

(2017) 02 AP CK 0035

In the Andhra Pradesh High Court

Case No : Writ Petition Nos.2649 of 2010 and 21088 of 2012

Chavali Anilaja (Smt)

APPELLANT

Vs

The District Collector, Ranga Reddy District

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 47, Section 48
Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 3(1), Section 4
Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 1977 — Rule 4
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 9
Constitution of India, 1950 — Article 226

Citation : (2017) 3 ALT 177 : (2017) 3 AndhLD 491

Hon'ble Judges : Sri A. Rajasheker Reddy, J.

Bench : Single Bench

Advocate : Mr. D. Vathsalendra, Counsel, for the Petitioners; G.P. for Revenue, for the Respondent Nos. 1 to 4; Sri Darsi Ranganath Kumar, Advocate, for the Respondent No. 6 (in WP No. 2649 of 2010); Mr. C. Buchi Reddy, SC for THB and TSHCL, for the Respondent No. 5; Mr. D. Ranganatha Kumar, Advocate, for the Respondent No. 6; G.P. for Land Acquisition, for the Respondent No. 7

Final Decision : Disposed Off

Judgement

Sri A. Rajasheker Reddy, J.—Writ Petition No.21088 of 2012 is filed questioning the order dated 08-02-2002 whereby the lands of the petitioners in Sy.No.176/2, 176/3 & 176/4 of Azeeznagar Village, Moinabad Mandal, Ranga Reddy District, are sought to be resumed. Writ Petition No.2649 of 2010 is filed assailing the order dated 20-11- 2009 passed by the 4th respondent-Tahsildar, Moinabad Mandal, refusing to correct the entries in the revenue records and record the names of the petitioners as pattedars in respect of the subject lands in question.

2. Inasmuch as the subject matter is connected in both the writ petitions and the parties are one and the same, they are heard together and being disposed of by

way of this common order. It would suffice to advert to the facts in WP No.2649 of 2010.

3. Facts stated are:-Lands in Sy.No.176/2, 3 and 4, situated at Aziznagar Village, Moinabad Mandal, Ranga Reddy District belongs to Abdul Hussaini and Mohd. Khaja and their names have been recorded in the revenue records and reflected in pahanies till the year 1966. Thereafter, the said lands were sold to different persons by them through registered sale deeds. P. Ramachander Rao claimed title to the subject lands based on a registered document dated 25-02-1967 and he in turn sold to one B. Dharma Rao, who is father of three sons and after the demise of B. Dharma Rao, his three sons, among themselves executed GPA in favour of one of them to deal with the subject lands i.e. B. Krishna Sagar, from whom the 1st petitioner purchased an extent of Ac.1-00 under a registered sale deed No.82/96, dated 04-01-1996, 2nd petitioner purchased an extent of Ac.2-00 under a registered sale deed No.3815/97, dated 03-06-1997 and 3rd petitioner purchased an extent of Ac.0-20 hectares under a registered sale deed No.8408/97, dated 05-12-1997 respectively, which are part of Sy.No.176/2, 3 and 4 situated at Aziznagar Village, Grampanchayat, Moinabad Mandal, Ranga Reddy District. That since the date of purchase, petitioners are in possession of the respective lands without any interference. Subsequently, the petitioners made several requests for entering their names in revenue records and also for issuance of patta pass books in their favour. That when the petitioners came to know about suspicious discrepancies in the revenue records and also the Government claiming right over the subject land from the year 2001 as Government land, they preferred revision petitions under Section 9 of the Andhra Pradesh Rights in the Land and Pattadar Pass Books Act, 1971, to the 2nd respondent-Joint Collector, Ranga Reddy District, for correction of entries in revenue records for the years 2001 to 2007 in respect of the subject lands. The said revision was dismissed by the 2nd respondent vide proceedings in Case No.D1/7791/2008, dated 20-11-2009 holding that pahanies from the years 1955-56 till 2006-07 showed the classification of subject lands either as Kharij Khata or Laoni Patta and thus subject lands are Government lands. Aggrieved by the same, petitioners filed writ petition, being WP No.2649 of 2010 questioning the order dated 20- 11-2009 as being illegal, arbitrary and contrary to the principles of natural justice and for consequential direction for making entries of their names in revenue records and also for issuance of patta pass books in their favour.

4. In the counter affidavit filed by 2nd respondent-Joint Collector, Ranga Reddy District, it is their case that originally the land in Sy.No.176 admeasuring Acs.220-37 guntas situated at Azeeznagar Village of Moinabad Mandal is Government Land, classified as "Gairan Sarkari" and as per the faisal patti for the year 1961-62, there were 53 landless poor persons, who were cultivating the land in the said Sy.No.176 un-authorisedly, without any valid certification and authorization and under those circumstances, the then Tahsildar, Hyderabad West Taluk, considering their possession over the lands, granted laoni pattas in the

year 1961 to all the 53 persons under the Laoni Rules, 1950, which were repealed by uniform revised assignment policy issued in GO Ms.No.1406, dated 25-07-1958. After allotting the laoni pattas to the 53 persons in respect of the land in Sy.176, the same was sub-divided into more than 50 parts. Out of the 53 persons, land in Sy.No.176/2 (Acs.2- 23 guntas), 176/3 (Acs.2-02 guntas) and 176/4 (Ac.2-33 guntas) was assigned to Abdul Hussain, Mohd. Khaja and Pasha Miyan in the year 1960-61 and their names reflected in the pahanies for the years 1975-76. But the original assignees have sold the assigned lands in contravention of the provisions of the AP Assigned Land (Prohibition of Transfer) Act, 1977 (for short, "the Act"). Having noticed this, the 4th respondent-Mandal Revenue Officer (Tahsildar) initiated action under the provisions of the Act and resumed the subject lands vide proceedings No.B/1250/01, dated 08-02-2002 and handed over the subject lands to the 6th respondent-Deccan Infrastructure Holdings, which is a subsidiary of 5th respondent-AP Housing Board, on 10-04-2007 along with the other resumed lands and since then the subject lands are under the custody of the 6th respondent. That instead of filing appeal before the competent authority against the resumption order dated 08-02-2002, which is subject matter in WP No.2649 of 2012, the petitioners have preferred revision under Section 9 of the Act for correction of entries in revenue records. That after perusing the records, revision filed by the petitioners was dismissed vide proceedings dated 20-11-2009, which is subject matter in WP No.2649 of 2010.

5. Counter affidavit of the 6th respondent is to the effect that it is a subsidiary unit of 5th respondent created under Section 21-A of the AP Housing Board Act, 1956, and incorporated as a Company under the Companies Act, 1956, pursuant to the permission granted by the Government vide G.O.Ms.No.42, Housing (HB.1) Department, dated 27-10-2006. That the subject lands were initially allotted to the AP Housing Board along with other lands by the Government on payment of market value vide GO Ms.No.1559, dated 19-12-2007 and the 5th respondent-AP Housing Board, in turn transferred it to the 6th respondent towards its equity share. As such, the 6th respondent is the lawful owner and possessor of the subject lands. Hence, the writ petitions are liable to be dismissed.

6. Heard Smt. D.Vathsalendra, learned counsel for petitioners, learned Government Pleader for Revenue (TS) for respondents 1 to 4, Sri C.Buchi Reddy, learned Standing Counsel for respondent no.5 and Sri Darsi Ranganath Kumar, learned Counsel for respondent no.6.

7. Learned counsel for the petitioners strenuously contended that the action of the 2nd respondent refusing to entertain revision to correct the names of the petitioners in the revenue records is illegal, non-exercise of jurisdiction, when admittedly the petitioners purchased the subject lands in the years 1996-97 under registered documents from one of the sons of B. Dharma Rao (i.e. B. Krishna Sagar) being the GPA holder, and the names of the petitioners' vendor and his father are shown in the pahanies from the years 1975-76 till 1995-96. It

is stated that part of the subject land was acquired by the Government to lay pipe line and the compensation paid to the vendor of the petitioners and at that time no claim was made that it is a Government land, but surprisingly from the year 2001, the respondents claiming it as a government land. It is also contended that the resumption order dated 08-02-2002 is bad in law and unsustainable as no enquiry was conducted nor any opportunity given to the rightful owners muchless to the petitioners and no procedure worth naming is followed before passing the order of resumption of the subject lands. It is further contended that resumption of lands is not permissible after this long length of time and the authorities cannot unsettle the settled things. It is also contended that there was no condition imposed as to non-alienation in the original assignment made to the landless poor persons and therefore resumption order passed on the ground of violation of conditions of assignment cannot stand to the test of reason besides violation of principles of natural justice. It is contended that when the Government has no title to the subject lands, transfer of subject lands in favour of the 6th respondent does not arise and any such transfer is not valid in the eye of law.

8. On the other hand, learned Assistant Government Pleader for Revenue contended that the lands in Sy.No.176 being "gairan sarkari" lands, the subject lands, which is part of land in Sy.No.176, were assigned to 54 beneficiaries being landless poor persons by way of Laoni pattas in the year 1960-61 and Abdul Hussain, Mohd. Khaja and Pasha Miyan were amongst the 54 beneficiaries, who in turn sold the subject lands to various persons in contravention of the non-alienation clause mentioned in the pattas. It is further contended that as the beneficiaries have sold the subject lands in contravention of the provisions of the Act of 1977, the 4th respondent-MRO (Tahsildar), Moinabad Mandal, after causing enquiry, issued proceedings dated 08-02-2002 resuming the lands to the Government and subsequently handed over to 5th respondent-AP Housing Board on 10-04-2007, after following due procedure. It is also contended that petitioners have remedy of filing appeal against the order dated 08-02-2002 of 4th respondent, but the petitioners filed revision under Section 9 of the Act of 1977 for correction of entries in revenue records, which was ultimately dismissed by the 2nd respondent after considering the records. It is also contended that when once the transfer of subject lands itself is not permissible in law, the subsequent transfer of lands in favour of the petitioners is not valid and is void transfer, and as such the petitioners cannot claim any right or interest over the subject lands based on such transfer.

9. Learned standing counsel for the 5th respondent and the learned counsel for the 6th respondent made submissions on the lines of the submission made by learned Asst. Government Pleader for Revenue.

10. Now the short point that arises for consideration is whether the action of the revenue authorities resuming the subject lands at this length of time on the ground of violation of non-alienation condition, by the assignees is sustainable in

law.

11. Tracing the genealogy of the matter, land in Sy.No.176 admeasuring Acs.220-37 guntas situated at Azeeznagar Village of Moinabad Mandal is stated to be Government land, classified as "gairan sarkari" which means barren Government land. The Faisal patti for the year 1961-62 showed that landless poor persons, identified 52 in numbers were cultivating the lands and by virtue of shivaijama (tax deposit) for cultivating the lands and were in possession of the lands, the then Tahsildar, Hyderabad West Taluk, granted Laoni pattas to them in the year 1961 under the Laoni Rules, 1950. The fact remains the assignees of the subject lands in the above said Sy.No.176 were granted pattas under the Laoni Rules, 1950, even according to impugned order dated 08-02-2002 in proceedings no.B/1250/2001 in WP No.21088 of 2002 and permissions were given for alienation under Section 47 and 48 of the AP (TA) Tenancy and Agricultural Lands Act, 1950, pursuant thereto several transactions took place. It is the case of learned counsel for the petitioners that there was no such non-alienation clause in the laoni patta of the assignees from whom the title eventually flown to the petitioners. Whereas it is the case of learned Asst. Government Pleader for Revenue that even the pattas under the Laoni Rules, 1950, could not have been granted, for the reason, as on that date, issuance of the pattas to the landless poor persons, assignment of land was governed by the uniform revised assignment policy formulated vide GO Ms.No.1406, dated 25-07-1958 and in view of the said policy, the lands assigned to the landless poor person cannot be alienated to any third parties and on proof of any such violation, the State has power to resume the lands. The revenue records and counter of respondent no.2 also shows that the subject land as Laoni patta as such the contention of learned Asst. Government Pleader cannot hold good. The assignment granted under the Loani Rules does not prohibit alienation.

12. In fact, AP Assigned Lands (Prohibition of Transfers) Act, 1977, not applicable to the assignment made in 1961 under the Laoni Rules, as there was no condition of non-alienation in order of assignment. Issuance of a show cause notice, should not be an empty ritual. It should provide a reasonable and fair opportunity to recipient of show cause notice to defend his title and possession of valuable right to property. Facts gathered by the respondents without the petitioners' knowledge, who is in possession of the property, behind his back and without giving an opportunity to deny or rebut the factual assertion, vitiates the proceedings. (see Joint Collector, Ranga Reddy District v. P. Harinath Reddy, (2009 (4) Alt 1 (Db) & Dasari Narayana Rao v. Deputy Collector and Mandal Revenue Officer, Serilingampalli, Rr District (2010 (4) Alt 655).

13. By way of transfer, the lands went into the hands of one P. Ramchandra Rao, by way of registered deed, registered in the year 1965 and to B. Dharma Rao, by way of registered deed, registered in the year 1967, and again on his demise, through his sons, represented by one of his sons, GPA holder, to the hands of the petitioners in the years 1996-97 by way of registered deed. The machinery to

resume the subject lands was set in motion in the year 2002, by which time the subject lands have come into the hands of the petitioners.

14. Even otherwise it is to be tested whether authorities could exercise power of resumption and alter the revenue records after long lapse of time.

15. It is true that there is no limitation prescribed for exercise of corrective power, but the legal position is well settled by a catena of decisions of this Court as well as the Supreme Court that even when there is no period of limitation prescribed for exercise of power, such power must be exercised within a reasonable period. What would constitute reasonable time would again depend upon the facts of each case. By virtue of long lapse of time and intervening delay led to creation of third party rights, sometimes, bona-fide third party rights which cannot be trampled. No limitation is prescribed, it does not mean there would be no time limit. Action should be exercised immediately on the happening of violation or within a reasonable time.

16. The Supreme Court rendered in the case of State of H.P. v. Rajkumar Brijender Singh (2004 (10) SCC 585) held that exercise of revisional power after unduly long and unexplained period was impermissible; and held as under:

"We are now left with the second question which was raised by the respondents before the High Court, namely the delayed exercise of the power under sub-section (3) of Section 20. As indicated above, the Financial Commissioner exercised the power after 15 years of the order of the Collector. It is true that sub-section (3) provides that such a power may be exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. For example, in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, it could well be open for the State to submit that the facts and circumstances were such that it would be within reasonable time but as we have already noted that the order of the Collector which has been interfered with was passed in January, 1976 and the appeal preferred by the State was also withdrawn sometime in March, 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by reason of which it could be said that exercise of suo motu power after 15 years of the order interfered was within a reasonable time. That being the position, in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before the lower appellate authority is withdrawn, may be, by the State. Thus the view taken by the High Court is not sustainable.

But the order of the Financial Commissioner suffers from the vice of the exercise of the power after unreasonable lapse of time and such delayed action on his part nullifies the order passed by him in exercise of power under sub-section (3) of Section 20."

17. A perusal of the pahanies from the years 1960-61 till the year 1995-96, it is clear that entry in pattedar column, the names of the assignees are reflected and entry in possessory column, the names of the petitioners' vendor and his father are shown. The pahanies from the years 2000-01 to 2006-07 entry in pattader column, the subject lands are shown as Government lands. The case of the petitioners is that no notice is issued to them, though they are in possession of the subject lands from the date of purchase of the lands by way of registered deeds. There is no proof or material produced to show that notices were issued to the petitioners nor opportunity of hearing was afforded to them in the matter before taking a decision to resume the subject lands on the purported ground of violation of conditions of assignment by the assignees. Section 4 of the Act, 1977, prescribes the machinery and the mode for redressing the violation and for restoring the land, other than notified, to the assignee or utilization of resumed land under notified area by the Government in the public interest for public purpose. Rule 3 of the AP Assigned Lands (Prohibition of Transfers) Rules, 1977, made under Act, 1977, stipulates a detailed procedure that is to be followed for eviction of the transferee and taking possession and restoration of assigned lands, which includes, among other things, issuance of notice to the person who acquired the assigned land in contravention of the provisions of the Act, 1977. The transferee being a purchaser of the lands for valuable consideration and in possession of the lands, any proceedings concluded without noticing transferee, behind his back, affecting his valuable property rights has to be invalidated not only the ground of equity but also on the ground of principles of natural justice. Precisely for this reason 3 of the Rules contemplates issuance of such a notice to the transferee and it is mandatory. In this case no notice is issued to the petitioners who are transferees of the assigned land. Transferee of the assigned land as employed in Rule 4 of the Rules is to be construed as the person in possession of the assigned land and on whose name the assigned land is last transferred as the predecessors in-title of the transferee, whose name is shown in the possessory column as person in possession, may not be interested in prosecuting the case, as whatever title he had it sand transferred to the transferee. Though it is mentioned in the impugned order dated 8-2-2002 that notice is issued to all the persons who are in unauthorized possession of the government land, no notice is issued to the petitioners, who claim to be in possession and are the transferees of the assigned lands which is in violation of principles of natural justice. Rule 4 of the Rules requires communication of list of assigned lands to the Registration department. This Rule is followed much in breach than in practise by the authorities, which is one of the reasons for defeating the object of the enactment of the Act, 1977.

18. One more fact in this case, which cannot be lose sight is that part of the

subject land was acquired by the Government to lay a pipe line of surplus water and issued gazette notification being GO Rt.No.1997and 1998, dated 11-12-1986 showing the vendor of the petitioners as owner and occupier of the subject lands in Sy. No. 176/2, 3 and 4. It has also come on record that the vendor of the petitioners agreed to give away part of the subject land for laying pipe line to metro water works department provided compensation towards land is paid. Thereafter, the vendor of the petitioners filed claim petition before the Land Acquisition authorities in File No. F/697/1987, dated 31-12-1988 and an award was passed in favour of the vendor of the petitioners and an amount Rs.4,785/- was awarded as compensation and paid to the vendor of the petitioners. The resumption order is conspicuously silent about acquisition of part of the subject land from the vendor of the petitioners in the year 1987 recognizing him as the owner and possessor of the subject lands. At no point of time, the land acquisition officer ever stated in his proceedings that the subject lands are government lands. Except extracting Section 3(1) of Act, 1977, no reasons are stated for resuming the subject lands. Similarly, the respondent-authorities before transferring the resumed lands to the 5th and 6th respondents have not followed the procedure by calling for claims if any from the persons in possession of the lands, which is mandatory under Section 4 of the Act, 1977. As noted above, no notice was issued to the petitioners and opportunity of hearing to them before passing the impugned order, which is a mandatory requirement under Rule 4 of the Rules.

19. On the above analysis, the impugned order dated 8-2-2002 passed by the respondent-MRO (Tahsildar), Moinabad Mandal, Ranga Reddy District, is unsustainable and it is accordingly set aside.

20. With reference to the order dated 20-11-2009 passed by the 2nd respondent-Joint Collector, Ranga Reddy District, in refusing enter the names of the petitioners in the revenue records in respect of the subject lands, which is impugned in WP No.2649 of 2010 is concerned, the said order is not sustainable in law for more than one reason. A perusal of the pahanies from the years 1960-61 till 1995- 96, entry in pattedar column, except for the years 1960-61, the names of the assignees is shown and the entry in possessory column, the names of the petitioners" vendor and his father"s are shown. When it comes to the years 2000-01 till 2006-07, the entry in pattedar column, it is shown as government land and the entry in possessory column, the name of Hyderabad Metro Water pipe line is shown. It is not discernable how after more than 37 years, entry in pattedar column, it can be recorded Government land in respect of the subject lands. The record reflects continuously for a period of 37 years, the names of the assignees are shown in pattedar column and the names of the petitioners" vendor and his father is shown in the possessory column. The authorities in exercise of suo motu power cannot correct the revenue entries after a period of 37 years, which is not legally permissible. It is not the case of the respondents that the entries were made fraudulently and that act of fraud necessitated correction of entries suo motu. Altering the entries in pahanies at its

own discretion, without issuing notice and conducting enquiry, is nothing short of taking away the property rights party whose name is recorded. (see *Kallem Penta Reddy v. Mandal Revenue Officer, Saroornagar Mandal, Ranga Reddy District* (2013 (5) Ald 471), *Sulochana Chandrakant Galande v. Pune Municipal Transport* (2010) 8 SCC 467).

21. In view of above facts and circumstances, both the writ petitions are allowed. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petitions, are disposed of. There shall be no order as to costs.