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**(2016) 02 AP CK 0014**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 33579 of 2011**

B. Jayaprada and Others

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

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**Date of Decision : 11-02-2016**

**Acts Referred:**

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 3, Section 3 (1), Section 3 (5), Section 4, Section 4(1), Section 4-A, Section 4-B (1)

**Citation : (2016) 02 AP CK 0014**

**Hon'ble Judges : C. Praveen Kumar, J.**

**Bench : Single Bench**

**Advocate : K.V. Subrahmanya Narusu, for the Appellant;**

**Final Decision : Dismissed**

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## **Judgement**

C. Praveen Kumar, J.—1. Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue (AP).

2. Questioning the jurisdiction of the Tahsildar, in cancelling the DKT patta granted in favour of Chakala Guravaiah, the present writ petition is filed.

3. The averments in the affidavit filed in support of the writ petition are as under:

"The first petitioner claims himself to be the absolute owner and possessor of land admeasuring Ac.0.66 cents in Sy. No. 490 of Kalavagunta Village, Penumuru Mandal, Chittoor District, having purchased the same through a registered sale deed dated 19.02.2003 from Smt. Sarala, who inturn purchased the same from Smt. Saraswathi. It is also claimed that the second petitioner purchased Ac.0.94 cents in Sy. No. 490 of Kalavagunta Village, Penumuru Mandal, Chittoor District, through a registered sale deed dated 17.08.2001 from R. Sahadevan, R. Janakiraman and R. Namasivayan, who were the successors of Rangaswamy Mudaliyar, who inturn purchased the said property through registered sale deeds dated 15.12.1967 and 30.03.2001. From the date of purchase, the petitioners claims to be in peaceful possession and enjoyment over their respective property.

While things stood thus, the Tahsildar, Penumuru Mandal, issued the impugned order stating that a representation came to be submitted by Chergaiah and others of Eguva Punepalli Village, with regard to the pathway and enquiries made by the Village Revenue Officer and Additional Revenue Inspector, Penumuru, revealed that the original assignee has violated the conditions of patta by alienating part of the assigned land in favour of third parties. It is averred that the said land was not under cultivation and is also vacant with erected stone fencing. A notice is said to have been issued to the petitioners and also to the original assignees, but the petitioners failed to attend the enquiry. Having regard to the material collected, the D.K.T. patta granted in favour of Chakala Guravaiah (original assignee) was cancelled and the land was resumed to the Government. Challenging the said action on the ground of jurisdiction the present writ petition is filed."

4. A counter came to be filed by the respondents disputing the averments made in the affidavit filed in support of the writ petition. It is stated that under Board Standing Orders, the Tahsildar alone is competent to cancel the pattas if there is a violation of condition of the patta and the Collector gets jurisdiction to cancel the patta only when there is a suppression of material facts and misrepresentation of facts. In any event, it is stated that the petitioners have a remedy of appeal under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short the Act, 1977), which the petitioners should have availed before approaching this Court.

5. Learned counsel for the petitioners mainly submits that the Tahsildar has no jurisdiction to cancel the D.K.T. patta granted in favour of the assignees and that the Collector alone has the power to cancel the patta. He further submits that since the assignment patta was in the year 1940, the original assignee can transfer the land in favour of third parties as the restriction of alienation came into force much later. Relying upon the judgment of this Court in *B. Mani v. Government of Andhra Pradesh*, (2011)1 ALT 334, learned counsel for the petitioners strenuously contends that the Tahsildar has no power to cancel the patta for breach of conditions of the patta.

6. In order to appreciate the same, it would be useful to refer to certain provisions of Act, 1977, and Board Standing Orders.

7. Section 3 of the Act, 1977, 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 purpose 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."

8. Section 3 (1) of the Act provides that any land assigned by the Government to a landless poor person shall not be transferred to any person either before or after commencement of the Act. Sub-section (3) of Section 3 makes it clear that any transfer or acquisition in contravention of the above said prohibition shall be deemed to be null and void. As per sub-section (5) of Section 3, the prohibition shall not apply to assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee prior to the commencement of the Act and which is in possession of such person on the date of such commencement.

9. Section 4 of the Act, 1977, deals with consequences of breach of provisions of Section 3, which reads as under:

"4. Consequences of breach of provisions of Section 3: (1) If in any case, the District Collector or any other officer not below the rank of a (Mandal Revenue Officer) authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land he may, by order--

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being in force; Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration. It shall be resumed to the Government for assignment to any other landless poor person."

10. From the material available on record, it is clear that the land was originally

assigned in favour of Chakala Guravaiah, who later sold the same to various persons through registered sale deeds for valuable consideration. Having noticed that the original assignee violated the conditions of patta by alienation, the Tahsildar after giving notice to the petitioners and after holding an enquiry resumed the land by cancelling the patta. The impugned order also reveals that the transferees of the above said land i.e., writ petitioners herein are wealthy pattadars and are above the poverty line, hence, the benefit of Section 3 (5) of the Act would not be available to the petitioners.

11. As stated earlier, the learned counsel for the petitioners relied upon the judgment in B. Mani case , (2011)1 ALT 334 (supra) contending that the Tahsildar has no power to cancel the patta. Since the judgment in B. Mani Case , (2011)1 ALT 334 (supra) is based on the earlier judgment of this Court in G. Munilakshamma v. The District Collector , (1991) 1 ALT 617, it would be appropriate to refer the judgment of G. Munilakshamma case , (1991) 1 ALT 617 (supra) in detail. It was a case where the petitioner was cultivating an extent of Ac.2.67 cents in Survey No. 50/2 and Ac.2.30 cents in Sy. No. 50/3 of Kagathi Village, which were Government waste lands. Though he was cultivating the lands as Sivaijamdar from 1978, but D-form patta was granted in his favour on 11.12.1989. A show cause notice came to be issued by the Mandal Revenue Officer to show-cause as to why patta granted in his favour should not be cancelled. The correctness of the show-cause notice was questioned before the High Court in that case. In the said case, the patta was sought to be cancelled on the ground of suppression of material facts and misrepresentation of facts. Referring to paragraph 18 of the Board Standing Order 15, the learned Single Judge of this Court held that the Collector alone has got the power to cancel the patta and the Mandal Revenue Officer has no power to do so for suppression of material facts and mis-representation of facts. It would be relevant to extract the relevant para of G. Munilakshamma case , (1991) 1 ALT 617 (supra), which is as under:

12. In the instant case, the patta is sought to be cancelled on the ground of suppression of material facts and misrepresentation of facts. On these grounds, in my view, the Collector has the power to cancel the patta under paragraph 18 of the board Standing Order 15. The Mandal Revenue Officer has no power to do so.

13. The said judgment, in my view, may not apply to the case on hand, as the cancellation of patta in the instant case was not on the ground of mistake of fact or owing to fraud or misrepresentation.

14. Therefore, the argument of the learned counsel for the petitioners that cancellation and resumption are two different aspects and that the Tahsildar cannot exercise the power of cancellation, cannot be accepted for the reason that the power of resumption which is given to the Tahsildar will have to be exercised only after cancellation. If the Joint Collector exercising his powers under paragraph 18 of Board Standing Order 15 cancels the patta for the reasons

stated therein, he has to order resumption of the said land by the Tahsildar after cancelling the patta. That by itself does not mean that in every case the Collector alone has to cancel the patta and the work of the Tahsildar is only to resume the land. On the other hand, paragraph 12 of Board Standing Order 15 confers power on Tahsildar and Deputy Tahsildar, in independent charge who are the assigning authorities, shall be the authorities competent, to order resumption in case of a breach of the conditions of grant, which would be after cancellation of patta.

15. Further, Paragraph 15 of Board Standing Order 15 deals with appeals to be filed against the orders of Tahsildar or from the order of the Divisional Officer. It would also be appropriate to refer to Sections 4-A and 4-B (1) of the Act, 1977, which reads as under:

"4-A. Appeal:--(1) Any person aggrieved by an order passed by the Mandal Revenue Officer under Sub-section (1) of Section 4, may, within ninety days from the date of receipt by him of such order appeal to the Revenue Divisional Officer.

(2) Any person aggrieved by an order passed by the Revenue Divisional Officer under Sub-section (1) of Section 4, may, within ninety days from the date of receipt by him of such order appeal to the District Collector.

4-B. Revision:--(1) The District Collector may in respect of any proceeding not being a proceeding covered by Sub-section (2) of Section 4-A on an application made to him and the Government may in respect of any proceedings either suo motu or on an application made to them, call for and examine the record of any officer subordinate to him or them to satisfy himself or themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order taken or passed therein, and if in any case, it appears to the District Collector or as the case may be to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that every application for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceeding, decision or order to which the application relates was communicated to the applicant."

16. A plain reading of the above two provisions would show that (1) whenever a person is aggrieved by an order passed by Mandal Revenue Officer (MRO) under Section 4(1) of the Act 1977 resuming the land to the Government, an appeal would lie to the Revenue Divisional Officer (RDO) having jurisdiction; (2) If an adverse order is passed by the appellate authority, aggrieved person can prefer further appeal to the District Collector (Joint Collector) within ninety days from the date of receipt of copy of the order of the first appellate authority; and (3) Even after the order of the Joint Collector, an aggrieved person can make an application to the Government for revision, where the Government can examine the regularity, correctness, legality or propriety of the order passed by the Joint

Collector or by any other authority subordinate to the Government.

17. In a case where there is a violation of Section 3 (1) of the Act, 1977, and in case of any action is being initiated by an officer not below the rank of Mandal Revenue Officer, for violating the provisions of sub-section (1) of Section 3 of the Act, 1977, an appeal would lie before the Revenue Divisional Officer under Section 4-A of the Act, 1977, and any person aggrieved by order passed by Revenue Divisional Officer may within ninety days file another appeal before the District Collector. If the argument of the learned counsel for the petitioners, namely, that it is only the District Collector alone who is competent to cancel the patta irrespective of the reason is to be accepted, then paragraph (12) and (15) of Board Standing Order 15 will be nugatory and the provisions of appeals and revisions which are there in the statute book will be of no use. Definitely that would not have been the intention of the legislatures.

18. From the analysis made, it is clear that the Collector will get jurisdiction to cancel the patta only if it is found that it was grossly inequitable or was passed under a mistake of fact or owing to misrepresentation or fraud or in excess of the limits of the authority delegated to the assigning officer under Board Standing Order 15 or that there was an irregularity in the procedure. In all other circumstances, the Mandal Revenue Officer alone is the appropriate authority to cancel the patta and resume the land. Therefore, the argument of the learned counsel for the petitioners that the Tahsildar has no jurisdiction to cancel the patta for violation of conditions of patta cannot be accepted. For the foregoing, I see no merits in the writ petition and the same is liable to be rejected, giving liberty to the petitioners to avail the remedies available under law.

19. Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.