
(1995) 03 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1861 of 1994

Smt. C. Rajamma and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 3, 3(2), 4(1)

Constitution of India, 1950 — Article 14, 21, 300A

Citation : (1995) 1 ALT 681 : (1995) 1 APLJ 334

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; Govt. Pleader for Revenue for Respondent Nos. 1 and 2 and D.V. Bhadram, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—A short but an important question of law of general importance which arises for consideration and resolution in these three Writ Petitions is that whether it granted to the landless poor persons in Form "D" Patta (Appendix.V) under Standing Order (S.O.) No. 15 of the Andhra Pradesh Board of Revenue Standing Orders for the purpose of allotting the same to a Cooperative Society for establishing an additional Milk Processing Plant (Dairy) by virtue of power reserved for them either under Condition 17 of the Conditions of the said Form "D" Patta or u/s 4(1) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, hereinafter shortly referred to as "the Act". This question arises in the following facts-situation of these cases.

2. One Smt. C. Rajamma is the petitioner in W.P.No. 1861 of 1994; C Chandrasekhara Reddy alias Chandra Reddy is the petitioner in W.P.No. 1290 of 1994 and Smt. Chandraiahgari Guramma and Smt. Chandraiahgari Chandramma are the petitioners in W.P.No. 1640 of 1994.

3. Ac. 0.79 cents of land in Sy.No. 5/4 and Ac. 3.52 cents of land in Sy. No. 5/8

of Avilala Village was assigned to one Muni Reddy by the erstwhile Tahsildar of Chandragiri on 12-6-1959 under S.O. 15 of the Board of Revenue Standing Orders by issuing Form "D" Patta. Smt. C Rajamma claims to be the legal heir of the said Muni Reddy. Ac.O.52 cents in Sy.No. 5/3 and Ac. 1.77 cents in Sy.No. 5 /7 of Avilala Village was assigned to one V. Muniswamy Reddy by the erstwhile Tahsildar of Chandragiri on 12-6-1959 by issuing Form "D" Patta. C. Chandrasekhara Reddy alias Chandra Reddy claims to be the legal heir of the said V. Muniswamy Reddy. Similarly, Ac 0.52 cents in Sy.No. 5/5 and Ac. 2.22 cents in Sy.No. 5/9 of Avilala Village was assigned to one Chandraiahgari Venkata Rami Reddy by the erstwhile Tahsildar of Chandragiri on 12-6-1959 Smt. Chandraiahgari Chandramma claim that the said Chandraiahgari Venkta Rami Reddy is none other than a cousin brother of their husband. There is no dispute that all these lands in question were assigned to the afore-mentioned three persons under S.O. 15 of the Andhra Pradesh Board of Revenue Standing Orders. It is also the case of all the petitioners that even before the assignment of the lands on 12-6-1959, the lands in question were in actual, unauthorised possession and enjoyment of the afore-mentioned three persons and members of their families. In other words, the petitioners claim that the lands in question have been in actual possession and enjoyment of the petitioners and their predecessors-in-title for the past more than 50 years.

4. According to the petitioners in W.P.No. 1640 of 1994, Chandraiahgari Venkata Rami Reddy does not have any direct class I legal heirs, but they claim that they are the legal heirs of the said Chandraiahgari Venkata Rami Reddy in the absence of class I heirs. The lands assigned to the said Chandraiahgari Venkata Rami Reddy were sold to the petitioners in W.P.No. 1640 of 1994 by a registered sale deed No. 2313 dated 21-4-1984.

5. All these assignments of the Government lands in favour of the original assignees were subject to certain conditions incorporated in Form "D" Pattas issued to them. Condition No. 17 of the Conditions incorporated in the Form "D" Pattas issued to the assigness provides that in the event of the land being required for a project or any other public purpose, the land will be resumed and no compensation shall be paid to the assignee and the decision of the Government or other authority empowered by them in this behalf shall be final on the question, whether the purpose for which the land is to be resumed is a public purpose or not.

6. In all these Writ Petitions the first respondent is the District Collector of Chittoor District; the second respondent is the Mandal Revenue Officer, Tirupati Rural Mandal and the third respondent is the Chittoor District Cooperative Milk Producers Union Limited. It appears that the third respondent Union wanted certain extent of land for the purpose of expanding its activities, to be specific to establish an additional Milk Processing Plant (Dairy) at Tirupathi. Therefore, it approached the Govt., the Respondents 1 and 2 with a request to allot the lands earlier assigned to the afore-mentioned three assignees. This is the background

of the case for the impugned resumption of the lands from the petitioners.

7. The lands covered by Writ Petition No. 1861 of 1994 and W.F.No. 1290 of 1994 were sought to resumed by the second respondent by virtue of the power reserved to him under Condition No. 17 of the "D" Form Patta, whereas the lands covered by W.P. No. 1640 of 1994 were sought to be resumed by the second respondent by virtue of the power granted to him u/s 4(1) of the Act. The appeals preferred by the petitioners to the first respondent District Collector against the action of the second respondent were also dismissed. Hence these three writ petitions.

8. In all these three writ petitions, the petitioners have questioned the legality and validity of the proceedings initiated by the second respondent to resume the lands culminating in passing of the appellate order dated 1-11-1993 by the first respondent - District Collector. The petitioners have sought for a declaration that the respondents 1 and 2 have no jurisdiction to resume the lands without resorting to the provisions of the Land Acquisition Act and without payment of compensation: -

9. Heard Sri P.S. Narayana, the learned Counsel appearing for the writ petitioners in all these writ petitions, the learned High Court Government Pleader for Revenue and Sri D.V. Bhadram, the learned Counsel for the third respondent - Co-operative Society.

10. Sri P.S. Narayana, the learned Counsel for the petitioners, submitted that the impugned action is violative of Article 300A of the Constitution and the petitioners could be deprived of their properties only by authority of law. The learned Counsel submitted that Condition No. 17 incorporated in Form "D" Patta is not a law within the meaning of that term as used in Article 300A of the Constitution. Adverting to the case in W.P.No. 1640 of 1994 Sri Narayana argued that the action of the respondents 1 and 2 in seeking to resume the lands purported to be u/s 4(1) of the Act is ultra vires of the Act itself. The learned Counsel would highlight that if a power is granted by the law to an authority for a specific purpose, then such a power should be exercised only for achieving such purpose and if the power is used for any other purpose, such an action should be held to be ultra vires of the law. Sri Narayana, the learned Counsel, would place an alternative argument by submitting that assuming that the second respondent has the power under Condition No. 17 of the Conditions incorporated in "D" Form Patta to resume the lands, nevertheless his action after a lapse of 33 years should be held to be totally unreasonable, arbitrary, unfair and violative of Article 14 of the Constitution of India. Thirdly Sri Narayana, the learned Counsel, submitted that the respondents 1 and 2 have no power at all to resume the lands straight away by virtue of power reserved for them under Condition No. 17 and the only remedy is to approach competent Civil Court for resumption of the lands. The learned High Court Government Pleader, on the other hand, would support the impugned actions of the respondents 1 and 2 and contend that "D" Form Patta was nothing but an agreement of contract between the Government

and the original assignees and it was permissible for the second respondent to invoke a power reserved under Condition No. 17 of "D" Form Patta. Meeting the case of the petitioners in W.F.No. 1640 of 1994, the learned High Court Government Pleader contended that admittedly the original assignee transferred the lands in question to the petitioners in that writ petition by way of registered sale deed on 21-4-1984 after the Act came into force and therefore it was permissible and competent for the second respondent to invoke the power u/s 4(1) of the Act to resume the lands. Sri B.V. Bhadram, the learned Counsel for the third respondent while adopting and supporting the submissions made by the learned High Court Government Pleader, would further contend that the resumption of the lands from the petitioners is in public interest and large number of milk producers in and around Tirupathi Town are going to be benefitted and therefore no case is made out to interfere in the matter.

11. Before advertng to the rival contentions placed before the Court by the " learned Couounsel for the parties it is necessary to note the conditions subject to which the assignments in Form "D" Patta were made in favour of the original assignees and the relevant provisions of the Act. As earlier noted, the lands were assigned to the original assignees by the Tahsildar under S.O.15 of the Andhra Pradesh Board of Revenue Standing Orders subject to the following conditions as specified in Form "D" Patta (Appendix-V).

"1. Land assigned shall be heritable but not alienable.

2. Lands assigned shall be brought under direct cultivation within three years from the date of this order and shall not be leased out in any manner.

3. Cultivation shall be done by the assignee or members of his family or with hired labour under the supervision of himself or the members of his family.

4. No land tax shall be codected for the first three years except for the extent if any which has already been brought under cultivation. But cesses shall be charged on the land tax payable. Water rate and cesses thereon shall also be charged if the lands are irrigated with Government water.

5. If the land is used for casuarina plantations, no pits or ponds shall be excavated nor such plantation irrigated by pots within 200 yards or any "Nattam" and all pits and ponds excavated beyond the above limits shall be filled up as soon as the plants watered therefrom are three years. A breach of any of these conditions will render the assignment liable for cancellation without payment of any compensation.

6. The existing and customary rights of the Government and the public in roads, rivers, streams and channels running through or bounding the land and the right of the Government to a share in mines and quarries adjacent to the said land are reserved and are in no way affected by grant.

8. The land shall be subject to all general taxes and local rates payable by law or custom (except as specified in condition 4).

9. The Government reserve the right in levying ground rent (which will be liable to revision from time to time in accordance with the rules in force at the time of the revision) in lieu of assessment, if the land or portioned it after having been once brought under cultivation is used for nonagricultural purposes.

10. The annual assessment on the land shall be liable to periodical revision at resettlement, if any.

11. The Government reserve to themselves the right to all sandalwood trees and their branches and roots which exist at the time of assignment as well as those which may grow subsequently after land is granted and Government shall be at liberty to cut or dig out any such trees or their roots and branches and remove them from the land in question and dispose of them at their pleasure. The assignee, shall not be entitled to cut or remove them without the permission of the Collector of the district.

12. The assignee shall take all reasonable steps to the satisfaction of the District Collector for the protection of the sandalwood trees from theft or damage and for the careful protection of immature trees growing on the land.

13. The assignee shall take steps to see that the marks made by the officer . of the Government on the sandalwood trees are preserved and are not tampered with.

14. In the event of the infringement or failure to observe all or any of the conditions 11 to 13 above, the assignee shall pay to the Government such compensation as is determined by the Collector of the district, for any loss or damage caused by such infringement or failure on his part subject to the right of appeal to the Government on the question of compensation and the decision of the Government therein shall be final. The Government shall also be at liberty to cancel the assignment and re-enter on the land and the whole land shall thereupon vest absolutely in the Government. In that case, the assignee shall not be entitled to any compensation whatever.

15. For breach of all or any of the aforesaid conditions, the Government will be at liberty to resume the land without compensation.

Note:- When the lands are assigned in the districts noted below, conditions 11 to 14 shall be scored out.

(1) Cuddapah

(2) East Godavari

(3) West Godavari

(4) Guntur

(5) Krishna

(6) Nellore

(7) Visakhapatnam

(8) Srikakulam

16. In the event of the cancellation of assignment either suo moto or on appeal or on revision, the assignee shall not be entitled to any compensation for any improvements that he may have made to the land.

17. In the event of the land being required for a project or any other public purpose, the land will be resumed and no compensation shall be paid to the assignee. The decision of the Government or other authority empowered by them in this behalf shall be final on the question, whether the purpose for which the land is to be resumed is a public purpose or not.

18. In the event of resumption of land assigned at market value the purchase money or such share of it, as is proportionate to the area resumed will be repaid.

19. The Government will not however be liable to pay compensation for any improvements which may have been effected on the land before such resumption.

20. The assignment is also liable for cancellation, if it is found that it is grossly inequitable or was passed under a mistake of fact or owing to misrepresentation or fraud or in excess of the limits of the authority delegated to the assigning officer under B.S.O. 15 read with G.O.Ms. No. 1142, Revenue, dated 18-6-1954 or that there was an irregularity in the procedure".

Sections 3 and 4 of the Act read thus:

"3(1) Where, before or after the commencement of this Act any 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 of transfer or other document relating to such land, it shall not be transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or a acquisition made in contravention of the provisions of Sub-section (1) or Sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in Sub-section (2) in execution of a decree or order of a Civil Court or of nay award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.

4 (1) If, in any case, the District Collector or any other officer not below the rank of a Tahsildar, authorised by him in this behalf, is satisfied that the provisions of Sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may by order.

a) take possession of the assigned land after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being in force:

Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.

(2) Any order passed under Sub-section (1) shall be final and shall not be questioned in any Court of law and no injunction shall be granted by any Court in respect of any proceeding taken or about to be taken by any officer or authority or Government in pursuance of any power conferred by or under this Court.

(3) For the purposes of this section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of Sub-section (1) of section 3.

12. According to all the learned Counsel appearing for the private parties as well as the learned Government Pleader for Revenue, the Andhra Pradesh Board of Revenue Standing Orders are only administrative instructions, issued by the Board of Revenue from time to time to regulate internal administration and they do not have any statutory force. In other words, the Standing Orders are not statutory instruments and they do not have force of law. It was submitted by the learned High Court Government Pleader for Revenue that Standing Orders are nothing but resolutions passed by the Board of Revenue from time to time for the purpose of guiding and regulating the internal administration of the Department.

13. In fact a Division Bench of this Court also in the case of Kanumuri Anji Raju and Anr. v. State of Andhra Pradesh and Ors. 1960 (2) An.W.R. 272 held that the Standing Orders are merely executive instructions issued for the guidance of officers who are to carry out the policy of the Government. Further, a learned single Judge of this Court in the case of Katta Rattamma and Ors. v. Gannamaneni Kotaiah and Ors. 1975 (2) An.W.R. 122 held that the Standing Orders are only administrative instructions and they do not have any statutory force, or force of law. At this stage itself it may also be noted that the Division Bench in Kanumuri Anji Raju's case (1 supra) also held that there is no provision

at all for making a temporary assignment either in the Standing Orders issued by the Board of Revenue or in any instructions issued by the Government from time to time. In other words, the Division Bench held S.O.No. 15 provides only for a permanent assignment of the lands. Therefore, it should be held that the assignments made by the Tahsildar in favour of the original assignees were on permanent basis or in other words they were permanent assignments.

14. In view of the afore-mentioned admitted and settled position, the basis in favour of the original assignees any "property" within the meaning of that term as used in Article 300A of the Constitution of India vested in the original assignees and if that question is answered positively, then the question to be considered is whether such "property" could be deprived of by virtue of a power retained under an Executive Act. These questions need not detain the Court for long.

15. "D" Form Pattas issued to the original assignees specifically vest in the assignees the right to possession, the right to cultivate and enjoy. It also provides that the assigned Lands are heritable. The conditions also make the assignees liable to pay general taxes and local rates payable by law or custom and to pay annual assessment.

16. According to Salmond, the title is the de facto antecedent, of which the right is the de jure consequent. The title to property is created or destroyed or transferred by facts. The aforementioned facts i.e., the right to possess, cultivate and enjoy and to pass on those rights to legal heirs by heredity as provided under "D" Form Pattas are divestitive facts, looking from the angle of the grantor. Divestitive facts are either extinctive or alienative. The former are those which divest a right by destroying it. Whereas the latter divest a right by transferring it to some other owner. Therefore, it should be held that when the Tahsildar assigned the lands to the original assignees on 12-6-1959 by issuing "D" Form Pattas, he transferred the right to possess, cultivate and enjoy the lands in question in favour of the original assignees. Therefore, these alienative facts do constitute a derivative title. In other words, it should be held that with the assignment of the lands derivative titles to the assigned lands stood vested in the assignees.

17. In the light of my finding that the aforementioned alienative facts vested derivative titles of the assigned lands in the original assignees and that the assignments were permanent assignments, the next question to be considered is whether what is vested in the original assignees could be treated as "property" for the purpose of Article 300A of the Constitution of India.

18. The Supreme Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, held that property means only that which could by itself be acquired, disposed of or taken possession of. Subject to this limitation, it is designed to include private property in all its forms as held by the Supreme Court in the case of *Commissioner, H.R.E. v. Lakshmindra*, 1954 SCR 1005, and must be

understood both in a corporeal sense as having reference to those specific things that are susceptible of private appropriation and enjoyment as well as in its judicial or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the exclusion of all others. The Sppreme Court in the of Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc., , held thus:

"In The State of West Bengal Vs. Subodh Gopal Bose and Others, Patanjali Sastri, C.J. held that the word "deprived" in Clause (1) of Article 31 cannot be narrowly construed. No cut and dry test can be formulated as to whether in a given case the owner is deprived of his property within the meaning of Article 31; each case must be decided as it arises on its own facts. Broadly speaking it may be said that an abridgment would be so substantial as to amount to a deprivation within the meaning of Article 31, if, in effect, it withheld the property from the possession and enjoyment by him or materially reduced its value. S.R. Das, J. as he then was, held that Clauses (1) and (2) of Article 31 dealt with the topic of "eminent domain", the expressions "taken possession of or "acquired" according to Clause (2) have the same meaning which the word "deprived" used in Clause (1). In other words, both the clauses are concerned with the deprivation of the property; taking possession of or acquisition should be in the connotation of the acquisition or requisition of the property for public purpose. Deprivation specifically referable to acquisition or requisition and not for any and every kind of deprivation. In Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, , Mahajan, J., as he then was, similarly held that the word "deprived" in Clause (1) of Article 31 and acquisition and taking possession in Clause (2) have the same meaning delimiting the field of eminent domain, namely, compulsory acquisition of the property and given protection to private owners against the State action. S.R. Das. J., reierated his view held in The State of West Bengal Vs. Subodh Gopal Bose and Others, , Vivian Bose, J. held that the word "taken possession of or "acquired" in Article 31(2) have to be read along with the word "deprived" in Clause (1). Taking possession or acquisition amounts to deprivation within the meaning of Clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. The word "law" used in Article 300A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an act of Parliament or State Legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition or taken possession of for a public purpose".

19. In the light of the legal principles noted above governing whether a thing is a property or not and having regard to what was vested in the assignees with the issuance of the "D" Form Pattas, it should beheld that what was vested in the assignees was a "property" within the meaning of Article 300A of the Constitution.

20. Article 300A provides that no person shall be deprived of his property save

by authority of law. This Article has been inserted by the Constitution (44th Amendment) Act, 1978. Prior to this amendment, the right to property was guaranteed by Article 31. While Clause (1) of that Article has been shifted from Part III to Article 300A, Clause (2) of that Article, which dealt with compulsory acquisition of property, has been repealed. Sub-clause (f) of Clause (1) of Article 19, which guaranteed the right to acquire and hold property, has also been omitted by the same 44th Amendment Act, 1978. The result of these to deprive a person by the authority of law.

21. Article 300A provides that a property of a person can be deprived by authority of law. The phrase "save by authority of law" came before the Court for interpretation. The Supreme Court in the case of *Wazir Chand Vs. The State of Himachal Pradesh*, , held that under the Constitution Executive cannot deprive a person of his property of any kind without specific legal authority which can be established in Court of law, however laudable the motive behind such deprivation may be. In the same decision the Supreme Court also held that in case of dispossession of property except under the authority of law, the owner may obtain restoration of possession by a proceeding for Mandamus against the governmental authorities. Further, the Supreme Court in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, , held that "by authority of law" means by or under a law made by the competent Legislature. The same position is reiterated by the Supreme Court in the case of *Jilubhai Nanbhai Khachar*'s case (5 supra) by observing, in para 48, that if there is no law, there cannot be deprivation of the property.

22. In the present case the property of the petitioners in W.P.No. 1861 of 1994 incorporated in Form "D" Pattas. I have already held above that S.O.15 is only an administrative instruction and has no force of law. Therefore, it is quite clear that the second respondent by virtue of a power reserved to him under an Executive Act cannot deprive the property of the petitioners. Therefore, I hold that the impugned action of the second respondent to resume the lands from the petitioners in W.P. 1861 of 1994 and W.P. 1290 of 1994 is wholly unconstitutional, being violative of Article 300A of the Constitution of India.

23. Now let me consider the alternative argument of Sri P.S. Narayana, the learned Counsel for the petitioners, that assuming that the second respondent could resume the lands by virtue of power retained under Condition No. 17, nevertheless that action is totally arbitrary, unreasonable, unfair and violative of Article 14 of the Constitution. I find there is a force in this submission. Admittedly the lands were assigned to the original assignees as far back as on 12-6-1959. When the action was initiated to resume the lands, 33 years were already lapsed. It is pleaded by the petitioners that after the assignments of the lands, considerable improvements are made by putting hard labour and spending considerable sums of money. Now it is settled position in law that every Executive or administrative action of the State should be informed by fairness, reasonableness and cannot be arbitrary and if the Court finds that an Executive

action is unfair, unreasonable and arbitrary, it could intervene and condemn such action as violative of Article 14 of the Constitution. At this juncture it is relevant to note that the power retained by the grantor under Conditions 17 and 19 incorporated in "D" Form Pattas. Condition No. 17 provides that the assigned land will be resumed and no compensation shall be paid to the assignee. It does not stipulate any time limit to invoke this power. Literally speaking this power can be invoked by the Governmental authorities the Government will not be liable to pay any compensation for any improvements which may have been effected on the land before such resumption. This power retained by the Government under these two conditions, in my considered opinion, are totally unreasonable, unfair, arbitrary and violative of the postulates flowing from Article 14 of the Constitution. The modern welfare Government cannot act like a Feudal Lord and it cannot be permitted to resume the assigned lands at any distant of time without paying compensation either for deprivation of the property or for any improvement that may be made by the assignees. Fair play in administrative action is a mandatory rule and this rule does not admit any exception. Therefore, I hold that even otherwise the impugned action initiated by the respondents 1 and 2 to resume the lands without providing any compensation either for deprivation of the property or for improvements effected by the original assignees and their successors-in-title is totally arbitrary, unreasonable, unfair and violative of Articles 14 and 21 of the Constitution of India.

24. In view of the findings of the Court on the first two contentions raised by Sri P.S. Narayana, the learned Counsel for the petitioners, it is not necessary for the Court to consider the third contention of Sri P.S. Narayana, the learned Counsel for the petitioners, that the respondents 1 and 2 have no power at all to resume the lands straight away by virtue of power reserved for them under Condition No. 17 and the only remedy is to approach competent Civil Court for resumption of the lands and accordingly the Court has not considered this last contention of the learned Counsel.

25. This takes us to the case in W.P.No. 1640 of 1994. In this case, the lands in question are sought to be resumed by the second respondent by virtue of the power granted to him u/s 4(1) of the Act.

26. Statement of Objects and Reasons for enacting the Act reads thus:

"The Government have launched, with effect from the 1st November, 1969, a special crash programme for assignment of Government waste lands to the landless poor persons. The rules regarding assignment of land and the conditions incorporation in "D" form pattas prohibit alienation of such However, past experience has shown that substantial extents of lands assigned to landless poor persons have been actually alienated and are in possession of well-to-do persons. As the existing rules do not have any provision for punishment of persons who have purchased such lands, efforts made for assigning large extent of lands to landless poor persons going waste. With a view to enforce the objective more effectively it is considered that a protective legislation is

necessary so as to prescribe a punishment to persons who have purchased such lands. Further, there have been requests from time to time, for enacting a protective legislation against transfers and alienations of assigned lands on the model of Legislation existing in regard to the Scheduled Tribes in the Scheduled areas of Andhra Pradesh, which prohibits alienation of lands and provides for restoration of such lands to the assignees. It has therefore been decided to undertake legislation immediately to prohibit alienation of lands assigned to landless poor persons and to provide for punishment of purchasers of such land".

27. The preamble to the Act declares that this Act was enacted by the legislature of the State of Andhra Pradesh to prohibit transfers of certain lands assigned to landless poor persons in the State of Andhra Pradesh. The Act is a piece of social welfare legislation solely intended to protect the interest of the beneficiaries under the Act, namely, landless poor persons, statutorily declaring that any transfer of the land granted in favour of any landless poor person should be deemed never to have been transferred and no right or title in such assigned land should vest in any person acquiring the land by such transfer. Section 3 further declares that any transfer or acquisition made in contravention of the provisions of Sub-section (1) or Sub-section (2) of Section resumption of the assigned land and restoring the same to the original assignee or his legal heir. The proviso to Clause (2) of Section 4(1) of the Act provides that if for any reason the resumed land cannot be restored to the original assignee or his legal heir, such land should be resumed to the Government for assignment to any other landless person. In a way the Act is a self contained code, in the sense that it provides for resumption, restoration and distribution of the assigned lands. The power granted to the authorities under the provisions of the Act are required to be invoked only for satisfying the objectives of the Act. The provisions of the Act do not arm the respondents 1 and 2 to resume the lands for the purpose of providing the same to a Co-operative Society. If law grants to an authority a power to be used for an authorised purpose, then the power is only validly exercised when it is used by such authority genuinely for that purpose as its dominant purpose, If that purpose is not the main purpose but is subordinated to some other purpose which is not authorised by law, then such authority exceeds its powers and the action is liable to be condemned as invalid and ultra vires of the law. In the present case, admittedly the lands covered by Writ Petition No. 1640 of 1994 are sought to be resumed by virtue of a power granted to the second respondent u/s 4(1) of the Act for the purpose of providing the same to the third respondent-Co-operative Society on the alleged ground of contravention of Sub-section (2) of Section 3 of the Act. As already pointed out the provisions of the Act do not contemplate resumption of the lands for such purpose and therefore it should be held that the impugned action is illegal and ultra vires of the Act.

28. The case of the petitioners in W.P.No. 1640 of 1994 is that though the original assignee, namely, Chandraiahgari Venkata Rami Reddy transferred the lands to them on 21-4-1984 in contravention of the provisions of Sub-section (2)

of Section 3 of the Act and therefore such a land is liable to be resumed u/s 4(1) of the Act, nevertheless such a resumed land is required to be restored to the legal heirs of the original assignee as required under provisions of Clause (b) of Section 4(1) of the Act. Their further case is that they being the legal heirs of the original assignee, namely, Chandraiahgari Venkata Rami Reddy, the second respondent is obliged to restore the lands to them and if that is the requirement of law, the initiation of the proceedings u/s 4(1) of the Act would be an empty formality. It is true that if the petitioners are in fact the legal heirs of the original assignee and in the absence of the original assignee, the lands are required to be restored to the heirs of the original assignee. However the question whether the petitioners are legal heirs of the original assignee or not need not be gone into in these proceedings because I do not find sufficient credible materials before the Court to record a finding on that question either way.

29. In the result and for the foregoing reasons, I make the following COMMON ORDER:

I. All the three Writ Petitions - W.P.No. 1861 of 1994, W.P.No. 1290 of 1994 and W.P.No. 1640 of 1994 are allowed and the entire proceedings culminating in the impugned order made by the first respondent -District Collector, dated 1-11-1993 are quashed.

II. The respondents 1 and 2 are hereby prohibited from resuming the lands in question from the petitioners in W.P.No. 1861 of 1994 and W.P.No. 1290 of 1994 either by virtue of power reserved to them in Condition No. 17 of "D" From Pattas issued under S.O.15 of the Andhra Pradesh Board of Revenue Standing Orders or under the provisions of the Act.

III. The respondents" 1 to 3 are directed to restore the lands in question to the petitioners forthwith.

IV. This order, however, shall not come in the way of the respondents 1 and 2 initiating the action to resume the lands from the petitioners in W.P.No. 1640 of 1994 u/s 4(1) of the Act, if they have information to believe that these petitioners are not the legal heirs of the original assignee, namely, Chandraiahgari Venkata Rami Reddy and they have purchased the lands in question in contravention of the provisions of Section 3 of the Act. If such action is initiated and lands are resumed to the Government, those lands shall be disposed of strictly in conformity with the provisions of Section 4(1) (b) of the Act. It is made clear that such resumed lands cannot be handed over to the third respondent - society or anyone else except to the landless poor persons as provided under the proviso to Clause (b) of Section 4(1) of the Act.

V. It is further made clear that this order shall not come in the way of the respondents 1 and 2 or the Government to initiate proceedings to acquire the lands in question of the petitioners in W .P .No. 1861 of 1994 and W.P.No. 1290 of 1994 either under the Land Acquisition Act or any other enabling provisions of any other statute if the same is required for public purpose.

VI. The petitioners are entitled to the cost or writ petitions which is quantified at Rs. 3,000-00 (Rupees three thousand only) in each of the writ petition and the respondents 1 and 2 are directed to pay them at that rate within three weeks from today.

VII. Liberty is reserved for the petitioners in all these writ petitions to bring civil action against the respondents 1 and 2 before a competent Civil Court for recovery of damages for the unauthorised deprivation of their properties with effect from 18-6-1992 till restoration of the properties.