

HONOURABLE SRI JUSTICE P.NAVEEN RAO

**WRIT PETITION Nos. 9880, 9215, 9931, 9988, 9907, 10062,
10065 & 10066 OF 2021**

Date:28.4.2021

W.P.No.9880 of 2021 :

Between:

B. Ramu S/o.Narayana,
Aged 45 years, Ayyappa Nagara Circle, 1st Cross,
Devasandra Main Road, K.R.Puram,
Bengaluru, Karnataka State

.....Petitioner

And

State of Telangana
Rep by its Principal Secretary,
Revenue Department,
Secretariat Hyderabad & others

.....Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P NAVEEN RAO

**WRIT PETITION Nos. 9880, 9215, 9931, 9988, 9907, 10062,
10065 & 10066 OF 2021**

COMMON ORDER :

Heard Sri V.Ravi Kiran Rao, learned senior counsel appearing for petitioners and learned Assistant Government Pleader for Revenue. With consent, writ petitions are disposed of at the admission stage.

2. In all these writ petitions the grievance is common. They are aggrieved by the endorsement of the District Collector dated 03.04.2021 rejecting their request to delete respective extents of land from the list of prohibited properties under Section 22-A of the Indian Registration Act and seeking to direct the Collector to delete their land from the prohibited list. As the issue in all the writ petitions is same, these writ petitions are heard and disposed of by this common order.

3. The averments in the affidavit filed in support of the writ petitions disclose that petitioners claim to have purchased individual extents of land in various sub divisions of Survey No. 146, Kothalapur village, Sanga Reddy district. The individual particulars are as under :

W.P.No.	Name	Extent	Survey No.
1. 9880/2021	B.Ramu	Ac.1.00	146/12/3, 146/41
2. 9215/2021	Dantuluri Avinash	Ac.14.09	146/103/2, 146/63/2, 146/66/2, 146/93/1/2, 146/64/3, 146/56/1, 146/56/2, 146/56/3, 146/64/2, 146/28/2/2, 146/67/4/1, 146/67/4/2, 146/67/4/3, 146/28/2/2, 146/67/4/1, 146/67/4/2, 146/67/4/3,146/38, 146/87, 146/2/8, 146/24, 146/78/4, 146/69, 146/80/1.
3. 9931/2021	K.Surya Kumar Raju	Ac.0.16	146/2
4. 9988/2021	Bandi Ramesh Reddy	Ac.0.12.5 guntas	146/81/1

5. 9907/2021	G.UdayBhaskar Naidu	Ac.1.00	146/2/9, 146/28
6. 10062/2021	Dantuluri Vikram Raju	Ac.6.03	146/78/2/1, 146/41/1, 146/48/1, 146/104/1, 146/72/1, 146/3/6, 146/3/8, 146/68/4, 146/26/2, 146/95, 146/26, 146/72/1, 146/4/4, 146/4/3, 146/204/1
7. 10065/2021	Mrs. R.Rajani	Ac.2.21 guntas	146/2/10, 146/2/8, 146/12/2, 146/80/1
8. 10066/2021	K.Sadasiva Reddy	Ac.3.00½ guntas	146/102/2, 146/102/3, 146/103/1, 146/58/1, 146/70/2, 146/94/2, 146/48/2, 146/30/1.

4. According to petitioners, when they intended to present the deeds of conveyance for registration, the Sub Registrar refused to receive the documents on the ground that the properties in issue are included in the list of prohibited properties under Section 22-A of the Registration Act. Therefore, petitioners submitted representations to the District Collector to delete the subject extents of land from the list of prohibited properties. On the representations made by the petitioners the District Collector issued endorsement dated 3.4.2021 rejecting the request of the petitioners following his earlier decision made on 18.1.2021 on an application submitted by Balaji Association concerning the land in same survey number. Copy of said endorsement was enclosed to the impugned endorsement.

5. According to learned senior counsel, on land in issue Laoni Pattas were granted in the year 1953. Said pattas are governed by Laoni Rules, 1950 which were made in exercise of powers vested in Government under Section 171 of A.P. (Telangana Area) Land Revenue Act, 1917 Fasli. These Laoni Rules did not stipulate non alienation conditions while granting pattas. As there was no restraint on alienation, the original assignee sold the Laoni patta land to their vendors. The said sale transactions were registered under the Indian Registration Act. As there was no restraint from

alienation, the purchase made by vendors of petitioners was legal and valid and therefore, their vendors acquired marketable title. He therefore submits that inclusion of the parcels of land in issue in the list of prohibited properties is illegal, erroneous and amounts to arbitrary exercise of power. He further submitted that petitioners are bonafide purchasers. On verification of the revenue records, it was found that there was no restriction on alienation of the Laoni Patta granted to the original vendors and on such verification only they have entered into the sale transaction by paying the full sale consideration.

6. Learned senior counsel submits that vendors to the vendors of petitioners were granted special Laoni patta certificates under the Laoni Rules, 1950. At that time, there was no prohibition on alienation of the land. For the first time Government introduced non alienation Clause vide G.O.Ms.No.1406 Revenue dated 25.7.1958 and said orders are prospective and applicable to pattas granted after that date.

7. He further submitted that the reports of the Tahsildar and Revenue Divisional Officer clearly point out that Laoni Pattas were granted much prior to introduction of prohibition on alienation of assigned lands. Thus, merely because relevant records are not traceable, petitioners cannot be penalized. As pattas were granted to vendors vendors in the year 1953, unless specifically proved otherwise, such pattas were not with any restriction on alienation. Thus, the burden is on the State to prove that alienation is not permissible and to include the property in the list of prohibited properties. Merely because record is not available the burden can

not shift to petitioners. Moreover, earlier sale transaction was registered without raising objection.

8. He further submitted that the Collector has not applied his mind, has not looked into the revenue records thoroughly and mechanically rejected the request of the petitioners to exclude the land in issue from the list of prohibited properties.

9. In support of his claim, learned senior counsel placed reliance on the following decisions to contend that the assignment granted prior to 1958 cannot have restriction on alienation and in view thereof rejection of the claim of the petitioners for deletion of the properties from the list of prohibited properties is erroneous, contrary to the law laid down by this Court and amounts to arbitrary exercise of power and authority :

i. GVK Rama Rao and another Vs Bakelite Hylam Employees Co-op. House Building Society, Hyderabad¹.

ii. Shyam Sunder Vs Govt. of A.P., Revenue (Assignment) Department and others².

iii. Letter sent from Plot No.338, Parvant Nagar, Borbanda, Hyderabad and others³.

iv. Akkem Anjaiah and another Vs Deputy Collector and Tahsildar, Saroornagar Mandal, Ranga Reddy District and others⁴.

10. Per contra, learned Assistant Government Pleader for Revenue submitted that once a patta is granted on Government land to land less poor person, it is an assignment to enable the family of the assignee to cultivate the land and to eak out a living. Therefore, no land assigned to land less poor can be alienated. Since land in issue was assigned, burden is on the assignee and

¹ 1997 (4) ALT 304

² 2001 (6) ALT 128

³ 2008 (5) ALT 313 (D.B)

⁴ 2011 (5) ALT 420

the subsequent purchasers to prove that there was no non-alienation clause and assigned land can be sold. Unless they establish otherwise, it is not permissible to transact on land assigned to a landless poor person.

11. Two aspects emerge from the submissions made by the learned senior counsel, learned Assistant Government Pleader and from the material placed on record:

Firstly, Laoni Rules enable sale of Government land by conducting open auction by following procedure laid down in the Rules and on confirmation of the sale, Government land could be sold to the highest bidder. In order to help persons who cannot afford to purchase land in open auction, to prescribe upset price and to sell the land at the upset price prescribed to them. Secondly, if there were land less poor persons who could not afford to purchase the land, Government could assign land to them without demanding any money from them. In other words, under Laoni Rules, Government land could have been purchased in an open auction or at upset price or can be assigned.

12. As noticed from the report of Tahsildar, Khasra Pahani for the year 1954-55 and Faisal Patti for the year 1957-58 reveal issuance of 9 (g) pattas on a large extent of land in Sy.No.146 in the year 1953. It also reveals that on some extent of land though patta certificates were not issued, persons were found to be in possession for a long time. On the claim of applicants to issue No Objection Certificate, it was reported that while claim was on Ac.30.00 in various sub-divisions, the entries in Khasra Pahani and Faisal Patti were tallying on Ac.28.25 guntas. This report and opinion of Tahsildar was endorsed by the Revenue Divisional

Officer while submitting the report to the District Collector. These reports support the version of the petitioners. For the reasons best known, the District Collector does not discuss on why the opinions of the Tahsildar and the Revenue Divisional Officer are not valid. Only extracts their opinion and leaves there. He then holds that as Government land was assigned, it cannot be alienated. He then shifts the burden on petitioners to prove that there was no non-alienation clause.

13. While learned senior counsel asserts that prior to 1958 there was no restriction on alienation of even assigned land and such restriction was imposed for the first time in the year 1958 vide G.O.Ms.No.1406 dated 25.7.1958, learned Assistant Government Pleader sought to contend that once land is assigned to the landless poor person, he cannot alienate the land.

14. There are two competing aspects. On the one side is the claim of right to alienate laoni patta land and on the other side is the duty of the District Collector to protect Government land and to prevent alienation of land assigned to a landless poor person.

15. The scope of Telangana Area Land Revenue Act and the Laoni Rules was considered by two Division Benches and single Judge benches of this Court.

16. In **Letter sent from Plot No. 338**, Division Bench of this Court extensively considered the scope and ambit of the Telangana Area Land Revenue Act and the Laoni Rules, 1958. On thorough analysis of the provisions of Laoni Rules, Land Revenue Act and G.O.Ms.No.1406 dated 25.7.1958, the Division Bench held that unless a notification is issued as required by Section 58-A in respect of any village or a tract that right of occupation in land

under Section 54 given after the date of notification shall not be transferable without obtaining previous sanction of the Collector, no restriction can be imposed on alienation.

16.1. The Division Bench held as under :

“38. **Section 58 of the Telangana Area Land Revenue Act clearly demonstrates the Legislature never intended to impose ban on transfer of occupancy right granted.** Section 58-A is an exception to Section 58, where State Government may by official notification notify in respect of any village or tract of the area to which the Telangana Area Land Revenue Act extends that the right of occupation of any land under Sec.54 given after the date of notification shall not be transferable without obtaining the previous sanction of the Collector. For implementing the same, rules were made known as “The Laoni Rules” by the State Government. **Rule 9(g) of the Laoni Rules does not prohibit alienation of the land.** It only prescribes that on receipt of the full amount permission to occupy the land shall be given to the party in Form-G in duplicate and the signature of the allottee shall be obtained thereon along with date..... Unless a notification notifying in respect of any village or tract of the area to which the Act extends prohibiting transfer of occupancy rights without obtaining previous sanction of the Collector, any condition prescribed for obtaining permission for occupation of land which was granted laoni patta on confirmation of sale by the Collector, which is governed by Sec.58 of the Act has to be ignored and condition of inalienability under Form-G issued under Rule 9-g is inapplicable to the lands where occupancy rights/assignments granted on collection of market value and prior to issuance of notification under Sec.58-A, if any.”

47. For the aforesaid reasons, we are inclined to hold that though the Government framed rules and notified the same cannot be treated as notification as contemplated under Sec.58-A of the Telangana Area Land Revenue Act where State Government has to notify any village or tract of the area, to which this Act extends, for obtaining previous sanction of the Collector. Therefore, Rule VI (ii) of the Revised Assignment Policy issued in G.O.Ms.No.1406 dt.25.7.1958 cannot be given effect to until such notification is issued.

51. 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.”

17. In **Akkem Anjaiah's** case, person by name Maqdom Shareef was assigned land on 20.12.1956 under the Laoni Rules 1950. The said assignee sold the land in favour of petitioners therein

under registered sale deed dated 17.2.1967. Alleging that sale was in violation of the assignment conditions, show cause notice was issued on 14.2.2008 to show cause why land should not be resumed under the provisions of Act 9 of 1977. The defence taken was that even if it is treated as assigned land, as land was assigned under Laoni Rules, much before G.O.Ms.No.1406 dated 25.7.1958 was issued, there can be no restriction on alienation. Said objection was over ruled by the competent authority and it was held that the land in question was Government land and assigned to Mr Maqdoom Shareef and as purchasers failed to prove that it was not assigned land, and no patta was filed which did not contain non alienability clause, contention was not valid. Learned single Judge over ruled the view taken by the authority under the Act 1977 and stand of the respondent Government.

17.1. Learned Single Judge held as under :

“9. In the instant case, respondent No.1 has not given any finding that he has perused the patta granted in favour of Maqdoom Shareef under the Laoni Rules, 1950. Curiously, he placed the burden on the petitioners to show that the patta does not contain any condition against alienation. Indeed, it is for respondent No.1 to be first satisfied that the land, which was alienated is “assigned land” within the meaning of Section 2 (1) of Act 9 of 1977, which defined “assigned land” as the lands assigned by the Government to the landless poor persons under the Rules for the time being in force subject to the condition of non-alienation. In my opinion, the jurisdiction of respondent No.1/competent authority, under the provisions of Act 9 of 1977, for cancellation of the assignment and resumption of the land, can be exercised only on the prima facie satisfaction that the said land is an assigned land, which necessarily means that the assignment made in respect thereof contains a condition against alienation. Respondent No.1 was, therefore, not expected to issue the showcause notice without looking into the patta granted under the Laoni Rules. He has completely misdirected himself in throwing the burden on the petitioners to show that the Laoni patta does not contain the condition against the alienation. On the contrary, the initial burden is on him to show that the said patta contained such a condition. In the light of the admitted fact that the patta granted in favour of Maqdoom Shareef, who is the predecessor-in title of the petitioners, was much prior to the commencement of the revised policy vide G.O.Ms.No.1406, dated 25-07-1958, and in the absence of any finding that the said patta contained the condition against alienation, the very invocation of the provisions of Act 9 of 1977 by respondent No.1 is wholly without jurisdiction and therefore, the impugned proceedings cannot be sustained. As a consequence thereof, Proceedings No.A/1448/07, dated 24-05-2008, issued by respondent No.1, is quashed.”

17.2. The Division Bench of this Court in W.A.No.1728 of 2013 affirmed the said view of the learned single Judge. The Special Leave Petition (Civil) No. 12198 of 2016 preferred against the decision of the Division Bench was dismissed by Hon'ble Supreme Court by order dated 7.10.2016.

18. The view taken by the Division Bench in **Letter sent from Plot No. 338** and view taken by learned single Judge in **Akkem Anjaiah** is consistently followed. Therefore, prima facie, there is merit in the contentions of the learned senior counsel. It is not in dispute that Loani Rules, 1950 did not prescribe the non-alienation condition on assigned land. This was introduced for the first time in the year 1958. Prima facie, unless a notification under Section 58-A of Telangana Area Land Revenue Act was issued, no restriction can be imposed on alienation of the land. Further, as held in **Akkem Anjaiah** the District Collector can not shift the burden on petitioners to prove that there was no non-alienation clause. As held by this Court in the decisions noted above, prior to 1958 there was no restraint on alienation of assigned land. If that is so, it is not just and proper to harass subsequent purchasers by merely looking into status of land as SARKARI. The District Collector ought to have conducted the enquiry more objectively.

19. Therefore, it is apparent from the material placed on record that there was no proper exercise undertaken by the District Collector. He ignored material on record without recording reasons. By merely referring to the status of the land as Government land, and pattas were granted under the Laoni Rules, the claim was rejected. It thus amounts to non application of mind.

20. The District Collector ought to have looked into the reports of the Tahsildar and the Revenue Divisional Officer. If he was not satisfied by those reports, he ought to have thoroughly looked into the record independently to form an opinion on the status of the land. It is within his competence to refuse to delete the subject land from the prohibited list of properties if laoni patta was burdened with non-alienation clause. As held by this Court in **Akkem Anjaiah**, the District Collector can not shift the burden on applicants to prove non-alienation clause, more so, when in the first round transactions were allowed to be registered. The District Collector has also not looked into the provisions of the Telangana Area Land Revenue Act and the Laoni Rules and the law declared by this Court. He failed in discharging his statutory obligations effectively.

21. Having regard to the law laid down by this Court as affirmed by the Hon'ble Supreme Court, it is elementary for the District Collector to thoroughly verify the record to ascertain as to how patta was granted to the vendors of vendors of petitioners under Laoni Rules while considering the request of petitioners to delete the subject extents of land from prohibited list.

22. In the representation made by the petitioner in W.P.No. 9988 of 2021 on 12.3.2021 though he was trying to make a claim that patta was granted to the vendor under Rule 9 in Form-G and there was no non-alienation clause, he has not placed before the Collector the pattas granted to vendors of vendors of petitioner nor has he highlighted the legal position as evolved by several decisions of this Court as sought to be urged in these writ petitions. Same is the case with other petitioners.

23. Having regard to the infirmities noticed in the decision making process, the learned Senior Counsel for petitioners and the learned Assistant Government Pleader agree to remand the matters to the District Collector to consider the issue denovo.

24. Having regard to said submissions, the impugned endorsements are set aside and matters are remitted to the District Collector to consider the issue of deletion of subject properties from the list of prohibited properties uninfluenced by the decision dated 18.01.2021 communicated vide endorsement dated 03.04.2021. It is open to petitioners to place before the District Collector any additional submissions and the legal position as it stands now, within two weeks from the date of receipt of copy of this order. The District Collector shall consider the claim of the petitioners objectively, including additional submissions, if any, made, and take a decision as warranted by law duly considering the submissions of petitioners and by assigning reasons in support of the decision. The entire exercise shall be completed within six weeks from the date of receipt of copy of this order.

25. Writ Petitions are accordingly, disposed of. Pending miscellaneous petitions, if any, shall stand closed.

DATE:28.04.2021
TvK/Rds

P NAVEEN RAO,J

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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