

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 22526 of 2011

ORDER:

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The present writ petition is filed seeking issuance of a writ of mandamus declaring the action of respondent Nos.1 and 2 in cancelling the assignment granted in favour of the petitioners vide proceedings in D.Dis.No.4882/1994 (E3) dated 20.03.2002 of respondent No.2 and consequential proceedings No. BCW1/324/2002 dated 30.09.2005 of respondent No.1, as illegal, arbitrary and violative of principles of natural justice.

The facts which lead to filing of the writ petition are as under:

Land admeasuring Ac.5.00 in Sy.No.168/2 and Ac.5.00 in Sy.No.168-3 situated at Talupuru Village was assigned to the petitioners vide DR Dis.No.159/99 and 158/99 dated 04.04.1990. It is stated that from the date of granting of pattas the petitioners, who are brothers along with their mother, were said to be in possession of the land. Pursuant to a request made by one Smt. Harijana Hanumakka and Harijana Subbakka, for assignment of land in the same survey number, the matter was enquired into and it was found that the mother of the petitioners was holding about Ac.28.85 cents of private land. Having found that the mother of the petitioners was holding land to an extent of Ac.28.85 cents, the second respondent cancelled the assignment granted in favour of the petitioners on the ground that they have obtained the assignment of land by suppressing the real facts. Against the order of the second respondent dated 20.03.2002 the

petitioners preferred an appeal before the first respondent. By an order dated 30.09.2005 the first respondent confirmed the order passed by the second respondent. Questioning the same the present writ petition is filed.

A counter came to be filed by the third respondent disputing the allegations made in the affidavit filed in support of the writ petition. By an order 11.06.2015, the person to whom the land was assigned subsequently was impleaded as respondent No.4. He filed counter disputing the averments made in the affidavit.

Learned counsel for the petitioners mainly submits that without giving any notice and without hearing the writ petitioners, the impugned orders came to be passed as such the same is liable to be set aside. He further submits that these petitioners are landless poor as there is no land in their name. In view of the above, it is stated that the assignment of Ac.5.00 granted to each of the petitioners is legal and valid.

The Government Pleader for Revenue and also the counsel for the fourth respondent strenuously opposed the petition on the ground that the assignment of land was obtained by both the petitioners on a false declaration. The enquiries made by the respondents and the material produced before the Court discloses that the mother of the petitioners was having Ac.28.85 cents of private land and even if the petitioners were to get 1/5th share each, out of the family properties, each of them would be having morethan Ac.5.00 of land. It is thus contended that the petitioners cannot be treated as landless poor persons. In view of the above it is stated that there are no merits in the writ petition

and the same is liable to be dismissed.

A perusal of the material placed before the Court, the impugned orders passed by respondent Nos.1 and 2 and the affidavits filed would show that the petitioners were assigned land admeasuring Ac.5.00 each in Sy.No.168/2 and 168/3 and both of them who are brothers were put in possession of the said land. Subsequently, on a request made by two women namely Harijana Hanumakka and Harijana Subbakka seeking assignment of land in the same survey number, an enquiry was conducted and during the course of the enquiry it came to light that the mother of the petitioners was holding Ac.28.85 cents of land in Sy.Nos.5-1, 5-2, 68-12, 69-3 and 154-2 of Talupur Village. The above lands were found to be settlement patta lands inherited by the ancestors to the family. It was noticed that the family of the petitioners was holding the said land on the date of assignment. A perusal of the record also indicate that the father of petitioners namely Gosala Musalappa has 1/10th share in land situated at Kudair village out of Ac.44.01 cents, which comes to Ac.4.40 cents. In view of the material available on record, the Mandal Revenue Officer, Atmakur, has recommended for cancellation of assignment granted in favour of the petitioners as the land was obtained on misrepresentation of facts. Basing on the recommendation made by the Mandal Revenue Officer, Atmakur, a show-cause notice was issued to the petitioners to appear before the Joint Collector, Ananthapur on 22.06.1995. One advocate by name N.Jaya Ram filed vakalth on behalf of the petitioners. Pursuant to which the case underwent number of adjournments and finally it was decided on 18.03.2002. In spite of filing vakalth, no explanation was submitted to the show-cause notice issued and the counsel

for the petitioners was absent despite giving several opportunities. As the petitioners failed to contest the matter in spite of giving sufficient opportunity, the Joint Collector passed an order cancelling the assignment infavour of the petitioners. Therefore, it cannot be said that the petitioners were not given any opportunity to contest the matter before the Joint Collector. Aggrieved by the orders of the Joint Collector, the petitioners preferred an appeal before the first respondent. After calling for the records from the office of the second respondent, the case was initially posted on 12.06.2003 and later to 22.07.2015 for final hearing. Therefore, it cannot be said that without perusing the record the first respondent passed the order confirming the findings of the second respondent.

Further, the record shows that the mother of the petitioners was holding Ac.28.85 cents of land in different survey number of Talupuru village. The above land was settlement patta land inherited by the ancestors to the family. It is also to be noted that as on the date of assignment, the family consisting of the mother and these two petitioners were holding the said land. This fact of petitioners along with their mother holding Ac.28.85 cents of land was not brought to the notice of the Mandal Revenue Officer at the time of assignment of land. It is now sought to be contended that even if each of the petitioners get $\frac{1}{5}^{\text{th}}$ share they would be holding only Ac.4.44 cents of land. It is to be noted that firstly the petitioners have not brought to the notice of the Mandal Revenue Officer about their mother, with whom they are living as joint family, was holding Ac.28.85 cents of land. Secondly, even if the argument of the learned counsel for the petitioners is accepted, $\frac{1}{5}^{\text{th}}$ share of each of the petitioners would be Ac.5.77 cents and

not Ac.4.44 cents of land as contended by the learned counsel for the petitioner. Therefore, it cannot be said that the petitioners were landless poor and that they are entitled for the assignment of the land.

Further, a perusal of the record would show that the Mandal Revenue Officer has subsequently assigned the land, which was originally assigned to the petitioners, in favour of four other persons. The fourth respondent is one amongst the subsequent assignees. The said assignment was challenged by way of an appeal before the Revenue Divisional officer on 11.06.2009 and the same is said to be pending.

From the above discussion it cannot be said that the petitioners are landless poor and that assignment was cancelled without issuing notice to them. As stated earlier, show-cause notice issued by the second respondent was served on the petitioners and they engaged an advocate by name N.Jaya Rao, who filed vakalath. Subsequently the counsel for the petitioners failed to appear. Therefore, it cannot be said that no opportunity to contest the matter was given to the petitioners, thereby violating the principles of natural justice. In view of the above, it cannot be said that the orders passed by the second respondent in D.Dis.No.4882/1994 (E3) dated 20.03.2002 which was confirmed in an appeal by the first respondent in proceedings No.BCW1/324/2002 dated 30.09.2005 are illegal and incorrect.

Accordingly, the writ petition is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

07.08.2015
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