

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.1126 OF 2009

Between:

Nagavaram Janaki Rama Rao

... Petitioner

And

The Revenue Divisional Officer
Miryalguda Division, Miryalaguda
Mandal and another

... Respondents

JUDGMENT PRONOUNCED ON: 16.08.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Mr J. Suresh Babu

^ Counsel for Respondents : G.P. for Assignments

? Cases Referred:

1. 2021 SCC Online TS 946
2. 1997 (4) ALD 294
3. 2000 (2) ALD 433
4. 1996(4) ALD 572
5. 2001(5) ALD 766
6. (2008)(4) APLJ6
7. 2014(4) ALD 358

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 1126 of 2009****ORDER:**

Heard the learned counsel for the Petitioner and the learned G.P. for Assignment appearing on behalf of Respondents.

2. This Writ Petition is filed to issue Writ of Certiorari by calling for the records connected with the order passed by the 2nd Respondent in Proc.No. B/337/2007 dated 20.09.2007 as confirmed by the 1st Respondent in file No. 114/2007 dated 20.01.2009 and quash the same as illegal and void.

3. The case of the petitioner in brief, is as follows:

a) The petitioner's late father was the absolute owner of land in Sy nos. 478 measuring an area of Acs.13.12 gts and the same was mutated prior to 1950. After death of the petitioner's father, the said land was mutated in name of the Petitioner by the orders of the 1st Respondent herein vide Proc. No. 261/A2/56-57, dated 22.03.1957.

b) Out of Acs.13.12 gts of land in Sy. No. 478, (herein referred to as Subject Property) part of it was given to other

sharers in exchange for other lands and the petitioner was in possession of Acs.8.28 gts of land in the Sy.No.478/1 and the same is clear through the pahanies (2003-04) and Pattadar Pass Book issued to the petitioner.

c) Further out of this area of Acs.8.28 gts, an area of Acs.4.28 gts., has either been alienated or donated to various persons and religious institutions. Thus, the remaining Acs.4.00 gts., of land is in the possession of the petitioner.

d) The villagers complained to the 1st Respondent that the land in possession of the petitioner in Sy.No.478 is a government land and that the petitioner has been illegally plotting and selling the same to others. Therefore 1st Respondent, vide endorsement dated 26.02.2007 directed the office of the 2nd Respondent to initiate necessary proceedings to restrain the petitioner from enjoying the property.

e) On 28.02.2007, notice was issued to the petitioner by the 2nd Respondent, vide file No. B/337/2007 stating the petitioner as illegal occupant and of having purchased the said property illegally. In reply the petitioner stated that he is the legal occupant and the subject property was bought for valid monetary consideration.

f) On 22.03.2007, a memo was issued to the petitioner by the 2nd Respondent, seeking information with respect to the nature of allotment of the property to petitioner and also stated that the petitioner holds more than the ceiling limit and hence the petitioner has to file for ceiling declaration.

g) Through letter dated 04.04.2007, the 2nd Respondent admitted that an area Acs.13.12 gts has been allotted to the petitioner's father and that after his death, the land has been mutated in the name of the petitioner

h) The 1st Respondent through vide file No.E1/1141/07 dated 24.05.2007 observed that when the land has been assigned under Laoni Rules of 1950, there is no prohibition for the appellant to sell the land and this office further observed that when land is assigned on market value, there is no prohibition for sale.

i) Yet again, the 2nd Respondent, issued a fresh show cause memo Mp/N/337/2007 dated 20.08.2008 with same allegations as made previously. In turn, the petitioner requested for notice of hearing before making any enquiry into the matter or passing a final order. But, without any enquiry the 2nd Respondent has passed the impugned order

dated 20.09.2008 in Proc. No B/337/2007, directing the petitioner to evict the said property.

j) Aggrieved by the orders of the 2nd Respondent, an appeal was filed by the petitioner before the 1st Respondent. During pendency of the said appeal, the petitioner through applications dated 02.07.2007 and 18.07.2008, requested the 2nd Respondent to furnish the copies of Faisal patties from the years 1953- 57 pertaining to the subject property. However, the same was not provided.

k) On 11.10.2007, the petitioner filed an appeal before the Chief Information Commissioner, to direct Respondent Nos. 1 & 2 to furnish the above-mentioned notice & letter copies but the petitioner was directed to approach the 1st Respondent. In furtherance of the same, the petitioner filed an application before the 1st Respondent and subsequently before the 2nd Respondent but both the respondents failed to furnish the same.

l) It has been held by this court in Judgments reported in 1997 (4) ALD page 294; 2000 (2) ALD page 433; 2001 (5) ALD page 766 and 2008 (1) ALD page 29 that there is no

prohibition in the alienation of the land assigned before the enforcement of the said G.O.Ms. No. 1406 dated 25-7-1958.

m) However, on 20.09.2008, the 2nd Respondent passed final orders directing the eviction of the petitioner from the said land. Aggrieved by the same, the petitioner filed an appeal before the 1st Respondent but the same was dismissed.

n) The 1st Respondent has further erred in observing that in the faisal pahanies from 1955-58, the Sy.No. 478 is found to be Government land. On the contrary it is found as Patta land and the pahanies also show the endorsement of the 1st Respondent dated 22.03.1957, showing that the subject property is in the name of the petitioner's father. Therefore, the orders passed by the 1st Respondent and confirmed by the 1st Respondent in file No. 114/2007 dated 20.01.2009 are illegal and void. Hence this Writ Petition.

4. The counter affidavit filed by the Respondent No.2 is as follows:

a) As per the Revenue records, Sy.No.478 is admeasuring to an extent of Ac. 16-39 gts and same is recorded as Government land and in the pahani for the year 1963-1964.

The Sy. No.478 /A admeasuring Ac. 3-11 gts is recorded as Sarkari Bancharai land and the Sy.No.478/ AA admeasuring Acs.13-28gts is recorded in the name of petitioner's late father. Out of the total extent of Ac. 13-28 gts., an extent of Ac.5-00 gts was transferred to others and their names are shown in the pahani for the year 1979-80. The remaining extent of Ac.8-28 gts was kept at petitioner's father's disposal.

b) The petitioner herein stated that, after the death of his father the above balance land Ac.8.28 gts was mutated in the petitioner's name vide proceedings No. 261/A2/56-57 dated 22.3.1957 from the year 1993-1994.

c) The 2nd Respondent herein addressed a letter no. B/ 337 /2007 dated 04.04.2007 to the 1st Respondent and reported that, based on the oral representation filed by the villagers of Turupupally about making of illegal plotting by the Petitioner herein in Description of Document the Government land. The 2nd Respondent issued Notice dated 28.02.2007 to submit the physical position and evidence but the petitioner failed to do so.

d) In the report dated 04.04.2007 it was reported to the 1st Respondent that, "the said land was purchased on payment of market value@ Rs.15/- per acre only" and no evidence was shown to prove same by the petitioner.

e) Out of Ac.8.28gts, the Petitioner sold an extent of Ac.2-00 Gts of land for house-sites and temporary shelters were constructed on the said land, as such violating the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 as to Sub-Section 4(3) of the Act, "prohibits transfer of any assigned land of a landless poor, by way of sale gift mortgage, exchange lease or otherwise."Thus, it was ordered for resumption of the assigned land of Ac. 8.28 gts in Sy.No. 478from the Petitioner and the Revenue Inspector and VRO are directed to take over possession of the said land.

d) It is clearly established that the Petitioner herein has violated the provisions of Act and the assigned land held by the Petitioner herein was cancelled. The Petitioner is not in the physical possession over his claimed land in Sy. No.478 to an extent of Ac. 8-28 gts as it is very clear from the Dharani Portal, that the petitioner's name was not recorded as the

owner of the property and the same is marked prohibited for transaction.

e) Since, the Petitioner has alienated the assigned land, the Respondent Nos. 1 and 2 herein have rightly passed the orders in resuming the Government assigned land in favour of the Government. Hence, the Writ Petition is without merits and is liable to be dismissed.

PERUSED THE RECORD :

5. The order impugned dated 20.09.2008 vide Proceedings No.B/337/2007 of the Tahsildar, Devarkonda i.e., the 2nd Respondent herein directing resumption of assigned land of Ac.8.28 gts., in Sy.No.478 of Thurpupally (Village) from the Petitioner herein reads as under :

In his reply he stated that he is the rightful enjoyer on the above land by adverse possession since (60) years and created issue of notice as harassment. And further stated that his father has purchased the above scheduled land on payment of market value, but not produced any valid documentary evidence to support his claim and simply stated that issue of such proceeding copy lies on Revenue Department only. But he has not produced any documentary evidence in

support of this claim stating it to be as alienated land on payment of market value. Hence, it was not established that the Govt. land in Sy.No.478 to an extent of Ac.8.28 was an alienated land on payment of market value and determined it as Govt. assigned land to land less poor. The contents in his reply was un-satisfactory and far from truth. It was clearly established that the assignee has violated the rule position and relevant provision of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 as to sub-section 4(3) of the Act, any prohibits transfer of any assigned land to a landless poor by way of sale gift mortgage exchange lease or otherwise. Thus it is explicitly established that 4(3) of AP. assigned lands (POT) Act was grossly violated by assigned by selling on this land for house sites.

In view of the facts and circumstances explained, and under powers conferred in me under section 4(1) of A.P. Assigned land (prohibition of transfers Act 1977). I order for resumption of assigned land of Ac. 8.28 gts in Sy No. 478 of Thurpupally (v) from Janakirama Rao.

The Revenue Inspector and VRO are directed to take over possession of land under cover of panchanama and report compliance within a (3) days. The VRO Thurpupally is directed to close watch over the resumed land and report as if any encroachment.

6. The relevant portion of the impugned order dated 20.01.2009 of the Revenue Divisional Officer,

Miryalaguda, i.e., the 1st Respondent herein in File No.114/2007 confirming the proceedings dt. 20.09.2008 of the 2nd Respondent.

FINDINGS:

7. As seen with the Theensal pahani 1955-56, 56-57, 57-58, it is found that the Sy. No.478 of Thoorpupally is Government land. Sri Janaki Rama Rao who is appellant in this case has submitted his explanation in response to the notice issued to him by the then Mandal Revenue Officer, Devarakonda and in it he defined that same Sy. No.428 is Govt. land. It is disclosing his pre-maturity about the nature of the land. Secondly, he described the notice Resumption order of the Mandal Revenue Officer as "bald". It is exhibiting his obstinate mentality. Further he has stated that the Mandal Revenue Officer Devarakonda has admitted in his letter dt: 04-04-2007 that Ac.13-28 gts of land in Sy.No.478 was allotted to him on payment of Market Value @ Rs.15. As seen with the letter of MRO, it is found that he has reported that "the Appellant has deposed that the said land was purchased on payment Market Value @ Rs.15/- per acre

and after death of Achyutha Rao fourth was implemented in favour of Janaki Rama Rao". It is proving that the said and alleged admission of Mandal Revenue Officer is not true.

8. Further, three things have been established with the material papers found with the file. One is that Sy.No.478 is Govt. land Bancharai. Secondly, Sri Achyutha Rao has been assigned the land and subsequently the title was transferred and the name of his son Janaki Rama Rao by succession. Thirdly, the Janaki Rama Rao has alienated certain portion of land in exchange of other land (as per his explanation) and alienated certain portion of land for temples i.e. Ramalayam, Shivalayam and Anjaneya Swamy temple i.e. the land assigned to him was gone to the hands of others either by alienation or otherwise. Section 4(3) of A.P. Assigned Lands (P.O.T) Act, 1977 clearly prohibiting the transfer of assigned land by way of sale, gift mortgage, exchange, lease or otherwise.

9. In this case, there is gross violation of section 4(3) of the Act as Sri Janaki Rama Rao Appellant himself admitted that certain portion of land (about Ac.4-24 gts) was given to others in exchange for another land.

ORDER:

Since it is clearly established that provisions of AP assigned lands (P.O.T) Act, is violated, the assignment so made to Sri Janaki Rama Rao was cancelled by the Tahsildar, Devarakonda. After careful examination of the contents stated by Appellant, and after thorough verification of the file of Tahsildar, I don't find any mistake with his orders and I don't see any reason to interfere with the orders, Tahsildar

In view of the above findings and under the powers conferred in me under section 4-A of the AP Assigned land (P.O.T) Act, I dismiss the appeal filed by Sri Janaki Rama Rao.

10. The letter dt. 04.04.2007 of the Tahsildar, reads as under:

"I invite kind attention to the references cited and submit that as per the endorsement of the Revenue Divisional Officer, Miryalguda on the representation of the villagers of Toorpupally about the illegal plotting of Govt.land in Sy. No.478, I have inspected the spot and

issued notices to N.Janaki Rama Rao in Form No.1 under A.P.Assigned Lands (POT) Act, 1977 and served on 2.3.2007. Sri N. Janaki Rama Rao in his explanation stated that his fore fathers had got the lands in Sy.No.478 to an extent of Ac.13.12 Gts located at Toorpupally Village long back i.e., in the years 1955-56 and 1957-58 and the patta was confirmed in their names vide R.D.O, Miryalugda Proc. No. 261/A2/56-57, dated 22.3.1957 and the same were transferred infavour him as ancestral property. Further, he requested to give some more time to submit the evidences i.e., to produce the certified copies from the RDO's Office, Miryalguda.

In this regard, I submit that as per Khasra Pahani, the land in Sy. No. 478 of Toorpupally Village as Bancharai total extent of the land is Ac.16.30 Gts. Out of Ac.16.30 Gts. an extent of Ac.3.11 Gts was already occupied for house sites long back and remaining extent of Ac.13.28 Gts., was transferred in favour of N.Achutha Rao, S/o Laxman Rao in the year 1950, further it was deposed that the said land was purchased on payment of market value @ Rs.15/- per acre and after the death of N.Achutha Rao, fouthi was implemented in favour of Sri. N. Janaki Rama Rao, S/o. Achyutha Rao. Out of Ac.13.28 Gts., an extent of Ac.5.00 Gts barter with his relatives namely Sri.N.Venkateshwara Rao, Balaram Rao and others. Now, N.Janakirama Rao has got totally an extent of Ac.8.28 Gts and out of it he has sold away Ac.2.00 Gts and he is intending to made plots in the

remaining Ac. 6.00 Gts of land which is in his occupation.

Further I submit that, since the land in S.No. 478 is classified as GAIRAN as per original Sethwar of 1345 Fasli. The respondent is directed to submit the following information vide this office reference 5th cited.

01. As mentioned by you in the reply that your father has been confirmed the land in Sy.No.478 an extent of Ac. 13.28 gts through RDO, Miryalguda Proc.No. 261/A2/56-57, Dt: 22.03.1957 Hence I informed you to kindly produce the documentary evidence for reference.

02. Further the land in Sy.No. 478 is classified as Giran in the original sethwar of 1345 fasli, the lands so assigned to the petitioner only for livelihood. But, whereas you were straight away made the plots and sold away to the villages, to this effect you have not obtained the prior permission of Tahsildar/Mandal Revenue Officer for conversion of land as Non Agricultural Land.

03. Further as seen from the Pahani. The lands are more than ceiling limits in and covered under ceiling act, hence I have directed Sri. Janaki Rama Rao to file ceiling declaration, whether if you already filed the ceiling declaration, please furnish a copy of the same for reference.

In response to Memo issued by this office the respondent has submitted his reply on 20.04.2007 and given point wise interim reply only.

Further I submit that the respondent is having lands in his name an extent of Ac.36.22. In this regard a Notice also issued by the Revenue Divisional Officer, Miryalguda vide Notice No.D/164/207, Dated 07.02.2007 to submit declaration in the prescribed proforma under Section 18 of Ceiling Surplus Act, 1973 within (7) days and also it as served to the respondent.

In view of the above I am enclosing the copies of notice issued by this office and reply given by the respondent and requested the Revenue Divisional Officer, Miryalguda to kindly given suitable instructions in the matter."

11. The letter dated 24.05.2007 of the Tahsildar, Devarakonda, reads as under:

"I invite attention to the reference cited and to inform that vide your letter dt 4-4-2007, you have stated that Government land in Sy No 478 of Thoorupupalli village having an extent Ac 16-30 and out of which Ac 3-11 gts already occupied for house sites long back and balance Ac 13-28 gts was transferred in favour of N Achyutha Rao S/o Lakshma Rao in 1950 and it was on payment of market value @Rs. 15-00 per acre. It was further stated by you that the Revenue Divisional Officer Miryalguda vide proceedings No 261/A2/56- 57 dt 22-3-57 has confirmed patta.

As such with your report, the said land was assigned under Lavuni Rules 1950. It is to further clarify that

Hon'ble High Court of Andhra Pradesh in L.A. No. 161 of 1996 dt 25-3-97 held that "there was no prohibition of alienation of lands assigned by Government under the said Lavuni Rules 1950".

Regarding, Andhra Pradesh Assigned lands (P.O.T) Act 1977 it is to inform that 3(1) of the Act which prohibits alienation of assigned lands was also subject of scrutiny of Hon'ble High Court. Government vide Memo No. 3576/B1/80-2, Revenue dt 3-4-81, has discussed that Andhra Pradesh High Court in the Judgement in W.P. No. 4044 of 1979 held that the provision of 3(1) of P.O.T. Act shall have retrospective effect in respect of assignment made before the commencement of the Act but not in respect of transfers made prior to coming into force of the Act.

The same High Court has given different view in Judgment in W.P. No. 2500/1978 in respect same section 3, stating that section 3 of the Act under reference shall have retrospective effect in respect of not only assignment but also transfers made prior to the commencement of the Act. The Division Bench of the High Court upheld the "LATTER" judgment.

But in this case since the assignment took place about 57 years back under Lavuni rules 1950, on payment of Market value and there was no condition of non-alienability and it was stated by Hon'ble High Court that it cannot hit the provisions of section 9 of the Andhra Pradesh Assigned Rules P.O.T. Act 1977.

In view of the rule positions and Hon'ble Court citations stated above you are instructed to dispose the case.

12. Para 2 of the counter affidavit filed by Respondent

No.2 reads as under :

"Para 2 : The petitioner here in stated that, after the death of his father the above balance land Ac.8.28 gts., was mutated in the petitioner name vide proceedings No.261/A2/56-57 dated 22.03.1957 as per the Revenue records, his name is recorded as Pattadar in Sy.No.478/2 admeasuring Ac.8.28 gts., from the year 1993-1994."

DISCUSSION AND CONCLUSION:

DISCUSSION

13. A bare perusal of the proceedings dt. 04.04.2007 referred to and extracted above of the Tahsildar, Devarakonda, vide Letter No.B/337/2007, addressed to the Revenue Divisional Officer, Miryalguda, indicates that in pursuance to an endorsement of the Revenue Divisional Officer, Miryalguda, made on the representation of the villagers of Toorpupally about the illegal plotting of Government land in Sy.No.478 the Tahsildar Devarakonda had inspected the spot and issued notices to Petitioner in Form No.I under A.P.

Assigned Lands (POT) Act, 1977 and called for Petitioner's explanation as to why the subject assigned land in Sy.No.478 which was assigned for agriculture purpose was sold away for house site purpose in violation of the provisions of Government Assigned Lands norms and in response to the said notice Petitioner submitted reply stating that the subject land was sold by the Government to the Petitioner's father in the year 1950 AD on payment of market value @ Rs.15/- per acre and thus it is not an assigned land and the same was confirmed by the Revenue Divisional Officer, Miryalguda vide Proceedings No.261/A2/56-57, dt. 22.03.1957.

14. A bare perusal of the material documents filed by the Petitioner in support of the present Writ Petition further indicates that the then Tahsildar, Devarakonda, by letter No.B/337/2007, dt. 04.04.2007 sought certain clarification with regard to the subject issue and had received a reply from the office of the Revenue Divisional Officer, vide Letter No.E1/1141/2007, dt. 24.05.2007 stating that since the said allotment was

based on the market value and that too before the enforcement of Prohibition of Alienation, the land held by the Petitioner is not hit by the provisions of Act No.9 of 1977.

15. A bare perusal of the contents of the notice issued to the Petitioner dt. 28.02.2007 vide No.E/337/2007, indicates that it is a notice issued under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 stating that the Petitioner is in illegal occupation of land to an extent of Ac.8.28 gts, out of total extent of Ac.16.30 gts., and since the Petitioner is found to have the said assigned lands in contravention of the provisions of Sub-Sec.(2) of Sec.3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, the Petitioner was called upon to show cause within 15 days of the receipt of the said notice as to why Petitioner should not be evicted from the subject land. Subsequent to the said notice dt. 28.02.2007, the Petitioner had submitted his reply dt. 09.03.2007. The Tahsildar, Devarkonda again vide Memo No.B/337/2007, dt. 22.03.2007 addressed to the

Petitioner herein referred to the reply dt. 09.03.2007 of the Petitioner and requested the Petitioner to produce the documentary evidence for reference pertaining to the land in Sy.No.478 to an extent of Ac.13.28 gts., referring to the proceedings of the RDO, Miryalguda, dt. 22.03.1957 vide Proceedings No.261/A2/ 56-57. The Petitioner vide his reply dt. 30.03.2007 had enclosed the certified copy of the pahanies for the year 1955-58 and other documents but the 2nd Respondent herein without considering the documentary evidence furnished by the Petitioner passed the order impugned dt. 20.08.2008 vide No.B/337/2007, holding that the Petitioner failed to produce the relevant documentary evidence and further the submission of valid and relevant documentary evidence lies on the Petitioner only to take necessary action to dispose the case. The Petitioner had sold away land for house site purpose which was assigned to the Petitioner for agriculture purpose by violating the Government norms and further the Petitioner was called upon to submit his reply with documentary evidence failing which the subject land

will be resumed in favour of the Government without further notice.

16. A bare perusal of the order impugned dt. 20.09.2008 vide Proc. No.B/337/2007 clearly indicates that the 2nd Respondent herein directed the Revenue Inspector and VRO to take over possession of the subject land under cover of panchanama and report compliance within 3 days exercising the powers conferred on him U/s.4(1) of A.P. Assigned (Prohibition of Transfers Act, 1977), on the ground that the Petitioner failed to produce any documentary evidence in support of Petitioner's claim stating the subject land as alienated land on payment of market value and hence it was not established by the Petitioner that the Government land in Sy.No.478 to an extent of Ac.8.28 gts., was an alienated land on payment of market value to the Petitioner's father. The said proceedings dt. 20.09.2008 of the 2nd Respondent in Proc. No.B/337/2007 was confirmed by the 1st Respondent holding that there was no mistake in the orders of the 2nd Respondent dt. 20.09.2008 in Proc.No.B/337/2007,

since there is gross violation of Sec.4(3) of the Act as the Petitioner himself admitted that certain portion of the land (about Ac.4.24 gts.) was given to others in exchange of another land.

17. This Court vide its interim orders dt. 20.01.2009 observed as under :

"Prima facie it is clear that the Respondents themselves were not sure as to whether the land was assigned at all or as to the date of alienation much less the persons in whose favour the land was alienated".

CONCLUSION :

18. The order impugned dt. 20.01.2009 in file No.114/2007 of the 2nd Respondent herein indicates three things as having been established on perusal of the material papers on record, as observed by the 2nd Respondent in the said order.

- (i) That Sy.No.478 is Government land.
- (ii) The Petitioner's father has been assigned the land and subsequently the title was transferred in the name of the Petitioner herein by succession.

(iii) The Petitioner had alienated certain portion of the land assigned to him for temples i.e., Ramalayam, Shivalayam and Anjaneya Swamy temple and the land assigned to the Petitioner was gone to the hands of others either by alienation or otherwise.

19. The 1st Respondent in conclusion observed that he found no reason to interfere with the orders of the 2nd Respondent dt. 20.09.2008 in Proc.No.B/337/2007, holding that there is gross violation of Sec.4(3) of the Act as the Petitioner himself admitted that certain portion of the land (about Ac.4.24 gts.) was given to others in exchange for another land and certain portion of the land was alienated for temples.

20. This Court opines that there is a clear admission as borne on record by the 1st Respondent herein i.e., RDO, Miryalguda Division, Miryalguda Mandal, Nalgonda District, that the subject land is assigned land which has been assigned to the father of the Petitioner, i.e., Sri Achuta Rao and subsequently the title was transferred on the name of his son Janaki Rama Rao

i.e., the Petitioner herein by succession and that the Petitioner herein had alienated certain portion of the land for temples and further since the Petitioner failed to establish by producing any documentary evidence in support of Petitioner's claim that the subject land in Sy.No.478 to an extent of Ac.8.28 gts., was an alienated land on payment of market value determined it as Government assigned land to landless poor.

21. This Court opines that the orders impugned dated 20.09.2008 vide proceedings No.B/337/2007 of the 2nd Respondent as confirmed by the 1st respondent in File No.114/2007 dated 20.01.2009 need to be set aside for the following reasons :

a) Section 3 of the 1977 Act reads as under:

"3. Prohibition of transfer of assigned lands.—

(1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purposes of cultivation or as a house-site then, notwithstanding anything to the contrary in any other law for the time being in force on in the deed to transfer or other document relating to such land, it shall not be transferred and shall be

deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) 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.

(3) 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.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil Court or of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement".

b) In view of the definition of the expression "assigned land" in Section 2(1) of the 1977 Act, lands assigned by the Government to landless poor persons under any rules for the time being in force, which are assigned subject to a condition of non-alienation, are assigned lands. Thus lands assigned under the 1950 Rules would be "assigned land" within the meaning of the expression under the 1977 Act, if and only if the land is assigned with a condition in the deed of assignment prohibiting its alienation.

c) Assigned land is defined as per Sec.2 of the POT Act reads as under :

2. Definitions :

(1) **"assigned lands"** means 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 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;

Explanation:- A mortgage in favour of the following shall not be regarded as an alienation, namely: -

(i) the Central Government, or the State Government or any local authority;

(ii) any co-operative society registered or deemed to be registered under the ¹Telangana Co-operative Societies Act, 1964; and

(iii) any bank which includes, -

(a) the Agricultural Development Bank;

(b) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

(c) the State Bank of India constituted under the State Bank of India Act, 1955;

(d) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; and

(e) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

d) The above definition makes it clear that the land to be treated as an assigned land within the meaning of POT Act should be burdened with a condition of non-alienation.

e) The order of resumption had been passed seeking resumption of land rejecting Petitioner's specific pleas that the subject land was transferred in favour of Petitioner's father in 1950 and the same had been the ancestral property of the family of the Petitioner herein since nearly 60 years.

f) In a judgment of the Division Bench of our High Court reported in 2009 (4) ALT 1, Joint Collector, Ranga Reddy District and others Vs. P.Harinath Reddy & Others dated 01.05.2009 and in particular paras 14 & 15 read as under :

"14. The other aspect viz. power of resumption, even if available, having been exercised after long length of time is also not permissible in view of the ratio in the decision of the Supreme Court in Ponnala Narsing Rao V. Nallolla Pantaiah And Others (2005) 11 SCC 115. It is evident that during the interregnum, several developments have taken place with reference to the lands in question and at this length of time the names of the purchasers are mutated in the revenue records and respective purchaser has been enjoying the property as owner thereof for several years. Thus, even without going into the question of adverse possession and its applicability, it is evident that the petitioners have altered their position based upon long length of time, therefore, it cannot be allowed to be nullified at such distance of time. In view of that also the proceedings for resumption impugned in these matters, having not been exercised within a reasonable time, the appellants are not entitled to any relief.

15. This Court in the decision Letter Sent From Plot No.338, Etc. referred to above also found that assignment, which is not made with a condition of non-alienability does not fall within the definition of assigned lands as contemplated under the Act. The grant of 1961, which is the subject matter of both these appeals, therefore, does not fall within the definition of assigned land under the aforesaid Act and as such, the said Act has no application. This Court even went further and found in the above decision that the condition of alienation can be enforced only in the event of there being a notification under Section 58-A of Andhra Pradesh (Telangana Area) Land Revenue Act with reference to transfer of occupied lands in respect of notified villages. The said entire aspect including Laoni Rules vis0a-vis revised assignment policy was duly considered by the Division Bench and it was held as follows:

“We are of the view that provisions of Act No.9 of 1977 will not be applicable to the cases where assignment were made on collection of market value of under Circular 14 except it were granted to the landless poor persons free of market value”. The ratio in the above decision squarely applies to the facts of the present case and as such, the issues raised on behalf of the appellants in

this appeal are liable to be answered against the appellants and the appeals are liable to be dismissed and accordingly dismissed. There shall be no order as to costs.

e) In a Division Bench Judgment dated 10.08.2021 passed in W.A. No.91/2020 in The State of Telangana, Hyderabad and others v Dakoj Durgapathi reported in 2021 SCC online TS 946 and at paras 13 and 14 of the said judgment it is observed as under:

Para 13 : It is considered necessary to examine Section 2(1) of the POT Act which is extracted below for the sake of convenience:

2. Definitions:- In this Act, unless the context otherwise requires,"

- (1) "assigned land" means [lands or house sites assigned] by the Government to the [landless or homeless or homeless poor persons] under the rules for the time being in force, subject to the condition of nonalienation and includes lands allotted or transferred to landless or homeless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly;

The above definition makes it clear that a land to be treated as an assigned land, within the

meaning of POT Act, should be burdened with a condition of non-alienation.

Para 14 : The contention of the learned Government Pleader that the pahani entries in the year 1961-62 show that Laoni Patta was granted to Mangali Narayana is devoid of merits. It is the assignment patta and conditions imposed therein, which will determine the nature of the assignment. The Government, being a custodian of the revenue records including records pertaining to the assignment etc., is duty bound to produce the relevant records to establish the nature of the assignment.

f) In G.V.K Rama Rao v. Bakelite Hylam Employees Co-op. House Building Society, Hyderabad, 1997 (4) ALD 294, this Court was considering a fact situation where land was assigned on 4.1.1953 under the 1950 Rules. In 1953 there was no condition of non-alienability in the assignment. The condition of non-alienability was seen to have been incorporated in the 1950 Rules by the revised assignment policy issued in G.O Ms. No. 1406 Revenue, dated 25.7.1958 Under this G.O the provisions relating to assignment of Government land in Andhra and Telengana Regions of

the State were integrated. On this analysis and conclusion as to the position of the 1950 Rules, the learned Single Judge of this Court held that since there was no prohibition of alienation in the assignment in 1953 the land would not constitute "assigned land" within the meaning of the expression under the 1977 Act and therefore sale of such land is not hit by the provisions of the 1977 Act.

g) In Rambagh Satyanarayana v. The Joint Collector, R.R Dist. & Ors., R.R District, Hyderabad, 2000 (2) ALD 433, this Court reiterated that the prohibition under Section 3 of the 1977 Act comes into operation only in case where the land is assigned subject to the condition of non-alienation.

h) In Nimmagadda Rama Devi v. District Collector, Machilipatnam, 1996 (4) ALD 572 (DB), a Division Bench of this Court held, on an analysis of the provisions of the 1977 Act, that only if there is a condition of non-alienation while assigning the lands or the land is assigned under the provisions of the AP Land

Reforms (Ceiling on Agricultural Holdings) Act, 1973, it would be “assigned land” within the meaning of the 1977 Act; where the assignment is without any such condition as to non-alienation, it would not be “assigned land” under the 1977 Act and the said Act has no applicability. When such is the position, the authorities under the Act have no jurisdiction to deal with the lands under the provisions of the 1977 Act, held the Division Bench.

i) In *Shyam Sunder v. Government of A.P*, 2001 (5) ALD 766, this Court recorded that in the Laoni Rules, 1357 Fasli as well as the subsequent Rules (the 1950 Rules) there was no condition of non-alienability, till G.O Ms. No. 1406 dated 25.7.1958 was issued. This Court clearly held that in considering whether a transfer is hit by the provisions of the 1977 Act, the relevant fact is whether the transfer is of a land which has been assigned by the Government with a condition of non-alienability incorporated in the deed of assignment. On an analysis of the evolution of the Rules with regard to alienation this Court observed that neither under the

1357-F Rules nor the 1950 Rules was there a condition of non-alienability. Having identified this lacuna, the Government issued comprehensive rules in 1958 in G.O Ms. No. 1406 in supersession of the earlier Rules relating to assignment. It is only thereafter that the Rules enjoined that assigned lands are heritable but not transferable. This Court in Shyam Sunder's case (supra) held that the condition of non-alienability was incorporated in assignments made subsequent to 25.7.1958 and that no such condition may be presumed to have been attached to assignments made prior to 25.7.1958

j) In the light of the above precedents, it is evident that the authorities implementing the provisions of the 1977 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 1977 Act. But in the present case it is evident that the Respondents

themselves were not sure as to whether the subject land was assigned at all or as to the date of alienation, much less the persons in whose favour the land was alienated and instead it is observed in the orders impugned that the Petitioner failed to produce documentary evidence in support of Petitioner's claim that the subject land is alienated land on payment of market value.

22. In LETTER SENT FROM PLOT NO.338, PARVANT NAGAR, HYDERABAD V THE COLLECTOR AND DISTRICT MAGISTRATE, R.R. DISTRICT reported in (2008 (4) APLJ 6), it has been held that the land, which is assigned on payment of upset price cannot be treated as an assigned land. We may reproduce para 50 of the judgment as below:-

"50. We are of the view that provisions of Act No.9 of 1977 will not be applicable to the cases wherein 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."

23. It has been held by this Court in Judgments reported in 1997(4) ALD Page 294, (2) 2000 (2) ALD Page 433, (3) 2001 (5) ALD Page 766 and 2008 (1) ALD Page 29 that there is no prohibition in the alienation of land before the enforcement of G.O.Ms.No.1406 dated 25.07.1958. In the present case it is the specific case of the petitioners that the petitioners name is mutated in the revenue records vide proceedings No.216/A2/56-57, dated 22.03.1957 from the year 1993-94 itself.

24. The erstwhile High Court of Andhra Pradesh in G.Satyanarayana Vs. Government of Andhra Pradesh, in its judgement dated 28.04.2014 reported in 2014 (4) ALD 358 while dealing with assignment pattas issued in the Telangana Area and Andhra Area held in para 136 as follows :

“From the lengthy discussion on the land tenures undertaken hereinbefore, it could be deduced that the genesis of ones title is traceable to his possession. A registered occupant of the land, both under the ryotwari tenure and also under the estates, is recognised as a person holding rights over the land. Subject to payment of land revenue till the land is transferred to another

person, a registered occupant was conferred with the right of selling the land to any third party without restrictions. Thus, the recognised possession can be said to be the source of a persons title. The possession of a person is reflected in the records. As noticed earlier, the A-Register/Diglot in Madras Presidency and the Sethwar in Telangana Area was the mother of all the Registers. Though the primary intention of preparing this Register was to classify the lands according to the soil and potentiality and assess the revenue, recording the names of the persons in occupation was an equally important object in preparing this Register, for, without recording the names of the persons in occupation, the Government will not be able to collect revenue. All the revenue records such as Registers A to E and monthly and annual Accounts No.1 to 4 and No.10 Accounts in Andhra area and Wasool Baqui, Khasra Pahani, Pahani Patrik, Choufasla, Faisal patti etc., discussed hereinbefore, in Telangana Area are based on the basic register of Diglot/Sethwar. Therefore, if a persons name is recorded as an occupant or pattadar in these records, a necessary presumption would arise in his favour or in favour of the persons who claim through him that he holds title to the land. In case of a dispute between two private parties, this presumption can

be rebutted by the rival claimant by producing better evidence, such as subsequent partitions, mutation in the revenue record and registered sale transactions etc. In many cases, after preparation of Diglot/Sethwar, changes in ownership of land may occur. In such cases, a person who sets up rival claim must be able to show that either he or his predecessor-in-title derived right through sale deeds supported by entries in revenue record.

25. The ratio that could be culled out from the slew of authorities of this Court is that the assignments made prior to issue of G.O.Ms.No.1142, dt. 18-6-1954 in Andhra Area and that were made prior to issue of G.O.Ms.No.1406, dt. 25-7-1958 in Telangana Area, did not contain prohibition on alienation that the assignees are entitled to exercise all the rights including transfer of lands; that the initial burden lies on the Government and its functionaries to show that the assignments contain a condition against alienation of the land and that unless the revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated."

26. A bare perusal of the contents of the show cause notice dated 28.02.2007, issued by the Mandal Revenue Office vide Proc. No.E/337/2007 clearly indicates that the Respondents proceeded against the petitioner for holding the subject land as assigned land, in a pre-decided manner without bringing on record, considering or analyzing the relevant facts as to the date of assignment and whether the deed of assignment in favour of Petitioner's father contained a specific prohibition under alienation, and without even referring to the specific terms and conditions incorporated in the deed of assignment and more particularly without even recording the finding if the assignment deed was prior to the amendment of the 1950 rules (by the Revised Assignment Policy introduced in G.O.Ms.No.1046) which must be necessarily discussed, adjudicated, ascertained and recorded by the 1st and 2nd Respondents herein since these constitute findings on jurisdictional facts which determine the jurisdiction to proceed under the 1977 Act, the order impugned dt. 20.09.2008 of the 2nd Respondent vide Proc.No.E/337/2007 had been passed

and therefore, the same cannot be sustained since it fails in either referring to or even considering all the above referred crucial issues and the 1st Respondent herein vide Proceedings dt.20.01.2009 also held against the Petitioner, mechanically and confirmed the orders of the 2nd Respondent dated 20.09.2008 by simply reiterating and confirming the said proceedings without independent application of mind clearly admitting and recording findings in favour of the Petitioner referring to all the material documents on record and further observing that it has been established that the subject land is assigned land in favour of Petitioner's father and subsequently the title was transferred on Petitioner's name by succession and that since Petitioner admitted that he had given certain portion of the subject land assigned to his father to others in exchange for another land, the Petitioner had violated Sec.4(3) of the Act and therefore dismissed the Appeal. This Court opines this order is also unsustainable since there is no discussion and finding on the jurisdictional facts of the present case. It has been held by this Court in Judgments

reported in 1997(4) ALD Page 294, (2) 2000 (2) ALD Page 433, (3) 2001 (5) ALD Page 766 and 2008 (1) ALD Page 29 that there is no prohibition in the alienation of land before the enforcement of G.O.Ms.No.1406 dated 25.07.1958.

27. Taking into consideration the above referred facts and circumstances and the law laid down in the various judgments referred to and discussed above (1) Division Bench judgment dated 10.08.2021 passed in W.A.No.91 of 2020 in the State of Telangana, Hyderabad and others v Dakoj Durgapathi reported in 2021 SCC online TS 946(2) G.V.K.Rama Rao v Bakelite Hylam Employees Co-operative House Building Society, Hyderabad reported in 1997 (4) ALD 294 (3) Rambagh Satyanarayana v The Joint Collector, R.R.District and others, R.R. District, Hyderabad reported in 2000(2) ALD 433 (4) Nimmagadda Rama Devi v District Collector, Machilipatnam reported in 1996(4) ALD 572 (DB) (5) Shyam Sunder v Government of A.P. reported in 2001(5) ALD 766 (6) In letter sent fro Plot No.338, Parvant Nagar, Hyderabad v The Collector and District

Magistrate, R.R. District reported in (2008)(4) APLJ 6 (7) G.Satyanarayana v Government of Andhra Pradesh in its judgment dated 28.04.2014 reported in 2014(4) ALD 358 (8), the Writ Petition is allowed and the impugned order dt. 20.09.2008 vide Proceedings No.B/337/2007 of the 2nd Respondent as confirmed vide the impugned order dt. 29.01.2009 of the 1st Respondent in File No.114/2007 are set aside, in view of the fact as borne on record that the Government being a custodian of the revenue records pertaining to assignment etc is duty bound to produce the relevant records to establish the nature of assignment and admittedly in the present case, it is established beyond doubt that the Government failed to establish that there was a condition of non-alienation to bring the subject lands under the purview of Pot Act, 1977. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 16.08.2023

**Note: L.R.Copy to be marked.
b/o kvrm**