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Letter Sent from Plot No. 338 Vs. the Collector and District Magistrate and

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Court : Andhra Pradesh

Decided On : Sep-02-2008

Reported in : 2008(5)ALD626; 2008(5)ALT313

Judge : A. Gopal Reddy and; B. Seshasayana Reddy, JJ.

Acts : Constitution of India - Articles 14, 21, 38, 39, 46 and 226; Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 - Sections 2(1), 2(3), 3, 3(1), 3(2), 3(5), 4, 4(1), 4A and 4A(1); Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 - Sections 47, 48 and 50B; Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 - Sections 54, 57, 58, 58A, 61, 61(3), 65, 166B and 172; Contract Act - Sections 23; Orissa Municipal Act, 1950 - Sections 1(3), 1(5), 2, 13(1) and 16(1); Orissa General clauses Act, 1937 - Sections 23; Andhra Pradesh Land Encroachment Act, 1905; Andhra Pradesh Rights in Land and Pattedar Pass Books Act, 1971; Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978; Karnataka Land Reforms Act, 1

Appeal No. : Takenup W.P. Nos. 10206, 13227, 14021 and 14795 of 2005

Appellant : Letter Sent from Plot No. 338;mohd. Syed Ather S/O Mohd. Akbar,; Abdul Qayum S/O Gulam Mahaboob,; Mo

Respondent : The Collector and District Magistrate And; the Secretary to Government of Andhra Pradesh, Revenue De

Advocate for Def. : A. Satya Prasad, Spl. GP in W.P. Nos. 10206, 13227 to 13230 and 14795 of 2005 and for Respondent Nos. 1 to 4 in W.P. No. 14021 of 2005 and; M. Damodar Reddy, Adv. for Respondent Nos. 5 and 6 in W.P. N

Advocate for Pet/Ap. : V. Venkataramana, Adv. in W.P. Nos. 13227 to 13230,; K.S. Murthy, Adv. in W.P. No. 10206 of 2005 and; M. Subba Reddy, Adv. in W.P. No. 14021 of 2005

Disposition : Petition allowed

Judgement :
ORDER

A. Gopal Reddy, J.

1. WP No. 14795/2005 is taken up writ petition on the basis of a letter addressed to the Honourable the Chief Justice on 5-7-2005 along with newspaper cutting, under the caption 'Rs.50 thousand crores worth of 15000 acres of assigned land grabbed by real estate persons, industrialists including the Member of Parliament from Hyderabad under benami names on the basis of forged documents, which should be remained with the assignees/landless poor persons in whose favour lands were initially assigned.'

2. The matter initially appeared on 16-8-2005. The Government Pleader who took time filed counter affidavit on behalf of the first respondent-Collector, Ranga Reddy District admitting that 'there is some truth in the allegation that certain assigned lands were purchased by some real estate persons, industrialists.' In the backdrop of filing the counter affidavit, this Court called upon the respondents to furnish detailed information. Pursuant to the directions of this Court, the Government Pleader submitted a document, titling 'Details of POT (Prohibition of Transfer) Cases in Ranga Reddy District' purporting to contain the details of the various assigned lands in some 34 Mandals of Ranga Reddy District and also furnished the details of the illegal transfers as assessed by the respondents in the District. The documents furnished by the Government Pleader disclose that a few prominent personalities are alleged to have involved in such illegal purchase and

an extent of about Ac.8716-39 guntas is the subject matter of alleged illegal transfers. The same is the subject matter of challenge in the other writ petitions. Therefore, this Court by order dt. 5-10-2005 directed to list all the matters together for hearing.

3. When the matter was taken up for hearing on 17-3-2008, the cases were categorized into 4 categories, namely, (1) Section 4 of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (for short 'the Act No. 9 of 1977); (2) Section 3(1) of the Act No. 9/1977; (3) Section 4(1) of the Act No. 9/1977 and (4) A.P. Land Encroachment Act, 1905.

4. Four writ petitions ie., WP Nos. 13227/2005; 13228/2005; 13229/2005 and 13230 of 2005 arise out of the orders passed by the Revenue Divisional Officer, Chevella Division, Ranga Reddy District. The petitioners in the above writ petitions have obtained a Rule from this Court calling upon the respondents to show cause why a writ in the nature of Certiorari under Article 226 of the Constitution should not be issued quashing the proceedings of the Revenue Divisional Officer, Chevella Division, Ranga Reddy District in proceedings No. D/1229/2003 dt. 30-4-2005 and consequently setting aside the common order passed by the Deputy Collector and Mandal Revenue Officer, Ranga Reddy District in Proceedings No. B/l139/1998 dt. 15-2-2003 resuming the land in S.Nos.37 and 38/1 of Khanamet village, Serilingampally Mandal, Ranga Reddy District, if necessary, by declaring that the petitioners have pattadari rights over the suit land as purchasers.

5. WP No. 10206/2005 is filed by two persons for restoration of the land admeasuring Ac.9-38 cents situate in Khanamet village in their favour under Section 4 of the Act 9 of 1977 and for a consequential direction to the Mandal Revenue Officer to deliver the said land to them.

6. WP No. 14021/2005 is filed for issuance of a Writ of Mandamus declaring that changing the revenue records pertaining to the land in S. No. 177/6 ad-measuring Ac.3-25 guntas situate at Aziznagar village, Moinabad Mandal, Ranga Reddy District from patta land to laoni land and granting patta in favour of respondents 5 and 6 as arbitrary and illegal and same is in violation of principles of natural justice,

7. Since the point that arises for consideration, namely, 'Whether lands which were granted patta under Laoni Rules, 1950 (for short 'the Laoni Rules') can be resumed under the provisions of the Act No. 9/1977 treating them as assigned lands', in all the writ petitions, they were heard together and disposed of by this common order.

8. The facts giving rise to filing of the four writ petitions, namely, WP Nos. 13227/2005; 13228/2005; 13229/2005 and 13230 of 2005 briefly stated as under:

9. The petitioners in all the writ petitions purchased different extents of land in S. No. 37 and 38/1 situate at Khanamet village, Serilingampally Mandal under various registered sale deeds. The Deputy Collector and Mandal Revenue Officer, Serilingampalli Mandal, Ranga Reddy on noticing that lands were alienated by assignees to the third parties in S. Nos. 37 and 38/1 issued Form No. I under Rule 3(1) of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 to the petitioners including the original assignees from whom the petitioners purchased the land alleging contravention of provisions of Sub-section (2) of Section 3 of Act No. 9 of 1977.

10. On issuing such notices, the petitioners filed their objections stating that Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 and Act No. 9/1977 are not applicable to the lands and the subject lands are not assigned lands covered by provisions of Act No. 9 of 1977 and the said Act has no application to the lands purchased by them. The lands which were granted patta under Lavoni Rules without there being any condition of inalienability of the land. There were several transactions since 1965 onwards and the lands were mutated in the name of subsequent purchasers. Further the Tahsildar granted permission under Section 47 by validating the registered sale transaction under Section 50-B of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Telangana Tenancy Act'). On issuance of certificate to one Raja Ram in the year 1965, the petitioners purchased lands from him. The petitioners' vendor who acquired valid title was in possession for the past over 35 years and requested to withdraw the notice issued. Earlier proceedings initiated treating them as assigned lands were dropped on submission of explanation on satisfying that the lands were

not assigned lands and the Act No. 9 of 1977 has no application and the said lands were also mutated in the name of the petitioners as landlords under the provisions of A.P. Rights in Land and Pattedar Pass Books Act, 1971, and rules made thereunder. The Deputy Collector & Mandal Revenue Officer, Serilingampalli Mandal after providing an opportunity of hearing to the petitioners held that the lands bearing S. No. 37 and 38/1 of Khanamet village are classified as Khariz Khata and assignments were made during the year 1961 to the villagers as per the Revised Assignment Policy issued in G.O.M.S. No. 1406, Revenue dt. 25-7-1958. The assignees were brought on record as pattedars through Faisal Patti for the year 1962-63. Subsequently the above lands were transferred to the third parties through registered sale deeds and purchasers have taken possession of the lands and mutations were granted by the Recording Authority under the provisions of Record of Rights Act and purchasers were found to be in possession of the land. After referring to the judgment of the High Court of A.P. in WA No. 1920/2001 dt.18-12-2001 and judgment of the Apex Court in Government of A.P. v. Gudepu Sailoo : AIR 2000 SC2297 (wherein it was held that grantee is not empowered to transfer the occupancy without the sanction previously obtained from the Tahsildar/Collector) the Mandal Revenue Officer while holding that since no permission has been granted by the Collector, alienation made by the assignees in favour of the third parties is contrary to the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 and also the Laoni Rules, passed orders to resume the land bearing S. No. 37 extent Ac.3-24 guntas and S. No. 38/1 extent Ac.9-14 guntas of Khanamet village, Serilingampally Mandal, Ranga Reddy District and take custody of the same from the possession of purchasers/possessors by evicting them from the lands according to the provisions of the Act No. 9 of 1977. Aggrieved by the same, the petitioners filed separate appeals before the Revenue Divisional Officer, Chevella Division, Ranga Reddy District and the Revenue Divisional Officer after reiterating the findings recorded by the Mandal Revenue Officer, 2nd respondent, dismissed the appeals holding that it is clear form the primary authority record that lands in question are assigned to the original assignees under the Laoni Rules r/w Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 and LRs of original assignees admitted the said fact. The lands in question are assigned land come within the meaning of

Section 2(1) of the Act No. 9 of 1977. Once notice in Form No. I as prescribed under Rule 3 of A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977 has been issued, burden lies on the petitioners to prove that lands in question are purchased by the landless poor persons for valuable sale consideration and for cultivation purpose before the Act No. 9/77 came into force, and since they failed to prove the same, mutation of lands in their favour does not confer any right in the lands and holding so dismissed the appeals.

11. Questioning the aforementioned orders, the above writ petitions have been filed contending that grant under Laoni Rules with or without condition of alienability is not covered by the provisions of the Act No. 9 of 1977 and grant of patta under Laoni Rules is not an assignment and the Revised Assignment policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 and the provisions of the Act No. 9/77 have no application. The Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 has not repealed the Laoni Rules, which deals with different types of grants. Both the primary and appellate authorities failed to notice applicability of the provisions of the Act No. 9/77 to the grant made under Laoni Rules, the same is liable to be set-aside and the appellant authority rendered a perfunctory adjudication of the appeal by reiterating the findings recorded by the primary authority without substantiating the finding of its own, therefore the same cannot be sustainable.

12. In W.P. No. 10206/2005, the petitioners claiming to be in possession of land by raising horticulture filed the writ petition contending that lands in S. Nos. 38/2, 39 and 40 in Khanamet village, Serilingampally Mandal, Ranga Reddy District ad-measuring Ac.9-38 cents were assigned to Gopaiah and family, who had two wives and six sons. The petitioners are two sons of late Gopaiah. The property devolved on them as legal heirs. Due to disputes among family members, some persons got some deeds executed. Due to non-giving of land to the revenue authorities for road widening, the revenue authorities initiated proceedings under the Act No. 9/1977 on the basis of sale transactions took place in violation of the provisions of the Act No. 9/77, which culminated in W.P. Nos. 26090 and 24647 of 1999 and 15068 of 2000 on the file of this Court. This Court by judgment dt. 12-12-2003 remitted back the matters to the Mandal Revenue Officer while setting aside

the orders passed by the Mandal Revenue Officer, Revenue Divisional Officer and the Joint Collector. Pursuant to the orders passed by this Court dt. 12-12-2003, the Mandal Revenue Officer passed orders on 29-3-2005 resuming the lands in question. The primary authority violated the mandate of the Act No. 9 of 1977 in restoring the land to them.

13. The petitioners in WP No. 14021/2005 purchased Ac.3-41 cents situate at Aziznagar of Moinabad Mandal, Ranga Reddy District under an agreement of sale deed dt. 14-6-1965 and took possession of the same. After obtaining necessary permission under Sections 47 and 48 of the Telangana Tenancy Act, original pattedar executed a registered deed dt. 5-7-1965 and since then she became the absolute owner and possessor of the land and has been in possession and enjoyment of the land along with other land. The Mandal Revenue Officer, Moinabad Mandal issued a show cause notice dt. 6-8-1995 in Form No. I dt. Nil calling upon her to show cause why she should not be evicted from the said land as the purchase made by her is contrary to the provisions of Section 3(2) of the Act No. 9/77. On her giving reply dt. 7-9-1995 denying that the land in question is not an assigned land, the Mandal Revenue Officer having satisfied with the explanation dropped the proceedings. But once again he issued a show cause notice dt. 4-11-1998, for which an explanation was submitted on 3-1-1998 reiterating the contentions as taken earlier. When she sought for certified copies of Khasra pahani and other pahanies by filing a petition dt. 21-12-1998, the same was taken up for hearing on 12-1-1999 and on that day it was adjourned to 21-1-99. But no copies were furnished. She sent an application dt. 10-10-2001 to drop further proceedings as the land is a patta land and she purchased the same after due permission from the then Tahsildar and the Act No. 9 of 1977 has no application at all, followed by application dt. 5-11-2001 by furnishing certified copies of Khasra Pahani and other Pahanies pertaining to the year 1954-55, whereunder her vendor, Balaiah was shown as 'Pattedar' and the land is shown to be a 'patta land'. In stead of dropping further proceedings, an explanation was called for from the petitioner. Questioning the same, she filed W.P. No. 26173/2001, which was allowed quashing the show cause notice dt. 12-11-2001 in file No. B/1294/2001. Without initiating any proceedings, the respondent No. 2, Mandal Revenue Officer, Moinabad Mandal cannot direct the third respondent,

Village Administrative Officer, Aziznagar, Moinabad Mandal, to change the entries in the revenue record in respect of the said S. No. 177/6 from patta to 'Kharij Khatha' or 'Gairan Land', which is without jurisdiction and the same is liable to be quashed.

14. The second respondent, Deputy Collector & Mandal Revenue Officer, Serilingamaplly Mandal filed counter-affidavits in all the above four writ petitions i.e., WP Nos. 13227/2005; 13228/2005; 13229/2005 and 13230 of 2005 reiterating the grounds on which resumption orders have been passed resuming the land and ordering eviction of the petitioners from the land purchased. Further, it was averred that the pattas granted under Laoni Rules are governed by the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 wherein alienation of the assigned land was prohibited. Since the assignment was made after the year 1960 and the original assignee also filed the application on 25-8-1960 for assignment of land in S. No. 37 and 38 of Khanamet village after issuance of Revised Assignment Policy in G.O.Ms. No. 1406 dt. 25-7-1958, the assignment is conditional, and the provisions of Act No. 9 of 1977 are applicable. Since there is a prima facie evidence to establish against the assignees/purchasers that they contravened the provisions of Sub-section (2) of Section 3 of the Act No. 9 of 1977, resumption orders have been passed, resuming the land by the impugned proceedings. Aggrieved by the said resumption orders, the petitioners filed W.P. Nos. 3605, 3612, 3624, 3627, 3691, 3692, 3696, 3820 and 5301 of 2003, which were disposed of on 28-4-2003 granting liberty to the petitioners therein to approach the appellate authority i.e., Revenue Divisional Officer, Chevella within three weeks from the date of order and as and when such appeal were filed, the RDO was directed to take the appeals on file and dispose of the same in accordance with the law. In compliance with the orders passed by this Court, the appeals were filed before the Revenue Divisional Officer, Chevella, who after considering the ground of appeal and arguments advanced, dismissed the appeals stating that since notices were issued by the primary authority in Form No. I as prescribed under Rule 3 of A.P. Assigned Lands (Prohibition of Transfers) Rules, 1977, the burden lies on the petitioners to prove that the lands in question were purchased by the landless poor persons for valuable sale consideration for cultivation purpose before Act No. 9/77 came into force. Mere mutation of land in

favour of the petitioners in the revenue records does not create any valid title in their favour. Act No. 9/77 being a special statute it has over riding effect over all other laws time being in force in view of the non-obstante clause provided under Section 3(1), as such transfer of assigned land made through registered documents deemed never to have been transferred, accordingly no rights were conferred in the lands in favour of the vendee/transferee. In view of the same, the claim of the petitioners that they have perfected their title by their long standing possession does not arise.

15. When the writ petitions were taken up for hearing, Sri A. Satya Prasad, learned Special Government Pleader appearing for the respondents submitted that on the basis of the newspaper item, on which W.P. No. 14795/2005 was taken up, nearly in 7000 cases proceedings have been initiated for resumption of the land; in 2333 cases, orders have been passed, and in 1655 cases possession was also taken, and no further adjudication is called for in the taken up writ petition.

Sri Vedula Venkata Ramana, learned Counsel for the petitioners in the above four writ petitions, WP Nos. 13227 to 13230 of 2005, submitted that the provisions of the Act No. 9/77 cannot be invoked where pattas were granted under Laoni Rules. Form-G under Rule 9-g does not prohibit alienation of assigned land and it only prohibits alienation without prior permission, therefore, transfer, if any, is voidable, and the petitioners' predecessors/vendors will not lose title to the land. Under Laoni Rules, there are two types of laonis ie., one is general laoni and second is special laoni, which are issued to cover the cases under Sections 54 and 65 of the A.P. (Telangana Area) Land Revenue Act, 1317 F (hereinafter referred to as 'the Telangana Area Land Revenue Act'), therefore, it cannot be said that patta granted under Rue 9 (g) of the Laoni Rules is assignment. In the absence of repeal of Laoni Rules and the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 which altogether apply to assignment land free of market value, both the Rules are in operation, therefore it is not open for the authorities to contend that assignment was made only under Revised Assignment Policy issued in G.O.Ms. No. 1406, which has been clarified by G.O.Ms. No. 1724 dt. 26-8-59. When the Act No. 9/77 deals with only to the assignment of land defined under Act No. 9/77 but not under the other laws where patta is granted under Laoni Rules.

When Section 58 of the Telangana Area Land Revenue Act does not impose any restriction for transfer of land where patta is granted, no condition can be imposed prohibiting alienation. In the absence of repeal of Laoni Rules by the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 15-7-1958 patta granted may come under Laoni Rules but not under G.O.Ms. No. 1406, therefore, entire proceedings initiated under Act No. 9 of 1977 are liable to be set-aside. When the Telangana Area Land Revenue Act and Laoni Rules deal with rights and ownership rights, Form-G does not fall under Act No. 9/1977.

16. Per contra, learned Special Government Pleader would contend that Laoni Rules which were issued in furtherance of Chapter 5 of the Telangana Area Land Revenue Act were superseded through the Revised Assignment Policy issued in G.O. Ms. No. 1406. Under Rule-VI, the lands assigned shall be heritable but not alienable and only landless poor persons who directly engage themselves in cultivation are eligible to occupation of Government land under Rule-Ill and maximum extent of land which may be assigned to a single individual is one acre wet or five acres dry with variation upto 10 per cent wherever necessary. All the assignments which were made to various persons from whom petitioners or their vendees purchased were after 1958, therefore, it is not open for the petitioner to contend that Act No. 9/77 is not application as assigned land will fall within the definition of Section 2(1) of the Act 9 of 1977. Once the original assignees through whom the petitioners are claiming are landless poor persons and ^ assignment was made 1958, the petitioners cannot confer any title and they cannot have a right by converting the assigned land into non-agricultural purpose without obtaining any permission. In support of his contentions, he placed reliance on the following judgments:

1. Papaiah v. State of Karnataka : AIR 1997 SC2676

2. Jayamma v. Maria Bai (2004) 7 SCC 459

3. Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde (1995) Supp. (2) SCC 549

4. Government of Andhra Pradesh v. Gudepu Sailoo : AIR 2000 SC2297

He further contends that the decision in Municipal Council, Palai through the Commissioner of Municipal Council, Palai v. T.J. Joseph : [1964]2SCR87 , whereunder the Supreme Court was dealing with repeal of legislation, on which much reliance has been placed by the learned Counsel for the petitioner, is not applicable to the facts of the present case, as the rules can always be made in supercession of earlier rules and the rules so framed will prevail over the rules which were superseded. He also contended that occupant never becomes a landlord, but he conferred only a right to occupy but not any further right in the land which was granted permission and Government will be the paramount titleholder to resume the land whenever the conditions were violated.

In the light of the submissions, as referred to above, the points that arise for consideration in these writ petitions are:

1. Whether the land in question was assigned in the year 1960, 1961 in favour of the petitioners' predecessors in title under the Telangana Area Land Revenue Act read with Laoni Rules made thereunder or whether the grant of patta is attributable to Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958?

2. Whether the provisions of Act No. 9/77 can be applicable to all types of pattas granted under Laoni Rules after collection of market value under Chapter V of the Telangana Area Land Revenue Act?

17. Before adverting to the contentious issues involved, we deem it necessary to refer to the judgments cited by the learned Government Pleader.

18. in Papaiah v. State of Karnataka : AIR 1997 SC2676 , the Supreme Court while interpreting the provisions of Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 and while rejecting the plea of adverse possession held that Assignment of land having been made in furtherance of directive principles issued under Article 46 and 39(b) of the Constitution, any alienation, in its contravention, would be not only in violation of the constitutional policy but also opposed to public policy under Section 23 of the Contract Act. Thereby, any alienation made in violation thereof is void and the purchaser does not get any valid right, title or interest thereunder.

19. In Jayamma v. Maria Bai : AIR 2004 SC3957 the Supreme Court while dealing with Karnataka Land Reforms Act, 1961 and the right of a tenant who has become an occupant observed thus:

(18) AS we have, noticed hereinbefore, that the statutory embargo on transfer of land is stricter in a case where the tenant has become occupant than a land held by a tenant simpliciter.... What is permitted under the law is partition of the land amongst the members of the family. Section 61 of the Act is to be read in its entirety.

(19) Sub-section (3) of Section 61 lays down that any transfer of land in contravention of Sub-section (1) shall be invalid whereupon the same shall vest in the State government free from all encumbrances. The legislative intent that the land should not be allowed to go to the hands of a stranger to the family is, therefore, manifest....

20. The Supreme Court in Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde (1995) Supp. (2) SCC 549 while upholding the order passed by the District Collector refusing permission under Bombay Revenue Code for alienation of land in favour of the purchaser who was in possession of the property pursuant to the agreement of sale held that all the State Government also evolved assignment of its lands to the landless 9 poor persons and the prohibition of sale is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble to the Constitution.

21. It is well settled that a judgment cannot be read as statute. Application of it depends upon the similar facts and with similar statutory provisions. In our view, the above judgments cannot be made applicable to the facts of the present case.

22. In Government of Andhra Pradesh v. Gudepu Sailoo : AIR 2000 SC2297 the condition of inalienability of assigned land was not directly in issue. But the issue before the Supreme Court was whether action initiated by the Collector and ratification by the Government to proceed with enquiry is valid or not on the following circumstances. The Government of Andhra Pradesh assigned 7.06 acres of government land situated in village Manchireyal, District Ranga Reddy, situated

at a distance of about 10 miles from the city of Hyderabad in Andhra Pradesh, each to the respondents, 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 Tahsildar and in case the land was sold, it would revert back to the Government. The respondents (assignees) to whom the land was assigned, executed a Power of Attorney in favour of a builder giving powers to negotiate, enter into agreements 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 the prospective purchasers in his absolute discretion. The Power of Attorney-holder applied to the Mandal Revenue Officer who issued a Memo dated 23-9-1992 that the sale of land was not hit by the provisions of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. At that stage, the State Government on a requisition dt. 12-11-1993 from the Inspector-General of Police, Special Security Force, Andhra Pradesh for acquisition of the land situated in Manchirevula Village, Rejendranagar Mandal for setting up of operational Headquarters with residential accommodation for the Police Academy examined the validity of the assignments made in favour of the respondents in 1966 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. Accordingly, a show cause notice dt. 28-3-1994 was issued by the District Revenue Officer, requiring them to show cause why the assignment of land made in their favour in 1961 should not be cancelled. Questioning the show cause notice, a writ petition No. 484/1995 came to be filed before the High Court of Andhra Pradesh, which was disposed of holding that the writ petition is pre-mature granting liberty to the petitioner to submit his explanation within a period of one week and the same shall be considered by the District Revenue Officer. Till then, the assignee shall not be dispossessed from the petition schedule land. The District Revenue Officer after considering the explanation passed an order holding that there was no irregularity in the assignment of lands to the respondents and further held 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

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 suspended the operation of the order dated 15-9-1994, passed by the District Revenue Officer, which was the subject matter of challenge in the writ petition. In the meanwhile, the Collector wrote a letter to the Government to ratify the action initiated by him in his order dated 3rd of January, 1995. The Government ratified the Collector's action and directed him to proceed with the enquiry and pass final order. The said order was challenged in WP No. 7221/1996. This Court by a common judgment dated 1st day of September, 1997, allowed both the writ petitions and quashed the order of the Government dated 24th of January, 1996. Questioning the same, the State of Andhra Pradesh 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, dismissed the said appeal confirming the order passed by the learned single Judge that the assignment of lands, made in favour of the respondents thirty years ago, could not be touched. On Government of Andhra Pradesh preferring further appeal, the Supreme Court while observing that when two writ appeals were filed against the common judgment, both the appeals should have been heard together. Since the High Court in the first writ petition filed by the assignees, i.e., WP No. 9106/1994 questioning the show cause notice, a mandamus was issued to the Collector, Ranga Reddy 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 directions of the High Court. As a matter of fact, 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 made by the Government are matters, which should have been allowed to take final shape instead of being challenged in 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 and accordingly disposed of the appeal directing the Collector to o complete the proceedings initiated by him by his order dt. 3-1-1995, as ratified by

the Government by its order dt. 24-1-1995, at an early date in accordance with law.

23. Having regard to the fact that the Supreme Court categorically holding that there is no necessity to go into the merits of the submissions made by the parties, it cannot be said that the Supreme Court endorsed that condition imposed under Form-G absolutely bars the alienation without prior sanction of the Collector.

24. The Telangana Area Land Revenue Act is enacted with a view to amend and consolidate the orders and regulations relating to land revenue as per the preamble of the Act No. VIII of 1317 F. Chapter-V deals with occupation of Khalsa land and right of occupants. Section 54 prescribes the procedure for acquiring unoccupied land, which reads as under:

(1) When any person is desirous of taking unoccupied land he shall before occupying the land submit a petition to the Tahsildar and obtain his permission in writing.

(2) On such petition being submitted, the Tahsildar may, in accordance with the rules made by the Government in this behalf from time to time, give permission in writing for occupation.

25. The occupancy rights, which were acquired under Section 54 were heritable and transferable under Section 58. Section 58-A envisages sanction of Collector for transfer of occupied land compulsory in certain cases, which reads as under:

(1) Notwithstanding anything contained in the preceding section the Government may, by Official Gazette notify in respect of any village or tract of the area to which this Act extends that the right of occupation of any land under Section 54 given after the date of the notification shall not be transferable without obtaining the previous sanction of the Collector.

(2) The Government may also as its discretion from time to time notify by Official Gazette, that any part or person or class of persons of such village or tract of the area to which this Act extends to which the provisions of Sub-section (1) have been made applicable shall be exempt from the said provisions.

26. For due implementation of the provisions of the Telangana Area Land Revenue Act and for guidance of all persons in the matters connected with the enforcement of the Telangana Area Land Revenue Act or in the matters not expressly provided in the Telangana Area Land Revenue Act, rules were made in exercise of powers conferred by Section 172, known as 'The Laoni Rules, 1950' on 16-11-1950, which came into force on 7-12-1950.

27. Under Rule 2, any person desiring to take up any unoccupied land shall submit a petition to the Tahsildar in writing. Such person shall not enter upon the land without obtaining the previous permission in writing from the Tahsildar's office. Rule 4(a) prescribes opening of a separate file with a fly-sheet as per Form-A in respect of each application received by the Tahsildar for land for laoni. Rule 5(a) contemplates registration of applications in the order in Form-C (1) to be opened separately for each kind of land such as (a) lands assessed as waste; (b) unassessed lands and (c) reserved lands. 5(c) contemplates forwarding of applications received by Tahsildar to the Girdawar of the halqa in which the village is situate for submission of detailed inspection and report. Under Rule 6, the Girdawar shall maintain a register in Form-D and enter therein the particulars of the applications received from the Tahsil Office. He shall then issue a notice in Form-E stating therein the name of the applicant, particulars of the land applied for and the date on which the Girdawar would inspect the land, such date being fixed not earlier than 15 days from the date of issue of notice. Copies of the notice shall be served on the applicant and on the adjoining landholder. The village officers shall also affix a copy of the notice in a conspicuous place in the village chavidi and on the land applied for and the contents thereof be proclaimed by beat of drum. Rule 7 contemplates inspection by Girdawar in the presence of the applicant and of such of adjoining landholders and to draw up a Panchanama mentioning therein the nature of the land applied for, the extent required, and all relevant information about other applicants indicating their willingness to take up the land; and prepare a sketch of the land applied for showing its approximate position to other lands of the village and after inspection a report shall be submitted to the Tahsildar. As per Rule 9, the Tahsildar shall, on receipt of the report from Girdawar, decide whether the request of the applicant for grant of land may be complied with after giving due consideration to the various matters mentioned

therein. Under Rule 9(c)(i) if the Tahsildar comes to the conclusion that from the panchanama and the report of the Girdawar it is apparent that the land applied for is only an assessed waste, whether from the commencement of the period of settlement or has become waste-land subsequently due to the resignation of resumption, he shall proceed to dispose of the application (i) if the land is dry land and has long lain waste, Tahsildar shall fix a date for the sale of such land in the village where it is situate. If the value of such land mentioned in Clause (i) is estimated to be less than Rs. 100/-, the Tahsildar may allow the sale to be conducted on the spot by the Girdawar. If the value of the land exceeds Rs. 100/- but does not exceed Rs. 500/-as per the panchanama sent up by the Girdawar with his report, the Tahsidlar shall conduct the sale personally on a specified date after giving due publicity thereto in the village where the land is situate and after affixture of a copy of the notice to the Notice Board of Tahsil Office. Under Rule 9(c)(iv), if the value of the land is estimated to be Rs. 500/- or more but within Rs. 2000/-, the Tahsildar shall submit a recommendation to the Deputy or Assistant Collector and as per Rule 9(c)(v) if the estimated value of the land is Rs. 2000/- or more the recommendation shall be submitted by the Deputy or Assistant Collector to the Collector to conduct sale personally, as the case may be, on a specified date. The prominent feature, which is noticeable under Rule 9, is that the entire transaction is a sale but not an assignment. As per Sub-rule (g) of Rule 9, when it is decided to dispose of the land by auction, the auction amount of the land and the tress standing thereon shall be recovered in the manner prescribed under the said rule. Under Sub-rule (h) of Rule 9, if on the report of the local officers, the Collector finds that a proper price may not be secured by an auction or that there is likelihood of vested interests acting together and putting up prices so as to make it impossible for the poorer classes to get the land at a fair price, he may fix an upset price and allot the land to the applicant without holding an open sale. The sale shall be held after giving 15 days previous notice to the inhabitants of the village by pasting sale notice in Form-H on the notice board of the Tahsil office and the village chavidi. Rule 10 provides for confirmation of sale by the Tahsildar where it is held by the Girdawar; by the Deputy or Assistant Collector-in charge of the division where it is held by the Tahsildar and by the Collector where it is held by the Deputy or Asst. Collector. Where the sale is conducted by the Collector

himself, the Board of Revenue shall be the confirming authority. At the conclusion of the sale, the authority conducting the sale shall submit the records along with the necessary challan numbers pertaining to the payment of the full price by the party to the proper authority as indicated above. The confirming authority shall pass orders either confirming the sale if there be no objection or canceling the same if he is of the opinion that the sale should be cancelled and a fresh sale held. In case the confirming authority is of the opinion that the land cannot be granted for loani, he shall order accordingly. After the endorsement of his order, the papers shall be sent back to his next subordinate officer, and if that subordinate officer is not the Tahsildar, the intermediate authority shall send the papers with the final orders to the Tahsildar. In case of confirmation of sale, the Tahsildar shall issue permission for occupation in Form-G prescribed under Sub-rule (g) of Rule 9 of the Laoni Rules. Rule 11 provides where a land granted for occupation does not already bear survey number, a reference shall be made by the Tahsildar to the District Land Record Officer for getting the phodi work completed. Under Rule 12, the District Land Record Officer, after receiving record, shall arrange to have the land sub-divided and to have a separate number assigned thereto in accordance with the prescribed rules to classify the soil and to arrange to get the akarbands and maps corrected. After such correction has been made in the records the same shall be sent back to the Tahsildar to make a note in the village records showing the area finally determined as a result of such phodi work and the assessment due thereon.

28. Rule 15 onwards deals with special laoni. Rule 15 deals with land in the specified areas notified under Section 58-A of the Telangana Area Land Revenue Act shall be assigned in accordance with Rules 15 to 23 of the Loani Rules. Rule 15(a) provides to make land available in certain areas to such landless persons of agricultural and backward classes as may be notified from time to time, and who have not sufficient means to purchase land either at the ordinary laoni auctions or otherwise, and the selection of the most deserving applicants should be made by the Tahsildar after due publicity in the village or at the place fixed for the allotment proceedings. Special laoni proceedings may ordinarily take place twice a year in the months of April and September and may also take place at other times when the Tahsildar is visiting the locality. Rule 16 provides selection for special laoni and

preferential treatment to some persons. Under Rule 17 persons selected by the Tahsildar were given possession of the land after auctioning the timber standing thereon. Rule 18 contemplates confirmation of the persons selected by the Tahsildar for special laoni by the Collector within a month from the date of the proposal. Rule 19 provides preparation of land for cultivation within three years by the allottee and pattedar may be rejected by the order of the Collector for breach of any of the conditions after issuing due notice intimating the violations of condition and if the land has been transferred in contravention of the conditions, the Collector may reject the transferee. Rule 20 provides for obtaining of an agreement by Tahsildar from the person to whom the land is to be allotted after sanction of the ordinary laoni or special laoni and granting permission to occupy the land.

Form-G is issued under Rule 9(g) of the Laoni Rules.

Which is extracted hereunder:

FORM G

[See Rule 9(g)]

Written permission to occupy land (to be given by the Tahsildar under the Laoni Rules)

Permission is hereby given to. inhabitant of. in the Tahsil of District...to occupy Survey of Number in the village of...in the Taluq of...in District.

(Name of the Party)...is to pay...amount per year from for the land granted for occupation under this permit as assessment.

If, after the phodi work is completed, the area and assessment are both fixed by the Department of Land Records (Survey and Settlement). is bound to pay the assessment so fixed, but this change will take effect only from the year following that in which such change has been made as a result of the completion of phodi work by the Department of Land Records.

(In the case of land granted as not transferable) he the grantee is not empowered to transfer the occupancy without the sanction previously obtained from the Collector.

This permission to occupy shall not confer the right to mine on the land or collect minerals therefrom.

(seal)

Tahsildar

Place:

Date:

29. Conditions of sale annexed to Form-G are extracted hereunder:

1. The sale shall be subject to confirmation by the Collector, or by some other Revenue officer duly authorised to confirm the same.

2. It shall be in the discretion of the Collector or other officer aforesaid, to accept or refuse the highest bid.

3. The highest bidder shall have no ground for complaint if the sale be not confirmed, or if there be delay in the confirmation of the sale.

4. The party who is declared, subject to confirmation of the sale as aforesaid, to be the purchaser shall be required to deposit immediately 25 per cent on the amount of his bid, and in default of such deposit, the occupancy right shall forthwith be put up and resold.

5. If the proceeds of such resale be less than the bid of such defaulting purchaser, the difference shall be recovered from him by the Collector as arrears of land revenue.

6. The full amount of the purchase money shall be paid by the purchaser within 15 days of the auction or if the said fifteenth day be a Sunday or other public holiday, then on the first working day thereafter.

7. In default of payment, within the said period of the full amount of the purchase money, the deposit after defray therefrom the expenses of the sale, shall be forfeited to Government and the occupancy right be resoid and the defaulting purchaser shall forfeit all claim to the occupancy right, or to any part of the sum for which it may be subsequently sold.

8. If the sale is not confirmed, the purchaser shall be entitled to refund of his deposit or his purchase money, as the case may be.

9. The purchaser shall, prior to occupation of the land, obtain the permission in writing of the Tahsildar or Collector under Section 54 of the A.P. (Telangana Area) land Revenue Act. Such permission shall only be accorded on his paying local fund cess at the rate of one anna in the rupee on the amount of the purchase money. If the land is occupied without such permission being first obtained, the occupation shall be liable to be treated as unauthorised under the A.P. (Telangana Area) Land Revenue Act No. VIII of 1317 F.

10. The purchaser shall pay the assessment of the land and Local Fund Cess thereon commencing with the year, provided that, if for no fault of his, he does not obtain possession of the land in due time to make use of it that year, he shall not be chargeable with the assessment and Local Fund Cess there of till the next following year.

30. What is therefore manifest from the foregoing statutory provisions of the Telangana Area Land Revenue Act and the Laoni Rules made thereunder is that Section 54 provides for acquisition of any unoccupied land by a person who is desirous of taking such unoccupied land by submitting a petition before occupying the land to the Tahsildar and to obtain his permission in writing. Relevant procedure has been prescribed under the Laoni Rules for dealing with such application and its disposal. In the first instance, the Girdawar of the village concerned shall have to inspect the land, gather particulars and submit a report to the Tahsildar. On such application, the sanctioning authority may either accept or reject the application. If it is sanctioned, permission will be issued to occupy the land and after completion of the Girdawar separate revenue number will be given. Under Section 58 of the Act, occupancy rights thus acquired was deemed to be

heritable and transferable. The Laoni Rules, which were made by the Governor in exercise of the powers conferred upon him under Section 172 of the Telangana Area Land Revenue Act, provides procedure for obtaining unoccupied land. Different revenue authorities have been given power to conduct the sale depending upon the estimated value. There is a provision for the confirmation of the sale. After the confirmation, where the land granted for occupation does not already bear survey number, a reference shall have to be made by the Tahsildar to the District Land Record Officer for getting the phodi work completed.

When the Laoni Rules were in force, Circular No. 14/A3/ 1107/54 dt. 8-11-1954 was issued for assignment of government land, which were under cultivation on the basis of permission for Eksala Cultivation or unauthorized cultivation. In cases of occupation by the Harijans, Scheduled Castes, Backward Classes of poor landless persons, patta shall be granted under Eksala permission subject to the provisions contained in S. No. 58-A of the Telangana Area Land Revenue Act free of cost to the extent of one family holding inclusive of the land already owned by occupants. In case of occupation by other persons than those specified above, i.e., Harijans, Scheduled Castes, Backward Classes of poor landless persons, permanent patta shall be granted on payment of an upset price equal to 16 times the land revenue to the extent of one family holding, inclusive of the land already owned by the occupants, and where the land is in excess thereof, they shall be evicted from the excess area.

31. Under Rule-III of the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958, lands at the disposal of the Government shall be assigned only to the landless poor persons who directly engage themselves in cultivation. Preference, however, shall be given to Harijans, Girijans, Harijan Christians and any other Backward Classes. The word 'landless poor persons' has been defined under Rule-IV which is to the following effect 'landless poor person is one who does not own or has share in ancestral or acquired land in excess of Ac. of wet land or 5 acres of dry land and also person engages in agricultural operations having a total income of less than Rs. 6000/- per annum'. Under Rule-V, maximum extent of land will be assigned to a single individual shall be limited to one acre wet or five acres dry, taking into consideration the land owned by the assignees.

Under Rule-VI, the assignment of lands shall be free of market value, and the land assigned shall be heritable but not alienable. Under Rule-IX, isolated plots of land not exceeding 10 guntas of wet or acres of dry contiguous to and necessary for the convenient enjoyment of the lands private owned by a ryot may be assigned to him on payment of full market value though he may not be landless poor person.

In partial modification of Rules issued in G.O.Ms. No. 1406 dt. 25-7-1958, the Government through G.O.Ms. No. 1724, Revenue dt. 26-8-1959 made rules for eviction of occupier not eligible for assignment and the principles which have to be observed for such eviction. Under Rule-VII, pending cases to which Circular No. 14 is applicable and other circulars issued should be dealt with under those circulars but not under the new rules of assignment policy issued in G.O.Ms. No. 1406 dt. 25-7-1958. Rule-VIII(a) saves the provisions of G.O.Ms. No. 1406 which are not inconsistent with the rules issued in G.O.Ms. No. 1724 will continue to be in force; (b) procedure to be followed in regard to the assignment of lands envisaged in Laoni Rules should be continued to be followed so far they are not inconsistent with the rules issued in G.O.Ms. No. 1406.

32. Thus circular No. 14/A3/1107/54 dt. 8-11-1954 deals with classes of persons who are entitled for grant of patta. Para-A deals with grant of patta of lands under cultivation on the basis of permission for Eksala Cultivation. Para-A(1) deals with grant of patta subject to the provisions of Section 58-A of the Telangana Area Land Revenue Act free of cost to the Harijans, Scheduled Castes, Backward Classes or poor landless persons. Para-A(2) deals with grant of patta to the persons other than those specified in para-A(1) on payment of an upset price equal to 16 times the land revenue to the extent of one family holding, inclusive of the land already owned by the occupants. Para-B deals with lands under unauthorized cultivation. Under Para-B(1) in case of occupation by the Harijans, Scheduled Castes, Backward Classes or poor landless persons prior to 1949 patta shall be granted subject to the provisions contained in Section 58-A of the Telangana Area Land Revenue Act to the extent of one family holding inclusive of the land already owned by the occupants. Under Para-B(2) in case of occupation by persons other than those specified in para (1) above, provided the occupation is for a period of not less than six years prior to 1952, patta shall be granted on

payment of an upset price equal to 16 times of land revenue to the extent of one family holding and persons who are unauthroised occupation after 1949 shall be evicted therefrom.

33. Under Laoni Rules, any person desiring to take up unoccupied land shall submit a petition to the Tahsildar. It only deals with future occupation after rules were framed. Circular No. 14 and Laoni Rules deal with different kinds of assignment. Whereas Circular No. 14 dt. 8-11-1954 deals with prior occupation i.e., prior to 1949 and grant of patta in favour of persons who are in occupation. Whereas Laoni Rules deals with grant of patta who occupied land after a written permission from the Tahsildar after rules were framed ie., after 7th December, 1950. Whereas Rules issued in G.O.Ms. No. 1406 dt. 25-7-1958, which were made in supercession of the earlier, are relating to assignment of government land, which deals with land after obtaining permission. Under Rule-II, any person can submit an application for taking up unoccupied land and person so applying shall not enter upon the land without obtaining previous permission in writing. Landless poor persons, as defined under Rule-IV, are eligible for assignment of government land under Rule III. Rules issued under G.O.Ms. No. 1406 deals with two types of patta, one is persons who have occupied land through a written permission from Tahsildar, as mentioned in Rule-II. Whereas Rule-VIII recognizes preferential claim of the categories of persons, namely, (i) Sivoijamadars who have expended a material amount of labour or money in reclaiming or improving the land; (ii) persons who hold tress on the land under the tree tax system; (iii) persons who have been using the water of wells in the land for cultivation; and (iv) people of the village where the lands are situated. Sivoijamadars are the persons unlawfully occupies any unoccupied land or uses the land without title under Section 57 of the Telangana Area Land Revenue Act. The said Rules have been modified through G.O.Ms. No. 1724 dt. 26-8-1959 saving pending cases where Circular No. 14 dt. 8-11-1954 applies and such of the provisions which are not inconsistent with the Rules to be followed.

34. A combined reading of the statutory provisions and the Rules as referred to would clearly indicate that grant of pattas are of two kinds; one is by way of sale in favour of persons who desirous of taking up unoccupied land. As per Rule-III of

the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 assignment of land in favour of landless poor persons who directly engage themselves in cultivation by giving preference to Harijans, Girijans, Harijan Christians. In case of granting patta for the persons who desirous to occupy unoccupied land made a claim for such grant of patta under Laoni Rules or under Circular 14, the same shall be transferred by way of sale as per the rules referred to above. In case of occupation of land, old occupants are entitled to grant of patta under Circular No. 14, the same shall be granted either by collecting upset price equal to 16 times the land revenue to the extent of one family holding which is an out right sale. The family holding has not been defined under Telangana Area Land Revenue Act but the same has been defined under A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950.

35. Section 58-A of the Telangana Area Land Revenue Act puts a restriction for transfer of occupied land notified in respect of any village or tract of the area to which Act extends that the right of occupation of any land under Section 54 given after the date of the notification shall not be transferable without obtaining the previous sanction of the Collector. The Advocate General representing the State Government admitted that no notification by the State Government under Section 58-A was published prohibiting transfer of the occupied land granted patta under Section 54. The same has been recorded by this Court in WP No. 144/75 dt. 6-12-1976.

36. Section 58 of the Telangana Area Land Revenue Act clearly demonstrates the Legislature never intended to impose ban on transfer of occupancy right granted. Section 58-A is an exception to Section 58, where State Government may by official notification notify in respect of any village or tract of the area to which the Telangana Area Land Revenue Act extends that the right of occupation of any land under Section 54 given after the date of notification shall not be transferable without obtaining the previous sanction of the Collector. For implementing the same, rules were made known as 'The Laoni Rules' by the State Government. Rule 9(g) of the Laoni Rules does not prohibit alienation of the land. It only prescribes that on receipt of the full amount permission to occupy the land shall be given to the party in Form-G in duplicate and the signature of the allottee shall be

obtained thereon along with date. One copy of the permission shall be given to the allottee and the Girdawar shall return the other copy with necessary endorsement of service along with record to the Tahsildar. The Girdawar shall personally serve all such notices and obtain acknowledgments and a memo shall also be given to the village officers to note in the village records the particulars of the land, the name of the person and the assessment to be recovered etc., and revenue shall be collected on the land, according to the rates so fixed till the akarband is finally corrected by the Survey and Settlement Department. If on the report of the local officers, the Collector finds that a proper price may not be secured by an auction or that there is likelihood of vested interests acting together and pushing up prices so as to make it impossible for the poorer classes to get the land at a fair price, the Collector may fix an upset price, and allot the land to the applicant without holding an open sale under Rule 9(h). Form-G, as referred to above, also specifies giving of written permission to occupy land (to be given by the Tahsildar under the Laoni Rules). Once the sale is confirmed, it is heritable and transferable under Section 58 of the Telangana Area Land Revenue Act. The condition, if any, imposed for sale of unoccupied land on payment of market value under Form-G is till the sale is confirmed by the Collector, but not otherwise. Unless a notification notifying in respect of any village or tract of the area to which the Act extends prohibiting transfer of occupancy rights without obtaining previous sanction of the Collector, any condition prescribed for obtaining permission for occupation of land which was granted laoni patta on confirmation of sale by the Collector, which is governed by Section 58 of the Act has to be ignored and condition of inalienability under Form-G issued under Rule 9-g is inapplicable to the lands where occupancy rights/assignments granted on collection of market value and prior to issuance of notification under Section 58-A, if any.

37. The next question falls for our consideration is whether a section could be brought into operation by mere framing of rules.

38. While dealing with the same, the Supreme Court in Harla v. State of Rajasthan : [1952]1SCR110 held that in the absence of any law, rule, regulation or custom, a law cannot come into being by merely passing a resolution without promulgation or publication in the Gazette or other means but promulgation or publication of some

reasonable sort is essential.

39. The Supreme Court in Sakhawant Ali v. State of Orissa : [1955]1SCR1004 while dealing with coming into force of the Municipal Election Rules made under the Orissa Municipal Act, 1950 held that ordinarily the statute enacted by a State Legislature comes into force as soon as it receives the assent of the Governor. Section 1(3) of the Act however postpones the commencement of the Act, which means that Section 1(3) came into operation immediately the Governor gave his assent to the Act. Section 1(5) is nothing but a proviso to Section 1(3) and must be regarded also to have come into operation simultaneously with Section 1(3). It was further held thus:

No doubt the Act was not to be in force in a particular area until the relevant notification was issued by the State Government and until the Act came into force the disqualifications prescribed in Section 16(1) of the Act would not normally attach to candidates for election. The election rules also would be framed in exercise of the power reserved under the Act and if the Act had not come into force much less could the election rules come into operation and bind the candidates. This argument could have availed by the appellant f the State Legislature had not enacted Section 1(5) of the Act and the defect could not have been cured by the provisions of Section 23 of the Orissa General clauses Act (Orissa Act 1 of 1937) which was relied upon by the respondent.... (para 8)

40. This Court in Gram Panchayat, Zillalguda v. V. Government of Andhra Pradesh : AIR 1982 AP315 while dealing with notification specifying Municipal Corporation of Hyderabad area as development area earlier to the coming into force of A.P. Urban Areas (Development) Act, 1975 held thus: (para 30).the Government which is the Authority empowered to issue the orders under Section 2(o) and Section 13(1), exercised the power after the passing of the Act but before the coming into force of the Act with a view to apply the provisions of the Act immediately on its coming into force and is covered by the provisions of Section 6 of the A.P. General Clauses Act and is, therefore, valid. The order in G.O.Ms. No. 411 did not become effective or operative on the date on which it was issued but it acquired statutory force under Section 2(k) only on the date of its publication in the

Gazette on 1-10-1975, the date on which the Act came into force. This notification in the Gazette is in conformity with the provisions of Section 2(o) and Section 13(1) read with Section 2(k) of the Act. Hence the said G.O. having been notified in lawful exercise of the provisions of the Act after the Act came into force the said GO cannot be said to be illegal or devoid of jurisdiction. (para 30)

41. When Telangana Area Land Revenue Act came into force, there was no restriction for transfer/alienation of occupancy rights granted. However Section 58-A was introduced by Amending Act No. III of 1308 Fasli authorizing the Government to notify in respect of any village or tract of the area and right of occupation of any land under Section 54 given after the date of the notification shall not be transferable without obtaining the previous sanction of the Collector, and the Government may also exempt by notification any part or person or class of persons of such village or tract of the area to which the provisions of Sub-section (1) have been made applicable.

42. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The Supreme Court in Babu Verghese v. Bar Council of Kerala : [1999]1SCR1121 after noticing the origin of this rule traceable to the decision in Taylor v. Taylor (1875) 1 Ch.D 426 : 5 LJCh 373 which was followed by Lord Roche in Nazir Ahmad v. King Emperor (1936) 63IA 372 : AIR 1936 PC 352 who stated that 'where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all' and after noticing the approval of the said rule in Rao Shiv Bahadur Singh v. State of V.P. : 1954 CriLJ910 and again in Deep Chand v. State of Rajasthan : [1962]1SCR662 held that this rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.

43. In St. Johns Teachers Training Institute v. Regional Director, NCTE : [2003]1SCR975 , the Supreme Court held thus:

'A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make

subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy.... Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of (sic) enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate....' In other words, unless statutory provisions are in operation, rules/regulations made under rule making power conferred under the power of statute to regulate the procedure have begun to operate, delegated legislation cannot fill up details. If the statute has not comes into operation, the regulations made under power conferred by the statute which are in the nature of supporting legislation will not have any force and have to wait till the statute comes into operation on issuance of notification.

(emphasis supplied)

44. It is well settled that Rules cannot be made to supplant the provisions of the main Act but to supplement the main Act. (Nedurimilli Janardhana Reddy v. Progressive Democratic Students' Union : (1994)6SCC506 . Further it was held by the Supreme Court in B.L. Wadhera v. Union of India : [2002]3SCR226) any rule which is contrary to mandatory provision is ineffective and the same cannot be enforceable.

45. For the aforesaid reasons, we are inclined to hold that though the Government framed rules and notified the same cannot be treated as notification as contemplated under Section 58-A of the Telangana Area Land Revenue Act where State Government has to notify any village or tract of the area, to which this Act extends, for obtaining previous sanction of the Collector. Therefore, Rule VI(ii) of the Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 cannot be given effect to until such notification is issued.

46. Even if the rules are framed in exercise of rule making power unless notification is issued as contemplated under Section 58-A notifying any village or tract of the area where sanction of the Collector for transfer of land is necessary, rules cannot be enforced. As already observed, the condition, if any imposed for sale of unoccupied land on payment of market value under Form-G is till the sale is confirmed by the Collector, but not otherwise, as Section 58-A itself envisages sanction of right of occupation of land under Section 54 given after the date of the notification, but the same does not cover the occupancy rights granted under Section 58 of the Telangana Land Revenue Act. Point No. 1 is answered accordingly.

47. The next issue, which falls for our consideration, is whether the provisions of Act No. 9/1977 are applicable to all types of pattas/occupancy rights granted under various rules issued under Telangana Area Land Revenue Act.

Section 2(1) of the Act No. 9/1977 defines 'assigned land', which reads as under:

'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.

'Landless poor person' has also been defined under Sub-section (3) of Section 2, which means a persons who owns an extent of land not more than 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land as or such other extent of land as has been or may be specified by the

Government in this behalf, from time to time and who has not other means of livelihood.

48. Section 3 prohibits transfer of assigned lands after commencement of the Act of any land assigned by the Government to a landless poor person for purposes of cultivation or as a house-site. Sub-section (2) of Section 3 declares that no landless poor person shall transfer any assigned land and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. Sub-section (3) of Section 3 adumbrates any transfer or acquisition made in contravention of the provisions of Sub-section (1) or Sub-section (2) shall be deemed to be null and void. Sub-section (5) of Section 3 engrafts an exception to the retrospective operation of Section 3(1) in favour of those landless poor persons who have already purchased the land prior to the commencement of the Act No. 9/1977 from landless poor persons in violation of condition of inalienability, provided purchaser is a landless poor persons purchased in good faith for valuable consideration from the original assignee or his transferee prior to the commencement of the Act No. 9/1977. Further the provisions of Act No. 9 of 1977 will not apply to the alienation of pattas/occupancy rights granted under Laoni Rules or under Revised Assignment Policy issued in G.O.Ms. No. 1406 dt. 25-7-1958 since Act No. 9/77 prohibits transfer of assigned land which is defined under Section 2(1). Laoni Rules as well as the rules issued under G.O.Ms. No. 1406 dt. 25-7-1958 deal with two types of assignments, ie., assignment on payment of market value and assignment to the landless poor persons. Act No. 9/77 deals with assignment by Government to the landless poor persons subject to the condition of inalienability. Further Under Section 58-A of the Telangana Area Land Revenue Act issuance of notification in the official gazette notifying in respect of any village or tract of the area to which the Act extends, sanction of Collector for transfer of dry land is compulsory and any right of occupation of any land under Section 54 given after the date of notification shall not be transferable without obtaining previous sanction of the Collector. Since no such notification has been issued making it a condition to obtain sanction of the Collector for possession of unoccupied land compulsory in respect of any village or tract, the condition under Form-G which is contrary to the main statue cannot be invoked for invalidating the transfer of the assigned land in whose favour patta is granted either under Laoni

Rules or under G.O.Ms. No. 1406 on collection of market value.

49. We are of the view that provisions of Act No. 9 of 1977 will not be applicable to the cases where assignments were made on collection of market value or under Circular 14 except it were granted to the landless poor persons free of market value. Point No. 2 is answered accordingly.

50. For the reasons aforementioned and conclusions reached by us, having regard to the fact that action has been initiated on the basis of a letter addressed to the Honourable Chief Justice, which has been treated as taken up writ petition i.e., 14795/2005, having regard to the complexity of the issue involved and since 1960 onwards land has been changed several hands and the persons to whom notices were issued are not aware of the nature of occupancy rights/assignment granted, we pass the following order:

51. Whenever any proceedings are to be initiated by the revenue authorities for resumption of the land, they have to specify

(a) the nature of occupancy rights granted, namely, whether occupancy rights were granted on collection of market value or free of market value in favour of the landless poor persons;

(b) whether the said land falls within the notified area restricting inalienability as per the notification issued under Section 58-A of the Telangana Area Land Revenue Act;

(c) whether Act No. 9 of 1977 applies to the nature of occupancy right/assignment granted;

(d) if any changes in the revenue records are effected, reasons for change from the original entries in khasra pahani of 1954-55 or subsequent to the same;

in the notice to be issued for enabling them to make an effective explanation to meet the contentions and submit their explanation to the action proposed. Unless such particulars are furnished for submitting an effective explanation, lands cannot be resumed merely basing upon the revenue entries so made.

52. For the foregoing reasons and conclusions drawn by us, we accordingly pass the following orders:

WP No. 14795/2005: Pursuant to the taken up writ petition, the Government has already initiated action for resumption of land nearly in 7000 cases, as submitted by the learned Special Government Pleader. Therefore, no further adjudication is called for in the present writ petition.

The writ petition is accordingly disposed of directing the authorities to follow the directions, as aforementioned, and action, if any, for resumption of land is to be taken/has been taken, the same has to be finalized in the light of the directions, as aforementioned.

WP Nos. 13227/2005; 13228/2005; 13229/2005 and 13230 of 2005:

In these writ petitions, sale deeds were executed after obtaining permissions under Section 47 of the Telangana Tenancy Act, 1950 and sale transactions have been validated under Section 50-B. Since the respondents have not denied the fact of assignment of land on collection of market value and once permission is granted under Section 47 of the Telangana Tenancy Act and sale transaction has been validated under Section 50-B, which is validated only to the lands which were granted on market value, the impugned orders passed by the Deputy Collector & Mandal Revenue Officer, Serilingampalli Mandal as confirmed by the Revenue Divisional Officer, Chevella Division are liable to be set-aside and they are accordingly set-aside.All these writ petitions are accordingly allowed.

WP No. 14021/2005: In this case, the petitioner obtained permission Section 47 and 48 of the Telangana Tenancy Act. Since 1965 her name was recorded in the revenue records showing as possessor of the land. Earlier writ petition No. 26173/2001 was allowed quashing the show cause notice dt. 12-11-2001. Without initiating any proceedings, the Mandal Revenue Officer cannot direct the third respondent to change the entries in the revenue records. Therefore, consequential action if any taken to change the entries in the revenue record in respect of S. No. 177/6 from 'Kharij Khath' or 'Gairan Land' to patta is deemed to have been quashed, and possession of the petitioner shall not be disturbed.

53. The writ petition is accordingly allowed. However, this order will not preclude the authority from initiating proceedings for change of revenue records or for resumption of land, following due procedure, if they want to do so.

W.P. No. 10206/2005: The petitioners who are original assignees filed this writ petition for restoring the land as per Section 4(1)(b) of the Act No. 9 of 1977.

Learned Special Government Pleader contended that in view of amendment made to Section 4 of the Act No. 9 of 1977 by Act No. 8/2007, the petitioners are not entitled to restoration of possession of the land. Admittedly, Act No. 8 of 2007 came into force with effect from 29-1-2007. Whereas the impugned order was passed on 29-3-2005 resuming the land for violation of conditions. Section 4(1)(a) and (b) of the Act No. 9 of 1977 obligates the authorities on taking possession of the assigned land after evicting the person in possession have to 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 to landless poor persons in accordance with the rules for the time being in force. Such restoration of possession to the original assignee shall not be made more than once.

Against the order passed by the Mandal Revenue Officer resuming the land and handing over possession of the land to the original assignee, an appeal lies to the Revenue Divisional Officer under Section 4-A(1). Sub-section (2) of Section 4-A provides for an appeal to the District Collector against the orders of the Revenue Divisional Officer passed under Section 4(1). Therefore, we grant liberty to the petitioners to file an appeal within a period of four weeks from the date of receipt of a copy of this order. On filing such appeal, the Revenue Divisional Officer shall entertain the same without any objection to the law of limitation and pass appropriate orders on merits.

With the above direction, writ petition is accordingly disposed of.

In the circumstances of the matter, there shall be no order as to costs in all these batch of writ petitions.

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