

(2001) 08 AP CK 0080
In the Andhra Pradesh High Court
Case No : Writ Petition No. 33825 of 1997

Shyam Sunder

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 2(1), 3, 3(1)
Andhra Pradesh Assigned Lands (Prohibition of Transfer) Rules, 1977 — Rule 16
Constitution of India, 1950 — Article 226

Citation : (2001) 5 ALD 766 : (2001) 6 ALT 128

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : Mr. Vinod Kumar Deshpande, for the Appellant; Government Pleader for Assignment, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition is filed challenging the orders passed by the 5th respondent-Mandal Revenue Officer, Adilabad vide Proceedings No.c/7006/92, dated 19-11-1997 cancelling the assignment granted in favour of one Mirza Mohammad Ali Baig.

2. The petitioner is the purchaser of the land assigned to Mirza Mohammad Ali Baig. The said person was assigned this land under Laoni Rules of 1356-Fasli to an extent of Ac.12.00 in S.No.2/3 of Dasnapur Village, Adilabad Taluk and District.

3. It is the case of the petitioner that Mirza Mohammad Ali Baig was granted patta by the District Collector, Adilabad bearing No.156 of 25-4-1356-Fasli under Laoni Rules, 1347-Fasli. The correspondence took place for cancellation of the patta on the ground that he did not cultivate the land within 3 years which is one of the conditions for grant of assignment. But those grounds need not be referred to as the Board of Revenue has directed the authorities not to cancel the

patta on that ground and close the file. However, the original assignee sold the land to one Raji Reddi on 4-5-1970 by a registered deed. In turn Raji Reddy sold the same under a registered sale deed on 29-3-1973 to the petitioner. While the matter stood thus, the petitioner was issued a show-cause notice dated 11-4-1997 as to why the assignment should not be cancelled and the transfer in his favour should not be declared as hit by the provisions of the Andhra Pradesh Assigned Lands Act, 1977 (Act 9 of 1977). To the said show-cause notice, the petitioner submitted an explanation on 10-4-1997. However, the order was passed on 19-11-1997 resuming the land from the possession of the petitioner on the ground that the transfer was in contravention of the provisions of Section 3 of Act 9 of 1977. The said order was assailed in this writ petition.

4. The learned senior Counsel appearing for the petitioner submits that the entire approach of the authorities is illegal and contrary to law. The land in question does not fall within the definition of the assigned lands inasmuch as there was no condition of non-alienability. The only condition which was attached for grant of assignment is that the land should be cultivated within 3 years from the date of assignment. He further submits that the show-cause notice was issued on the basis of G.O. Ms. No.1406, dated 26-7-1958, wherein a condition of heritability and non-alienability is contained. Therefore, the order passed is illegal and the same is liable to be set aside. He further submits that in *N. Jagadish Babu v. Jogeeta Bai*, 1997 (4) ALD 294, this issue was considered by this Court and also in *Rambagh Satyanarayana and others Vs. Joint collector, R.R. Distt., Hyd. and others*, , wherein it was held that if the condition of non-alienability is not therein the order of assignment or such a condition is not available in the relevant rules as on the date when the assignment was granted, it is not permissible for the authorities to take action u/s 3 of Act 9 of 1977.

5. The learned Government Pleader, however, submits that the very intendment of grant of patta to the landless poor is frustrated if the assignee is allowed to transfer the land in favour of the third parties and even as per the special Laoni Rules, for violation of any condition of assignment, the same is liable to be cancelled. He refers to clause 16 of the conditions of Laoni Rules (Special) and submits "if the land has been transferred in contravention of the above conditions", it is always open for the authorities to resume the land. He relies on, the judgment of this Court reported in *K. Narayanaswami Naidu and Another Vs. State of A.P. and Others*, and also a decision reported in *Dharma Reddy v. Sub-Collector Bodhan, Nizamabad District* 1987 (1) ALT 124 (FB). The learned Counsel also submitted that an appeal is available to the petitioner under the rules and the petitioner without filing any appeal, filed the present writ petition. So, on this ground alone, the writ petition is liable to be dismissed when the petitioner failed to avail an alternative remedy.

6. In the instant case, the writ petition is filed on the principal ground that the authority has no jurisdiction to pass an order of resumption. Since the jurisdictional aspect is challenged in this case, the writ petition cannot be thrown

out on the ground of alternative remedy. It is to be noted that the doctrine of alternative remedy is a self-imposed rule and it cannot create any fetters for exercising the power of this Court under Article 226 of the Constitution of India. The question of jurisdiction goes to the root of the matter in this case. Therefore, it is held that the alternative remedy is not a bar for adjudicating the writ petition. Further it is held that the petitioners specifically averred that the order is passed at the instance of the higher authorities including the appellate authority. Therefore, no useful purpose will be served by filing an appeal against the order passed by the Mandal Revenue Officer. Keeping in view of this situation also which is not denied in the counter, the writ petition cannot be thrown on the ground of availability of alternative remedy.

7. The question now falls for consideration is whether the land can be resumed under the provisions of Act 9 of 1977.

8. Admittedly, the original assignment was granted to the assignment under Laoni Rules, 1347-Fasli. As can be seen from the assignment granted, the condition relating to the non-availability has not been attached. Further, under Rule 10, the condition, which forms part of the assignment is that he shall cultivate the land within a period of 2 years from the date of handing over the possession of the land. That is not a condition on which action has been initiated. In fact, on an earlier occasion, the action was initiated to cancel the assignment on the ground that assignee was a minor and that the land was not brought under cultivation. But, however, the Board of Revenue considered this matter and rejected the proposal for cancellation. It was observed by the Board of Revenue that the land was transferred by changing the hands on the date of the rejection of the proposal by the Board of Revenue. As can be seen from the proceedings of the Board of Revenue, dated 14-5-1981, it was noticed by the Board that the land assigned to Mohammad Ali Baig already changed hands twice through registered sale deeds. In this position, the Board found that no useful purpose will be served by reopening the case at this point of time. The Board was aware that the land was transferred to third parties. Yet it did not direct cancellation on that ground obviously no such condition was attached to the assignment nor such a condition was available under the rules in vogue at the relevant time.

9. The learned Government Pleader also submits that under the provisions of Act 9 of 1977, it is open for the authorities to resume the land even in respect of the lands which are assigned prior to the Act coming into force. It not only covers the assignment subsequent to the Act but also to the lands assigned prior to the commencement thereby which has retrospective effect. This contention need not detain me for any long as the retrospective effect of Section 3 of the Act is not in dispute but the question is the alienability of the land and whether this land falls within the category of "assigned land". When once the lands does not fall within the category of assigned land, the question of applicability of the Act would not arise at all.

10. u/s 2(1) of the A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977,

the definition of assigned lands has been defined as follows:

"Assigned land" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings, and the word "assigned" shall be construed accordingly."

11. This definition came to be considered by a learned single Judge of this Court in *N. Jagadish Babu v. Geeta Bai* (supra) which was followed by another learned single Judge of this Court reported in *Rambagh Satyanarayana v. Joint Collector, R.R. District, Hyderabad* (supra). The definition itself contains a condition that it should be subject to the condition of non-alienation. Inasmuch as such a condition is not mentioned in the assignment, the provisions of this Section would not apply. Admittedly in *Laoni Rules of 1357-Fasli* and subsequent rules the condition of non-alienability was not contained, till G.O. Ms. No. 1406, dated 25-7-1958 was issued. Under those circumstances, a learned single Judge of this Court held that unless such a condition is contained. Section 3 of the Act cannot be invoked for resumption of the lands. The learned Government Pleader, however, tried to humbly rely on the judgment of the Full Bench reported in *Dharma Reddy v. Sub-Collector, Bodhan, Nizamabad District* (supra) and submits that Section 3(1) of the Act not only prohibits the transfer of assigned lands on or after the commencement of the Act. It also declares that all transfers of such assigned lands, which took place prior to the commencement of the Act shall be deemed to be null and void.

12. The question is whether the land assigned falls within the category of assigned land.

13. Admittedly, in the instant case such a condition of non-alienability was not contained and no rules were existing at the relevant time. That issue was not the subject-matter in the case decided by the Full Bench. Of course, the retrospectivity is not in dispute and that is not the contention of the learned senior Counsel for the petitioner also.

14. The question that fell for consideration before the Full Bench was "whether the expression and shall be deemed never to have been transferred" occurring in Section 3(1) of the Act takes within its sweep transfers in respect of assigned lands which had been effected prior to 21-1-1977 on which date the Andhra Pradesh Assigned Lands (Prohibition of Transfers Ordinance) was promulgated (and on which date the Act replacing that Ordinance is deemed to have come into force). But that issue is not the subject-matter in the present writ petition.

15. The learned Government Pleader also tries to rely on the observations made by the Division Bench reported in *K. Narayanaswami Naidu v. State of A.P.* (supra) stating that the concept of vested rights in respect of the assigned lands cannot be alienated and the assignee has a possessory right which is quite against the whole world but not against the real owner. But this observation

cannot be treated as laying down a principle that when the lands which are assigned without there being any non-alienability clause which covers the situation in the instant case the prohibition gets attracted. The question whether the assigned lands without the condition of non-alienability can be the subject-matter of adjudication u/s 3 of Act 9 of 1977. Therefore, the observation of the Division Bench do not cover the situation of the present case.

16. Therefore, what is required to be considered in this case is whether the transfer is hit by the provisions of Act 9 of 1977. Considering the judgment of the learned single Judge and also taking into consideration the definition of assigned land under Act 9 of 1977, keeping in view of the said Laoni Rules with reference to proviso to Rule 16 it has to be only held that in case of assignment coupled with a condition of non-alienability, it is open for the authorities to invoke the provisions of Section 3 of the Act and declare such sales as void and consequently resume the lands. However, in cases where there is no such a condition, it has to be considered whether still it will be open for the authorities to take action u/s 3 of the Act. The answer should be in negative as the lands were assigned under 1357-Fasli Rules and even in 1950 Rules also there is no such a condition for non-alienability. The legislature having identified this lacuna, brought comprehensive rule in 1950 in G.O. Ms. No.1406, dated 25-7-1958 in supercession of other rules relating to the assignment. In that new rule, it is specifically stated that the lands should be heritable and they are not transferable. Such a condition forms part of the assignment in respect of the assignments made subsequent to 25-7-1958 but it cannot be stated that such a condition should also be deemed to be attached to the assignment which was made prior to 25-7-1958.

17. In the circumstances I am constrained to reject the contentions raised by the learned Government Pleader. The learned Government Pleader tries to impress upon the Court that the very purpose of assigning the land in favour of landless poor is frustrated, if they are allowed to sell the land. The contention appears to be appealing but in the absence of any statutory support, this Court has to necessarily reject this contention. It is for the Legislature to bring appropriate amendments to safeguard the interest before assigning the lands. If such a condition was not contemplated by the Legislature at the relevant time, and it cannot be construed that the Legislature had the intention of resuming the land even in respect of those cases where such conditions were not stipulated.

18. Under these circumstances, the impugned orders are set aside and the writ petition is allowed. No costs.