

GOVT. OF ANDHRA PRADESH AND ORS.

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v.

GUDEPU SAILOO AND ORS.

APRIL 28, 2000

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

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Constitution of India, 1950—Article 226—Writ Petition filed by the respondents at interlocutory stage in land revenue proceedings—Direction to petitioner to submit explanation to the Collector—Mandamus issued to the collector to dispose of the explanation—Proceedings dropped by District Revenue Officer—Suspension of the order of district revenue officer—Writ petition against—Held, not maintainable—The District Revenue Officer had no jurisdiction to consider the matter in violation of the direction of the court—The action initiated by the Collector and the ratification of his order by the State Government, should have been allowed to take final shape instead of being challenged at the interlocutory stage—Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F—Section 172, 166-B—The Laoni Rules, 1950—Rule 19—Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977.

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Practice and Procedure—When two writ appeals filed against a common judgment and there were two distinct questions involved in the appeal, both the appeals should have been heard together.

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The respondents were assigned the land in question, with the condition that the same would be used only for cultivation, and would not be sold without prior sanction of the Government and in case it is sold it would revert back to the Government.

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The respondents, executed power of attorney in favour of a builder, who applied to the Mandal Revenue Officer and obtained a Memo dated 23.9.92 from him that the sale of the land was not hit by the provisions of Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977.

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In the meantime, when Police Department sent a requisition to the Government for acquisition of the land in question for setting up of Police Academy, the irregularities with regard to the assigned lands came to notice. Action was initiated against the respondents and notice was issued

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A to show cause as to why the assignments be not cancelled by the District Collectors.

B The respondents filed a writ petition challenging the validity of the show cause notice, which was disposed of by Single Judge treating the petition as premature and directed the respondents to submit their explanation to the District Collector, and further directed the District Collector to consider the same.

C Pursuant to the order of the High Court, the respondents submitted their explanation, which was considered by the District Revenue Officer, who held that there was no irregularity in assignment of lands to the respondents.

D The District Collector, after examination of the order of the District Revenue Officer, vide its order dated 3.1.95 suspended the operation of the order. The order of the District Collector was challenged by the respondents in writ petition before High Court.

E In the meantime, the order of the District Collector dated 3.1.95 was ratified by the Government vide order dated 24.1.96 and he was directed to proceed with the enquiry and pass final order. The order dated 24.1.96 was also challenged by the respondents in writ petition before the High Court.

F Single Judge allowed both the appeals and quashed the order of the Government dated 24.1.96. State filed two appeals before Division Bench, which took only one of the appeals and dismissed the same holding that the assignments of land made in favour of the respondents thirty years ago, could not be touched.

Disposing of the appeal, this Court

G HELD : 1.1. Since a mandamus was issued to the Collector and dispose of the explanation, which was required to be submitted by the respondents in reply to the show cause notice issued to them, the District Revenue Officer had no jurisdiction to consider the matter in violation of the direction of the court. The explanation to the show cause notice had to be submitted before the Collector and the Collector alone had to consider and take a final decision in the matter. The action initiated by the Collector and the ratification of his order by the State Government are matters

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which should have been allowed to take final shape instead of being challenged at the interlocutory stage by the respondents. [799-B-D]

1.2. Since it is not disputed that on account of the proceedings, initiated by the respondents in the High Court, the Collector could not complete the proceedings. There has been a non-compliance of the mandamus issued by the High Court in respondents' own writ Petition. [798-H]

2. When two writ appeals were filed against the common judgment and there were two distinct questions involved in the appeal, both the appeals should have been heard together.

(The Court directed the Collector to complete the proceedings, initiated by him by his order dated 3.1.1995.) [798-A; 799-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3033 of 2000.

From the Judgment and Order dated 14.9.98 of the Andhra Pradesh High Court in W.A. No. 1487 of 1998.

P.P. Rao, K. Ram Kumar, B. Sridhar and Y. Subba Rao for the Appellants.

M.N. Rao, Sudhir Chandra, P. Niroop and Pavan Kumar for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted. On 21.10.1961, each of the respondents was allotted an area of 7.06 acres of Government land situated in village Manchirevula, District Rangareddy, situated at a distance of about 10 miles from the city of Hyderabad in Andhra Pradesh. This assignment was subject to two conditions, namely, (i) that the land would be used only for cultivation and (ii) that it would not be alienated regarding which each one of the assignees had given a written undertaking that they would not sell the land under any circumstance without the prior sanction of the Tehsildar and in case the land was sold, it would revert back to the Government. (Learned Senior Counsel, Mr. M.N. Rao and Mr. Sudhir Chandra object to this undertaking being read by us on the ground that this was not filed before the High Court).

A In exercise of the power conferred by Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F., the Government had made THE LAONI RULES, 1950 of which Rule 19 is quoted below:-

B "19. The allottee of the land shall prepare the land for cultivation within three years of being placed in possession and commence cultivation of the land thereafter. The pattadar may be rejected by the order of the Collector for breach of any of the above conditions:

C Provided that he has been served with a notice calling upon him to comply with the conditions which he has violated and he fails to comply with it within three months of the date of service thereof. If land has been transferred in contravention of the conditions, the Collector may eject the transferee."

(Emphasis supplied)

D Permission to occupy the Government land is given on the prescribed Form 'G'. One of the conditions contained in Form 'G' is that the "grantee is not empowered to transfer the occupancy without the sanction previously obtained from the Collector".

E Under the Revised Assessment Policy, published in Part II of Andhra Pradesh Gazette dated 31.7.1958 (pages 771-773), which again was made in exercise of the powers conferred by Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F., it was provided in Part VI thereof as under:-

F "VI. Terms and conditions of assignment:-

- (i) the assignment of lands shall be free of market value;
- (ii) lands assigned shall be heritable but not alienable;
- G (iii) lands assigned shall be brought under cultivation within three years;
- (iv) no land tax shall be collected for the first three years except for the extent if any, which has already been brought under cultivation. Water rate shall, however, be charged if the lands are irrigated with Government water; and
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- (v) cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.”

Thus, under the original Laoni Rules, 1950 as also under the Revised Policy published in 1958, the alienation of the assigned land was prohibited. While under the Laoni Rules, 1950, the alienation or transfer without the previous sanction of the Collector was prohibited, under the Revised Policy, it was clearly provided that though the assigned lands would be heritable, they would not be transferred.

On 14th of August, 1991, the respondents to whom the land was assigned, executed a Power of Attorney in favour of a builder, M.A. Baksh, giving him, inter alia, the following powers:-

“5. To negotiate, enter into agreements for and/or let lease or licence the said property or any portion thereof to such person(s) or body and for such consideration and upon such terms and conditions and for such purpose(s) as my said attorney may in his absolute discretion deem fit.

6. To negotiate and agree to and/or to enter into agreement, to sell/develop/lease/mortgage the said property or to sell, convey, lease, mortgage, assign or to otherwise transfer the said property or any portion thereof to such person(s) or body and for such consideration and upon such terms and conditions and for such purpose(s) as the said attorney may in his absolute discretion deem fit and to collect and receive the considerations thereof and to give a valid receipts therefor.

7. To enter into agreement(s) to develop the said property by laying roads, drainage, water connections, Electricity connection etc. and or erecting individual/multistoreyed, residential/commercial buildings thereon with any person(s), firms, company/companies or society/societies upon such terms and conditions as my said attorney may in his absolute discretion deem fit.”

Acting upon the Power of Attorney, M.A. Baksh applied to the Mandal Revenue Officer and obtained a Memo dated 23.9.1992 from him that the sale of land was not hit by the provisions of Andhra Pradesh Assigned Lands

A (Prohibition of Transfers) Act, 1977.

In the meantime, the Inspector-General of Police, Special Security Force, Andhra Pradesh, sent a requisition on 12.11.1993 to the Government for acquisition of the land situated in Manchirevula Village, Rejendranagar Mandal for setting up of operational Headquarters with residential accommodation for the Police Academy. It was, at this stage, that the validity of the assignments made in favour of the respondents in 1966 was examined and on certain irregularities having been noticed in making those assignments, it was decided to take action under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli and, therefore, a notice, requiring them to show cause why the assignment of land made in their favour in 1961 be not cancelled, was issued to the respondents on 28.3.1994 by the District Revenue Officer. It was on receipt of the show cause notice that the respondents filed Writ Petition No. 9106 of 1994 in the Andhra Pradesh High Court challenging the validity of the notice. This Writ Petition was disposed of by a learned Single Judge on 3.5.1994 by the following order:-

“This writ petition is filed for a writ of certiorary by calling for the records relating to the impugned order dt. 28.3.1994 of the second respondent and quash the same, by the impugned notice dated 28.3.1994 the Distt. Collector Ranga Reddy has issued a show cause notice to the petitioner as to why the Patta granted earlier should not be cancelled in view of certain alleged contraventions.

However, it is the case of the petitioner that he has not submitted his explanation, instead furnished in this court. This writ petition is premature as it is filed against the show cause notice. However, having regard to the facts and circumstances of the case, I direct the petitioner to submit his explanation within a period of one week from today and the same shall be considered by the second respondent. Pending consideration of his explanation, the petitioner shall not be dispossessed.

Subject to above the writ petition is disposed of at the stage of admission.”

It may be stated that the second respondent in the Writ Petition to whom a direction was issued to consider the explanation which was to be submitted

by the respondents was the District Collector, Rangareddy District. It was he who had issued the show cause notice dated 28.3.1994. Pursuant to the judgment passed by the High Court, the respondents submitted their explanations to the show cause notice which was considered by the District Revenue Officer and he, by his order dated 15.9.1994, held that there was no irregularity in the assignment of lands to the respondents. It was further held by him that the respondents were in possession over the assigned lands in pursuance of the Certificate granted to them in Form 'G' issued on 21.10.1961 and, therefore, the assignment was not affected by the subsequent G.O.Ms. No.1122, dated 29.6.1961 by which the assignment of lands falling within 10 miles of Hyderabad City was banned. This order was examined by the Collector who was of the opinion that the District Revenue Officer had not examined certain vital aspects of the matter and consequently by his order dated 3rd of January, 1995, he suspended the operation of the order dated 15.9.1994, passed by the District Revenue Officer. This order was challenged by the respondents in Writ Petition No.484 of 1995.

In the meantime, the Collector wrote to the Government on 31st of July, 1995 to ratify the action indicated by him in his order dated 3rd of January, 1995. By order dated 24th of January, 1996, the Government ratified the Collector's order dated 3rd of January, 1995 and directed him to proceed with the enquiry and pass final order. This order of the Government was challenged by the respondents in Writ Petition No.7221/96. By a common judgment dated 1st of September, 1997, a learned Single Judge of the High Court allowed both the Writ Petitions and quashed the order of the Government dated 24th of January, 1996. It may be stated that in the counter-affidavit, filed on behalf of the Government of Andhra Pradesh (appellants), it was, *inter alia*, stated that the respondents had alienated the lands in favour of a third person. They had converted the agricultural lands into non-agricultural lands and had also appointed a General Power of Attorney in favour of a developer, for developing and sale of the plots, who converted the lands into residential plots in the name and style of "Bakshi Estates".

The State of Andhra Pradesh, thereafter, filed two appeals before the Division Bench but the Division Bench took up only one of the two appeals, namely, Writ Appeal No.1487/98 and by judgment dated 14th of September, 1998, it dismissed the said appeal and maintained the order of the Single Judge that the assignment of lands, made in favour of the respondents thirty years ago, could not be touched.

A We may observe that when two writ appeals were filed against the common judgment and there were two distinct questions involved in the appeal, both the appeals should have been heard together. However, having regard to the facts of the present case, we are of the view that since the High Court in the first Writ Petition, namely, Writ Petition No. 9106/94, which was
B filed by the respondents against the show cause notice dated 28.3.1994 for cancellation of the assignment made in their favour, had itself directed the respondents to submit their explanation to the show cause notice, and had directed the Collector, Rangareddy District, who was arrayed as second respondent in that Writ Petition, to consider and dispose of the explanation, there was no occasion to challenge the action initiated by the Collector at the interlocutory stage. The mandamus which was issued in Writ Petition No.9106/
C 94 consisted of a direction to the respondents to submit their explanation to the show cause notice issued to them for cancellation of the assignment of lands made in their favour and a direction to the Collector, Rangareddy District, to consider and dispose of that explanation. The explanation submitted by the respondents was, however,
D considered by the District Revenue Officer who was of the view that the assignment of lands, made in favour of the respondents, could not be cancelled and consequently dropped the proceedings. It was, at this stage, that the Collector intervened in the matter vide order dated 3rd of January, 1995 and suspended the operation of the order passed by the District Revenue Officer and proceeded himself to
E enquire into the matter by writing to the Government on 31st of July, 1995, to ratify his action. As pointed out earlier, the Government, by its order dated 24th of January, 1996, ratified the action of the Collector.

F It is not disputed that on account of the proceedings, initiated by the respondents in the High Court, the Collector could not complete the proceedings. There has, thus, been a non-compliance of the mandamus issued by the High Court in respondents' own Writ Petition No.9106/94.

The High Court in the impugned judgment has observed as under:-

G "We do not find any infirmity in the reasoning of the learned Single Judge. In any event, the District Revenue Officer was vested with the power under Section 166-B and in exercise of such a power he passed an order recording therein that it will neither be fair nor proper to reopen the issue of assignment which took place three decades back by invoking the provisions of Section 166-B of the
H A.P.(T.A.) Land Revenue Act, 1317 Fasli. We also record our

concurrency with the observations of the learned Single Judge and record that no exception can be taken to the order of the District Revenue Officer and the order under appeal cannot be said to be suffering from any infirmity. There is no merit in the appeal. As such, this appeal fails and is dismissed. No order as to costs."

We cannot subscribe to the view expressed by the High Court in so far as the order passed by the District Revenue Officer is concerned. Since a mandamus was issued to the Collector, Rangareddy District, to hear and dispose of the explanation, which was required to be submitted by the respondents in reply to the show cause notice issued to them, the District Revenue Officer had no jurisdiction to consider the matter in violation of the direction of the High Court. As a matter of fact, the explanation to the show cause notice had to be submitted before the Collector and the Collector alone had to consider and take a final decision in the matter. The action initiated by the Collector and the ratification of his order by the State Government are matters which should have been allowed to take final shape instead of being challenged at the interlocutory stage by the respondents. That being so, there is no necessity of going into the merits of the submissions made by the learned counsel for the parties with regard to the provisions of Section 166-B and 166-C of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli.

We, therefore, dispose of this appeal finally with the direction to the Collector to complete the proceedings, initiated by him by his order dated 3rd of January, 1995 as ratified by the Government by its order dated 24th of January, 1995, at an early date in accordance with law. There shall be no order as to costs.

K.K.T.

Appeal disposed of.