

(2012) 2 ALD 133

Andhra Pradesh High Court

Case No: C.R.P. No. 3985 of 2011

Undela Durgamma

APPELLANT

Vs

Singamreddy Lakshmi
Reddy

RESPONDENT

Date of Decision: Nov. 25, 2011

Acts Referred:

- Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 - Section 2(1), 3
- Transfer of Property Act, 1882 - Section 10, 11

Citation: (2012) 2 ALD 133

Hon'ble Judges: A. Gopal Reddy, J

Bench: Single Bench

Advocate: A.V. Sessa Sai, for the Appellant; G. Narasimha Rao, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A. Gopal Reddy

1. This revision by the judgment debtor is directed against the order of the II Additional Senior Civil Judge, Vijayawada, in E.P. No. 100 of 2010 in O.S. No. 1144 of 2007 dated 15.07.2011.

2. In execution of the decree obtained by the decree holder in O.S. No. 1144 of 2007 filed for recovery of the amounts under the pro-note, the above execution petition came to be filed. In the suit, the property of the judgment debtor was attached before judgment. In the execution petition, the judgment debtor raised an objection that the land was allotted to her by the Municipal Corporation, Vijayawada and not entitled to be sold in execution of the decree and that the land was allotted by the Municipal Corporation, Vijayawada to the slum dwellers in NSC Bose Nagar Colony and that the judgment debtor who is one of the

allottee of the plot agreed to purchase the same subject to the conditions prescribed in G.O.Rt. No. 1209 dated 17.10.2002.

3. The Executing Court, though permitted to raise the said ground for the first time, was of the view that though the land was allotted by the Government to the judgment debtor and others who are slum dwellers, when once the land was assigned to the person on payment of concessional market value, the sale of such land is not governed by the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977. Though the sale deed contains a clause that the land shall not be alienated but the condition of inalienability is void in view of Section 10 of the Transfer of Property Act, 1882 ("for short the 1882 Act"). Therefore, there is no bar to proceed with the sale and accordingly, rejected the objections raised by the judgment debtor and posted the matter for settlement of terms. Questioning the correctness of the same, the present revision is filed.

4. It is not disputed that the Government in G.O.Rt. No. 1209 dated 17.10.2002 permitted the Municipal Corporation, Vijayawada to execute sale deeds in favour of the slum dwellers including the judgment debtor at concessional rates. The sale deed executed by the Municipal Corporation in favour of the judgment debtor dated 31.07.2006 also discloses that on receiving consideration amount of Rs. 1200/- from the judgment debtor the property was transferred subject to the condition that the judgment debtor is not entitled to alienate the land except to obtain loan from any commercial Bank for the purpose of construction of house by him in the schedule land, together with all ways water courses, liberties, privileges, easements, advantages and appurtenances whatsoever to the said piece or parcel of land along with structure therein and premises or any of them in any wise appertaining or heretofore occupied or enjoyed there with and all the estate right title interest, property, claim and demand whatsoever of the vendor into and upon the same.

5. Assigned Land has been defined u/s 2(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act 9, of 1977, which reads as under:

2(1) "assigned land" means lands assigned by the Government to the landless poor persons under the rules for the time being in force, subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly;

6. Further Act 9 of 1977 has been given an over riding effect over other laws by virtue of Section 10 of the said Act. Once it is established that the property was allotted under the Slum Areas (Improvement and Clearance) Act, 1956 to the slum dwellers who are in possession of the property subject to inalienability and the Municipal Corporation was permitted to execute the sale deed, the provisions of the 1882 Act will not have any application in view of over riding effect. Sections 10 and 11 of the 1882 Act are inconsistent with Section 3 of the Act 9 of 1977. In view of the same, the Executing Court

has committed an illegality in exercise of its jurisdiction. this Court in Vaka Punnamma V. Yadavali Jurala Narasimham 2002(1) ALD 306, categorically held that the ground of inalienability of the assigned lands can be raised at any time as all such sales are prohibited including sale in execution of the decree. In view of the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the impugned order passed by the Executing Court is set aside and the E.P. as such is dismissed.

7. The civil revision petition is allowed. No costs.