

**(2013) 11 AP CK 0034**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 13179 of 2013

P. Narasimha Rao

APPELLANT

Vs

Government of Andhra Pradesh  
and Others

RESPONDENT

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**Date of Decision:** Nov. 20, 2013

**Citation:** (2014) 2 ALD 48 : (2014) 2 ALT 717 : (2014) ALT(Rev) 146

**Hon'ble Judges:** C.V. Nagarjuna Reddy, J

**Bench:** Single Bench

**Advocate:** K.S. Murthy, for the Appellant; P. Veera Reddy for Respondent Nos. 5 and 6, for the Respondent

**Final Decision:** Disposed Off

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### **Judgement**

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This writ petition is filed for a mandamus to declare the action of the respondents in not restoring possession of the land admeasuring Acs. 4.64 cents in Survey No. 981/A1 of Griddaluru Village, Sydapuram Mandal, SPSR Nellore District as illegal and arbitrary. The petitioner sought for a consequential direction to the respondents to put the petitioner back into possession of the above-mentioned land, after setting aside the proceedings, dated 25.06.2007, of respondent No. 4 to the extent of resumption/cancellation of the assignment and also order, dated 27.01.2013, of respondent No. 3. I have heard Sri K.S. Murthy, learned counsel for the petitioner, the learned Assistant Government Pleader for Revenue (Assignment) appearing for respondent Nos. 1 to 4, and Sri P. Veera Reddy, learned counsel appearing for respondent Nos. 5 and 6.

2. One Bhaskar Rao, father of the petitioner, was assigned an extent of Acs. 4.64 cents in Survey No. 981/A1 of Griddaluru Village (hereinafter referred to as "the subject land") by respondent No. 4 vide his proceedings in F. Dis. No. 11/85, dated

25.07.1978. The subject land was resumed by respondent No. 4 vide his proceedings in Rc. No. 609 and 610, dated 20.06.2007, on the ground that the assignee has sold the property to respondent No. 7 contrary to the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act").

3. For the first time, after resumption of the subject land, the petitioner made a representation to respondent No. 3 on 16.11.2012 for restoration of the land as per the direction contained in the resumption order. On the said representation, respondent No. 3 has made an endorsement to the effect - "verify the assignment register and see if the assignee("s) name exists, book POT case against the illegal encroachers and restore land back to the original assignee". A similar endorsement was made by respondent No. 3 on the petitioner's representation, dated 07.01.2013.

4. However, on the representations made by respondent Nos. 5 and 6, respondent No. 3 called for a report from respondent No. 4 and after considering the report, dated 24.12.2012, submitted by the latter, respondent No. 3 has passed order, dated 27.01.2013, wherein he has stated that as per the report of respondent No. 4, the original assignee was not a native of Griddaluru village, that he came to the Village from his native Prakasam District in connection with the tobacco barn works and that after closing of the barns, he went back to his native village and died on 12.10.1989, that his wife also died on 15.12.2005 in her native village and that the land was resumed on 20.06.2007. That the petitioner came back to Griddaluru village three months back and claimed restoration of the land as the legal heir of the assignee. That at present, the subject land is under the possession and enjoyment of respondent Nos. 5 and 6 who belong to Scheduled Caste and they are eligible for grant of D-form patta. That as the land was resumed in the year 2007 and no appeal was filed, the said resumption order has become final and as such, possession of the present enjoyers need not be disturbed and that in view of the instructions issued by the State Government not to propose new assignments, it is not possible to issue D-form patta in favour of the present enjoyers and that the same will be considered after receiving instructions from the State Government.

5. Feeling aggrieved by non-restoration of the land to the petitioner, he has filed this writ petition.

6. The learned counsel for the petitioner submitted that the very order of resumption was illegal as the same was passed against a dead person and without notice to the legal heir of the assignee. Alternatively, the learned counsel submitted that u/s 4(1)(b) of the Act as it stood, the petitioner who is admittedly the legal heir of the original assignee is entitled for restoration of the land and also as directed by respondent No. 4 in the resumption order.

7. The learned counsel for respondent Nos. 5 and 6 submitted that the very assignment itself given to the father of the petitioner who was never the permanent

resident of Griddalur was irregular and that in any event, the petitioner having kept quiet without questioning the resumption order or at least making a claim for restoration of the land within a reasonable time is not entitled to seek restoration of the land. He has further submitted that by the time, the petitioner has sought for restoration, the provisions of Section 4(1)(b) of the Act have been amended by Act No. 21 of 2008, whereunder the restoration of the land to the original assignee or to his family members is not automatic.

8. I have carefully considered the respective submissions of the learned counsel for the parties.

9. The learned counsel for the petitioner has fairly submitted that since his client is interested in restoration of the land, he is not interested in pressing the relief of setting aside the order of resumption. Therefore, it is not necessary for this Court to deal with the legality or otherwise of that part of the order, dated 20.06.2007, of respondent No. 4.

10. From a reading of the order, dated 20.06.2007, it is clear that while resuming the land, respondent No. 4 has further observed that after verifying the eligibility of the assignee as on the date of passing of the order, further action will be taken for restoration of the land in his favour or in favour of his legal heirs u/s 4(1)(b) of the Act.

11. Section 4(1)(b) of the Act as it originally stood to the extent it is relevant for this case is as under:

4. Consequences of breach of provisions of Section 3:- (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorised by him in this behalf, is satisfied that the provisions of sub-sec. (1) of Section 3, have been contravened in respect of any assigned land, he may, by order-

(a) ....

(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 of 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.

....

12. In strict sense, the petitioner being the legal heir is entitled to restoration of the land as per Section 4(1)(b) of the Act as it stood then. But, the petitioner has not approached the respondents till the end of 2012 i.e., for a period of five years, for

restoration of the land. From the report of respondent No. 4 as discussed by respondent No. 3, it appears that the original assignee has left the village for his native place in Prakasam District much prior to the resumption of the land and he died on 12.10.1989 i.e., almost eight years prior to resumption of the land. It was further reported by respondent No. 4 that the petitioner came back from his native place to Griddalur three months prior to submission of his application i.e., some time in September, 2012. Thus, the petitioner failed to assert his right for restoration of possession of the land in terms of Section 4(1)(b) of the Act.

13. Section 4(1)(b) of the Act has been amended by Act No. 21 of 2008, which to the extent relevant reads as under:

4. Consequences of breach of provisions of Section 3:- (1) If in any case, the District Collector or any other officer not below the rank of a Mandal Revenue Officer, authorised by him in his 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) ....

(b) (i) reassign the said resumed land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose, to the transferee who purchased the land in good faith and for valuable consideration on or before 29th January, 2007, subject to the condition that he/she is landless poor person, and is in occupation of the land by using the said land for agriculture or as house site, as on the date of taking possession by eviction:

Provided that the reassignment in case of transferee shall be limited to only such an extent that the total holding of the re assignee including any other land held by him/her does not exceed 5.00 acres dry land or 2 1/2 acres wet land: Provided further that where the transferee who has purchased the land and got reassignment of it, or his legal heir, transfers the reassigned land, the land shall be resumed for assignment to the other eligible landless poor;

(ii) restore the said assigned land, other than those land/areas as may be notified by the Government from time to time in public interest and for public purpose, to the original assignee, subject to the condition that he or she is landless poor person as on the date of restoration for one time; or

(iii) assign to other eligible landless poor person:

.....

14. Confusing as it looks though, the amended provision does not automatically provide for restoration of the assigned land to the original assignee. The amended provision also renders the transferee eligible for assignment. Strictly speaking, the amended provision which came into force after resumption of the land may not apply to the present case. However, as noted hereinbefore, the petitioner failed to

approach the respondents for restoration of the land before Section 4(1)(b) of the Act was amended. The claim of the petitioner, thus, suffers from unexplained laches. In this gap of more than five years, respondent Nos. 5 and 6 came to occupy the land. Respondent No. 4 has opined in his report that respondent Nos. 5 and 6 belong to Scheduled Caste community and they are landless poor persons eligible for assignment.

15. Thus, by the failure of the petitioner to claim restoration of the land within a reasonable time, he has allowed a situation to emerge where respondent Nos. 5 and 6 came into possession of the land and they have been making competing claims for assignment.

16. In this complex situation, this Court is of the opinion that it would be highly iniquitous to direct respondent Nos. 2 to 4 to straightway restore possession of the land to the petitioner. The petitioner having frittered away his right of automatic restoration by his own making can at best be considered for assignment as an eligible landless poor person by competing with respondent Nos. 5 and 6, who are also found to be landless poor persons. The claims of the petitioner and respondent Nos. 5 and 6 for assignment need to be considered as per para-10 of BSO-15. If the petitioner is able to establish in the enquiry that he has permanently settled down in Griddaluru Village by producing relevant material, he shall be considered as a native of that Village while considering the claims of the petitioner and respondent Nos. 5 and 6 under para-10 of BSO-15. Respondent No. 4 is accordingly directed to consider the claims of the petitioner as well as respondent Nos. 5 and 6 strictly according to the preference laid down in the above-mentioned para of the Board Standing Order by holding enquiry, wherein he shall give an opportunity of being heard to both the parties and thereafter pass a speaking order, wherein he shall discuss the merits and demerits of both the parties and give reasons in support of his decision to grant assignment in favour of the person(s) among the petitioner and respondent Nos. 5 and 6. He shall complete this exercise within a period of three months from the date of receipt of a copy of this order. Subject to the above directions, the writ petition is disposed of. As a sequel to disposal of the writ petition, W.P.M.P. No. 16193 of 2013 and W.V.M.P. Nos. 2975 & 3219 of 2013 shall stand disposed of as infructuous.