had requested him to allot Ac.5.20 gts in the said survey number for construction of houses under 2BHK scheme. Thus, the motive for initiating the proceedings under the Act against the petitioner is made very clear i.e. it has nothing to do with the violation of the conditions of the assignment and that it is to take away the petitioner's land for the purpose of constructing 2BHK houses therein. Thus the power under the Act is being exercised for an ulterior purpose.

12. It is next stated that the 4th respondent verified and inspected lands in entire Sy. No.817 and found that the original assignee had violated the terms and conditions of the assignment. How an inspection of the land of the petitioner would prove violation of conditions of assignment is not stated. Admittedly pattadar pass books were issued to the petitioner mentioning the survey number of his land as 817/A3/1 of extent Ac.3.00 gts and land conversion for Ac.1.00 gts was given to the petitioner on 25-02-2010 by the Revenue Divisional Officer (RDO) without mentioning any sub division in Sy. No.817.

13. The 4th respondent then states that as per Khasra pahani, the land is Gairan Sarkari land and reference is made to be assignments in Sy. Nos.817/14 and 817/13. Since the petitioner is not claiming the land in the said survey numbers, any reliance on alleged assignment of land in the said survey nos., is totally irrelevant.

14. It is then stated by 4th respondent that there was a change in the revenue records and petitioner's name was mutated as owner of Ac.3.00 gts in Sy. No.817/A3/1, without there being registered sale deed, on the basis of regularization of unregistered sale deeds without any file number on 30-12-2009 and it is asserted that the entire Sy. No.817 is Government land which is assigned to various persons. *But in the counter affidavit filed by the 4th respondent at para 6 it is admitted by him that that there is no record of assignment available at*

all in respect of the land in Sy.No.817. This is also confirmed by the G.P. for Revenue.

15. In **Dasari Narayana Rao and another** (1 supra), this Court had categorically held that under the Act, the term ‘assigned land’ means lands assigned by the Government to landless poor subject to condition of non-alienation; that even if there is an assignment, but there is no condition of alienation, the provisions of the Act cannot be invoked and authorities under the Act would have no jurisdiction. This Court also held that authorities implementing the provisions of the Act must record a finding that there was an assignment by the Government to a landless poor person under the Rules for the time being in force with a condition prohibiting alienation, and that such assigned land was alienated by such assignee in contravention of Section 3 of the Act; and the authorities must establish on the basis of evidence the date of the assignment and the conditions of assignment, and supply these facts to the person who is being proceeded against under the Act so as to afford to him a reasonable opportunity to explain for defending his possession and ownership of the land in question and that this is a valuable right. This Court recorded that prior to issuance of G.O.Ms.No.1046 Revenue dt.25-07-1958, there was no condition prohibiting alienation in the deeds of assignment and so, the date of the deed of assignment is a critical fact and is a jurisdictional fact on the basis of which only there can be determination under the Act.

16. Once the 4th respondent admitted that they have no record relating to the assignment available with them, it has to be held that they failed to discharge the burden to show that the land was assigned land and that it was assigned with a condition prohibiting alienation. So the 4th respondent had no jurisdiction to invoke the provisions of the Act at all.

17. Without having any record to show that the land is assigned land, it is shocking that 4th respondent had issued notices dt.27-02-2017 as well as 04-08-2017 invoking the provisions of the Act. It shows a brazen disregard to the provisions of law governing the exercise of his jurisdiction under the Act and is clearly a *mala fide* action for an ulterior purpose.

18. That apart, in spite of principle laid down in **Dasari Narayana Rao and another** (1 supra) as well as the specific order passed by this Court on 28-04-2017 in W.P.No.13973 of 2017 (which he also referred to in his impugned order dt.04-10-1997), 4th respondent falsely states in the impugned order that the show cause notice dt.04-08-2017 mentions the year of assignment and also the person to whom the assignment was made. This is clearly intended to mislead the Court.

19. The 4th respondent further stated in the impugned order that the regularization of the occupation of the petitioner in respect of the subject land as well as conversion permission given by the RDO,

Nirmal on 25-02-2010 are not valid and that conversion would not disentitle the Government to initiate action under the Act. How the 4th respondent can sit in appeal over an order passed by his superior officer, RDO, Nirmal Division who passed the order permitting conversion of land to non-agricultural use, is beyond comprehension. It only shows the extent to which the 4th respondent would go to take the land belonging to the petitioner.

20. It may be that that in the proceedings dt.30-12-2009 of the then Tahsildar, Nirmal, produced by the petitioner, there is a mention of Tahsil File No.B/979/2004 dt.05-03-2004 but that file does not relate to the petitioner. But if the Tahsildar issued proceedings on 30-12-2009 without mentioning the correct tahsil file and sanctioned mutation to the petitioner, the petitioner cannot be blamed for the same.

21. The 4th respondent further states that the Tahsildar could not have regularized the sada sale deed produced by the petitioner under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 in respect of the assigned land. When there is no evidence to show that the land is assigned land, this finding of 4th respondent is also without merit.

22. Strangely, new facts are stated in the counter affidavit filed by 4th respondent which do not find any place in the impugned order relating to assignments in Sy. No.817. It is settled law that

correctness of an impugned order must be considered on its contents only and it cannot be supported by new material produced either by way of pleadings or documents subsequently. (see **Mohindhr Singh Gil and another Vs. Chief Election Commissioner, New Delhi and others²** and **the Commissioner of Police, Bombay Vs. Gordhandas Bhanji³**).

23. When it is the clear case in the counter affidavit that the file relating to the assignment made in Sy. No.817 is not traceable and this is also reiterated by the Government Pleader for Revenue, it has to be held that the entire proceedings initiated under the Act by 4th respondent against the petitioner are without jurisdiction, *mala fide*, illegal, contrary to the provisions of the Act and are wholly unsustainable.

24. Since it is settled law that when an order passed is without jurisdiction, existence of alternative remedy is not a bar for this Court to entertain the Writ Petition (see **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others⁴**), the question of the petitioner preferring appeal under Section 4-A of the Act as contended in the counter affidavit of 4th respondent, does not arise.

25. When this Court noticed that Form-II notice dt.04-08-2017 was issued by 4th respondent contrary to the order passed by this Court on 28-04-2017 in W.P.No.13973 of 2017 (by withholding

² AIR 1978 S.C. 851

³ AIR 1952 S.C. 16

⁴ (1998) 8 S.C.C. 1

particulars about the deed of assignment, the nature of assignment, when the assignment was granted and in whose favour it was granted), this Court issued show cause notice to him (the Tahsildar, Soan Mandal) on 06-11-2017 to show cause why contempt of Court proceedings shall not be issued against him. This was numbered as CC 2390 of 2017.

26. The 4th respondent then appeared on 20-11-2017 and sought time to file counter affidavit. Thereafter, counter affidavit was filed after taking two more adjournments on 28-11-2017, 30-11-2017 and 04-12-2017.

27. In the counter affidavit filed by him, the contemnor stated that he did not violate the order passed by this Court. He further stated that as per records of original assignment, he issued notices in Form I and II as the records of original assignment were in favour of Sri Bhojja Pochiga and Sri Bonthala Ramulu for Ac.1.00 gts in Sy. No.817/17 and Ac.2.00 gts in Sy. No.817/19 respectively, but the original records with reference to the said assignment were not available and so date of assignment was not mentioned.

28. There is no mention of Bhojja Pochiga or Bonthala Ramulu in the two show cause notices issued by the contemnor/4th respondent to the petitioner in the Writ Petition.

29. The Contemnor stated that since original assignment register was not available, he did not give particulars as directed by

this Court in its order dt.28-04-2017 in W.P.No.13973 of 2017 and that the same is neither deliberate nor intentional. When any such original records were not available, he ought not to have issued a fresh notice again under the Act, since as per settled law explained above, unless the land is assigned land and there is a condition in the deed of assignment prohibiting alienation, no jurisdiction under the Act can be exercised by him. It is clear that only to grab the petitioner's property at the instance of the Sarpanch of the Kadthal village to enable construction of 2BHK houses in the petitioner's land, 4th respondent had initiated these proceedings under the Act and that the said proceeding is with an oblique motive and is clearly *mala fide*. I therefore hold that the contemnor/4th respondent in the Writ Petition has intentionally and deliberately violated the orders passed by this Court and rendered himself punishable for contempt.

30. The unconditional apology tendered by him in the counter affidavit in the CC cannot be accepted because there is no contrition on his part. Also he has filed the elaborate counter in the Writ Petition as well as in the Contempt Case justifying the exercise of his jurisdiction under the Act though it is patent that he could not have taken any action under the Act without the original assignment record available with him and without furnishing details of the assignee, the date of assignment, and whether there is a condition prohibiting alienation in the assignment to the petitioner as mandated in the order dt.28-04-2017 in W.P.No.13973 of 2017.

31. Accordingly, both the Writ Petition and the Contempt Case are allowed; the order dt.04-10-2017 in proceedings No.B/37/2017 of 4th respondent is set aside as wholly without jurisdiction; 4th respondent is directed to pay costs of Rs.20,000/- (Rupees Twenty Thousand only) to the petitioner and the respondents are directed not to interfere with the possession and enjoyment of the petitioner over the subject land. The 1st respondent shall also initiate disciplinary action against the 4th respondent for his above misconduct.

32. The 4th respondent in the Writ Petition/respondent in the Contempt Case is held guilty of willful and deliberate violation of the order dt.28-04-2017 in W.P.No.13973 of 2017 and is sentenced to undergo two months' Simple Imprisonment and fine of Rs.2000/- (Rupees Two Thousand only); the petitioner shall deposit subsistence allowance @ Rs.300/- (Rupees Three Hundred only) per day within four weeks from today. The sentence of imprisonment is suspended for a period of four weeks from today.

33. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15-12-2017

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