

(2022) 02 TEL CK 0049
In the Telangana High Court
Case No : Writ Appeal No. 80 Of 2021

Balagoni Sai Kiran

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 14-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 — Rule 3, 16
Telangana Assigned Lands (Prohibition of Transfers) Act, 1977 — Section 2(1), 3, 3(2), 4, 10

Citation : (2022) 02 TEL CK 0049

Hon'ble Judges : Satish Chandra Sharma, CJ;N.Tukaramji, J

Bench : Division Bench

Advocate : H Venugopal

Final Decision : Dismissed

Judgement

1. The writ appeal is arising out of an order dated 8.01.2021 passed in W.P.No.3789 of 2019 by the learned Single Judge, whereby the learned Single Judge has dismissed the writ petition filed by the appellants herein.

2. The appellants/petitioners preferred the writ petition before the learned Single Judge stating that the appellant No.1/petitioner No.1 is the owner and

possessor of land admeasuring Acs.2.00 guntas in Sy.Nos.692/1/1, 692/1/2, 692/1/3, 692/1/4 & 692/1/5; appellant No.2/petitioner No.2 is the owner

and possessor of land admeasuring Ac.1.35 guntas in Sy.Nos.692/3/1, 692/3/2, 692/3/3, 692/3/4 & 692/3/5; appellant No.3/petitioner No.3 is the owner

and possessor of land admeasuring Ac.1.32 guntas in Sy.No.692/2; and the appellant No.4/petitioner No.4 is the owner and possessor of land

admeasuring Ac.1.10 guntas in Sy.No.692/6, total admeasuring Acs.6.37 guntas, situated at Duddeda Village, Kondapak Mandal, Siddipet District

(erstwhile Medak District) (hereinafter referred to as "subject lands"). Originally, the subject lands were Government lands, which were assigned to the appellants/petitioners herein under assignment patta certificates. The appellants/ petitioners further stated that on 20.02.2019, the respondent No.4/Tahsildar, Kondapak Mandal, came to the subject lands and asked the appellants/petitioners to stop cultivation. It was brought to the notice of the respondent No.4/Tahsildar that the lands are assigned lands. However, without hearing, the appellants/ petitioners were thrown out of the lands. The respondent No.4/Tahsildar informed them that the Government is allotting the land for Government Projects and the appellants/petitioners were directed to remove the crop. The appellants/petitioners have challenged the said action of the State without issuing notice and without following due process of law as illegal, irrational, arbitrary and in violation of the constitutional rights guaranteed under the Constitution of India. The following prayer was made in the writ petition.

"to issue an appropriate Writ, Order or Direction, more particularly one in the nature of writ of mandamus, declaring the action of the Respondents and their officials, in seeking to violate and interfere with the constitutional rights of the petitioners over their property comprising of Sy.Nos.692/1/1, 692/1/2, 692/1/3, 692/1/4, 692/1/5 to an extent of Ac.2-00 gts; 692/3/1, 692/3/2, 692/3/3, 692/3/4 & 692/3/5 to an extent of Ac.1-35 gts; 692/2 to an extent of ac.1-32 and 692/6 to an extent of Ac.1-10 gts total admeasuring Ac.6-37 gts situated at Duddeda Village, Kondapak Mandal, Siddipet District (erstwhile Medak District), without issuing any notice to the petitioner as illegal, arbitrary, unconstitutional and violative of the principles of natural justice and Article 14 and 300 A of the Constitution of India and resultantly restrain the Respondents from interfering with such rights of the petitioners in any manner and pass any order or other orders".

3. A counter affidavit was filed by the State Government and the State Government took a categorical stand that the appellants/petitioners are not at all the owners of the land and as per the revenue records, the land in survey No.692 to an extent of Acs.9.00 guntas is recorded as "Bancharai" (Gairan). It was also stated that according to Form-I Register for the year 1989-90, vide proceedings No.B/1867/2003, dated 23.07.2003, the names of the appellants/petitioners were entered as assignees in respect of Acs.6.37

guntas relying upon the patta certificates, which were allegedly issued on 06.05.1998. The State Government on verification of records came to the conclusion that the Distribution Register relating to file No.B/1867/2003 discloses that the same is relating to representations submitted in Janmabhoomi Programme for the villagers of Etigadda Kistapur. It has been further stated on affidavit that the revenue records were burnt by some extremists and the appellants/petitioners, claiming as assignees, have preferred a writ petition praying before this Court to decide the disputed questions of assignment, title and possession as well as identification of lands. It was also brought to the notice of this Court that the appellants/petitioners have voluntarily made applications to the Tahsildar, Kondapak Mandal in Form-C under Rule 16 of the Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 (â??the Rulesâ??, for brevity) relinquishing their rights over the subject lands, vide applications, dated 04.02.2017, duly submitting â??Razinamaâ??. The said applications were signed by the appellants/petitioners and attested by witnesses and the same were accepted by the Tahsildar, vide order dated 04.02.2017. It has been further stated that after Razinama was accepted, the State Government took possession of the lands after drawing Panchanamas and the lands were thereafter allotted to Yaprala Narasimha Reddy through registered exchange deeds executed by the Tahsildar concerned on behalf of the State of Telangana, in lieu of surrender of their patta lands situated in survey No.692 to the Government for the purpose of construction of double bed room houses. It has been further stated that the appellants/petitioners are not at all in possession of the lands and they are not the assignees and such disputed questions of facts cannot be looked into in the writ petition.

4. A rejoinder was also filed by the appellants/ petitioners and the signatures on the applications, dated 4.02.2017 relating to Razinama were also disputed in the rejoinder. It has been stated that the respondent No.2/District Collector, Siddipet District in collusion with the Authorities was trying to grab the Government lands allotted to the backward classes and is trying to allot them to his relatives and well wishers under the guise of double bed room houses.

5. The respondent No.4/Tahsildar also filed an additional counter affidavit stating that the appellants/petitioners did submit applications on 4.02.2017

and thereafter the lands were allotted to some other persons, who gave their lands for construction of double bed room houses in survey No.692

situated at Duddeda Village, Kondapak Mandal, Siddipet District. It has also been stated that as many as two thousand double bed room houses have

come up over the lands exchanged by Yaprara Narasimha Reddy and a prayer was made to dismiss the writ petition.

6. Learned counsel for the appellants/petitioners has vehemently argued before this Court that there was a batch of certificates issued in favour of the

appellants/petitioners in the year 1989-90 and they were cultivating the said lands and they have never relinquished their rights and therefore, forged

and fabricated documents have been created by the State Government based upon some applications dated 4.02.2017 and the whole exercise of

respondents to evict the appellants/petitioners from the subject lands is illegal, arbitrary and against the constitutional rights guaranteed under the

Constitution of India to the appellants/ petitioners. Reliance has been placed upon the Judgment delivered in the case of Dammalapati Ramalingam v.

District Collector, Khammam District 2006 (6) ALD 5 (AP).

7. The learned Single Judge has dismissed the writ petition holding that the disputed questions of facts cannot be decided in the writ petition. The lands,

over which the appellants/petitioners were claiming title, were allotted to one Yaprara Narasimha Reddy and some other persons, who have not been

impleaded as parties in the writ petition, by virtue of the registered exchange deeds and over the lands, which were given by Yaprara Narasimha

Reddy and others, large number of houses have already been constructed and were allotted to other persons and they are in possession of the land.

The learned Single Judge has also held that no document has been filed to establish before this Court that the appellants/petitioners are in possession

of the subject lands. The learned Single Judge arrived at a conclusion that the question as to who is in possession of the subject lands cannot be

determined in a writ petition filed under Article 226 of the Constitution of India and the appellants/petitioners have approached this Court after two

years of passing of the resumption order by the Revenue Authorities. Paragraphs 14 to 18 of the order passed by the learned Single Judge are

reproduced as under:-

14. Here, it is apt to extract Rule 16 of the A.P. (Telangana Area) Land

Revenue Rules, 1951, which reads as follows:

16. Relinquishment of land. - A registered holder may relinquish his land by submitting an unconditional razinama in writing to the Tahsildar or Naib

Tahsildar before the end of April in any year. Such razinama need not be stamped but shall be in Form C and the declaration therein shall be attested

by two respectable witnesses. The Patwari shall, if requested to do so by the registered holder, write the razinama himself without charging any fees

for the same. If the razinama is prepared by the Patwari, he shall affix his signature beneath the words written on the lower left hand corner of such

razinama. The Tahsildar or Naib Tahsildar, as the case may be, who receives such razinama shall certify it in his own hand according to the certificate

prescribed in Form C. He shall exercise due care in ascertaining the identity of the person who has signed the same, notwithstanding that such notice

has been duly endorsed as hereinbefore required. The relinquishment shall have effect from the close of the current year.

Thus, it is clear that the respondents have followed due procedure in resuming the subject lands and the same does not suffer from any illegality,

infirmity or irregularity.

15. I had gone through the decisions relied upon by both the sides. In Dammalapati Ramalingam's case (supra) relied upon by the learned counsel

for the petitioners, the petitioners therein were purchasers of the assigned lands from the original assignee. The Government wanted to resume the

land on the ground of non cultivation by the original assignee. Under those circumstances, the original assignee relinquished the land as per the

procedure laid down under Rule 16 of the Rules. There was no notice to the purchaser of the assigned land. Therefore, it was held as follows:

"Section 2(1) of the Act defines "assigned lands" means lands assigned by the Government to the landless poor persons under the rules for the time

being in force. Therefore, even if the land is allegedly assigned in 1971, the same is covered under the Act. Section 3(2) of the Act prohibits transfer

of assigned land and in the event of such transfer, power is conferred on the competent authority under Section 4 of the Act to take possession of the

assigned land, after evicting the person in possession in such manner as may be prescribed. The procedure is contemplated under Rule 3 of the Rules,

which provides that before taking any action under Section 4 of the Act, the

authorized officer shall issue notice to the person who acquired the assigned land in contravention of the provisions of Section 3 of the Act. Section 10 of the Act gives overriding effect to it over all other laws.

Therefore, even if there is some other law, which enables the revenue authorities to accept relinquishment by the registered holders, but still the

provisions of the Act cannot be ignored. In that view of the matter, the reliance placed by the respondents on Rule 16 enables the Tahsildar to give

effect to relinquishment by registered holder in Form-C and take possession of the land. Having regard to Section 10 of the Act, it must be held that

the procedure contemplated under Section 4 of the Act read with Rule 3 of the Rules overrides Rule 16.â??

But in the instant case, the petitioners themselves, who are the original assignees, voluntarily relinquished their rights over the subject lands assigned to

them, by making applications of Razinama in Form-C under Rule 16 of the Rules and the said applications were accepted by the Tahsildar concerned.

They did not alienate the subject lands to anybody. The petitioners herein are the original assignees of the subject lands and they voluntarily

relinquished the subject lands in favour of the Government. Under these circumstances, no procedure as contemplated under Sections 3, 4 and 10 of

Act 9 of 1977 is required to be followed. Hence, the above decision is distinguishable on facts from the case on hand.

16. In *Municipal Corporation, Aurangabad through its Commissioner v. State of Maharashtra* (2015) 16 SCC 689 relied by the learned Special

Government Pleader, the Honâ??ble Apex Court held that the High Court erred in exercising its jurisdiction under Article 226 of the Constitution of

India in deciding the disputed questions of fact regarding title over disputed land raised by the parties therein. In *Hindustan Coca Cola Beverage*

Private Limited v. Union of India (2014) 15 SCC 44, the Honâ??ble Apex Court held that adjudication on disputed questions of fact is outside the

purview of Article 226 of the Constitution of India; the issue before the High Court was violation of principles of natural justice as no notice was

served on the appellants before initiating recovery proceedings; Hence, High Court ought not to have decided the matter by going to depth of facts of

case and hence, order passed by the High Court is untenable. In *Swati Ferro Alloys Private Limited v. Orissa Industrial Infrastructure Development*

Corporation (IDCO) (2015) 4 SCC 204, the Honâ??ble Apex Court held that matter involving disputed question of fact about the ownership of the land in question could not be decided in a writ petition under Article 226 of the Constitution of India and that the High Court was justified in directing the parties to approach civil Court for resolving such dispute.

17. Before parting, it is pertinent to state that judicial review under Article 226 of the Constitution of India is directed, not against the decision, but the decision-making process. Administrative decisions are subject to judicial review under Article 226 of the Constitution of India, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds, administrative decisions cannot be interfered with. A decision is vitiated by irrationality, if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken such decision. In the instant case, none of the contentions raised on behalf of the petitioners do establish any of the above circumstances to grant the relief sought by them. There is no material as well as circumstances to hold that the petitioners have not voluntarily surrendered the subject lands in favour of the Government. The record placed before this Court and the submissions made establishes that the petitioners have relinquished their right over the subject lands and voluntarily surrendered the same in favour of the Government and the subject lands were exchanged with the land belonging to Yaprala Narasimha Reddy and others and construction of double bed room houses have come up over the land taken in exchange from Yaprala Narasimha Reddy and others. There is no perversity, patent illegality or procedural laches on the part of the revenue authorities in accepting the voluntary surrender of the subject lands by the petitioners.

18. For the foregoing reasons, the relief sought by the petitioners in this writ petition cannot be granted. There are no grounds to allow this writ petition. The writ petition is devoid of merit and is liable to be dismissed.â??

8. In the present case, the appellants/petitioners are claiming title and possession and they are aggrieved by dispossession from the subject lands and their contention is that they have been forcibly evicted from the subject lands, which were assigned to them and they were also granted pattas by the State Government. The factum of grant of pattas to the appellants/petitioners

itself is in dispute. However, the appellants/petitioners have stated before this Court that as per Form-I Register for the year 1989-90, vide proceedings No.B/1867/2003, dated 23.07.2003, the names of the appellants/petitioners were entered as assignees in respect of Acs.6.37 guntas relying upon the patta certificates said to have been issued vide proceedings dated 06.05.1998. The undisputed facts of the case reveal that the revenue records relating to assignment of pattas in the year 1989 was burnt by some extremists and taking advantage of the situation, the appellants/petitioners are allegedly claiming right over the lands as their names were entered in the revenue records in the year 2002-2003. The counter affidavit filed by the respondents reveal that the proceedings No.B/1867/2003, Distribution Register, discloses that the proceedings relate to representations submitted in Janmabhoomi Programme for the villagers of Etigadda Kistapur and it was not the file relating to assignment of land or file relating to entry in the revenue records. Meaning thereby, the State Government has disputed the grant of original pattas, title and possession of the appellants/petitioners. Not only this, the record of the case reveals that on 04.02.2017 the appellants/petitioners submitted applications for Razinama under the Rules and the same were accepted by the Tahsildar, however the appellants/petitioners are disputing the signatures on the applications for Razinama, which again becomes a disputed question of fact and therefore, in the considered opinion of this Court, the disputed questions of facts cannot be decided in a writ petition by the High Court in exercise of powers conferred under Article 226 of the Constitution of India, as rightly held by the learned Single Judge, relying upon the Judgment delivered in the case of Municipal Corporation, Aurangabad (supra), Hindustan Coca Cola Beverage Private Limited (supra) and Swati Ferro Alloys Private Limited (supra).

9. In the considered opinion of this Court, as purely disputed questions of facts are involved in the present case - the factum of possession and the factum of title were disputed and the persons whose rights were being affected were not impleaded as respondents, the learned Single Judge was justified in dismissing the writ petition as devoid of any merit.

10. Resultantly, the writ appeal is dismissed. However, liberty is certainly granted to the appellants/petitioners to take recourse to civil remedies

available under law, wherein all the disputed questions of facts can be resolved based upon the evidence adduced by the parties.

Miscellaneous petitions, if any pending, shall stand dismissed. There shall be no order as to costs.