
(2016) 10 AP CK 0020

In the Andhra Pradesh High Court

Case No : W.P. Nos. 29827 of 2012 and 22765 of 2016

M. Ramakrishna

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 13-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 22A

Citation : (2016) 6 ALT 755 : (2017) 1 AndhLD 545

Hon'ble Judges : Sri S.V. Bhatt, J.

Bench : Single Bench

Advocate : Dr. P.B. Vijay Kumar, Counsel, for the Petitioner; G.P. for Revenue (AP), for the Respondents

Final Decision : Disposed Off

Judgement

Sri S.V. Bhatt, J. - Heard Mr. P.B. Vijay Kumar for petitioners and the Government Pleader (Assignment).

2. Petitioners are common in these two writ petitions but the prayers though on the same subject matter are slightly different and read thus :-

W.P.No. 29827 of 2012

"??.. to issue any writ, order or direction particularly one in the nature of Mandamus declaring the endorsement Rc.No.2008/2012/C dated 25-05-2012 of the 3rd respondent basing on the instructions Rc.No.4829/2011/E1 dated 16-05-2012 of the 2nd respondent as arbitrary, illegal, contrary to record and besides being contemptuous and consequently by nullifying the same permit the petitioners in terms of G.O.Ms.No.1117, Revenue (Assignment. I) Department dated 11-11-1993 to alienate their land of Ac.5.00 in S.No.280/2 (Carved out of S.No.134) of Chodipalli Village of Atchutapuram Mandal, Visakhapatnam, by issuing NOC?."

W.P.No.22765 of 2016

"??. to issue any writ, order or direction particularly one in the nature of Writ of Mandamus declaring the inaction on the part of respondents in addressing the Sub-Registrar deleting the particulars of the lands belonging to the petitioners comprising of Ac.5.00 in S.No.280/2 (Carved Out of S.No.134) of Chodipalli village of Atchutapuram Mandal, Visakhapatnam, enabling them to alienate, as arbitrary, illegal, contrary to record and besides being contemptuous and consequently direct the respondents, District Collector and Tahsildar to address the Sub-Registrar and a further direction to the Sub-Registrar to register proposed documents to be presented in respect of their land of Ac.5-00 in S.No.280/2 (Carved out of S.No.134) of Chodipalli Village of Atchutapuram Mandal, Visakhapatnam, in terms of G.O.Ms.No.279 dated 04-07-2016?."

3. The circumstances set out in W.P.No.22765 of 2016 are referred for convenience. The learned counsel appearing for both parties have submitted that the consideration of prayer in W.P.No.22765 of 2016 would substantially answer the prayer in W.P.No.29827 of 2012.

4. Petitioner No.1, M.Ramakrishna, claims that he is an ex-serviceman, retired from Army Corps of Signals. Petitioner No.1 requested for assignment of land under ex-serviceman quota. The request of petitioner No.1 was forwarded by the C.M. Secretariat, Hyderabad, vide letter No.3638, dated 03.11.1995, to the District Collector, Visakhapatnam-respondent No.2. Respondent No.2 vide letter No.5280/95/A10, dated 26.11.1995, called upon respondent No.4 to identify suitable land for assignment in Bheemunipatnam Mandal and report to respondent the details of Government land available for assignment.

5. On 09.03.1996, respondent No.4 has given the details of available Government land for assignment. On the request of respondent No.2, verification report on the genuineness of claim of petitioner No.1 was submitted by Zilla Sainik Welfare Officer on 30.11.1996. Respondent No.1 issued Memo No.23328/Asn.I(1)/97-6, dated 06.09.1997, facilitating assignment in the name of female member in the family. As the controversy, in fact, centers around the assignment made on 26.06.2001, viz., whether the assignment in favour of petitioner No.2 is under ex-serviceman category. Memo, dated 06.09.1997 is extracted for ready reference.

"Government of Andhra Pradesh Revenue (ASN.I) Department

Memo No.23328/Asn.I(1)/97-6

Dated 06-09-1997.

Sub:- Allotment of Government lands and surplus lands for agricultural and house site purposes ? Alienation of land/pattas for agricultural lands and house sites in the name of female member in the family instead of joint title ? Instructions reiterated.

Ref:- 1) Govt. Memo No.613/B1/85-1, dated. 12.3.1985.

2) From the Women's Development & Child Welfare Dept. U.O. Note No.3284/P1/97-1, dated 18.6.1997.

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Instructions have been issued in the Government Memo 1st cited for issue of pattas for agricultural lands and house sites in the name of female member in the family.

2. The Women's Development & Child Welfare in their U.O. Note 2nd cited while informing that the major decisions taken by the Government as laid down in the VI Five Year Plan and reiterated in the National Perspective Plan for Women (1988- 2000) was to give Joint Title to husband and wife in developmental activities involving transfer of assets like distribution of surplus ceiling land, Government and village common land, house sites, houses and beneficiary oriented economic units, and requested this Department to issue suitable instructions to the concerned for effective implementation of the orders and also for regular monitoring of the implementation at State level.

3. Government have carefully examined the point of giving Joint Title to husband and wife and decided that it will be desirable to assign the land in the name of wife only. This should also be made applicable to households headed by women.

4. Government, therefore, reiterate all the earlier instructions issued in Government Memo 1st cited, subject to the modification effected in this memo.

5. The Commissioner of Land Revenue is requested to ensure that the instructions are followed scrupulously by all the concerned for effective implementation of the programme and to monitoring the programme at State level. Suitable format for periodical review may be devised for this purpose and the progress of work monitored regularly.

6. The receipt of the memo shall be acknowledged.

G.Sudhir,

Secretary to Government

To

The Commissioner of Land Revenue, A.P., Hyderabad,

Copy to all Collectors in the State.

Copy to Women's Development & Child Welfare Dept.

Copy to Asn.II, III & IV Sections."

6. Therefore, the policy of Government encourages assignment to a female in the family. On 26.06.2001, the Mandal Revenue Officer assigned an extent of Acs.5.00 cents of land in Sy.No.280/2 of Chodipalli Village, Atchutapuram Mandal, Visakhapatnam District in favour of M.Lakshmi Kalyani, wife of

M.Ramakrishna, petitioner No.1 herein. The photograph of petitioner No.1 is affixed to the grant for demonstration of assignment to a female member.

7. The case of petitioners is that the assignment, dated 26.06.2001, though is in favour of petitioner No.2, the assignment is made under the category of ex-serviceman and the petitioners are entitled to sell the land in accordance with the policy of the Government after completion of ten years from 26.06.2001. The petitioners encountered a few difficulties in this behalf. Therefore, the petitioners filed W.P.No.25804 of 2011 for mandamus declaring the inaction of the Revenue Divisional Officer, Narsipatnam, Visakhapatnam-respondent No.3 therein in denotifying the land in terms of G.O.Ms.No.1117, Revenue (Assignment-I) Department, dated 11.11.1993, and further action of the Sub-Registrar, Yellamanchili, Visakhapatnam-respondent No.4 therein in insisting upon production of denotification for registering the land, as illegal, arbitrary and without jurisdiction. On 15.09.2011, the writ petition was disposed of and the operative portion of the order reads thus:

"Since the petitioners? claim to have submitted representations dated 23.07.2011, 27.07.2011 and 24.08.2011, which are pending before the second respondent for more than two months, and in view of the urgency expressed, in the affidavits filed in support of these writ petitions, of sale of the lands being necessary to performance of the petitioners? daughters marriage, I consider it appropriate to dispose of the writ petitions directing the third respondent to consider the representations of the petitioners? dated 23.07.2011, 27.07.2011 and 24.08.2011, in accordance with law, and pass orders thereupon, within a period of three weeks from the date of receipt of a copy of this order."

8. Respondent No.3 issued Endorsement No.2008/2012/C, dated 25.05.2012, to petitioners. Respondent No.3 has communicated the decision of respondent No.2 refusing to grant ?No Objection Certificate? for alienation of the subject matter of the writ petitions. The petitioners thereafter filed W.P.No.29827 of 2012 complaining against inaction in not denotifying the land as directed by this Court.

9. On 24.09.2012 in WPMP No.38060 of 2012 in W.P.No.29827 of 2012, the following interim direction was issued:

"?.

The District Collector, however, addressed a letter dated 16.05.2012 to the 3rd respondent requiring him to reject the application for issuance of ?No Objection Certificate?. The 3rd respondent promptly implemented the same by making endorsement, dated 25.05.2012. In case, the District Collector entertains any doubt, as to the nature of the assignment in these circumstances, he ought to have sought a clarification from the Government. However, he remains oblivious in exercising the power to interpret and became responsible for the impugned order.

There shall be interim direction as prayed for."

10. The case of the petitioners is that notwithstanding the positive direction issued by this Court, the respondents have not taken steps for denotifying the subject land under Section 22-A of the Registration Act, 1908 (for short 'the Act') and the petitioners are prevented to sell the land though are absolute owners. The respondents filed counter-affidavit in W.P.No.29827 of 2012. While the matter stood thus, petitioners filed W.P.No.22765 of 2016 for the relief referred above.

11. The case of petitioners is that the assignment of subject land in favour of petitioners is under the category meant for ex-serviceman. The patta was issued in favour of petitioner No.2 alone in view of the policy decision taken and communicated by the Government vide Memo, dated 06.09.1997. With the expiry of ten years from the date of assignment i.e. 26.06.2001, the petitioners are entitled to alienate the land and continuation of the subject land in the prohibitory list maintained under Section 22-A of the Act is illegal, arbitrary and beyond the jurisdiction of the respondents.

Therefore, the petitioners pray for a positive direction to delete the subject land from the prohibitory list communicated under Section 22-A of the Act.

12. Respondent Nos.3 and 4 though have initially resisted assertion of the petitioners that subject matter of the writ petitions is assignment in favour of ex-serviceman, this Court directed production of record of assignment and also field reports prepared by the revenue officials from time to time. The record has been produced. With the assistance of learned counsel appearing for the parties, I have perused the record and after perusing the record, this Court is of the view that the assignment though stands in the name of petitioner No.2, the assignment has been made to petitioner No.2 in execution of a policy decision as communicated through Memo, dated 06.09.1997 and therefore the assignment is treated as one made under ex-servicemen category. The respondents have not pressed this fact in issue for consideration or adjudication by this Court. The statement of learned Government Pleader that the subject matter of the writ petitions is land assigned to ex-service personnel, but is made in favour of petitioner No.2, is placed on record.

13. Now, the next point for consideration is once the assignment is made under the category meant for ex-serviceman, whether the petitioners are entitled for a direction to delete the subject matter of the writ petitions from the prohibitory list under Section 22-A of the Act or not.

14. Order 15- para 3 of the A.P. Board Standing Orders deals with persons eligible for assignment. Through G.O.Ms.No.743, Revenue, dated 30.04.1963, ex-servicemen are included in the list of persons eligible for assignment. The conditions of assignment in favour of the ex-servicemen are with the following concessions:

"(iv) The grant is subject to the following concessions:

- (a) No sub-division fee shall be collected from the assignee.
- (b) The collection of tree value up to Rs.50/- will be waived.
- (c) No land revenue or cesses will be collected for the first three years except for the extent, if any, which had already been brought under cultivation before the date of assignment. Water rate shall, however, be charged if the lands are irrigated with Government Water.
- (v) The grant of lands under this paragraph will be subject to the following conditions:
 - (a) Land assigned should not be sold or otherwise alienated for a period of ten years.

Note: The lands assigned may be mortgaged to the Government or to a Co-operative Society, recognised by the Government including a land Mortgage Bank or the Panchayat Samithi for obtaining loans for development of the land. The loan to be advanced will be in instalments not less than 3 depending upon the improvement effected on the land. No prior permission of the Government is necessary for such mortgage."

15. The assignment to petitioner No.2 was made under G.O.Ms.No.1117, Revenue (Assignment I) Department, dated 11.11.1993. G.O.Ms.No.1117, dated 11.11.1993, does not impose any condition for obtaining ?No Objection Certificate? after completion of ten years or for that matter, prohibits alienation of assigned land by an ex-serviceman.

16. The Government in modification of the policy set out in G.O.Ms.No.1117 Revenue (Assignment I) Department, dated 11.11.1993, issued G.O.Ms.No.307, Revenue (Assignments.I) Department, dated 06.06.2013. One of the policy decisions enunciated through G.O.Ms.No.307, dated 06.06.2013, is to issue ?No Objection Certificate? to sell the land assigned under ex-serviceman category. G.O.Ms.No.307, dated 06.06.2013, is superseded by G.O.Ms.No.279, Revenue (Assignment.I) Department, dated 04.07.2016. The conditions now in vogue read thus:

"6. Accordingly, Government after careful examination of the matter, issue the following orders in supersession of the orders issued in G.O.Ms.No.307, Revenue (Assn.I) Department, dated 06.06.2013:-

(i) The procedure of issuing ?NOC? shall be dispense with. There shall be no need for obtaining ?NOC? in all cases of assignment of ex-servicemen and freedom fighters in which a period of 10 years has expired and there is no dispute on the land with the Government.

(ii) All such cases without dispute shall be deleted from the prohibitory list under Section 22-A of Registration Act, 1908 and furnished to the Registration Department.

(iii) In respect of cases in which there is a dispute with Government about the genuineness of the assignment or otherwise a list of such cases shall be prepared by District Collector and furnished to Registration Department by following the procedure under Section 22-A. The Sub-Registrar shall enter the details of such disputed lands in the online records deleting all other lands in which there is no dispute.

7. The Spl.C.S. & Chief Commissioner of Land Administration and the District Collectors shall take further necessary action accordingly in the matter."

17. Mr. P.B. Vijay Kumar places strong reliance upon the underlying policy of assignment in favour of ex-serviceman and contends that the assignment in favour of ex-serviceman cannot and could not be treated as assignment made in favour of other categories under Order 15- para 3 of the A.P. Board Standing Orders. The condition of non-alienability is operational for a period of ten years and with the expiry of ten years, the assignees become owners of the assignment land and are free to alienate according to convenience and wish. When the assignment was made, the petitioners at best can be said as bound by the policy in vogue and according to counsel for the petitioners, G.O.Ms.No.1117, Revenue (Assignment. I) Department, dated 11.11.1993, does not impose condition to obtain ?No Objection Certificate? from the Department when the alienation is made. Reference to G.O.Ms.No.307, dated 06.06.2013, is unavailable and incorrect. Alternatively, with the issuance of G.O.Ms.No.279, dated 04.07.2016, continuation of subject land in the prohibitory list is illegal and arbitrary.

18. On the other hand, learned Government Pleader confines his submission to the difficulty faced by the Department on account of Memo No.20072/Assm.II (1)/2015, dated 20.04.2016, where under a finding is recorded that the petitioners are financially wealthy and are not entitled to get ?No Objection Certificate? for sale of the assigned lands as per the above conditions. Further, Paragraph 6 (iii) of G.O.Ms.No.279, dated 04.07.2016, is attracted for there is dispute on the land with the Government. Therefore, he justifies the action of the respondents to this limited extent.

19. In reply to the submission of learned Government Pleader, counsel for petitioners relies upon the Communication, dated 13.08.2013, issued by the Chief Commissioner of Land Administration and contends that placing reliance upon interdepartmental communication, not communicated to petitioners, refusing to delete the subject matter from the prohibitory list is unsustainable.

20. Now the point for consideration is whether the petitioners are entitled for issue of appropriate direction to respondent No.5 to delete subject land from the prohibitory list maintained by respondent Nos.2 to 5.

21. The point is briefly considered from the admitted and undisputed position viz., the subject land was assigned in favour of petitioners under the category meant for ex-serviceman. The condition imposed in G.O.Ms.No.743, Revenue (B)

Department, dated 30.04.1963, prohibits the assignee (ex-serviceman) from alienating the land assigned for a period of ten years. With the expiry of ten years, according to the policy in vogue, the assignees/ex-servicemen are entitled to alienate the assigned land and are not required to take ?No Objection Certificate? from respondents.

22. The case of the respondents that one or the other conditions stipulated in G.O.Ms.No.279, dated 04.07.2016, is attracted to the case on hand is merely noted to be rejected. The factual basis for the contention is intra-departmental communication, dated 13.08.2013. As already noted, the decision borne out by letter, dated 13.08.2013, was not communicated to petitioners and on that ground, un-communicated letter cannot affect the right of petitioners. This contention of respondents is rejected. Therefore, the reasons weighed with the respondents in 2012 or continued to weigh till issuance of G.O.Ms.No.279, dated 04.07.2016, do not subsist as on date. By reference to the concessions and conditions with which assignment in favour of ex-serviceman is made, this Court is of the view that the writ petitions can be ordered by this order:

(a) subject matter of the writ petitions shall be treated as assignment made in favour of petitioner No.2 under the category of ex-serviceman;

(b) the period of ten years expired by 25.06.2011;

(c) the continuation of subject matter of the writ petitions in the prohibitory list maintained and communicated under Section 22-A of the Act is illegal and arbitrary;

(d) respondent Nos.2 to 4 are directed to issue appropriate communication deleting the subject matter of writ petitions from the prohibitory list maintained under Section 22-A of the Act within six weeks from the date of receipt of a copy of this order; and

(e) if a document is presented by petitioners for registration or transfer of subject matter of the writ petitions, respondent No.5 is directed to consider the document in accordance with the provisions of the Act and the Indian Stamp Act, 1988 without reference to communication or notification received under Section 22-A of the Registration Act.

23. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.