

HONOURABLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION Nos 3237, 3239, 3240, 3257, 3294 and
WP.No.3326 of 2021**

Date:12.02.2021

WP.No.3237 of 2021

Between:

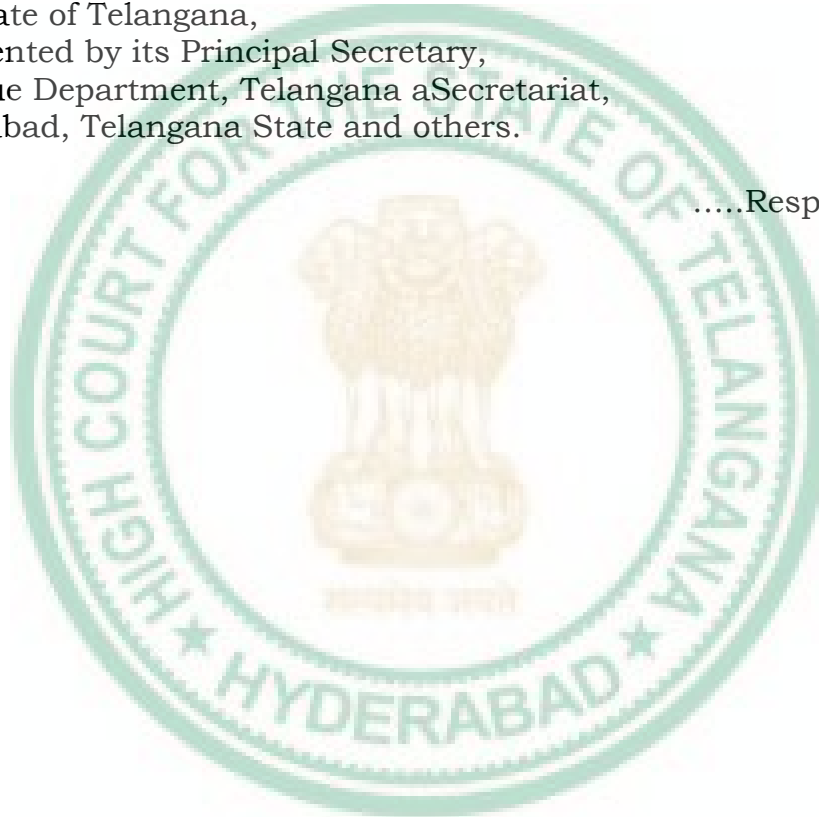
Sri Pastham Dharmaiah
S/o.Late P.Venkat Ramaiah @ Venkat Ramulu
Aged about 56 yers,occ:Agriculture,
R/o.Gopal Nagar Village, Bachannapet Mandal
Janagoan District, Telangana State and others.

.....Petitioners

And

The State of Telangana,
represented by its Principal Secretary,
Revenue Department, Telangana aSecretariat,
Hyderabad, Telangana State and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER :

Heard learned counsel for petitioners and learned Assistant Government Pleader for Revenue.

2. In all these writ petitions, the common issue for consideration is whether Tahsildar followed the due procedure while cancelling the assignment orders under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short “the Act 1977”) holding that petitioners are in illegal occupation of land assigned to landless poor persons.

3. According to respondents land in issue in respective writ petitions form part of survey No.174 of Chinnaramcherla village. Individual extents of land was assigned to landless poor persons; petitioners illegally purchased the said land and dispossessed the landless poor persons. It appears, based on some information received by the Tahsildar, he initiated proceedings under the Act, 1977 by issuing notice in Form-II and passed orders impugned in this writ petition in exercise of powers under Section 4(1) of the Act, 1977 and ordered for resumption of the land.

4. These orders are challenged primarily on the ground that due procedure was not followed before initiating proceedings under the Act, 1977 and passing orders and the orders are vitiated on that ground alone.

5. According to learned counsel for petitioners no prior notice or opportunity afforded to the petitioners and straightway the orders are passed, impugned in these writ petitions and same are

ex-facie illegal. According to learned counsel, they are the owners of land and the question of violating the provisions of the Act, 1977 does not arise. However, on ownership claim of petitioners the Court is not expressing any opinion at this stage and leaves it open for consideration in appropriate proceedings.

6. Learned Government Pleader placed before this Court photocopy of notice issued in the name of Giriboina Anjaiah, who is the first petitioner in WP.No.3326 of 2021 in FORM-2. It is seen from this notice that it does not contain the date on which notice was issued. Though document also contains receipt also and signature of Anjaiah, it does not contain date of service of notice on Anjaiah, whereas, it is assertion of petitioners that no notices were served on them. Court is informed that similar notices were delivered to all the petitioners in these writ petitions. Further the orders impugned in the writ petitions do not contain the date of order, whereas contains signature of Tahsildar, Dated 02.02.2021. In a proforma, the Tahsildar fills-up the gaps and proceeded to pass orders. In the first page of the order, he fills-up the gaps regarding the property details and person who is claimed to be in possession, then extracted text of Section 3 of the Act, 1977. In the next page, under the caption "As an answer to the notice issued", he writes as under:

“ the vendee/transferee submitted : individuals
received but has not submitted reply”.

Then he writes the statement of assignee stating that “his father did not sell the land” and rest of the two paragraphs is proforma order by filling the gaps of details of the property.

7. An authority exercising powers vested in him by a statute is required to consider the issue objectively with an independent application of mind and by affording due opportunity to the parties. More particularly, when his decision affects the rights of persons claiming to be in possession or enjoyment of land. Thus, while exercising power under the Act, 1977, it is elementary that Tahsildar is required to serve notice on persons, give reasonable time to respond to the notice, afford due opportunity and on consideration of the explanation offered, he should pass orders by assigning reasons in support of the decision. Even when party has not responded to the notice, Tahsildar is required to deal with the matter based on the material available on record and to pass orders by assigning reasons in support of the decision. None of these basic parameters of decision making by a quasi-judicial authority are satisfied in the cases on hand. Thus, on this ground alone, the orders impugned herein are not sustainable.

8. Learned Government Pleader sought to contend that the Tahsildar is competent to pass orders under the Act, 1977 and against decision of Tahsildar, remedy of appeal is available for petitioners and they ought to have availed said remedy. Therefore, writ petition is not maintainable on that ground. In the normal circumstances, Court would have relegated the petitioners to avail remedy of appeal. However, having regard to the infirmities noticed above, this is not a case where Court should relegate the petitioners to avail remedy of appeal, as orders under challenge are ex-facie illegal and unsustainable.

9. From the material on record, it is also seen that there are rival claims and villagers are fighting against each other and in order to ensure law and order, Tahsildar exercised powers under Section 145 Cr.P.C. on 19.01.2021. This Court is not expressing any opinion on the said aspect.

10. Therefore, writ petitions are allowed and orders impugned in the writ petitions are set aside. If the Tahsildar is of the opinion that conditions of assignment are violated, sale transactions have taken place on assigned land and third parties are in possession of the land, it is open to the Tahsildar to initiate action under the Act, 1977.

11. The Tahsildar who was responsible for passing these orders and invited this litigation is present in the Court. From the details given by him about his service record, it appears that he is having sufficient experience, but failed to explain how he could take such decisions without observing elementary principles required to be followed. He is advised to be careful in future in dealing with such matters.

Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO, J

12th February, 2021
Nvl

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