

**(2003) 01 AP CK 0124**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 22280 of 1999**

Vemula Satyavathi

APPELLANT

Vs

District Collector, Krishna and Others

RESPONDENT

**Date of Decision : 09-01-2003**

**Acts Referred:**

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 14, 14(4), 14(5)

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 10

**Citation :** (2003) 3 ALD 415 : (2008) 2 ALT 738 : (2003) 1 APLJ 295

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** Kowturu Vinaya Kumar, for the Appellant; Government Pleader for Revenue, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

V.V.S. Rao, J.—The petitioner is aggrieved by endorsement dated 22.10.1999 issued by the Mandal Revenue Officer, Machilipatnam. It is the case of the petitioner that her husband was assigned an extent of Acs. 1.19 in R.S. No. 81/2 of Potepally Village on payment of consideration. After his death the petitioner is cultivating the land. When the petitioner approached the authorities for mutation of the revenue record it was refused and therefore she filed a suit being O.S. No. 203 of 1991 on the file of the Court of Principal District Munsif, Machilipatnam which was decreed on 10.8.1994 directing the District Collector to alter 10(1) account and mutate the name of the petitioner and enter in revenue records. The Government's appeal being A.S. No. 101 of 1994 was also dismissed on 22.8.1997. Therefore, mutation was carried out. After the land was mutated in the name of petitioner, she decided to alienate the property to third parties and presented a sale deed before the third respondent, who by endorsement dated 23.8.1999 declined to register the document on the ground that the land is registered in revenue records as assigned land and that unless there is permission from the District Collector the same cannot be registered. In those

circumstances, the petitioner again approached the Mandal Revenue Officer with a request to delete the land from the list of assigned land since assignment was made on the basis of consideration. The Mandal Revenue Officer therefore passed the endorsement as follows:

The contents of the petition of Smt. Vemula Satyavathi, W/o (Late) Vemula Satyanarayana of Nandigama Village of Pedana Mandal seeking for Deletion of Entry of assignment of land in R.S. No. 49/1.B Ac. 1.17 cents and R.S. No. 89/2 Ac.0.80 cents assigned in favour of Vemula Satyanarayana S/o. (Late) Rattaiah of Pothepalli on "D" Form Patta is examined in detail. The petitioner is informed that the surplus land assigned on "D" patta is "Heritable but not alienable to Third Party".

Hence, Smt. Vemula Satyavathi, W/o. (Late) Satyanarayana is therefore informed that the request of the petitioner is negated.

2. The writ petition was opposed by the respondents inter alia on the ground D-form patta granted to the husband of the petitioner contains a clause that the land is heritable, but not alienable. Therefore the petitioner is not entitled to transfer or alienate the land in favour of third parties.

3. The learned Counsel for the petitioner submits that as the sale price of the land was collected from husband of the petitioner, the petitioner has absolute right to alienate the properties and Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 has no application to the facts of the case. This is refuted by the learned Government Pleader for Assignment Sri Vijaya Kumar placing reliance on Section 14 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short, the Land Reforms Act).

4. It is not denied before me that the petitioner's husband was assigned land which was declared surplus under the Land Reforms Act. Therefore, the assignment is subjected to conditions mentioned in D-form patta as well as Section 14 of the Land Reforms Act. Section 14 of the Land Reforms Act insofar as it is relevant reads as under:

14. Disposal of land vested in Government:

(4) Any transfer of the land under this Section shall be subject to

(i) the condition that the land shall not be alienated by the transferee by way of sale, gift, mortgage, lease or in any manner whatsoever otherwise than by way of mortgage in favour of the Government, a Bank or a Co-operative Society, including a Land Mortgage Bank; and

(ii) the condition that where the land transferred is an orchard, the transferee shall continue to maintain such land as an orchard; and

(iii) such other condition as may be prescribed.

(5) Any alienation effected or other act done in respect of any land in violation of

the conditions specified in Sub-section (4) shall be null and void; and the Revenue Divisional Officer shall resume the land after giving an opportunity to the persons affected of making a representation in this behalf.

5. Rule 10 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (for short, the Land Reforms Rules) which deals with disposal of lands vested in the Government is also relevant and reads under.

10(1). Subject to the reservations provided in the Act, land vested in the Government under the Act, shall be allotted by the Thasildar for use as housesites for agricultural labourers, village artisans or other houseless poor persons; or shall be transferred to landless poor persons for purposes of agricultural or for purposes ancillary thereto in the following manner:

(i) displaced tenants having no land;

(ii) landless poor persons; and

(iii) other poor agriculturists:

Provided that in respect of each category of persons referred to in Section 14 of the Act and in this rule priority shall be given to persons locally residing and further from among whom priority shall be given to an ex-servicemen and a widow of a person employed in the armed forces and who died in a war belonging to that category;

Provided further that in respect of land surrendered by a co-operative society, firm or company and vesting in the Government, preference shall, as far as may be practicable, be given to a landless poor person or other poor agriculturist who, as a shareholder of such co-operative society, or company or as a partner of such firm was cultivating such land on the specified date;

Provided also that land surrendered in the Scheduled Areas shall not be allotted or transferred to persons other than members of the Scheduled Tribes.

(2) The maximum extent of land which may be allotted to an individual or a family unit for use as house-site shall not exceed 0.056 hectares (five cents) and the maximum extent of land which may be transferred to an individual or a family unit for agricultural purposes or for purposes ancillary thereto shall not exceed 1.01 hectares (two and a half acres) of wet land or 2.02 hectares (five acres) of dry land.

(3) The procedure followed for the allotment or assignment of Government lands for use as house-sites or for purposes of agriculture shall mutatis mutandis apply to the allotment or transfer of land under this rule.

(4) The allotment or transfer of lands shall be made by the Tahsildar concerned subject to the following conditions, namely:-

(a) The allottee or transferee shall pay to the Government the sum specified in Subsection (2) of Section 14 in fifteen equal annual instalments from the date of

allotment or transfer, each annual instalment being payable before the 1st day of March of every year.

(b) Where the land transferred contains any fruit-bearing trees or permanent structures, the transferee shall also be liable to pay the value of such trees or structures, as calculated as per Rule 11, and it shall be recovered in fifteen equal annual instalments along with the sum payable for the land under Clause (a).

(c) No instalment of the sum payable shall be recovered in a Fasli year in which the land revenue on the land is remitted or suspended and such instalment shall stand postponed by one Fasli year and the instalment so postponed shall be recovered together with the instalment of the succeeding year.

(d) The allottee or transferee, shall, in addition to the instalment payable under this rule, be liable to pay the land revenue and other rates and taxes, if any, payable on the land.

(e) Where the land is allotted for use as house-sites, the allottee shall utilise the same for construction of a house thereon within a period of two years from the date of allotment or such further period as the Tahsildar may permit.

(f) Where the land is transferred for purpose of agriculture or for purposes ancillary thereto, land shall be cultivated personally by the transferee or any of the members of his family or by hired labour under the supervision and control of himself or any member of his family.

(g) All lands allotted or transferred shall be heritable, but shall not be transferable except by way of mortgage in favour of the Government, a Bank or a Co-operative Society, including a Land Mortgage Bank.

(5).....

(6).....

6. A reading of Section 14(4) and (5) of the Land Reforms Act and Rule 10 of the Land Reforms Rules together it becomes evident that even where the surplus land is assigned on collection of a sum calculated at 50 times the land revenue on such land and the character of the land is not changed, it still remains assigned land. In an unreported judgment in Patakamuru Damodar Prasad and Another Vs. Government of Andhra Pradesh and Others, I considered the effect of Section 14 of the Land Reforms Act and Rule 10 of the Land Reforms Rules on right of assignee to transfer land to third parties and held as under:

Sub-rule (2) prescribes the maximum extent of land that can be assigned, and Sub-rule (3) lays down the procedure to be followed for allotment or assignment of Government lands for use of house-sites or for purposes of agriculture shall *mutatis mutandis* apply to the allotment or transfer of lands under the Rules. Therefore, wherever the Act and the Rules are silent, the revenue officials have to follow BSO 15, which deals with allotment/ assignment of agricultural land and/or BSO 21, which deals with allotment of house-sites..... The Clause (2) of

Para 2 of BSO 15 defines "landless poor person" as one who owns not more than two and half acres of wet or five acres of dry land and is also poor. By the very definition, a person who is not poor, but is landless, is not eligible for assignment of the land. Indeed Rule 10(1) of the Rules obliges the Thasildar to allot surplus land to displaced tenants having no land, landless poor persons, and other poor agriculturists in that order. A person, therefore, must be poor before seeking assignment of surplus land and also must be landless person. In this background, reliance placed by the learned Counsel for the petitioners on Rule 10 of the Rules in support of his contention that BSO 15 has no application, is misconceived and cannot be accepted.

7. Therefore, the conclusion is irresistible that even if land assigned is surplus land for consideration the assignee is not entitled to alienate the land to third parties. The Writ Petition is therefore devoid of merits and is accordingly dismissed.