

by any Court including Supreme Court till today, holding or negating my honest opinion. I appreciate and accept with respectful thanks any criticism from the legal faculty or other gentry, as, this subject is a

highly important point dealing with fundamental rights of a citizen, for it is the constitutional mandate that no citizen of this country shall be punished for no offence at all.

The decision reported in 2011 (3) ALD 771 = 2011 (4) ALT 345 (Mamidi Sambasiva Rao v. Bali Ammannna and another) is *per incuriam*, as it does not refer to the amendment made to Section 4(1)(b) of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act No.9 of 1977) by Amendment Act 2008 (Act No.21 of 2008) with effect from 6.5.2008 relating to transfers made on or before 29.1.2007.

By

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1. The facts in the above cited decision are simple. The suit schedule property admeasuring 73 square yards, a residential site with premises bearing No.6/339 with Assessment No.6781, consisting of two rooms with cement sheet roof, was originally assigned to the second defendant under a Patta dated : 10.10.2010. The second defendant died and so his legal representatives 3 to 6 were added as parties to the suit. The plaintiff claims that he purchased the suit schedule property from the deceased second defendant under an agreement of sale dated 3.1.1990 for a consideration of Rs.5,000/- and he obtained a decree in OS 152 of 1999 dated 28.4.2000. Pursuant to the said decree, the plaintiff (D.Hr.) filed EP 148 of 2001, seeking a direction to the defendants/J.Drs. to execute a registered sale deed. The defendants/J.Drs. resisted the claim of the plaintiff/D.Hr., contending that the plaintiff D.Hr. obtained an *ex parte* decree and the property in question is a Government porambock land and that it was assigned by the Government to the second defendant *i.e.*, the father of defendants 3 to 6 and since it is an assigned land for construction of a house, the same cannot be alienated and the agreement of sale is hit

under the provisions of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 (Act 9 of 1977). It is to be understood that the said E.P. 148 of 2001 filed by the plaintiff (D.Hr.) under Order 21 Rule 34 CP Code must have been dismissed by the executing Court, as, from the reported decision, CMA 15/2004 was filed in the Court of Additional Senior Civil Judge (Fast Track Court), Gudiwada, which, in turn, dismissed the same on 28.7.2004, against which CRP No.856 of 2006, was filed in High Court, which was also dismissed on 20.1.2011. The said dismissal of CRP 856/2006 is, according to my honest opinion, *per incuriam*.

2. In the original Act 9 of 1977, Section 4(1) declared that, if the District Collector is satisfied that the provisions of sub-section (1) Section 3 have been contravened in respect of any assigned land, he or any other officer not below the rank of a Tahsildar, authorized by him in this behalf, may, by order

- (a) take possession of the assigned land, after writing the person in possession...and;

(b) restore the assigned land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose :—

- (i) to the original assignee, if he or she is eligible as per the norms fixed in this behalf, as on the date of restoration for one time job.
- (ii) assign to other eligible landless poor person, provided that where the original assignee or his legal heir, after the first restoration, transfers the assigned land, the land shall be resumed for assignment to the other eligible landless poor;

Provided

Explanation :—

3. But, this Section 4(i)(b) was amended in 2008 under A.P. Act 21 of 2008 *w.e.f.* 6.5.2008, which is as follows :—

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

- (a) take possession of the assigned land, after evicting the person in possession.
- (b) (i) reassign the said resumed land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose, to the transferee, who purchased the land in good faith and for valuable consideration on or before 29th January, 2007, subject to the condition that he/she is landless poor person and is in occupation

of the land by using the said land for agriculture or as house-site as on the date of taking possession by eviction.

- (ii) restore the assigned land, other than those lands/areas as may be notified by Government, from time to time in public interest and for public purpose to the original assignee, if he or she is eligible as per the norms fixed in this behalf as on the date of restoration for one time; or
- (iii) assign to other eligible landless poor person : provided that where the original assignee or his legal heir after the first restoration transfers the assigned land, the land shall be resumed for assignment to the other eligible landless poor;

Provided further that, if no eligible landless poor persons are available in the village/ area, the resumed land will be utilized for public purpose.

Explanation :—

4. So, as per the said Amendment Act of 2008 (21 of 2008) the plaintiff in the above cited decision, purchased an assigned land for a valuable consideration of Rs.5,000/- from second defendant under an agreement to sale dated 3.1.1990 and obtained a decree against the second defendant therein, since died, and filed EP 148 of 2001 probably under Order 21 Rule 34 CPC against defendants 3 to 6, who are the legal heirs of the deceased second defendant, which came to be dismissed by the executing relying on sub-sections (1), (2), (3) and (4) of Section 3(1) of the Act. In this context, it may be seen that the above said sub-sections of Section 3 are not amended in view of amendment made to Section 4(1)(b)(i) as per the Amendment Act 2008 (Act 21 of 2008). Nonetheless, as sub-sections (1) to (4) of Section 3, which speak of violations only,

have got to be understood with reference to the effect of such violations mentioned in Section 4 of the Act. So, though subsections (1) to (3) of Section 3 declare that a transfer of an assigned land by the assignee to any other person in general, even for consideration, is *null* and *void*, such transfer by an assignee in favour of another landless poor person effected on or before 29.1.2007 for consideration is exempt from the curse of the effect of such transfer in general, as mandated in Section 3. This Amendment Act 2008 was not brought to the notice of the learned Judge, who delivered the judgment above referred. Had this Amendment Act 2008 been brought to the knowledge of the learned Judge, the said learned Judge would not have delivered the judgment in the manner he did. This Amendment Act 2008 in crystalclear terms saves the purchase of assigned land from the second defendant by the plaintiff-decree holder in the above cited decision and hence he is entitled for the relief as prayed for by him in his E.P. 148 of 2001. This Amendment Act 2008 was

not brought to the knowledge of the executing Court, the Appellate Court or the Revision Court (High Court). Without taking risk of repetition, I am of the honest view that the decision reported in 2011 (4) ALT 345 is *per incuriam* and did not rule the law correctly relating to the purchase of assigned land by a landless poor person from the original assignee or his legal heirs before 29.1.2007, as it held that such transfer/sale of assigned land is void, in the teeth of Amendment Act 2008 (Act 21 of 2008) as the said Amendment Act 2008 (Act 21 of 2008) was not brought to the notice of the learned Judge, which came into force with effect from 6.5.2008 and which is applicable to all kinds of transfers effected on or before 29.1.2007 by assignee in respect of assigned land in favour of another landless poor person, for consideration, declaring such transfers to be valid, without becoming prey of the curse under subsections (1) to (4) of Section 3 of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977).

LEGAL CONCEPT OF SOVEREIGNTY IN THE PRESENT SCENARIO

By

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Nothing is Permanent Except Change - Anonymous

Sovereignty is the quality of having supreme, independent authority over a geographic area, such as a territory¹. Sovereignty is the power of State to do everything necessary to govern itself such as

making executing and applying laws, imposing and collecting taxes. Making war and peace and forming treaties or engaging in commerce with foreign nations. Literally speaking or legally speaking every country is sovereign and equal on par with the other countries. In reality are they really sovereign when they are having relationship or dependant on other countries or groups of countries educationally, politically, economically, culturally, socially, religiously and even to defend themselves by external aggression by the mighty countries.

1. "sovereignty (Politics)" Britannica Online Encyclopedia.

<http://www.britannica.com/EBchecked/topic/557065/sovereignty>. Retrieved 5 August 2010.