

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

* * *

WRIT PETITION Nos.34217 and 36988 of 2021

Between:

K. Malla Reddy and others.

... **PETITIONERS**

VS.

State of Telangana & others

... **Respondents**

DATE OF ORDER PRONOUNCED: 28-04-2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

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|--|---|-----|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | : | No |
| 2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. | : | Yes |
| 3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? | : | Yes |

B. VIJAYSEN REDDY, J

* HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

+ WRIT PETITION Nos.34217 and 36988 of 2021

% Date: 28.04.2023

K. Malla Reddy and others.

... PETITIONERS

v.

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

... Respondents

! Counsel for the Petitioners : Sri Vedula Srinivas
For Smt. Vedula Chitralkha

^ Counsel for the respondents: Sri Parsa Anantha Nageshwara Rao,
Government Pleader for Assignment

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. (2007) 13 SCC 482
2. 1990 (1) APLJ 60

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY**WRIT PETITION Nos.34217 and 36988 of 2021****COMMON ORDER:**

Both these writ petitions are filed seeking the following relief:

"Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ, Order or Orders, Director or Directions to declare the proceedings of 3rd respondent in endorsement dated 08.12.2021 whereby he rejected individual applications filed by the petitioners seeking deletion of their respective lands situated in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village, Ramachandrapuram Mandal, Sangareddy District in the prohibited list in the Dharani Portal despite the judgment of the Hon'ble Division Bench in W.P.No.15041 of 2019 dated 07.04.2021 declaring that those lands cannot be continued in the prohibited list, as arbitrary, illegal and unsustainable and to set side the same and issue a consequential direction to the Respondent to delete the same from the prohibited list in the Dharani Portal and to direct the 5th respondent to receive, register and release documents presented by the petitioners in respect of their lands situated in Sy.No.191 of Kollur Village, and Sy.No.30 of Osman Nagar Village, Ramachandrapuram Mandal, Sangareddy District and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The facts in WP.No.34217 of 2021 are set out in brief for the sake of convenience and in order to avoid repetition.

2.1. That the lands in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village originally belonged to the Government and

they were assigned in favour of ex-servicemen. The ex-servicemen were entitled to sell the lands after ten years without any restriction as regards alienation. Accordingly, the original assignees sold the said lands to different persons under registered sale deeds and thereafter, the same were sold in some more sale transactions. The petitioners are now intending to sell/develop their lands. However, the registration of the documents is not being accepted by the respondent No.5 on the ground that the lands are in the prohibited list. The petitioners verified the status of the land in the Dharani Portal and came to know that the lands in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village are shown in the prohibited list. The petitioners applied for mutation, the lands were mutated in the names of the petitioners and they were issued e-passbooks. The petitioners have been receiving Rythubandhu benefit from the Government. The e-passbook and the pahanies show the land is patta land.

2.2. It is stated that the very same issue has fallen for consideration before a Division Bench of this Court in WP.No.15041 of 2019 and order dated 07.04.2021 was passed holding that the lands in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village cannot be continued in the prohibited list as the alienations were made by the ex-servicemen ten (10) years after the dates of assignment. Accordingly, a direction was issued to the respondents

Nos.4 to 6 therein, which include the respondent No.5 herein, to register the conveyance deeds/sale deeds executed in respect of the lands in the above mentioned survey numbers. The Special Leave Petition No.7227 of 2021 filed against the said judgment before the Supreme Court was dismissed by order dated 30.06.2021. Subsequently, a learned Single Judge of this Court allowed WP.No.25333 of 2019 on 16.07.2021 following the order of the Division Bench in WP.No.15041 of 2019 dated 07.04.2021.

2.3. In view of the above, the petitioner, being similarly situated, approached this Court in WP.No.22677 of 2021 seeking to declare the action of the respondents in including the lands of the petitioners in the prohibited list in the Dharani Portal as illegal. The writ petition was disposed of by order dated 21.09.2021 with a direction to the petitioners to submit a representation to the respondent No.3 and directed him to consider and dispose of the same within a period of eight weeks in accordance with law. The petitioners submitted individual representation by way of Dharani application Nos.2100104612, 2100104614, 2100104631, 2100104615, 2100104616, 2100104618, 2100104620, 2100104621, 2100104622, 210010624, 2100104625, 2100104626, 21001014627, 2100104628, 2100104629 and 2100104630 dated 18.10.2021. The respondent No.3 considered the same and passed orders vide endorsement dated 08.12.2021 once again taking the

same ground, which was already rejected by this Court in WP.No.15041 of 2019 dated 07.04.2021 and confirmed by the Supreme Court in SLP.No.7227 of 2021 dated 30.06.2021.

3. The petitioners contended that as per the report submitted by the Task Force, on lands, appointed by the Government for enquiry into the irregularities on the disputed Government lands situated in the entire State of Telangana on 28.07.2016, the lands in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village were assigned in the year 1971-72 to the landless poor persons in terms of G.O.Ms.No.1406 dated 25.07.1958 and the present lands of the applicants also form part of the same report. The report of the Task Force was dealt with by the Division Bench of this Court in WP.No.15041 of 2019 dated 07.04.2021 in para 60 wherein it is held as under:

"Though the extract of the report has been filed along with the counter affidavit by the District Collector, the complaints of the report are General in nature and not specific as regards the land claimed by the petitioner though there is a reference to Sy.No.191 of Kollur Village and Sy.No.30 of Osman Village which together cover Ac.480. The contents of the said report are not useful to the State."

4. It is submitted that the respondent No.3 also stated that one A. Madhusudhan Reddy filed WP (PIL).No.8 of 2020 making the Government officials and private individuals as respondents to the said case. According to the petitioners, mere pendency of PIL

cannot be a ground for the respondent No.3 to continue the lands of the petitioners in the prohibited list when a Division Bench of this Court has categorically held in WP.No.15041 of 2019 dated 07.04.2021 that the lands in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village cannot be continued in the prohibited list by invoking Section 22-A(1)(a) of the Registration Act. The contention of the Government that the lands were assigned vide G.O.Ms.No.1406 dated 25.07.1958 was also rejected by the Division Bench of this Court on the ground that it is lacking any factual basis and the Division Bench conclusively held that the lands in Sy.No.191 of Kollur Village and Sy.No.30 of Osman Nagar Village cannot be continued in the prohibited list and there shall not be any objection for registration of documents. It is further stated that the respondents cannot raise the same grounds, which were already rejected by the Division Bench, and reject the applications of the petitioners. Thus, the endorsement dated 08.12.2021 of the respondent No.3 is illegal, arbitrary and unconstitutional.

5.1. It is the case of the respondents that the land in Sy.No.191 in an extent of Ac.283.05 guntas of Kollur Village of Ramachandrapuram Mandal is Government land classified as 'MAHASURA SARKARI'. As per the revenue records, the assignment was made in Sy.No.191 to various persons during the period from 1972-73 onwards. As per the entries in the revenue record, the

assignment was made in Sy.No.191 in an extent of Ac.143.39 guntas to various persons @ Ac.3.00 guntas each during the year 1972-73 and implemented in the revenue records for the year 1977-78 to 1982-83 and also as per the entries made in the Faisal Patti for the year 1975-76, it is clearly evident that the assignment was made to certain persons under the landless poor category as per the terms and conditions laid down in G.O.Ms.No.1406 Revenue dated 25.07.1958.

5.2. That assigned lands are heritable but not alienable. Laoni Patta certificates have been issued vide Tahsildar File No.A5/1124/1971 dated Nil.6.1972 and Laoni Izafa was also sanctioned. The same was clearly mentioned in the Faisal Patti for the year 1980-81. Most of the assignees disposed of the lands in favour of third parties, claiming that the assignments were made under the ex-servicemen category, on the strength of irregular clarification issued by the then MRO, Ramachandrapuram Mandal during the year 1993. The said clarification by the then MRO was without competence and contrary to the records that the lands assigned during the year 1972-72 in Sy.No.191 was in favour of ex-servicemen in terms of G.O.Ms.No.743 Revenue Department dated 30.04.1963. Due to the said irregular clarification, the sale transactions have been made in respect of the above lands and implemented in the revenue records. Subsequently, it was

discovered that the lands in Sy.No.191 are assigned lands and patta certificate discloses that the assignment was made under G.O.Ms.No.1406 dated 25.07.1958, which contains a condition that assigned land shall be heritable but not alienable.

5.3. The petitioners have not produced any relevant documents to show that the land was assigned under the ex-servicemen category. The assignment of the petitioners was under G.O.Ms.No.1406 dated 25.07.1958. During the preparation of prohibitory properties list under Section 22-A of the Registration Act, old records have been verified and it was found that Sy.No.191 of Kollur Village of Ramachandrapuram Mandal is Government land classified as 'MAHASURA SARKARI' and subsequently, the land was assigned under the landless poor category in terms of G.O.Ms.No.1406 dated 25.07.1958 and as such, the land in Sy.No.191 of Kollur village was kept under prohibitory properties list. The petitioners got their names mutated in the revenue records. The order of this Court in WP.No.15041 of 2019, filed by M/s. BHEL Employees Model Mutually Aided Co-operative House Building Society Limited, cannot be made applicable to the petitioners. The dismissal of SLP.No.7227 of 2021 vide order dated 13.06.2021 cannot have bearing on the claim of the State, as SLP.No.7227 of 2021 was filed by a third party and not State.

5.4. The petitioners have not mentioned the details of the ex-servicemen to whom the land was assigned. G.O.Ms.No.1406 dated 25.07.1958 is relating to the assignment of land made under laoni rules to landless poor persons. G.O.Ms.No.743 dated 30.04.1963 relate to ex-servicemen quota. But in the case on hand, the assignment was made under G.O.Ms.No.1406 dated 25.07.1958 and therefore, the sale transactions are in contravention of Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. As per the Faisal Patti for the year 1975-76, it is clearly mentioned that 'Laoni Patta' was issued, which indicates that the assignment was made under landless poor category and not under the ex-servicemen category. In any case, a review application in IA.No.1 of 2022 in WP.No.15041 of 2019 was filed by the Government after having found on verification that the assignment was made under G.O.Ms.No.1406 dated 25.07.1958.

5.5. The Government appointed a Task Force on land to enquire into the old cases in respect of Government land in Sy.No.191 of Kollur Village and the Task Force submitted a report to the Government on 28.07.2016 with certain recommendations. In the summary of report No.7, the committee has categorically mentioned that in 1971-72, assignment was made to the landless poor in terms of G.O.Ms.No.1406 dated 25.07.1958 with condition that the assigned land is heritable but not alienable.

5.6. During the 1990's there were many companies floated by various persons promising huge return if they share their land and agreed to plant trees. One such company, M/s. Maxworth Orchards (India) Limited, duped many investors and traded in huge chunks of Government assigned lands. The said company in association with Sri Kamlesh Lohade and M/s Vajra Farms and Engineers perpetrated to loot Government lands in Kollur and Osman Nagar village. In perpetrating such loot, the then MRO issued an irregular clarification in 1993 that the land was assigned in favour of ex-servicemen in terms of G.O.Ms.No.743 dated 30.04.1963 and such irregular clarification paved the way for Sri. Kamlesh Lohade, M/s. Maxworth Orchards (India) Limited, M/s. Vajra Farms and Engineers to trade in such assigned lands from 1990. The Sub-Registrars, who worked during 1991 to 1996, violated the Indian Registration Act, 1908 by registering several GPAs in favour of Kamlesh Lohade, who was minor and a large number of documents of sale. M/s. Maxworth Orchards (Indian) Limited went into liquidation in the year 1998 before the High Court of Madras but continued to sell the huge chunks of lands in the said two villages, even during the pendency of application of liquidation before the High Court of Madras. WP (PIL).No.8 of 2020 was filed by one Madhusudhan Reddy making the Government officials and private individuals as respondents in respect of the lands in Sy.No.191 of

Kollur Village and Sy.No.30 of Osman Nagar Village of Ramachandrapuram Mandal. The said PIL was dismissed by order dated 16.02.2022 as under:

"In the considered opinion of this Court, once the controversy involved in the present case in respect of the same land has already been adjudicated in the earlier writ petition, the present public interest litigation is dismissed with a liberty to file a fresh public interest litigation in respect of any other Government land which has been encroached by any other person."

The petitioners are not similarly placed as that of the petitioner in WP.No.15041 of 2019.

6. Mr. Vedula Srinivas, learned senior counsel appearing for the petitioner, contended that the issue regarding title and nature of assignment was already decided by this Court in WP.No.15041 of 2019 dated 07.04.2021 and the same has attained finality. The review petition IA.No.1 of 2022 in WP.No.15041 of 2019 was also dismissed by order dated 16.12.2022 and the SLP.No.7227 of 2021 filed before the Supreme Court challenging the order dated 07.04.2021 also came to be dismissed vide order dated 13.06.2021. Hence, the question of the respondents raising the same objection under the impugned endorsement does not arise. There is no material to show that the subject lands were assigned under landless poor category under G.O.Ms.No.1406 dated 25.07.1958.

7. On the other hand, Mr. Parsa Anantha Nageshwara Rao, learned Government Pleader for Assignment, submitted that the petitioners misguided the authorities by giving false declaration that the assignment was under ex-servicemen category. He further submitted that there is no evidence to show that the original assignment was made under G.O.Ms.No.743 dated 30.04.1963 and that the original assignee was an ex-serviceman. He has further drawn attention of this Court to the contents of the sale deed of the petitioner bearing document No.636 of 1993 dated 03.03.1993. He also relied upon the relevant portion of the sale deed as under:

“AND WHEREAS number of Ex-Servicemen including the Vendors No.1 have applied to the Collector District Medak A.P. for the assignment of plots of land in their favour in or about July, 1971 in the said gairan land.

AND WHEREAS the Collector Medak District by proceedings No.D/DOS.B1/1881/71 dated 15th December, 1971 had ordered the assignment of Plots No.21 and 22 on patta each admeasuring 3 acres in extent comprised in S.No.191 in Kollur Village Sanga Reddy Taluk under G.O.Ms.No.1406 dated 25th July, 1958 to Vendors No.1 and in pursuance of the said proceedings the Tahsildar Sanga Reddy Taluk Medak District had issued patta Certificate by order No.D.Dis.No.A/5/1124/71 dated 17th May, 1972 certifying that the Vendors No.1 have been assigned on patta an area of 3 acres each in S.No.191 in Kollur village subject to the conditions laid down in the Special loan rules and specified in the Annexure to the patta certificates.

AND WHEREAS the patta Certificates annexed to the order of the Tahsildar Sanga Reddy Taluq, District Medak were

issued in accordance with one the laoni rules in G.O.Ms.No.1406 dated 25th July, 1958 read with G.O.Ms.No.7124 dated 26th March, 1959 whereunder the said plots No.21 and 22 have been assigned on patta subject to the condition that the said lands assigned shall be heritable but not alienable and in the vent of breach of all or any of the aforesaid conditions the Government will be at liberty to resume the said lands without compensation."

8. Learned Government Pleader further submitted that the petitioners are estopped from contending that the lands were assigned to vendors under sale deed dated 03.03.1993 under ex-servicemen category, as the sale deed contents make it clear that assignment was granted to the vendors (N. Kumara Swamy and B. Yohan) under proceedings No.D/DOS.B1/1881/71 dated 15.12.1971 of the District Collector, Medak, under G.O.Ms.No.1406 dated 25.07.1958 in pursuance of which Tahsildar, Sanga Reddy Taluq, Medak District, had issued patta certificate by order No.D.Dis.No.A/5/1124/71 dated 17.05.1972. He also contended that there is no document filed by the petitioners to substantiate their claim that original assignees were assigned under ex-servicemen category and the Faisal Patti, which is the crucial document indicates that the assignment was under laoni rules.

9. Mr. Vedula Srinivas, learned senior counsel for the petitioners, submitted that assignment to N. Kumara Swamy and B. Yohan was under ex-servicemen category. Learned senior

counsel has drawn attention of this Court to several correspondences made between Sainik Welfare Board and revenue authorities, which were filed as additional documents along with the reply affidavit.

10. Several documents, filed along with the reply affidavit, unfortunately, were not submitted before the District Collector during enquiry in the impugned proceedings. The order dated Nil.06.1972 with proceedings No.A5/1124/71 issued by the Tahsildar, Sanga Reddy, shows that the land in an extent of 237 acres in Sy.Nos.30 and 191 of Kollur and Osman Nagar villages of Sanga Reddy Taluq was assigned in favour of ex-servicemen as per the list enclosed under G.O.Ms.No.1406 dated 25.07.1958. The list of assignees under ex-servicemen category in File No.A5/1124/71 shows names of N. Kumara Swamy and B. Yohan at Sl.Nos.21 and 22. The Mandal Revenue Officer/Tahsildar vide memo No.B/1262/93 dated 14.06.1993 clarified that the land in Sy.Nos.191 and 30 were assigned in favour of ex-servicemen in 1991 in terms of G.O.Ms.No.743 dated 30.04.1963 but due to oversight it has been mentioned as G.O.Ms.No.1406 dated 25.07.1958 in Tahsildar order No.A5/1124/71 in the year 1972.

11. In the pahani for the year 1974-75 it is clearly shown that the lands in Sy.No.30 have been allotted to ex-servicemen.

Letter bearing No.C1/192/2001 dated 05.11.2001 was addressed by the RDO, Sanga Reddy to Zilla Sainik Welfare Officer, Sanga Reddy, requesting for verification of genuineness of ex-servicemen. The Zilla Sainik Welfare Officer vide letter No.846/Land/2007-A dated 29.08.2001 informed the District Collector, Medak at Sanga Reddy, that genuine report of assignment of ex-servicemen door-to-door has been verified and found correct. The report also gave details of ex-servicemen. The names of N. Kumara Swamy and B. Yohan were referred at Sl.Nos.21 and 22 in the following manner giving particulars of their rank:

Sl.No.	No.	Rank	Name	Address	Remark
...					
21.	Ex.2542473	Sep	N. Venkata Swamy		Expired
22.	Ex.6783931	Sep	B. Yohan	LIG 514, Bharathinagar, R.C. Puram, Medak District	
...					

It is apparent the name at Sl.No.21 is mentioned as N. Venkata Swamy instead of N. Kumara Swamy, as evident from the documents discussed below.

12. In the list showing the names of the persons eligible for assignment at Kollur, the assignees under the ex-servicemen category were separately shown from Sl.Nos.166 to 246 giving details of Regimental Number, Rank and land to be assigned:

Sl.No.	Ex.Servicemen	Regimental No.	Rank	To be assigned
...				
188.	N. Kumara Swamy S/o. Rajaiah	2542473	Sep	3 acres

189.	B. Yohan, S/o. Somadass	6783931	Sep	3 acres
...				
...				

Thus, from the above documents, it is clear that the vendors under document No.636 of 1993 dated 03.03.1993 (N. Kumara Swamy and B. Yohan) were assigned land under ex-servicemen category and not under landless poor category.

13. Learned senior counsel for the petitioners placed strong reliance on the judgment of a Division Bench of this Court in WP.No.15041 of 2019 dated 07.04.2021. The subject lands in the said case pertain to lands in Sy.No.30 of Osman Sagar Village and Sy.No.191 of Kollur Village and the issue involved was whether the lands which were assigned to ex-servicemen were entitled to transfer of land after expiry of ten (10) years from the date of assignment. The learned Division Bench considered the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977, G.O.Ms.No.743 dated 30.04.1963, G.O.Ms.No.1117 dated 11.11.1993 and G.O.Ms.No.1406 dated 25.07.1958. Taking note of averments in the counter affidavit filed by the respondents therein, the learned Division Bench recorded a finding that as there is no assignment record available with the respondents No.1 to 6, the contention of the respondents that assignment were made to ex-servicemen under G.O.Ms.No.1406 dated 25.07.1958 cannot be

accepted. The relevant paras of the judgment of the learned Division Bench are extracted below:

45. Having said so, it is then stated that the records relating to the individual assignees are "not available".

46. What the 2nd respondent means by the words "not available" is not explained and is deliberately left vague.

...

50. It is then stated in para 3 of the counter affidavit by District Collector that these assignments were made as per terms and conditions laid down in G.O.Ms.No.1406, Revenue, dated 25.07.1958 and that the land assigned under the said policy is only heritable, but not alienable. If the records relating to the individual assignments are "not available", the respondents should explain on what basis this assertion that those assignments were made as per G.O.Ms.No.1406, Revenue, dated 25.07.1958, and were only heritable, but not alienable, is being made. No such explanation is forthcoming from the respondents.

51. It is next stated by the District Collector in the counter affidavit that "most of the assignees of the above said lands, taking advantage of the assignments made in the same survey number to the genuine Ex-Servicemen and political sufferers, disposed the property in favour of third parties, claiming the assignments were made under the Ex-Servicemen quota relying on relaxations granted to such category of assignees under G.O.Ms.No.743 dt.30.04.1963 and G.O.Ms.No.1117 dt.11.11.1993".

Again we wish to state that no basis for the above statement is forthcoming and in the absence of available records, we are of the opinion that such an assertion by the District Collector has no value.

...

60. In para-6 of the counter affidavit, it is stated by the District Collector that meanwhile, the Government, taking note of irregular transfers of assigned lands constituted a Task Force Committee under the Chairmanship of S.K. Sinha, I.A.S., former Special Chief Secretary to enquire into the irregular transfers and mutations of lands in Sy.Nos.191 and 30 of Kollur and Osmannagar Villages. It is also stated that the Task Force Committee submitted a detailed report to the Government on 28.07.2016.

On what basis the said Committee conducted enquiry when the records relating to the assignments in these two survey numbers were admittedly "not available", is not disclosed by the District Collector.

Though an extract of the report has been filed along with the counter affidavit by the District Collector, the contents of the report are general in nature and not specific as regards the land claimed by the petitioner though there is a reference to Sy.No.191 of Kollur Village and Sy.No.30 of Osmannagar Village which together cover Ac.480.00. The contents of the said report are not useful to the State.

...

67. As stated above, there is no assignment record available with the respondent nos.1 to 6.

68. So, it is not possible for the respondents 1 to 6 to speculate/imagine under which G.O. the ex-servicemen were actually assigned the lands. On what basis the learned Government Pleader for Revenue is presuming that the assignments to the ex-servicemen were made under G.O.Ms.No.1406, Revenue dt.25.07.1958, is not stated by him. In our opinion, such a contention cannot be raised without any factual basis."

14. The learned Division Bench further held that even if the assignment is made in favour of ex-servicemen under ex-servicemen category under G.O.Ms.No.1406 dated 25.07.1958, the assignees, who are, admittedly, ex-servicemen, are entitled to the benefit of G.O.Ms.No.1117 dated 11.11.1993 despite existence of condition in the deed of assignment prohibiting alienation. The learned Division Bench also relied on the judgments of the Andhra Pradesh High Court in ***Ande Narasimha Rao v. State of Andhra Pradesh*** [2013 (3) ALT 500] and ***Thatisetty Kusuma Kumari and others v. Sub-Registrar, Ananapuram, Visakhapatnam District*** [AIR 2017 AP 713]. It was held in paras 69 to 71, in the order of the Division Bench in WP.No.15041 of 2019 dated 07.04.2021, as follows:

69. Even otherwise, if there is an assignment of land to a person, who is an ex-servicemen, and he is a landless poor person entitled for assignment, even if by some error, the said assignment was made quoting G.O.Ms.No.1406 Revenue dt.25.07.1958 and not mentioning G.O.Ms.No.743 dt.30.04.1963 or G.O.Ms.No.1117 dt.11.11.1993, we are of the opinion that the assignees, who are admittedly ex-servicemen are still entitled to the benefit of G.O.Ms.No.1117 dt.11.11.1993 despite the existence of any condition in the Deed of Assignment prohibiting alienation.

70. Similar view has been taken by the Andhra Pradesh High Court in ***Ande Narasimha Rao vs. State of Andhra Pradesh***, and by the High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh in ***Thatisetty***

Kusuma Kumari and others vs. Sub-Registrar, Anandapuram, Visakhapatnam District and others.

71. In **Ande Narasimha Rao** (7 supra), an ex-servicemen was granted assignment of land by the State without mentioning G.O.Ms.No.743 dt.30.04.1963. The assignment deed also contained a condition prohibiting transfer of property while permitting enjoyment of the same by inheritance.

The Andhra Pradesh High Court held that despite existence of the said condition, the petitioner is still entitled to the benefit of G.O.Ms.No.1117 dt.11.11.1993 and he was entitled to sell away the assigned land after ten years from the date of assignment.

It held that such land cannot be included in the prohibitory register and the registering authorities cannot refuse to register the deed transferring the same.

In that case also, like in the instant case, the *Darkhast* file (i.e., the Record of Assignment) was missing, and the Court held that the missing of the file cannot be to the disadvantage of the petitioner.

15. In **Ande Narasimha Rao's** case (supra), the petitioner therein was an ex-serviceman, who was granted DKT patta, which contained prohibition of transfer of land assigned to him. The writ petitioner was aggrieved by the action of the respondents in not receiving documents presented by him for registration in respect of assigned land. The learned Single Judge made the following observations:

“A perusal of the DKT patta granted to the petitioner shows that the land was assigned to him in his capacity as

ex-serviceman. However, unfortunately, the assignment patta has not incorporated the condition as envisaged by GO.Ms.No.743, dated 30-04-1963. Instead, condition No.1 therein has prohibited transfer of the property while permitting enjoyment of the same by inheritance. Despite existence of the said condition, the petitioner is still entitled to the benefit of GO.Ms.No.1117, dated 11-11-1993, which was issued a few months after issuance of patta in favour of the petitioner, as the said GO has, in categorical terms, permitted the ex-servicemen to sell away their assigned lands after 10 years.

The learned Government Pleader for Revenue, while not disputing the above position, however, submitted that since Darkhast file pertaining to the petitioner is missing, respondent No.5 has included the land in question in the prohibitory register.

In my opinion, missing of the file cannot be allowed to work to the disadvantage of the petitioner. Once, the petitioner's status as ex-serviceman was recognised in the DKT Patta, the condition incorporated in G.O.Ms.No.743, dated 30-04-1963, as modified in GO.Ms.No.1117, dated 11-11-1993, enures to his benefit.

In this view of the matter, the Writ Petition is allowed. Respondent No.6 is directed to receive the document that may be presented by the petitioner in respect of the above-mentioned land and register the same subject to the latter complying with the provisions of the Registration Act, 1908, and the Indian Stamp Act, 1899."

16. In ***Thatisetty Kusuma Kumari's*** case (supra), the petitioner was assigned land by the Government in which there was a condition prohibiting alienation. The learned Single Judge held

that such condition cannot prevail over G.O.Ms.No.743 dated 30.04.1963 and G.O.Ms.No.1117 dated 11.11.1993. In paras 8, 9, 10 and 12 the following observations were made:

8. It is no doubt true that in the patta granted to the petitioners, there was a condition prohibiting alienation. However, such condition, in my considered opinion, cannot prevail over G.O.Ms.No.743 Revenue Department dt.30-04-1963 and G.O.Ms.No.1117 dt.11-11-1993. When the 1st petitioner's husband is entitled assignment under G.O.Ms.No.743 issued on 30-04-1963, which entitled ex-serviceman for assignment of land.

9. However, instead of assigning the same to them under G.O.Ms.No.743 Revenue Department dt.30.04.1963 which entitled ex-servicemen to assignment of land, without application of mind, the 4th respondent had assigned the land invoking G.O.Ms.No.1142 Revenue Department dt.18.06.1954.

10. Under the latter G.O., there is a prohibition to alienate the assigned land, whereas if the land had been assigned to petitioners' predecessors-in-title under G.O.Ms.No.743 Revenue Department dt.30.04.1963, such ex-servicemen were permitted to sell the land assigned to them vide G.O.Ms.No.1117 dt.11.11.1993 after ten years of enjoying the same.

...

12. Therefore, petitioners cannot be denied permission to sell the land on the pretext that the land was previously assigned under G.O.Ms.No.1142 Revenue Department dt.18.06.1954. For the mistake of the respondents in assigning the land to ex-servicemen under the said G.O. instead of G.O.Ms.No.743 Revenue Department dt.30.04.1963, the petitioners cannot be made to suffer.

Also, the respondents cannot be allowed to discriminate between ex-servicemen who obtained assignment under G.O.Ms.No.743 Revenue Department dt.30.04.1963 and G.O.Ms.No.1142 Revenue Department dt.18.06.1954, since all ex-servicemen form part of the same class and there would be no intelligible differentia to distinguish one category of ex-servicemen from the other category, and it would be arbitrary and violative of Article 14 of the Constitution of India if there were to be such discrimination."

17. Learned Government Pleader for Assignment vehemently submitted that the judgment of the Division Bench in WP.No.15041 of 2019 dated 07.04.2021 is not applicable to the facts of the present case, as adverse inference was drawn against the respondents for not producing the records pertaining to assignment; in the instant case, assignment record has been produced by the respondents and there is no dispute that the land was assigned under landless poor category; unfortunately, these records were not produced before the Division Bench and also when the review application in IA.No.1 of 2022 in WP.No.15041 of 2019 was argued and the same came to be dismissed by order dated 16.12.2022 by the Division Bench. The order in WP.No.15041 of 2019 cannot be treated as a binding precedent. Alternatively, the learned Government Pleader for assignment requested this Court to remand the matter to the authorities to conduct enquiry to

find out whether assignment was made under landless poor category or ex-servicemen category.

18. As discussed in paras 10 and 11 supra, the revenue department has requisitioned information from the Zilla Sainik Welfare Officer and verified the genuineness of the ex-servicemen. The regiment number and rank of ex-servicemen have been clearly mentioned in the correspondences and the assignment was granted on being satisfied that N. Kumara Swamy and B. Yohan were ex-servicemen.

19. The assignment of land to ex-servicemen usually were done under G.O.Ms.No.743 dated 30.04.1963 and under G.O.Ms.No.1117 dated 11.11.1993 they were entitled to sell the land after expiry of ten (10) years from the date of assignment. It is not in dispute, as borne out from the record, that N. Kumara Swamy and B. Yohan were ex-servicemen and they were assigned land under that category. Therefore, the contention of the learned Government Pleader that the above persons were granted assignment under the landless poor category is without any merit. It is either by misquoting of G.O. or mistake done by the authorities. If the contention of the learned Government Pleader for Assignment is to be accepted, then it would run contrary to the concept of equality enshrined under Article 14 of the Constitution of India,

as the ex-servicemen, who are granted assignment under G.O.Ms.No.743 dated 30.04.1963, are entitled to sell the land after expiry of ten (10) years of assignment and those who are erroneously granted assignment under G.O.Ms.No.1406 dated 27.05.1958 would not be entitled for such benefit.

20. Learned Government Pleader for Assignment relied on the judgment of the Supreme Court in **GOVERNMENT OF KARNATAKA v. GOWRAMMA**¹ and the judgment of this Court in **B. RAMAIAH v. MANDAL REVENUE OFFICER**² and contended that so long as condition of non-alienation is there in the assignment patta, the alienation of the land is in contravention of the provisions of the Andhra Pradesh Assigned Lands (Prohibition on Transfer) Act, 1977.

21. By placing reliance on the observations made in para 10 of **GOWRAMMA**'s case (1 supra), the learned Government Pleader submitted that the order of the Division Bench in WP.No.15041 of 2019 dated 07.04.2021 cannot be treated as a binding precedent as the order was passed by drawing an adverse inference as assignment records were not produced by the respondents therein. It may be noted the observations made in WP.No.15041 of 2019 dated 07.04.2021 are being referred to in this order insofar as

¹ (2007) 13 SCC 482

² 1990 (1) APLJ 60

erroneous assignment made to ex-servicemen under landless poor category. Even assuming that the order in WP.No.15041 of 2019 dated 07.04.2021 is not to be treated as a precedent, the petitioners herein are better placed than the petitioners in WP.No.15041 of 2019, as the petitioners have clinchingly proved that assignees are ex-servicemen as discussed in paras 10 to 12 supra. The judgment in **RAMAIAH's** case (2 supra) is not applicable to the facts of this case, as it does not deal with assignment of lands in favour of ex-servicemen and thus, is of no relevance for the issue involved in this writ petition.

22. It is no doubt true, as contended by the learned Government Pleader, the judgment, in WP.No.15041 of 2019 rendered by the Division Bench, was by drawing adverse inference as records were not produced. So also in the impugned proceedings, the documents, which were filed on behalf of the petitioner in the reply affidavit, were not submitted before the third respondent. However, these documents, which include correspondences between the Sainik Welfare Board and the Revenue authorities and before the assignments were made, are undisputed and unimpeachable documents. In the opinion of this Court, the request of the learned Government Pleader to remand the matter to the respondent No.3 is not justified. It may be noted the original assignees sold the land in the year 1993 and subsequently, the land

have changed several hands. When there is no dispute about the documents filed along with the reply affidavit, relegating the parties to the respondent No.3 for *de novo* enquiry would be a futile exercise.

In view of the above observations, the writ petitions are allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

B. VIJAYSEN REDDY, J

April 28, 2023

Note:

1. LR Copy to be marked.
2. Issue CC forthwith
(**B/o**)DSK