

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT PETITION No.6604 of 2004

ORDER:

Heard the learned counsel for petitioner, the learned Government Pleader for Assignment for respondents 1 to 3 and the learned Counsel for respondent No.7.

2. The case of the petitioner is that an extent of Acs.300.00 of land out of Acs.1200-00 was deforested with a view to provide house sites to poor persons and also Non-gazetted Government Officers. The petitioner submitted an application to the then Tahsildar, Kavali, requesting to allot one plot from the layout approved by the Director of Town Planning, Hyderabad. Pursuant to the said application, the then Tahsildar, Kavali, assigned an extent of Ac.0-10 cents of vacant land bearing plot No.1224 in the said layout on 25.05.1978 in favour of the petitioner and possession was also delivered to the petitioner on the same day. A thatched house was constructed on the said plot of land. In the cyclone of November, 1989, the thatched house collapsed. When the fourth respondent tried to interfere with the possession of the said land on 20.02.1990, the petitioner filed O.S.No.59 of 1990 on the file of Junior Civil Judge, Kavali against him for permanent injunction. The petitioner also filed I.A.No.254 of 1990 for grant of temporary injunction and the same was granted on 16.04.1990. When Advocate Commissioner was appointed in the said suit, she visited the suit property and submitted a report on 14.03.1990, wherein it was stated that a foundation stone was laid and pits were dug for laying foundations and the required material for construction of house were existing there. Thereafter, when the fourth respondent filed a counter stating that he has no interest in the land. However, the father of the fourth respondent, the fifth respondent herein, filed O.S.No.15 of 1992 on the file of the Court of Junior Civil Judge, Kavali against the petitioner and the fourth respondent claiming title in respect of Ac.0.05½ cents of land on the ground that the third respondent granted him patta by proceedings in C.B.No.772/1990 dated 26.07.1991 and the

said land was assigned a new number as Plot No.1224/B. Thus, the petitioner came to know of the cancellation of patta granted in his favour and assignment of the land of an extent of Ac.0-05½ cents in favour of the fifth respondent. The petitioner submitted an application on 24.02.1992 to respondents 2 and 3 requesting them to provide certified copies of the documents of cancellation and on the same day, he filed an appeal before the first respondent against the orders of the second respondent dated 26.07.1991. A perusal of the proceedings of the second respondent indicates that an enquiry was conducted by the third respondent, who submitted a report to the second respondent stating that the petitioner never constructed a house and his whereabouts are not known and since he violated the conditions of grant of patta, he recommended for cancellation of patta and to issue patta to the fifth respondent. Basing on the said report, the second respondent cancelled the patta granted to the petitioner after publishing a notice to the petitioner in the District Gazette to show cause as to why his patta cannot be cancelled. The first respondent, to whom the appeal was preferred by the petitioner against the order of the second respondent, confirmed the orders of the second respondent, by his order dated 28.02.2004. Challenging the said proceedings, the present Writ Petition is filed.

3. During the pendency of the present Writ Petition, the fifth respondent expired and respondents 6 to 11 came on record as the legal representatives of the deceased fifth respondent, by order of this Court dated 18.06.2012 in WPMP.No.22547 of 2008. Now the case is being contested by the seventh respondent.

4. A counter-affidavit was filed on behalf of respondents 1 to 3 by respondent No.3 admitting that the then Tahsildar, Kalavi granted house site patta to an extent of Ac.0-10 cents bearing plot No.1224 in Sy.No.2048/B of Kavali Bit-II, Nellore District. As on the date of the said assignment, the petitioner was unmarried and he was residing jointly with his father. His father worked as a Surveyor in the Revenue Department and he was doing contracts and thus he was not eligible for assignment. However, since his father was a Surveyor, the petitioner managed to get house site patta in his favour. It was denied that the

petitioner constructed a thatched house and was in possession of the said plot. It was stated that since the plot was vacant, the fifth respondent occupied the same. It was also stated that in the civil suit filed by the petitioner in O.S.No.59 of 1990, respondents 1 to 3 were not parties. The grant of house site patta in favour of the fifth respondent for an extent of Ac.0.05½ cents in plot No.1224/B was admitted. It was also stated that the learned Principal District Munsif disposed of O.S.No.59 of 1990 filed by the petitioner and O.S.No.15 of 1992 filed by the fifth respondent, by a common judgment, dismissing the case of the fifth respondent and allowing the case of the petitioner. It was also stated that basing on the representation of the fifth respondent, an enquiry was conducted and in the enquiry, it was revealed that the original allottee, the petitioner herein, had not constructed any house and thus violated the conditions of grant of patta. The then Revenue Divisional Officer, Kavali, after examining the records, issued a show cause notice to the petitioner on 23.07.1990 and when the Village Assistant was directed to serve a copy of the same to the petitioner, he made an endorsement on 26.07.1990 stating that the petitioner was not residing in the village. As such, the notice was served by substituted service by affixing to his house plot. However, the notice was also published in the District Gazette before cancellation of house site patta granted to the petitioner, by proceedings of the second respondent dated 28.03.1991. Subsequently, a house site patta was granted in favour of the fifth respondent in respect of an extent of Acs.0.05½ cents of land by assigning plot No.1224/B. It was also stated that as per para 21 (7) (ii) and (iii) of B.S.O., the second respondent is competent to revoke the grant of house site for violation of conditions of patta.

5. The fifth respondent also filed a separate counter-affidavit stating that the Writ Petition is not maintainable as the petitioner has an alternative remedy of revision before the Commissioner (Appeals) under Para 18 of B.S.O.15. It was stated that the petitioner was aged only 17 years as on the date of assignment and the assignment was obtained by fraud.

6. This Court, by order dated 23.04.2004, granted orders of *status quo* and the same is being continued till today. The petitioner filed two applications in W.P.M.P.Nos.8779 and 13371 of 2015 for receiving the additional documents in

order to substantiate his possession over the property as on the date of cancellation of patta.

7. Learned Counsel for the petitioner submits that in view of the overwhelming evidence to show the availability of the petitioner in the Village and also his possession over the land, the cancellation of his patta by the second respondent and confirmation of the same by the first respondent without giving opportunity is illegal and void. He also submits that an attempt was made initially by the fourth respondent to occupy the land and, therefore, the cancellation of patta took place at the instance of the fifth respondent, who filed the civil suit and lost the same. He also submits that the present assignee in respect of half portion of the original land is no more and the case is being continued by only by one of the legal representatives i.e., the seventh respondent who came on record consequent to the death of the fifth respondent.

8. Learned Counsel for the fifth respondent submits that due procedure was followed by the second respondent before cancelling the patta issued in favour of the petitioner and cancellation of patta in favour of the petitioner and confirmation of the same by the first respondent cannot be held to be illegal.

9. Learned Government Pleader produced before the Court the record relating to the cancellation of patta.

10. It is an admitted case of the parties that the petitioner was granted patta for an extent of Ac.0.10 cents of land in plot No.1224 in Survey No.2048/B of Kavali Village, Nellore District. When the fifth respondent interfered with the land, the petitioner filed O.S.No.59 of 1990 and when he did not show interest the fifth respondent filed O.S.No.15 of 1992 in the same Court i.e., before the learned Junior Civil Judge, Kavali. The suit filed by the petitioner was against the fourth respondent, whereas the suit filed by the fifth respondent was against the fourth respondent and the Petitioner. Both the suits were disposed of by a

common judgment dated 04.10.1996 holding that the petitioner was entitled for permanent injunction, whereas the fifth respondent was not entitled for the same. The fifth respondent preferred A.S.No.21 of 1998 against the judgment and decree in O.S.No.59 of 1990 and A.S.No.11 of 1996 against O.S.No.15 of 1992. Both the appeals were disposed of by the learned Senior Civil Judge, Kavali, by common judgment and decree dated 12.07.2001 upholding the judgment and decree of the trial Court.

11. It is submitted by the learned Counsel for parties that the Second Appeal is pending in this Court in respect of the suit property claimed by the fifth respondent. In view of the order of the *status quo* granted by this Court in W.P.M.P.No.8540 of 2004 dated 23.04.2004 read with the common judgment and decree in A.S.No.11 of 1996 and 21 of 1998 the said order of *status quo* enures to the benefit of the petitioner in view of the findings recorded by the civil Court in favour of the petitioner that he is in possession.

12. Now the point for consideration is whether the second respondent followed due procedure while cancelling the patta issued in favour of the petitioner. In order to ascertain the procedure followed, I have perused the record produced by the learned Government Pleader.

13. The record of the second respondent discloses that the statement of the fifth respondent was recorded by the then Mandal Revenue Inspector on 02.04.1990 seeking assignment of land which was encroached by him and situated at Vengalraonagar in Kavali Mandal eight years back. It appears that the Mandal Revenue Inspector submitted a report to the third respondent. The third respondent in turn addressed a letter on 28.04.1990 to the Revenue Divisional Officer recommending the assignment of land in favour of the fifth respondent by cancelling the assignment in favour of the petitioner on the ground that the petitioner has not constructed any house, he was not residing in the Village and his whereabouts were not known. On the said recommendation, the second respondent addressed a letter to the third respondent on 09.06.1990

asking him to submit the details relating to the allotment of plot No.1224 along with the details in respect of the petitioner. Curiously, the then Mandal Revenue Officer, Kavali, by his letter dated 13.07.1990, stated that in the house site register, it was recorded that the petitioner was allotted plot No.1224 in 1976, but there are no details with regard to the issuance of patta on payment of market value.

14. However, the second respondent issued a notice on 23.7.1992 to the petitioner asking him to show cause within seven days as to why the allotment in his favour should not be cancelled on the ground that no house was constructed on the site allotted and the same was sought to be served through the third respondent. The third respondent by his letter dated 30.7.1990 stated that as per the report of the Village Assistant the petitioner was not residing in Kavali Town and enclosed a copy of the report. Thereafter, a show cause notice was published in the District Gazette dated 03.12.1990 of the Nellore District. The notice indicated that the petitioner did not construct the house within six months and the said plot was occupied by the fifth respondent who laid a basement in the said land. Ultimately an order cancelling the patta in favour of the petitioner was passed on 28.03.1991 by the second respondent and the fifth respondent was allotted the said plot. Curiously, a patta was issued in favour of the fifth respondent by the third respondent for an extent of 0.05 ½ cents only by making the said plot as plot No.1224/B by patta dated 26.07.1991. The record does not disclose as to the orders of which authority the plot, earlier allotted to the petitioner, was subdivided and an extent of 0.05½ cents only was allotted to the fifth respondent.

15. The petitioner filed a copy of the white ration card dated 19.04.1995 issued by the Mandal Revenue Officer, Kavali and Voters list of 125, Kavali Assembly Constituency of 1988 indicating the name of the fifth respondent at Sl.No.934 thereof as resident of Jaladanki Village. The said voters list was filed as an exhibit and it was marked as Ex.A7 in O.S.No.59 of 1990. He filed the following documents:

“(i) Ex.A3 23.09.1985 Interview letter of the

(ii) Ex.A4 26.03.1990 Ledger extract of State Bank of

To India, Kavali

29.03.1994

(iii) Ex.A5 09.06.1987 Nativity Certificate issued by

the Mandal Revenue Officer,

Kavali.

(iv) Ex.A6 24.09.1985 Income Certificate issued by

the Mandal Revenue Officer,

Kavali

(v) Ex.A7 1987 Voter Identification Card”

16. Based on the said documents the trial Court came to the conclusion that the petitioner was in possession of the property and the said judgment was upheld by the appellate court. A perusal of the government record indicated that respondent Nos.2 and 3 have come to the conclusion that the petitioner is not a resident of Kavali Town solely on the basis of the statement made by the then Village Assistant. Though a copy of the show cause notice was published in the District Gazette, it is common knowledge that no ordinary citizen would normally go through the copy of the gazette, unless that information is passed on by a person who has knowledge of the contents thereof. Thus, so far as the observation of the principles of natural justice is concerned, the petitioner was not put on notice properly by respondent Nos. 2 and 3 while cancelling the patta issued in his favour and allotting Ac.0.05 ½ cents in favour of the fifth respondent. The Joint Collector dismissed the appeal preferred by the writ petitioner with the following observations:

“Heard the counsel and verified the connected record. The question to be determined in this appeal is whether the orders of the Revenue Divisional Officer, Kavali in R.Dis.6605/90, dt.28.3.91 cancelling the House site patta assigned in favour of Sri P.Rukmamgadha Rao for an extent of Acs.0.10 in plot No.1224 in Sy.No.2048/B of Kavali Bit II

Village is maintainable or not. On verification of record of Revenue Divisional Officer, Kavali it is found that as soon as proposals of the Mandal Revenue Officer, Kavali received a notice was issued to Sri P.Ruckmangadha Rao to show cause as to why construction of house not made in plot No.1224 in Sy.No.2048B of Kavali Bit-II village though the house site was granted in the year 1978 and for violation of conditions of patta action could not be initiated against him. But the notice was not served on him as he is not residing in Kavali town. Hence a Gazette publication was also published on 3.12.1990 by the Revenue Divisional Officer, Kavali issuing a notice in Telugu about the condition of the house site patta. Even after gazette publication no explanation of the appellant received by the Revenue Divisional Officer, Kavali and issued orders cancelling the house site patta basing on the record available with him. The counsel for the appellant has argued that the Revenue Official has not taken into consideration about the suit is pending before the Principal District Munsiff Court, Kavali. In this suit Revenue Department is not party and the petitioner has never brought to notice of Revenue Officials that the encroacher was trying to construct a house in it which is evidently show that he never occupied the house site plot No.1224 and thus violated the conditions of grant. Therefore, it is clear from the above that the cancellation of the House site patta took place on grounds of non-residence of Sri P.Rukmangadha Rao.

The instant case falls under mistake of fact and misrepresentation under BSO 15 para 18(1), there has been material irregularity in the procedure in granting house site patta to Sri Pavani Ruckmangadha Rao S/o.Lakshmi Narasimha Rao hence the order passed by the Revenue Divisional Officer, Kavali in proceeding R.Dis.No.6605/90 dated 28.3.91 is upheld with those order passed by the Mandal Revenue Officer, Kavali in D.Dis.No.772/90, dated 25.7.91.”

17. The appeal of the petitioner was rejected on the ground that there was misrepresentation at the time of granting of house site patta and the issuance of patta in favour of the petitioner was irregular. The said fact was not mentioned in the show cause notice which was sought to be served on the petitioner.

18. As already stated above, the property is locked in litigation since 1990 and *status quo* is in operation till today by virtue of the orders granted by this Court. The fifth respondent is no more. The fourth respondent, who tried to interfere with the possession of the petitioner, initially in the year 1990 did not evince any interest thereafter and now only the seventh respondent is contesting the proceedings.

19. In the circumstances, no prejudice is caused, if principles of natural justice are properly observed by issuing a fresh show cause notice to the petitioner by the second respondent with regard to cancellation of his patta, to his address at Door No.10-8-22, Flat No.403, KRS Towers, Raja Street, Kavali, SPSR Nellore District, within a period of 30 days from the date of receipt of a copy of this order. The second respondent shall consider the explanation to be submitted by the petitioner within 30 days thereafter and pass appropriate orders, after considering the explanation along with documentary evidence, within a period of 3 months from the date of receipt of explanation submitted by the petitioner. Till such time, the petitioner as well as the legal representatives of the fifth respondent shall maintain *status quo* with regard to the land admeasuring Ac.0-10 cents in plot No.1224 in Sy.No.2048/B of Kavali Bit-II, Nellore District. In case the second respondent, in the facts and circumstances of the case, comes to the conclusion that the legal representatives of the fifth respondent also should be heard along with the petitioner in order to finally decide the validity of the orders passed earlier, he can issue a notice to them also while issuing the notice to the petitioner and consider their explanation and pass a comprehensive order.

20. The Writ Petition is, accordingly, allowed to the extent indicated above and the order passed by the first respondent dated 28.02.2004 is set aside. The grant of patta in favour of the fifth respondent shall abide by the orders of the second respondent. Miscellaneous petitions, if any, pending in this Writ Petition shall stand disposed of.

JUSTICE A.RAMALINGESWARA RAO

Date: 24.04.2015

TJMR