
(2021) 11 TEL CK 0061

In the Telangana High Court

Case No : Writ Petition Nos. 25149, 25439 Of 2021

Chaitanya Builders

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Laoni Rules, 1950 — Rule 9(g), 10

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 3

Citation : (2021) 11 TEL CK 0061

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Both these writ petitions are filed to declare the action of respondent No.2 in rejecting the building permission vide letter dated 12.07.2021 in respect of Plot Nos.3 & 4 and 5, admeasuring 822 square yards and 379 square yards, respectively in Survey No.233/2, situated at Nizampet Village, Bachupally Mandal, Medchal Malkajgiri District and for a consequential direction to respondent No.2 to accord permission in respect of the aforesaid plots.

2. Heard Mrs. K. Hemalatha, learned counsel for the petitioner, learned Government Pleader for Municipal Administration & Urban Development appearing on behalf of respondent No.1, learned Government Pleader for Revenue appearing on behalf of respondent No.3 and Mr. N. Praveen Kumar, learned Standing Counsel appearing on behalf of respondent No.2.

3. Since the parties and the lis involved in these writ petitions are one and the same, the same are disposed of by way of this common order.

4. The petitioner in W.P. No.25149 of 2021 claims to be the owner of Plot Nos.3 and 4, admeasuring 822 square yards in Survey No.233/3, situated at Nizampet Village, Bachupally Mandal, Medchal Malkajgiri District, which is hereinafter referred to as 'subject land, through a registered sale deed bearing document

No.27739 of 2018, dated 12.10.2017. The very same petitioner also filed W.P. No.25439 of 2021 claiming to be the owner of Plot No.5 admeasuring 379 square yards in the same survey number and locality through a registered sale deed bearing document No.27740 of 2018, dated 12.10.2017.

5. On the strength of the aforesaid sale deeds, the petitioner herein had submitted applications on 27.02.2020 and 01.06.2020 to the Hyderabad Metropolitan Development Authority (HMDA) seeking building permission by enclosing necessary documents including copies of orders, dated 05.07.2018 in W.P. Nos.24070 of 2014 and 22810 of 2014; order dated 26.11.2018 in W.P. No.26512 of 2014 and order dated 14.06.2021 in W.P. No.12776 of 2021.

6. Referring to the above, respondent No.2 requested respondent No.3 to furnish the details of the subject land. Thereafter, respondent No.3 vide his letter dated 05.07.2021 informed respondent No.2 that the subject land is 'assigned land', and as per the assigned land rules, the assigned lands are not alienable. Referring to the said remarks of respondent No.3, respondent No.2 vide impugned order dated 12.07.2021 informed the petitioner herein that the petitioner seeking for building permission is not original assignee and, therefore, the building permit for the subject land may not be considered. Challenging the same, the petitioner filed the present writ petitions.

7. Perusal of the record would reveal that one Mr. Lakshman Krishna Murthy and two others had filed W.P.No.24070 of 2014 against the District Collector, Ranga Reddy District, Revenue Divisional Officer, Tahsildar, Village Revenue Officer, Nizampet Village, Qutbullapur Mandal etc., to declare the action of the respondents therein in taking steps to dispossess them under the premise that the land in the possession of the petitioners therein is assigned land situated in Sy.No.233/3 of Nizampet Village, Qutbullapur Mandal, Ranga Reddy District i.e., Plot Nos.1 part and 10 owned by the petitioners therein respectively 1S in contravention of the provisions of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F (for short 'Act, 1317'), Rule - 9 (g) and 10 of the Laoni Rules, 1950 (for short 'Rules, 1950') and Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (for short 'Act, 1977'), and to declare the said provisions of Act, 1977 in respect of the land purchased by the petitioners therein is inapplicable. A similar W.P. No.22810 of 2014 was filed by one Kommineni Varaprasad and two others in respect of Plot Nos.2, 9, 6, 7 and 8 in the very same survey number. The Common High Court at Hyderabad vide order dated 05.07.2018 after elaborately discussing the relevant Rules, nature of land and other aspects, held as under:

"....from the available material on record, it is possible to hold that the lands are assigned under Laoni Rules and more over there is no prohibition incorporated against alienations. The fact that the lands are alienable is also stated by the Deputy Collector & Tahsildar, Quthbullapur Mandal, by his memo dated 06.0.2015."

With the said findings, this Court had allowed the said writ petition.

8. In *G. Amrutha Rao v. Government of Andhra Pradesh* 2013 (1) ALD 570, the erstwhile High Court of Andhra Pradesh had an occasion to deal with the and in Survey No.233 of Nizampet Village and also relevant rules and provisions of the Act and held as under:

"11. From a perusal of this, becomes clear that an assignment made under rule 9(g) of the Rules is invariably through auction and the fact that the assignment is made or rights are conferred in Form-G would provide a clinching proof to the effect that the assignment was made under Rule 9 (g).

12. Once this important factual aspect is clear, it now needs to be seen as to whether the proceedings under the Act can be initiated vis--vis such lands.

13. Section 3 of the Act manifests the policy underlying it and the intention of the Legislature. The Section provides for annulment of transfers of land assigned in favour of the landless poor. It is important to note that proceedings can be initiated under the Act, if only there existed a condition prohibiting alienation of the land. In other words, even if a land is assigned in favour of a landless poor or others but no condition is incorporated prohibiting alienation, the very invocation of the provisions of the Act in respect of such land becomes untenable. In a catena of judgments, this Court held so. In fact a plain reading of the provision makes this aspect clear. A Division Bench of this Court in the judgment cited supra, held that the lands assigned under Rule 9 (g) of the Rules are not amenable to the proceedings under the Act. The ratio laid down in that case squarely applies to the facts of this case.

14. When the provisions of the Act cannot be applied even where the land is assigned free of cost to a landless poor, if no condition prohibiting alienation is incorporated, it is just incomprehensible as to how a land which is sold, may be by the government, for consideration, can be the subject matter. For all practical purposes, what accrues in sub-Rule (g) of Rule 9 of the Rules, on an outright sale of the land an absolute right, except that the Government happens to be the vendor. The rights of a purchaser under such transaction cannot be curtailed simply because a certificate in Form-G is issued, instead a sale deed is executed. Viewed from any angle, the impugned order cannot be sustained in law."

9. A perusal of the Impugned order dated 12.07.2021 would reveal that respondent No.2 has referred the orders in W.P. Nos.24070 of 2014 and 22810 of 2014 and also the interim order dated 04.06.2021 in W.P. No.12776 of 2021.

10. In view of the above, respondent No.2 has sought clarification with regard to the subject property from respondent No.3 vide letter dated 22.06.2021. Pursuant to the said letter, respondent No.3 vide his letter dated 05.07.2021 informed respondent No.2 that the subject land is an assigned land, and as per the Assigned Land Rules, the assigned land are not alienable. Referring to the same, respondent No.2 informed the petitioner that as per the remarks of

respondent No.3, it is clear that the applicant seeking for building permission is not original assignee and, hence, the building permission in the subject land may not be considered.

11. In the letter dated 05.05.2021, respondent No.3 has mentioned that the land in Survey No.233 is admeasuring Acs.112-27 guntas of Nizampet Village is classified as Poramboke". As per the Faisal Patti Nizampet Village for the year 1963-64, Laoni Certificates had issued in Survey Nos.88, 90, 96, 233, 268, 270, 310, 319, 325, 339 and 344 to an extent of Acs.96-12 guntas and shivai jamabandi approved for Rs.144.48ps. Out of the above extent in Sy.233, the Government had assigned Acs.61-00 guntas of land in favour of 20 assignees and the same was implemented in the pahani for the year 1965-66. Therefore, the name of Kummari Ramaiah was implemented in pahanies from the year 1966 for an extent of Acs.2-20 guntas in Sy.No.233/3. Further, from the year 1992-03, the names of Kummari Bikshapathi and Kummari Yadaiah, sons of Ramaiah were recorded. It is further mentioned by respondent No.3 that the orders in W.P. Nos.24070 and 22810 of 2014 came to their knowledge just then, and so appropriate action would be taken to file appeal against those orders therein.

12. In the order dated 05.07.2018 in W.P. No.24070 of 2014, the common High Court has elaborately dealt with the provisions of the Act, 1317, Rules, 1950 and the Act, 1977, and also the facts of the said case with regard to the land in Survey No.233/3 and held that as per the material available on record shows that the lands were originally assigned to assignees after collecting consideration and on issuance of Form-G and, therefore, from the available material on record, it is possible to hold that the lands were assigned under Laoni Rules and more over there was no prohibition incorporated against alienations. The fact that the lands were alienable is also stated by the Deputy Collector & Tahsildar, Qutbullapur Mandal, by his memo dated 06.05.2015. Referring to the same and with the said findings, this Court had allowed the writ petition granting the relief as sought by the petitioners.

13. As discussed supra, it is also relevant to note that the petitioner herein had also filed one more writ petition viz., W.P. No.12776 of 2021 to declare the action of the respondents therein in not granting permission to the petitioner pursuant to the application dated 17.03.2021 and for a consequential direction to respondent No.2 to accord permission for the construction of building in respect of Plot Nos.3 and 4 in the very same survey number. In the said writ petition, this Court had granted interim order on 04.06.2021, which is as under:

"Notice before admission.

The learned Standing Counsel for Nizampet Municipal Corporation, on instructions, has stated that the respondent No.3 HMDA has already given technical clearance, and therefore, the respondent No.2 has addressed a letter to the Revenue Department seeking NOC, but, till date, the Revenue Department

has not responded to the same and are awaiting the same.

Having regard to the fact that the application of the petitioner for building permission is pending since two and half months, the authorities cannot keep the application pending for months together on the ground that they have not received the NOC from the Revenue Authorities. Therefore, this Court deems it appropriate to direct the competent authority to consider the same within a time frame stipulated below.

Accordingly, the competent authority is directed to send a reminder to the Revenue Authorities once again immediately and if they do not respond within two weeks thereof the authority shall consider the application of the petitioner for building permission, dated 17.03.2021, and pass necessary orders thereon on its own merits within a period of four weeks from the date of reminder to the Revenue Authorities. In case the competent authority comes to the conclusion that building permission shall be granted to the petitioner, the authority can grant the same. Any grant of permission shall be without prejudice to the claim of the Government over the land and the building permission so granted shall be subject to the final orders likely to be passed in this writ petition.

Post on 12.07.2021."

14. As discussed above, the information furnished by respondent No.3 vide his letter No.B/295/2021, dated 30.06.2021, to respondent No.2 is contrary to the order dated 05.07.2018 passed in W.P. No.24070 of 2014 and 22810 of 2014, and in the said letter dated 30.06.2021, respondent No.3 has mentioned that he came to know about the said orders just then, and they are taking steps to file appeal. It is relevant to note that this Court has passed the said orders elaborately considering the facts and conditions raised by the parties. Though the said orders are dated 05.07.2018, respondent No.3 have not taken any steps to file appeal challenging the order dated 05.07.2018 in W.P. Nos.24070 of 2014 and 22810 of 2014 so far. It is also relevant to note during the course of arguments, the learned Government Pleader for Revenue has informed this Court that respondent No.3 has not filed any appeal challenging the said orders so far. Thus, respondent No.3 without challenging the said orders passed by this Court cannot contend that the land is assigned land and as per the Assigned Land Rules, the assigned lands are not alienable.

15. It is also relevant to note that in the above said order dated 05.07.2018, there is mention about the memo dated 06.05.2015 issued by respondent No.3 stating that the lands are alienable. Therefore, this Court had referred the said memo and allowed the above said writ petitions. Thus, this Court is of the considered view that the information furnished by respondent No.3 vide letter dated 30.06.2021 is contrary to the findings of this Court in the above said writ petitions. Relying on the information furnished by respondent No.3 dated 30.06.2021, respondent No.2 has issued the impugned proceedings dated 12.07.2021 informing the petitioner that it is not original assignee and,

therefore, the application submitted by it for building permission may not be considered. This Court is also of the considered view that the impugned proceedings dated 12.07.2021 are contrary to the findings given by this Court in W.P. Nos.24070 of 2014 and 22810 of 2014.

16. In view of the above discussion, the present Writ Petitions are allowed and the impugned proceedings bearing Lr.Nos.GI/1056/ULBC NNMC/2021 and G1/1055/ULBCNNMC/2021, both dated 12.07.2021 issued by respondent No.2 are hereby set aside. Respondent No.2 is directed to consider the application submitted by the petitioner seeking building permission and pass appropriate orders in accordance with law if the same are otherwise in order. However, it is made clear that grant of permission shall be without prejudice to the claim of the Government over the land and the building permission so granted shall be subject to the final orders that are likely to be passed by this Court in writ appeal to be filed by the Revenue Officials. Respondent No.2 shall mention the said act in the permission to be granted in favour of the petitioner.

However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petitions shall stand closed.