
(2022) 09 TEL CK 0005
In the Telangana High Court
Case No : Writ Appeal No. 188 Of 2007

Kavvampally Budamma

APPELLANT

Vs

Mandal Revenue Officer

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 13, 13(3), 14, 19, 19(1)(e), 21, 31(2), 31A, 31C, 39(b), 39(e), 39(f), 41, 42, 162, 300A
Land Acquisition (Amendment), Act, 1984 — Section 3(f)
Telangana Assigned Lands (Prohibition Of Transfers) Act, 1977 — Section 2(6), 3, 3(1), 3(3A)

Citation : (2022) 09 TEL CK 0005

Hon'ble Judges : Ujjal Bhuyan, CJ; Surepalli Nanda, J

Bench : Division Bench

Advocate : K V Rajasree

Final Decision : Allowed

Judgement

1. Heard Mr. S.Satyam Reddy, learned Senior Counsel for the Appellants and Mr. Parsa Ananth Nageshwara Rao, learned Government Pleader for Assignment appearing for the Respondents.

2. This Writ Appeal has been preferred assailing the legality and validity of the Order dt. 15-02-2007 passed by the Learned Single Judge dismissing W.P.No.2903/2007 filed by the Appellants herein.

3. Appellants herein in the present Writ Appeal had filed W.P.No.2903 of 2007 seeking a Writ of Mandamus declaring the action of the 1st Respondent in issuing the impugned order bearing No.B/1580/2006-7, dt. 23-09-2006 seeking to resume the land in Sy.No.439/31 admeasuring Ac.1.08gts.situated at Chintakunta Village, Karimnagar as arbitrary, illegal and to set aside the same.

4. Order impugned in W.P.No.2903/2007 reads as under :

ORDER :

In the ref.1st cited, an extent of Ac.1.08 gts., of land in Sy.No.439/31, situated at Chintakunta Village, Karimnagar Mandal, was assigned to one Sri Kavvampally Durgaiah, S/o. Sailoo, R/o. Chintakunta Village for the purpose of agriculture, subject to certain conditions. In the ref. 2nd cited, a show cause notice was issued to Kavvampally Bhoodamma, W/o. Ganga Ram and Kavvampally Agamma, W/o. Durgaiah, who are the successors to show cause within 15 days from the date of receipt of this notice as to why the land in assigned to them will not be acquired for the public purpose i.e., for allotment of house sites to the poor as per the condition No.15 stipulated in 'B' Form Patta granted. In response to the above Notice through Ref. 3 & 4 they have submitted replies in writing stating that except the above land they have no other lands and if the Government resume the land, they will loose their livelihood.

2. The above replies have been examined sympathetically. But, as the land is required for the public purpose i.e., for providing house sites to the poor people, the Government issued orders for taking over the lands. If it is decided that, as per the Orders issued by the Hon'ble High Court in the ref. 5th cited and also the Government Orders in ref. 6th cited, necessary exgratia/compensation (market value and 30% solatium) and also for the trees and other constructions if existing on the land will also be paid suitably.

3. Therefore, it is decided to take over the land after the spot inspection for public purpose i.e., for providing house sites to the poor.

4. In view of the reasons explained above and as per the assignment rules, the assignment patta is cancelled and orders issued directing the Mandal Revenue Inspector, Karimnagar No.1 to take over the land under Panchanama.

6. Learned Senior Counsel for the Appellants mainly contends as follows :

i. The Learned Single Judge failed to appreciate the fact that an extent of Ac.1.08 gts., of land in Sy.No.439/31 situated in Chintakunta Village, Karimnagar Mandal, was assigned to one Sri KavvampalliDurgaiah, S/o. Sailoo, R/o. Chintakunta Village for the purpose of agriculture subject to certain conditions vide Orders No.A3/5976/78, dt. 22-07-1958 of the Tahsildar, Karimnagar, and the original assignee and the successors had been in continuous possession of the subject lands for more than 5 decades.

ii. The Learned Single Judge failed to consider the fact that the reason given in the impugned proceedings dt. 23-09-2006 issued by the Mandal Revenue Officer, Karimnagar, for resumption of Appellants land after more than 5 decades is that the subject land is being resumed for allotment of house sites to the poor as per the condition No.15 stipulated in B-Form granted to the original assignee was not at all a valid and a fair decision since the said Government decision is a malafide, biased and a unilateral decision which would eventually deprive the shelter and also livelihood to the Appellants who also belong to the poorer section of the society, affecting more than 8 families.

iii. The Learned Single Judge failed to consider the fact as borne on record that the Appellants were not provided with reasonable opportunity of hearing before cancellation of assignment of land made in their favour or their predecessors, and the Appellants had no opportunity to plead and prove that other land was available which could be allotted as house sites to the landless poor.

iv. The Learned Senior Counsel with the aforesaid submissions contended that the judgment of the Learned Single Judge dt. 15-02-2007 passed in WP No.2903/2007 has to be set aside in the interest of justice.

7. The Learned Government Pleader for assignment, on the other hand, mainly contended as follows :

a) When the assigned land is permitted to be resumed for public purpose subject to payment of compensation, the resumption of land by the Mandal Revenue Officer, Karimnagar is justified.

b) The grant of patta or assignment of the land is only permitting the assignee to enjoy the fruits or benefits of the land, while retaining the ownership to the property to the State.

c) The resumption order has been passed only after considering the reply submitted by the Appellants and therefore the resumption order does not suffer from any legal infirmity and the Learned Single Judge did not commit any error in dismissing W.P.No.2903 of 2007.

8. The Learned Single Judge dismissed W.P.No.2903/2007 vide order dt. 15-02-2007 and the relevant paras of the said order are extracted hereunder :

In a recent Judgment in W.P.Nos.1068 and 1069 of 2007, dated 19.01.2007, I considered the question and rejected the writ petition in limine. Instead of again repeating the reasons, it would be sufficient to hold that the State as a grantor of the immovable property can always resume the land from the grantee. Such power cannot be denied to the State as held by the Supreme Court in [1] Calcutta, South Satara v L.M.Deshpande [2] and S.V.V.S.V.Wadia v State of Sourashtra [3] . Secondly, three Full Benches of this Court in State of A.P. v P.Peda Chinnayya [4] , State of A.P. v Bondapalli Sanyasi [5] and Mekala Pandu (supra) have recognized this principle.

In Mekala Pandu (supra) while overruling Bondapalli Sanyasi (supra), the Full Bench of this Court held:

In the circumstances, we hold that the assignees of the Government lands are entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with full owners of the land even in cases where the assigned lands are taken possession of by the State in accordance with the terms of grant or patta, though such resumption is for a public purpose. We further hold that even in case where the State does not invoke the covenant of the grant or patta to resume the land for such public purpose and resorts to

acquisition of the land under the provisions of the Land Acquisition Act, 1894, the assignees shall be entitled to compensation as owners of the land and for all other consequential benefits under the provisions of the Land Acquisition Act, 1894. No condition incorporated in patta/deed of assignment shall operate as a clog putting any restriction on the right of the assignee to claim full compensation as owner of the land.

The writ petition is accordingly dismissed. No costs.

9. PERUSED THE RECORD :

10.(I) This Court opines that the assignment of land to Appellants was itself for a public purpose.

(a) Subject land was assigned to the assignees by granting 'B' Form patta, as the original assignees were landless poor and in discharge of States obligation to provide livelihood to the assignees made a grant in favour of the original assignees with certain conditions. Condition No.15 of the B-Form patta is as follows:

In the event of the lands being required for a project or for any other public purpose, the land will be resumed and compensation will be paid.

(b) State reserves its right to resume the land for public purpose and incorporated a condition in the B-Form patta itself. In fact, there is no much controversy about the issue regarding grant of patta is for public purpose or not for the simple reason that the Appellants/Writ Petitioners contended in the affidavit filed in support of the Writ Petition that Appellants are poor persons and that they are living there and that there is no other livelihood and shelter and its resumption for public purpose is contrary to law since grant of assignment by distributing the resources of the State shall not override any other public purpose. Therefore it is clear from the averments made in the affidavit filed in support of the Writ Petition that grant of pattas assigning the land in favour of Appellants/Writ Petitioners is only for public purpose. However, State by invoking Condition No.15 of B-Form patta, passed resumption order.

II. This Court opines that the resumption of land assigned to the original assignee (successors being Appellants/Writ Petitioners) by the State is violative of Article 21 and 300-A of the Constitution of India and the Judgment of the Learned Single Judge dt.15-02-2007 in WP No.2903/2007 holding that the resumption of land from the Petitioners vide the impugned proceedings letter No.B/1580/2006-7, dt. 23.09.2006 of the Mandal Revenue Officer, Karimnagar is legal with no illegality or infirmity in it is unsustainable for the following reasons.

i) The concept of 'public purpose' is one of the most entrenched issues in the legal field, what constitutes public purpose is an open question subject to interpretation and use. 'Public purpose' is a condition for the exercise of state's power of compulsory acquisition of private property but no definition of the phrase 'public purpose' is given either under repealed Article 31(2), or under

Article 300A or under repealed Land Acquisition Act 1894, nor any limitation prescribed. There are number of cases which have considered the word "public purpose" but none of them have proposed to lay down the definition or the extent of the expression. Black's law dictionary defines the word 'public purpose' as synonymous with governmental purpose. "A public purpose or public business" has for its objective to promote public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division. (Black's Law Dictionary 1247 (7 edition, 1999)

ii) Section 3(f) of Land Acquisition (Amendment), Act 1984, gives an inclusive definition of the phrase "public purpose". Public purpose thus includes provision for village sites, town planning, planned development of land from public funds and for further development of land for a corporation owned and controlled by the state carrying out certain schemes of government like education, health, housing, slum clearance any other scheme of development sponsored by government or for locating any public office. Land for companies would not come under the purview of public purpose in section 3(f) of the Act.

iii) A close scrutiny of this clause would reveal that except the provision for land for corporations owned or controlled by state all the remaining broad classifications are welfare functions of the state. Under section 3(f) of the Act after the 1984 Amendment the expression "public purpose" includes –

(a) the provision of village-sites, or the extension, planned development or improvement of existing village sites;

(b) the provision of land for town or rural planning;

(c) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of the government and subsequent disposal thereof in whole or in part in lease, assignment or outright sale worth the object of securing further development as planned;

(d) the provision of land for a corporation owned or controlled by the state;

(e) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State;

(f) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by government, or by any authority established by government for carrying out any such scheme, or, with the prior approval of the appropriate government, by a local authority or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a state, or a co-operative society within the meaning of any law relating to cooperative societies for the time being in force in any state; (vii) the provision of land for any other scheme of development sponsored by government

or, with the prior approval of the appropriate government by a local authority;

(g) the provision of any premises or building for locating a public office.

iv) Certain general considerations or guidelines relating to the meaning of the expression "public purpose" deducible from the following cases is as follows :

(a) In "Hamabai Framjee Petit v. Secretary of State" (1914-15) 42 IA 44

government had given certain land in Bombay on lease. Under the terms of the lease, the government had the right to resume the possession, subject to paying compensation, it is desired to use it for a public purpose. The government gave notice of their intention to resume possession with the object of using the land for providing residential accommodation to government servants at reasonable rates. Privy council held that the resumption of land was for a public purpose and therefore valid. J. Bachelor approved the following observation in this judgment. The Phrase 'public purpose' means general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned.

(b) In "Somavathi v. State of Punjab AIR 1963 SC 151", the Supreme Court observed as follows:

"Broadly speaking, the expression 'public purpose' would however include a purpose in which the general interest of the community as opposed to the particular interest of the individuals, is directly and vitally concerned".

(c) In "Venkatamma v. City Improvement of Trust Board, Mysore 1973 (1) SCC 188" an improvement scheme was drawn on the basis of several merchants to deposit the costs of acquisition for shopping sites. It was held that even if the scheme was that the shopping sites would be let out to provide individuals who would erect shops thereon, it cannot be contended that the land for shopping sites was not being acquired for a public purpose. Any purpose, which directly benefits the public or a section of the people, is a public purpose, moreover, development dealing with the improvement of cities in this country. So long as the object is development and the land is made fit for the purpose for which it is acquired there is no reason why the state should not be permitted to see that further development of the land takes place in the directions for which the land is acquired even though it may be through private agencies. The judicial trend discernible from these cases has been that even a purpose which benefits individuals does not lose the character of public purpose, if such individuals are benefited not as individuals but in furtherance of some scheme or plan aiming at welfare or utility.

III. Thus, in view of the judicial interpretation of the word "public purpose" even providing house site or providing livelihood to landless poor can be held to be public purpose. Hence, this Court opines that the assignment of land to the Appellants/Writ Petitioners to eke out their livelihood is also public purpose. State assigned the land in favour of the original assignee subject to certain conditions and since the Appellants are successors of the original assignee being landless

poor or persons in distress, the intention to assign the lands by way of B-Form Patta to the assignees being to eke out their livelihood by providing means of livelihood in discharge of States obligation under Article 39 Clause (b) of the Constitution of India i.e., distribution of ownership and material resources of the community as best to subserve the common good. Therefore assignment of agricultural land by distributing the material resources is to sub-serve the need of the landless poor or persons in distress to eke out their livelihood and to live with dignity. The Apex Court in its judgment "Jilubhai Nanbhai Khachar v. State of Gujarat 1995 Suppl. (1) SCC 596" observed as follows :

"Those without land suffer not only from an economic disadvantage, but also a concomitant social disadvantage. In the very nature of things, it is not possible to provide land to all landless persons but that cannot furnish an alibi for not undertaking at all a programme for the redistribution of agricultural land. Agrarian reforms therefore require, inter alia, the reduction of the larger holdings and distribution of the excess land according to social and economic consideration. We embarked upon a constitutional era holding forth the promise that we will secure to all citizens justice, social, economic and political, equality of status and of opportunity; and, last but not the least, dignity of the individual Indeed, if there is one place in an agriculture dominated society like ours where citizens can hope to have equal justice, it is on the strip of land which they till and love, the land which assures to them dignity of their person by providing to them a near decent means of livelihood."

It is further held:

"Property, therefore, accords status. Due to its lack man suffers from economic disadvantages and disabilities to gain social and economic inequality leading to his servitude. Providing facilities and opportunities to hold property furthers the basic structure of egalitarian social order guaranteeing economic and social equality. In other words, it removes disabilities and inequalities, accords status, social and economic and dignity of person Property in a comprehensive term is an essential guarantee to lead full life with human dignity, for, in order that a man may be able to develop himself in a human fashion with full blossom, he needs a certain freedom and a certain security. The economic and social justice, equality of status and dignity of person are assured to him only through property." (Emphasis is supplied).

IV. The purpose of assignment of land either under the Board Standing Orders or under the land reforms legislations to the weaker sections of the society by the State is obviously in pursuance of its policy to empower the weaker sections of the society. Having assigned the land, the State cannot deprive the Appellants of the welfare benefit or public assistance. Deprivation of assignee's right to enjoy the property assigned to him may affect his dignity and security. It may adversely affect the equality of status and dignity.

V. The right to live with human dignity, free from exploitation is enshrined in

Article 21 and derives its life breadth from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include the right to live with human dignity, the right to take any action which will deprive a person of enjoyment of basic right to live with dignity as an integral part of the constitutional right guaranteed under Article 21 of the Constitution of India.

VI. In "Chameli Singh v. State of Uttar Pradesh 1996 (2) SCC 549 : AIR 1996 SC 1051", a Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful.

The Court further observed that:

"Shelter for a human being, therefore, is not mere protection of his life and limb. It is however where he has opportunities to grow physically, mentally, intellectually and spiritually. The right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but the right to all the infrastructure necessary to enable them to live and develop as a human being."

VII. In "U.P. Avas Evam Vikas Parishad v. Friends Co-operative. Housing Society Limited 1995 Suppl. 3 SCC 456 : AIR 1996 SC 114", the right to shelter has been held to be a fundamental right which springs from the right to residence secured in Article 19(1)(e) and the right to life guaranteed by Article 21. To make the right meaning to the poor, the state has to provide facilities and opportunities to build houses.

VIII. Article 300-A of the Constitution of India, protects right of an individual, but such right in the property can be deprived of save by authority of law.

IX. The right to property is now considered to be not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension (Vide : Tukaram Kanna Joshi v. M.I.D.C.) – 2013 (1) SCC 353 : AIR 2013 SC 565.

X. Right to property of a private individual, though, permitted to be deprived of, it must be by authority of law. Still, Article 25 (1) of the Universal Declaration of Human Rights recognized such right in property as human right, which reads as follows:

"Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

XI. Right to property in India at present is protected not only under Article 300-A of the Constitution of India, but also recognized as human right under Article 25 (1) of the Universal Declaration of Human Rights.

XII. Hence, the only authority of law to deprive a person from his property is acquisition of land under the provisions of relevant law.

XIII. In the absence of any statutory foundation, mere reserving right to resume the land other than violations of conditions, is against intention of the State in providing livelihood by issuing B-Form patta assigning agricultural land in favour of the Appellants/Petitioners. Therefore, depriving the Appellants/Petitioners' livelihood by resuming the land based on conditions of B-Form patta is nothing but violation of fundamental right guaranteed under Article 21 of the Constitution of India and such deprivation of right in land is also violation of Article 25 (1) of Universal Declaration of Human Rights.

XIV. Such deprivation is permissible only by authority of law like the Land Acquisition Act, 1894 or the Act, 2013.

XV. Time and again, the Apex Court construed the meaning of word "Law" not only with reference to Article 13 of the Constitution of India, but also with reference to Article 300-A and 31C of the Constitution of India. The Apex Court in "Bidi Supply Co. v. Union of India AIR 1956 SC 479" and "Edward Mills Co. Ltd. v. State of Ajmer AIR 1995 SC 25" held that the law, in this Article, means the law made by the legislature and includes intra vires statutory orders.

XVI. Therefore, whatever legislation made by the legislature alone can be said to be law within the meaning Article 13 (3) of the Constitution of India. At the same time, the Apex Court in "Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh 1982 (1) SCC 39 : AIR 1982 SC 33" while deciding the issue with reference to Article 300-A of the Constitution of India defined the word "authority of law", and held that Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word 'law' in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order; having the force of law, that is positive or State made law.

XVII. In "Hindustan Times v. State of U.P. 2003 (1) SCC 591 : AIR 2003 SC 250"

the Apex Court while referring to "Bishambhar Dayal Chandra Mohan" (referred supra) held as follows:

"By reason of the impugned directives of the State the petitioners have been deprived of their right to property. The expression 'law', within the meaning Article 300A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law."

XVIII. The Apex Court in its recent judgment in B.K. Ravichandra and others v Union of India and others 2020 SCC On line SC 950 held at paras 21 and 23 as follows:

"21. Although the right to property is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable constitutional right. The importance of this right has been emphasized and iterated several times by this court. In Delhi Airtech Services Pvt Ltd v. State of U.P ((2011) 9 SCC 354) for instance, this court underlined the issue as follows:

It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property." Property must be secured, else liberty cannot subsist" was the opinion of John Adams. Indeed the view that property itself is the seed bed which must be conserved if other constitutional values are to flourish is the consensus among political thinkers and jurists."

23. The decision in K.T. Plantation Pvt. Ltd. v. State of Karnataka ((2011) 9 SCC 1) interpreted Article 300A and held that:

"168. Article 300A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law.

169. This Court in State of W.B. v. Vishnunarayan and Associates (P) Ltd. while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300-A that the State or executive officers cannot interfere with the right of others unless they can point out the specific provisions of law which authorizes their rights."

XIX In view of the amendment to sub-section (2A) of Section 3 of the Act 9 of 1977, the assignee is entitled to sell the property after expiry of 20 years period and also permitted the assignee to mortgage the property to Co-operative banks, Primary Agricultural Credit Societies or National Banks. If the assignees are unable to discharge the debts, the property is being sold in the auction. In such a situation, the question of retaining ownership over the property after assignment

does not arise.

XX. In view of our foregoing discussion, exercise of power by the Executive to resume the land for public purpose is contrary to Article 300-A of the Constitution of India.

XXI. Yet, Article 31A of the Constitution of India permits the State to acquire the property even against the consent of the owner i.e. compulsory acquisition as the State has got eminent domain over the property in the State. At the same time, Article 31C of the Constitution of India saves certain laws giving effect to certain directive principles. According to it, no law giving effect to the policy of the state towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

XXII. The immunity is extended only to law but not to any Government Order issued by exercising power under Article 162 of the Constitution of India. The word 'law' used in Article 31C is only with reference to Article 13 of the Constitution of India and it can be construed as legislation passed either by Parliament or State Legislature. But in the present facts of the case, protection under Article 31C of the Constitution of India is not available to such acts of the State so as to deprive a right in the property of a citizen of the State in the guise of eminent domain.

XXIII. Article 39(b) of the Constitution of India permits the State to distribute the natural resources, which is as follows:

"39(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good"

XXIV. Taking advantage of Article 39(b) of the Constitution of India, the State, now, intended to distribute its resources in different means i.e. by resuming the land assigned to the landless poor by exercising power under Article 162 of the Constitution of India. No doubt, State is competent to distribute such natural resources i.e. land etc. within its available resources.

XXV. In any view of the matter, it is made clear that when the land was assigned, it is always subject to Article 21 and 300-A of the Constitution of India.

XXVI. One public purpose cannot defeat the other public purpose.

XXVII. According to Act 9 of 1977, alienation is prohibited initially. Now, in view of amendment to sub-section (2A) of Section 3 of the Act 9 of 1977, prohibition is only up to 20 years and not a absolute prohibition.

XXVIII. The word "transfer" is defined under Section 2(6) of the Act 9 of 1977, which means any sale, gift, exchange, mortgage with or without possession, lease or any other transaction with assigned lands, not being a testamentary

disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction. Whereas, Section 3 of the Act 9 of 1977 prohibits transfer of assigned lands, but in view of the amendment, prohibition is limited to 20 years.

XXVIX. The language used in sub-section (1) of Section 3 of the Act 9 of 1977 is clear that when a land has been assigned by the Government to a landless poor person for purposes 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 to 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.

XXX. Therefore, there was a complete prohibition of transfer of assigned land. The word "transfer" in sub-section (6) of Section 2 strictly construed. The last word of the same provision i.e. "other transaction" assumes importance.

XXXI. Now, the State proposed to resume the land by payment of compensation. When the State is proposing to resume the land by paying compensation, it amounts to transfer within the meaning of sub-section (6) of Section 2 of the Act 9 of 1977.

XXXII. The definition of word "transfer" in sub-section (6) of Section 2 of the Act 9 of 1977 is inclusive definition; it covers different transactions including transfer of title of the property by the assignee to others. Still, the resumption of assigned land is involuntary transfer of ownership in the assigned land for consideration i.e. compensation payable to the assignee and such resumption of assigned land on payment of compensation is contrary to Section 3 of the Act 9 of 1977 and the same is violative of fundamental rights guaranteed under Article 21 and 300-A of the Constitution of India.

XXXIII. When the Government recognised the Appellants as landless poor, assigned land to eke out their livelihood and relieved them from their poverty, if for any reason, the land is resumed by the State by paying compensation, they will again be termed as "landless poor persons", and it is an endless process of distribution of natural resources in compliance of Article 39(b) of the Constitution of India. The Judgments relied upon and referred to by the Learned Single Judge in Judgment dt. 15-02-2007 in W.P.No.2903/2007 would not apply to the facts of the present case in view of the simple fact that one public purpose cannot defeat the other public purpose and the resumption of lands if permitted would be clearly in violation of Article 21 and 300-A of the Constitution of India and the protection under Article 31(c) of the Constitution of India will not apply to such unilateral Acts and decisions of the State Government which are not based on any law but based on certain whimsical executive instructions which are malafide, biased and politically motivated. The tenor of the order of resumption passed by 1st Respondent herein shows that the Government had already

decided to allot the subject land in question to the poor people of Karimnagar District for the purpose of house sites and therefore no option was left with the 1st Respondent but to resume the land. Therefore it is clear that the Appellants did not get a fair hearing or a reasonable opportunity since a bare perusal of order of resumption also indicates that the Appellants were not even called upon to put forward their case on factual parameters and the same is also in clear violation of Principles of Natural Justice. The Learned Single Judge failed to consider the vital fact that when the assignment of lands to the assignees/appellants is to provide livelihood to them by issuing B-Form patta, the Appellants cannot be deprived of their livelihood since the resumption order expropriates the land owner i.e., the beneficiary under the assignment, and all these aspects apparently have not been considered by the Learned Single Judge.

XXXIV. Division Bench of this Court vide its orders dt. 01-03-2007 in WAMP No.351/2007 in W.A.No.188/2007 ordered "status quo" existing as on today shall be maintained until further orders and the said status quo order is still subsisting.

11. In view of the foregoing discussion, this Court opines that the resumption of land assigned to the Appellants/Writ Petitioners by the order impugned that is letter No.B/1580/ 2006-7, dt. 23.09.2006 of the Mandal Revenue Officer, Karimnagar is violative of Article 21 and 300-A of the Constitution of India and the protection under Article 31C of the Constitution of India will not apply in the present case since the issuance of the impugned resumption order is not based on any law. Accordingly, order dated 23.09.2006 of the Mandal Revenue Officer, Karimnagar is hereby quashed. Consequently, the order of the Learned Single Judge dt. 15-02-2007 passed in W.P.No.2903/2007 is set aside and the Writ Appeal is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous applications, if any, pending in this writ petition shall stands dismissed.