(2013) 06 AP CK 0022

Andhra Pradesh High Court

Case No: Writ Petition No. 12372 of 1996 and WPMP No. 46181 of 2012

Mysagalla Balamma and Others		APPELLANT
	Vs	
Government of Andhra Pradesh and Others Nathi Laxmaiah Died L.Rs. of 21 Vs Mysagalla Balamma and Others		RESPONDENT

Date of Decision: June 19, 2013

Acts Referred:

- Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 - Section 166B
- Criminal Procedure Code, 1973 (CrPC) - Section 145

Citation: (2013) 5 ALD 208 : (2013) 6 ALT 349 : (2013) ALT(Rev) 449

Hon'ble Judges: S.V. Bhatt, J; L. Narasimha Reddy, J

Bench: Division Bench

Advocate: C.V. Mohan Reddy for Sri C. Sumon, for the Appellant;

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy , J.
This writ petition is filed challenging the order, dated 23.05.1996, passed by the 2nd respondent confirming the order, dated 26.12.1989, passed by the 3rd respondent. The facts that lead to filing of this writ petition, in brief, are as under:

There exists about 350 acres of Government land in different subdivisions of Survey number 63 of Boduppal village. The Government of A.P., the 1st respondent herein, issued G.O.Ms. No. 1302, dated 06.03.1957, proposing to assign the land to various

individuals with a specific condition that a Co-operative Farming Society shall be formed and the cultivation shall be carried on. Accordingly, the orders were issued by the authorities of the Revenue Department in the District. However, no society was formed even after expiry of two years. On a representation made by the individual members, the Government issued revised orders enabling the assignment to be made in favour of the individual members. Accordingly, the orders of assignment were issued to the members in the year 1959 and pattas were granted.

2. The petitioners, who are mostly the legal representatives of the original assignees, state that in the year 1969, some persons, who were interested in occupying the land, have obtained the thumb impressions or signatures of the original assignees and brought into existence the sale deeds.

3. According to the petitioners, when an attempt was made by the purchasers or persons claiming through them to interfere with the land in question, law and order situation has arisen and proceedings u/s 145 Cr.P.C. were initiated by the Revenue Divisional Officer. It is stated that after conducting enquiry and hearing the parties, the Revenue Divisional Officer has dropped the proceedings, through order, dated 12.11.1984, and through a panchanama, dated 29.11.1984, he handed over the possession to them. They stated that the purchasers of the land filed O.S. No. 469 of 1987 and started claiming rights over the land and that the suit itself was dismissed on 22.08.1996.

4. The Joint Collector, Ranga Reddy District, the 3rd respondent herein, issued show cause notice, dated 28.07.1987, to the petitioners exercising power u/s 166B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli (for short "the Revenue Act"), directing the petitioners to explain as to why the assignment orders have not been cancelled. It was mentioned that though the land was assigned for the purpose of cultivation, the assignees or their legal representatives have obtained layouts and have alienated the land in favour of third parties. The petitioners or some of them appeared before the 3rd respondent and submitted their explanation. Taking the same into account, the 3rd respondent passed the order, dated 26.12.1989, directing cancellation of the pattas. Review filed by the petitioners was dismissed. Thereafter, Revision was filed before the 2nd respondent. The same was dismissed, through order dated 23.05.1996.

5. Mr. C.V. Mohan Reddy, learned senior counsel for the petitioners, submits that assignments were made on the specific instructions issued by the Government and that the 3rd respondent has no power or competence to deal with the same. He further submits that even if there is any violation of the conditions of assignment, the same cannot be dealt with under the provisions of general law when there is special law, covering the subject. Expanding the same, the learned Senior Counsel submits that in case the assigned land is found to have been alienated, it is only for the Tahsildar, the 4th respondent herein, to initiate proceedings under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "Act 9 of 1977") and if the violation is as regards any other condition, it was for the authority who issued the order of assignment, that ought to have

initiated the steps. He placed reliance upon the judgment in Annapurna Co-op. Housing Society Vs. Commissioner of Land Revenue, Government of A.P. and Another,

6. Learned Advocate General appearing for the respondents 1 to 4 submits that the scope of power u/s 166B of the Revenue Act is very wide and the 3rd respondent, being an authority superior to the one who issued the order of assignment, is competent to exercise such powers. He submits that apart from alienating the land in contravention of the provisions of Act 9 of 1977, the petitioners or their purchasers have also violated the other conditions.

7. The manner in which, a fairly vast extent of land in Boduppal village came to be assigned has been indicated within permissible limits of brevity. The petitioners are either assignees or their legal representatives. It is not in dispute that the land in question was sold in the year 1967 under registered sale deeds. The petitioners contend that the sale deeds are not valid and they have been obtained by playing fraud or through misrepresentation. The adjudication thereof cannot constitute the subject matter of this writ petition.

8. The 3rd respondent initiated proceedings for cancellation of the assignment and resumption of land to the Government by invoking Section 166B of the Revenue Act. Even if one goes by the contents of the show cause notice, dated 28.07.1987, it becomes very clear that the allegation against the assignees was that they have sold away the land and violated the conditions of the assignment. The show cause notice is not clear as to who issued the order of assignment. In case the assignment was granted directly by the Government, the 3rd respondent tacks jurisdiction. If on the other hand, the assignment was made by the 4th respondent, he could have issued necessary instructions to him so that the proceedings can be initiated for cancellation of the assignment in accordance with law. However, he has taken up himself, the exercise for cancellation of the assignment.

9. Section 166B of the Revenue Act no doubt, confers power upon an authority of Revenue Department to call for the records of his subordinate officer to satisfy himself about the legality and propriety of the orders and to take necessary steps. The effort of the 3rd respondent herein was not to examine the legality, propriety or correctness of the orders of assignment. He took into account the developments that are said to have been taken place, subsequent to assignment. This cannot fit into the language employed u/s 166B of the Revenue Act. Further, this Court, in Annapurna''s case, took the view that when there is a special enactment dealing with the situation, namely, Act 9 of 1977, the general provision, such as, Section 166B of the Revenue Act cannot be invoked.

10. For the foregoing reasons, we allow the Writ Petition and set aside the proceedings, which are impugned in the writ petition. It is, however, left open to the respondents to take steps in accordance with law. Since the land was sold in the year 1967, it is directed that whenever any action is proposed to be taken, notice shall be issued not only to the

petitioners, but also to the purchasers. As most of the parties are said to be not available, we direct that the display of the notice in the office of the Tahsildar and at the site and publication thereof in the District edition of a Telugu Daily newspaper shall be treated as proper service; and is not necessary to wait for the service of notice on all individuals. We do not express any view as to the possession over the land in question. It is directed that none of the parties shall take any steps over the land till the proceedings, which are left open, are initiated and concluded. The miscellaneous petitions, if any, filed in this writ petition shall stand disposed of. There shall be no order as to costs.