

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No. 22810 of 2013

Between:

G.Shankar Reddy

... Petitioner

And

1. The Revenue Divisional Officer, Karimnagar
2. The Tahsildar, Karimnagar.
3. The District Collector, Karimnagar

... Respondents

JUDGMENT PRONOUNCED ON: 28.07.2022

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**W.P.No. 22810 of 2013**

% .07.2022

Between:

G.Shankar Reddy

..... Petitioner

And:

\$ The Revenue Divisional Officer, Karimnagar
and others

.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioners: Mr. Ponnamm Ashok Goud

^ Counsel for the Respondents: G.P. for Revenue

? Cases Referred:

¹ (2008) 15 SCC 7 11

² 2014(2) ALT 1

³ 2010(4) ALT 655

⁴ 1996 (4) ALD 572 (D.B)

⁵ . 1997 (4) ALT 304

⁶ . 2000 (3) ALT 774

⁷ . 2001 (5) ALD 766

⁸ . 2014(4) ALD 358 = 2014(3) ALT 473

9. W.P.No.12179 of 2008, dated 05.07.2011

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 22810 of 2013****ORDER:**

Heard learned counsel for the petitioner and learned Government Pleader for Revenue.

2. The petitioner filed this writ petition impugning the proceedings of respondent No.2 contained in No. B1/1665/2008, dated 24.06.2008 as confirmed by respondent No.1 in his proceedings No.L/2816/2008, dated 28.06.2013 as illegal, arbitrary and in violation of principles of natural of justice.

3. The case of the petitioner, in brief, is that the petitioner is the owner of land admeasuring to an extent of Ac.3.39 Gts in Survey No.321 of Malkapur Village, Karimnagar Mandal and District and have been in continuous peaceful possession and enjoyment since from the date of purchase i.e. in the year 1996. The said land was purchased by the petitioner from Somi Reddy Laxma Reddy and others for a valuable consideration and the said sale was regularized by the then MRO and pursuant to which the petitioner's name was also

recorded in ROR register while granting pattadar passbook and title deed. The petitioner, subsequently, sold the said land to one Smt Juvvadi Padma W/o Pruthvidar Rao, vide sale deed dated 05.03.2001 bearing document No.1327/2001. Originally the subject land was owned and possessed by one Devunoori Narasaiah and his father Rajaiah even prior to 1955 onwards and the same is evident from the revenue records and the said Devunoori Narasaiah sold the subject land to Jakku Laxma Goud, S/o Naga Lingam vide sale deed dated 26.11.1969 and that subsequently, one J.Rama Goud and others, who are the successors of J.Laxma Goud sold the said land to Somi Reddy Laxma Reddy and others in the year 1989, which was in turn they sold to the petitioner in the year 1996. But that as it may, the 2nd respondent issued a show cause notice dated 24.06.2008 under the provisions of the A.P. Assigned Land (Prohibition of Transfers) Act, 1977. The petitioner submitted explanation on 24.05.2008 contending that the subject land is not a Government land and it is a patta land of Devunoori Narasaiah right from the period prior to 1957 i.e. much prior to the commencement of Act 9 of 1977. The 2nd respondent has issued the impugned

proceedings without conducting proper enquiry and without verifying the records. Aggrieved by the said order, the petitioner filed appeal before the 1st respondent under Section 4(A) of Act 9 of 1977 and the same was dismissed on 28.06.2013 without considering the grounds raised in the appeal and without assigning any reasons. The petitioner relied on the judgment of the Apex Court in **State of Rajasthan v Rajendra Prasad Jain**¹ wherein it was held that the reason is the heart beat of every conclusion and without the same it becomes lifeless. Hence, the petitioner filed the present writ petition seeking writ of certiorari calling for the records relating to the impugned proceedings of the 2nd respondent herein contained in No.B1/1665/2008, dated 24.06.2008 as confirmed by the 1st respondent in his proceedings No.L/2816/2008, dated 28.06.2013 as illegal arbitrary and in violation of Articles 14 and 21 of the Constitution of India and consequently to quash the same.

4. The main contentions put-forth by learned counsel for the petitioner are as follows:

¹ (2008) 15 SCC 7 11

a) The provisions of Rule 3 of the A.P. Assigned Land (Prohibition of Transfer) Act, 1977 (for short 'the Act, 1977') against the petitioner is totally unwarranted.

b) The explanation submitted by the petitioner to the show cause notice dated 24.06.2008 of the 2nd respondent which clearly explained how the provisions of the Act cannot be invoked against the petitioner was not at all considered.

c) The subject land was not at all assigned land and it was patta land of one Devunoori Narsaiah right from 1957 i.e much prior to the commencement of Act 9 of 1977.

d) The 2nd respondent issued the proceedings on 24.06.2008 mechanically without conducting proper enquiry and without assigning valid reasons and without explaining how the grounds raised by the petitioner in his explanation dated 24.06.2008 were unsustainable in particular, the specific contention of the petitioner that the subject land is a patta land and not assigned land.

e) The 2nd respondent totally relied on the report of the Tahsildar, which was totally unilateral in clear violation of

principles of natural justice without the petitioner being put on notice.

f) The 2nd respondent's order, which is vitiated was reiterated erroneously by the 1st respondent, who failed to apply his thought independently, which was in total non-application of mind by the 1st respondent.

g) Learned counsel for the petitioner relied upon the judgment of the erstwhile High Court in **Sunkara Sujana v District Collector, Ranga Reddy District and others**² and contended that the burden of proof lies on the revenue authority to show that the subject land is government land and that the patta issued in favour of the Devunoori Narsaiah. The registered sale transaction in respect of the subject land on different occasions of petitioner's predecessors in title established that the subject land was treated as free hold land. Therefore, the 1st respondent cannot contend that the subject land is Government land at this length of time without relevant material on record indicating the same or establishing the same.

² 2014(2) ALT 1

5. No counter affidavit has been filed by the Government. Learned Government Pleader however, submits that there is no illegality in the impugned orders passed by the 2nd and 1st respondents herein and the same warrants no interference by this Court since the conditions of assignment were violated, orders have been passed for resumption of the subject land. Therefore, the writ petition is liable to be dismissed.

6. **Perused the record.**

7.(a) A bare perusal of the notice dated 24.06.2008 vide No.B1/1665/2008, of the 2nd respondent herein indicates that vide notice dated 07.06.2008, the petitioner was called upon to submit his explanation as to why the subject land is kept fallow without cultivation as per condition in G.O.Ms.No.1562, Revenue Department, dated 13.09.1963. The petitioner has submitted his explanation on 24.06.2008 stating that the petitioner purchased the subject land from his vendor. The 2nd respondent was required, as the primary authority to have first dealt with, adjudicated and then recorded a finding on the existence of the jurisdictional fact (of the land in question being assigned land) such conclusion

was required to be arrived yet by the 2nd respondent on the basis of credible and preponderating oral and documentary evidence. The 2nd respondent was required to first conclude that the land was “assigned land” as defined in the 1977 Act before proceeding to adjudicate whether there was a transgression of the provisions of Section 3 of the 1977 Act.

(b) Section 4 of the 1977 Act empowers the District Collector or any other Officer not below the rank of a Mandal Revenue Officer, authorized by him in this behalf, if satisfied that the provisions of Section 3(1) have been contravened in respect of any assigned land, to take possession of the assigned land after evicting the person in possession; and to restore the assigned land to the original assignee or his legal heir..." Section 4(3) enacts a presumption of a contravention of the provisions of Section 3(1), when an assigned land is in possession of person other than a original assignee. Section 4A(1) provides an appellate remedy to a person aggrieved by an order passed under Section 4(1); and a further appellate remedy to the District Collector [Section 4A(2)] and Section 4B provides a revisional remedy to the State government.

(c) The letter of the Tahsildar dated 24.06.2008 vide No.B1/1665/2008 further in its conclusion reads as under:

"With reference to above subject, on spot inspection neither original beneficiary (assignee) nor his sons are not cultivating for so many years and on the spot it is known that he sold to others and they also sold to others and the family members of assignee not cultivating the said land though assigned for cultivation, contravened the conditions by selling to others."

"Hence, it is clear that beneficiaries have violated Laoni conditions, as per G.O.Ms.No.1562, dated 13.04.1963 the Government land in Survey No.321 area 3.39 acres of Malkapur Village will be taken into Government custody and orders are issued and ordered Mandal Revenue Inspector-I to take the said land into Government custody after conducting Panchanama."

(d) The letter dated 24.06.2008 states that on spot inspection neither original beneficiary (assignee) nor his sons are cultivating the subject land since many years and on the spot it is known that the subject land is sold to others and further that family members of the assignee are not cultivating the said land though assigned for cultivation and contravened the conditions by selling to others.

(e) There is a fatal infirmity in the proceedings of the 2nd respondent dated 24.06.2008.

i) The 2nd respondent all of a sudden records a conclusion unilaterally that the subject land is assigned land and the

assignee nor his sons are cultivating for many years and further they sold the land to others and thereby contravened the assignment conditions. This conclusion is a unilateral conclusion based neither on evidence nor a logical co-relation of facts on record.

ii) The 2nd respondent unilaterally orders the Mandal Revenue Inspector-I to take the subject land into Government custody after conducting panchanama.

iii) There is no basis for this conclusion arrived at, neither in evidence nor in logic and reason. Section 3 of the 1977 Act reads as under:

(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 or in the deed of 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.

iv) Now it therefore, requires to be considered what the expression assigned land means. Section 2(1) of the 1977 Act defines “assigned land” to mean “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 the landless poor persons under the relevant law for the time being in force relating to land ceiling and the word ‘assigned’ shall be construed accordingly.

v) In view of the definition of the expression “assigned land” in Section 2(1) of the 1977 Act, lands assigned by the Government to the landless poor person under any rules for the time being in force, which are assigned subject to a condition of non-alienation, are assigned lands. Thus, land assigned would be ‘assigned land’ within the meaning of expression under the 1977 Act, if and only if the land is

assigned with a condition in the deed of assignment prohibiting its alienation.

f) A bare perusal of the above provision clearly indicates that the said land necessarily must be an assigned land in favour of a person with a condition prohibiting alienation and that there must be a transfer in violation of the said provision. The order impugned, however, is silent with regard to the date of assignment in favour of Devunoori Narsaiah nor the date on which spot inspection was done nor the date of cancellation of the assignment made against Devunoori Narsaiah in Survey No.321 to an extent of Ac.3.39 gts situated at Malkapur Village, Karimnagar Mandal and District, when he sold the assigned land to others in clear violation of the assignment conditions.

g) In **Dasari Narayana Rao and another v Deputy Collector and Mandal Revenue Officer, Serilingampally. Ranga Reddy District and others**³ in a judgment reported in 2010(4) ALT 655 in W.P.No.10933 and 10934 of 2006 decided on 23.11.2006, the erstwhile High Court, Hyderabad

³ 2010(4) ALT 655

at paras 30 to 35 dealing with a similar situation as the present case observed as under:

*“30. In **Nimmagadda Rama Devi v. District Collector, Machilipatnam and Anr.** MANU/AP/0540/1996 : 1996 (4) ALT 325 (D.B) : 1996 (4) ALD 572 (D.B)⁴, 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 A.P. 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.*

*31. In **G.V.K. Rama Rao and Anr. v. Bakelite Hylam Employees Co-op. House Building Society, Hyderabad** MANU/AP/0362/1997 : 1997 (4) ALT 304 : 1997 (4) ALD 294⁵, 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*

⁴ 1996 (4) ALD 572 (D.B)

⁵ 1997 (4) ALT 304

Act. 32. In **Rambagh Satyanarayana and Ors. v. Joint Collector, R.R. District, Hyderabad and Ors. MANU/AP/0202/2000 : 2000 (3) ALT 774 : 2000 (2) ALD 433⁶**, 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.

33. Again in **Shyam Sunder v. Government of A.P and Ors. MANU/AP/0630/2001 : 2002 (5) ALT 454 : 2001 (5) ALD 766⁷** this Court recorded that in the Laoni Rules 1357 Fasli as well as the subsequent Rules (the 1950 Rules) there was no condition of nonalienability, 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 195 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* (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.

34. In the light of the above precedents, 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

⁶ 2000 (3) ALT 774

⁷ 2001 (5) ALD 766

alienated by such assignee, in contravention of Section 3 of the 1977 Act.

35. The proceedings under the 1977 Act are in the nature of civil proceedings. The conclusion that the land in question is assigned land may also be arrived at by a compelling inference preponderating from the circumstantial evidence on record. If the assignment in question is under certain Rules for the time being in force (within the meaning of this clause as employed in Section 2(1) of the 1977 Act); if such Rules (under which the assignment is made) enjoin a prohibition on alienation; and such statutory prohibition was in operation on the actual date of assignment, it might perhaps be an indicator justifying an inference that the land in question is an "assigned land". For such a presumption to be legitimately drawn, the respondents must establish the date of assignment and the contemporaneous state of the Rules under which assignment was made, to legitimize the conclusion that the Rules did prohibit alienation as on the date of assignment. All these are essentially questions of facts and must first be put to the person aggrieved so as to afford him a reasonable opportunity to explain or defend his possession and ownership of the land in question, a valuable property right. A reasonable opportunity is that which informs a respondent to a show cause notice of the facts that are asserted against him or his interest."

h) The erstwhile High Court of A.P. in **G.Satyanarayana v Government of A.P.**⁸ held as follows:

The ratio that could be culled out from the slew of authorities of this Court is that 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

⁸ 2014(4) ALD 358 = 2014(3) ALT 473

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.

i) While dealing with a case filed against an order resuming the land under the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the erstwhile High Court of A.P. in **Akkem Anjaiah v Deputy Collector and Tahsilder, Saroornagar Mandal** (in W.P.No.12179 of 2008, dated 05.07.2011⁹, held in para 9 as under:

“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

⁹ W.P.No.12179 of 2008, dated 05.07.2011

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 show cause 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."

j) A bare perusal of the order dated 24.06.2008 reveals that no specific reference is made to the relevant rules of the assignment to legitimise the conclusion arrived at in the impugned letter dated 24.06.2008 that the rules prohibit alienation as on the date of assignment.

k) The impugned order of the 2nd respondent is illegal, the 2nd respondent having come to an erroneous conclusion that the subject land is assigned land without bringing on record,

considering or analysing the relevant facts, as to the date of assignment and whether the deed of assignment (in favour of the original assignee) contained a prohibition against alienation. There is no rational and legitimate finding of conclusion recorded that the land in the possession of the petitioner is an 'assigned land'.

l) The 1st respondent in his proceedings No.L/2816/2008, dated 28.06.2013 merely reiterated the erroneous and speculative conclusion of the 2nd respondent.

m) A bare perusal of the impugned proceedings of the 1st respondent dated 28.06.2013 vide No.L/2816/2008, clearly indicate non application of mind, and total reliance on the report of the 2nd respondent, the report which neither referred to the date of assignment in favour of the original assignee or his legal heirs to claim the subject land as Government land nor refers to the date of cancellation of the assignment made in favour of original assignee or his legal heirs on violation of terms of assignment.

n) The 1st respondent in letter dated 28.08.2013 though admitted the possession of the petitioner since 1996 however,

curiously observed that it will not create any right or title over the said assigned land.

o) In view of the fact that the impugned order of the 2nd respondent dated 24.06.2008 is a leap to an erroneous conclusion that the possession of the petitioner (of the land in question) is in transgression of the prohibitions contained in the 1977 Act, the unilateral conclusion having arrived at by the 2nd respondent, which is based on no evidence whatsoever and no deed of assignment having been examined by the 2nd respondent prior to arriving at the said conclusion and admittedly as borne on record there is no rational and legitimate finding or conclusion recorded that the land in the possession of the petitioner is an 'assigned land' as the expression is defined in Section 2(1) of the 1977 Act, this Court opines that the impugned order of the 2nd respondent dated 24.06.2008 in proceedings No.B1/1665/2008 declaring that the beneficiaries have violated the laoni conditions and further ordering the Mandal Revenue Inspector-I to take the subject land into Government custody after conducting panchanama declaring the possession of the petitioner of the

land in question as in violation of the provisions of Section 3 of the 1977 Act, is therefore, invalid and inoperative.

p) Since the primary order of the 2nd respondent dated 24.06.2008 is invalid, it must logically follow that the impugned order of the 1st respondent vide proceedings No.L/2816/2008, dated 28.06.2013 must also perish since the same is mere reiteration of the primary order and suffers the same incurable defect.

q) As the consequence of the aforementioned conclusion the resumption of the subject land in favour of the State by the order of the 2nd respondent dated 24.06.2008 as confirmed by the order of the 1st respondent dated 28.6.2013 must normally be restored and the petitioner put in the same position as he was prior to the impugned order dated 24.06.2008.

8. Taking into consideration the law laid down in the judgments relied upon by the petitioner referred to above and also the view taken by the erstwhile High Court at Hyderabad in all other judgments referred to and discussed above and also the interim orders of this Court dated 01.08.2013 passed

in WPMP No.27982 of 2013 in present W.P.No.22810 of 2013, the writ petition is allowed as prayed for and the impugned proceedings No. B1/1665/2008, dated 24.06.2008 of the 2nd respondent as confirmed by respondent No.1 in his proceedings No.L/2816/2008, dated 28.06.2013 are hereby quashed. There shall be no order as to costs.

Miscellaneous petitions, if any, shall stand dismissed.

SUREPALLI NANDA, J

Date: 28.07.2022
Note: L.R.Copy to be marked
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