

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.46074 of 2018

ORDER:

It is the case of the petitioners that they are owners and possessors of the land mentioned against their names in Sy.Nos.29/1, 29/3 & 29/4 of Madhurvada Village, Visakhapatnam Rural Mandal, Visakhapatnam District (for short 'the subject lands'). The said plots are situated in an approved layout covered by L.P.No.20/1994 issued by the Visakhapatnam Urban Development Authority on 3.6.1994 and the plots are covered with structures which have been assessed to tax and have been assigned door numbers by the Greater Visakhapatnam Municipal Corporation and tax books have also been issued. That the predecessors in title of the petitioners i.e., Mandava Dhanalakshmi was granted market value patta on 3.12.1981 vide D.R.No.2/1390/B1 by the Tahsildar, Visakhapatnam Taluk, in relation to an extent of Ac.1.00 in Sy.No.29/1 of Madhuravada Village and Athaluri Hanumantha Rao was granted market value patta on 3.12.1981 vide D.R.No.1/1390/B1 by the Tahsildar, Visakhapatnam in relation to an extent of Ac.1.00 in Sy.No.29/3 and another extent of Ac.0.33 cts in Sy.No.29/4 of Madhuravada Village, was subject matter of market value patta granted on 6.07.1984 vide R.C.No.869/1984/B1, by the said authority and the market value was paid by the assignees. It is stated that since the assignments made on collection of market value, the conditions regarding non-alienation prescribed in BSO-15 are not applicable so also the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977. Though the lands are assigned on payment of market value, the same were included in the list of prohibited properties under Section 22-A (1)(a) of the Registration Act, 1908 on the ground that the same are assigned lands. Aggrieved by the same, present writ petition is filed.

Heard learned counsel for the petitioners and learned Assistant Government Pleader for Revenue appearing for respondents.

Learned counsel for the petitioners submits that when once the assignments are made on payment of market value, there is no restriction for alienation of subject land. He submits that when patta was granted, the said non alienation clause was included and later the said clause was deleted by virtue of the orders passed by the District Collector dated 29.01.1992. He submits that in spite of deletion of said non-alienation clause, the application filed by the petitioners for deletion of subject lands from the list of prohibited properties was rejected on the ground that challans regarding payment of amounts and DR file is not available, which is erroneous.

A perusal of the impugned proceedings dated 12.11.2018 of the District Collector, Visakhapatnam, it is found about that the orders passed by the Joint Collector approving the deletion of patta condition No.1 by order dated 29.01.1992. But only on the ground of non availability of challans regarding payment of amount, the District Collector asserts that the said proceedings were issued. It is also stated that without original DR files and original challan, it is not possible to conclude that the land in question was proved to be assigned on payment of market value. In the impugned proceedings, it is also asserted that even the land in question was proved to be assigned on payment of market value also, the provisions of the Government Grants Act would applicable for all assignments/alienations of Government lands.

In this case, it is to be seen that even according to the impugned proceedings of the District Collector, the proceedings of the then Joint Collector dated 29.01.1992 along with the patta file and material papers are available. Even there is an endorsement that condition No.1 of the

market value patta regarding deletion of non-alienation clause. Whether the then Joint Collector has correctly issued the proceedings 29.01.1992 or not cannot be considered at this point of time.

In **Nimmagadda Rama Devi and others v. The District Collector, Krishna and another**¹ this Court held as follows:

“7. By reading the above provisions, it is apparently clear that the scheme of the Act is to prohibit alienation of assigned lands except those on payment of market value because the whole idea of the Act is to make free gift of the lands to the landless poor persons, whereas the lands were originally assigned to the assignees as per G.O.Ms. No. 1142 dated 1-6-1954 on payment of market value under unavoidable circumstances. Further the definition of 'assigned land' makes it clear that lands assigned to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings, and the word 'assigned' shall be construed accordingly. From the above, it has to be construed that if there is a condition of non-alienation while assigning the lands or the land is assigned under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, then only it is deemed as assigned land under Act No. IX of 1977. In the case on hand, there is no condition barring alienation of lands. On the other hand the note appended to Condition No. 1 of 'D' form patta specifically says that "this condition will not apply to cases of assignment made on collection of market value under para 1(8) of G.O.Ms. No. 1142 of 18-6-1954". By that condition, it is evident that there is no bar for alienation of lands. Therefore, it cannot be said that the lands are assigned lands. When the lands are not assigned lands, the Act No. IX of 1977 has no applicability to the assignments made to the assignees. In *Ravuri Tulisamma v. Mandal Revenue Officer*, 1991 (1) An.W.R. 533 a learned single Judge of this Court held that cancellation of assignment of land and grant of 'D' form patta on receiving consideration, on the ground of alienation, is illegal.”

In **Letter sent from Plot No.338, Parvant Nagar, Borabanda, Hyderabad and others v. Collector & District Magistrate, Ranga Reddy District at Hyderabad**², this Court held as follows:

“51. Section 3 prohibits transfer of assigned lands after commencement of the Act of any land assigned by the Government to a landless poor person for purposes of cultivation or as a house-site. Sub-section (2) of Section 3 declares that no landless poor person shall transfer any assigned land and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. Sub-section (3) of Section 3 adumbrates any transfer or acquisition made in contravention of the provisions of sub-section (1) or sub-section (2) shall be deemed to be null and void. Sub-section (5) of Section 3 engrafts an exception to the retrospective operation of Sec.3(1) in favour of those landless poor persons who have already

¹ 1996 (4) ALT 325 (D.B)

² 2008 (5) ALT 313 (D.B)

purchased the land prior to the commencement of the Act No.9/1977 from landless poor persons in violation of condition of inalienability, provided purchaser is a landless poor persons purchased in good faith for valuable consideration from the original assignee or his transferee prior to the commencement of the Act No.9/1977. Further the provisions of Act No.9 of 1977 will not apply to the alienation of pattas/occupancy rights granted under Laoni Rules or under Revised Assignment Policy issued in G.O.Ms.No.1406, dated 25.07.1958 since Act No.9/77 prohibits transfer of assigned land which is defined under Sec.2(1). Laoni Rules as well as the rules issued under G.O.Ms.No.1406, dt.25.07.1958 deal with two types of assignments, i.e., assignment on payment of market value and assignment to the landless poor persons. Act No.9/77 deals with assignment by Government to the landless poor persons subject to the condition of inalienability. Further under Sec.58-A of the Telangana Area Land Revenue Act issuance of notification in the official gazette notifying in respect of any village or tract of the area to which the Act extends, sanction of Collector for transfer of dry land is compulsory and any right of occupation of any land under Sec.54 given after the date of notification shall not be transferable without obtaining previous sanction of the Collector. Since no such notification has been issued making it a condition to obtain sanction of the Collector for possession of unoccupied land compulsory in respect of any village or tract, the condition under Form-G which is contrary to the main statute cannot be invoked for invalidating the transfer of the assigned land in whose favour patta is granted either under Laoni Rules or under G.O.Ms.No.1406 on collection of market value.

52. We are of the view that provisions of Act No.9 of 1977 will not be applicable to the cases where assignments were made on collection of market value or under Circular 14 except it were granted to the landless poor persons free of market value. Point No.2 is answered accordingly.”

In view of the principle laid down in the aforesaid decisions, and also in view of above facts and circumstances of the case on hand, this Writ Petition deserves to be allowed by setting aside the impugned order of the District Collector-3rd respondent in eOfc.No.10053/2018/E1, dated 12.11.2018. Accordingly, same is allowed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.RAJASHEKER REDDY, J

21-12-2018
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Date: 21.12.2018

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