
(2012) 12 AP CK 0060

In the Andhra Pradesh High Court

Case No : Writ Petition No. 38504 of 2012

Ande Narasimha Rao

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Citation : (2013) 2 ALD 702 : (2013) 3 ALT 500

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : N. Siva Reddy, for the Appellant;

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a mandamus to declare the action of respondent Nos. 3 and 6, in not receiving the document sought to be presented by the petitioner for registration in respect of Acs.5-00 of land in Survey No. 356/2 of Desapatrunipalem Village, Parawada Mandal, in Visakhapatnam District, as illegal and arbitrary. The petitioner is an ex-serviceman, who was granted a DKT patta in respect of the above mentioned land. On 25.1.1993, when the petitioner sought to sell the said land and presented sale deed for registration, respondent No. 6 refused to receive the same on the ground that the same is covered by a DKT patta containing prohibition on transfer of the land. Feeling aggrieved by the said action, the petitioner filed the present writ petition.

2. In support of his plea that he is entitled to transfer the land in question, 10 years after the assignment was made, he has placed reliance on G.O. Ms. No. 1117, dated 11.11.1993. A perusal of the said GO shows that the State Government has earlier issued G.O. Ms. No. 743, Revenue (B) Department, dated 30.4.1963, whereunder conditions were framed for assignment of the lands in favour of ex-service men. One such condition was to the effect that the lands assigned shall not be sold or otherwise alienated for a period of 10 years.

In order to clarify the said condition, the State Government issued G.O. Ms. No. 1117, dated 11.11.1993, whereunder G.O. Ms. No. 743, dated 30.4.1963, was modified and a positive condition was incorporated to the effect that the ex-servicemen are free to sell away their assigned lands after a period of 10 years. In other words, the condition, which was in the form of prohibition against alienation for a limited period of 10 years was modified by incorporating a positive condition by permitting sale of lands of ex-servicemen on the expiry of 10 years period after assignment. Thus, the purport of both the GOs is the same though the form in which the condition was incorporated varied.

3. 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 G.O. Ms. No. 743, dated 30.4.1963. 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 G.O. 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.

4. 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.

5. 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 30.4.1963, as modified in G.O. Ms. No. 1117, dated 11.11.1993, enures to his benefit.

6. 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. As a sequel, WPMP No. 48831 of 2012, filed by the petitioner for interim relief, is disposed of as infructuous.