

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.28637 of 2008

Dated : 26.03.2015

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Between:

Pulivarthi Vengaiah S/o.Sriramulu,

Aged about 55 yrs, Occu : Agriculturist,

R/o.Majra Vaddepalem,

Potti Sreeramulu, Nellore District & others

.. Petitioners

And

District Collector, Pottisriramulu

Nellore District & others

.. Respondents

This Court made the following :

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ORDER :

The petitioners claim to be the landless poor and they were assigned various extents of land in Survey Nos.230/2, 242/1, 86/7, 318/1, 185/6, 137 and 96 of Narrawada Village, Dattulur Mandal, Pottisriramulu Nellore District. The petitioners claim that they are in possession and enjoyment of these lands for several years and in recognition of their possession and enjoyment and their status as landless poor, the above lands were assigned to them. Pattedar pass books and title deeds were issued to the petitioners and their names are reflected in the revenue records. In support of the claim that the petitioners are in possession and cultivating the lands

they have filed photographs. Apprehending that the petitioners are going to be dispossessed without any justifiable reason or cause and without following due process of law, this Writ Petition is instituted.

2. At the time of admission, this Court passed interim order directing the respondent-authorities not to interfere with the possession of the petitioners in respect of the land in question without following due process of law.

3. Praying to vacate the said interim order, W.V.M.P.No.107 of 2010 and Counter affidavit are filed. With the consent of learned counsel for petitioners and the learned Assistant Government Pleader the writ petition is disposed of finally.

4. Learned counsel for the petitioners contend that in recognition of the possession and enjoyment of the lands by the petitioners for several years and the status of the petitioners as landless poor, various extents of land in the above mentioned Survey numbers were assigned to them and they are in continuous possession and enjoyment till date. The above extents of lands are cultivable based on the rains (Rain fed area) and therefore, cultivation is only seasonal. Thus, during dry season the petitioners have to go away from the village to eke out their living. On erroneous assumption that the petitioners are not living in the village and that they are gainfully employed elsewhere or otherwise, financially sound, the petitioners are sought to be dispossessed and such assumption of the respondent-authorities is not valid.

5. Learned counsel further contends that the possession and enjoyment of the land is evident from the documents filed along with the writ petition which are issued by the competent authority. The respondent-authorities do not dispute issuance of such documents nor the entries made in the documents. When the documents issued by the competent authority confirm possession and enjoyment, it is illegal to assign the very same land to others and to dispossess the petitioners depriving their livelihood.

6. Learned Assistant Government Pleader submits that on verification of the relevant records and the field inspection in the village, it was found that except three petitioners none of the petitioners are entitled for assignment of land. It was also noticed that many of the families of the petitioners were already assigned lands or they own other extents of land. Many of them live elsewhere by doing business or employed gainfully and they should be classified as persons with sufficient financial means and therefore they are not entitled for assignment of lands. Learned Assistant

Government Pleader further contends that when the petitioners are living at far of place it is not possible for them to cultivate the lands. It is the further assertion of the learned Assistant Government Pleader that the petitioners are not in possession and enjoyment and were not cultivating the land. As per the IVth Phase Distribution Scheme for assignment of lands to landless poor, these extent of lands were assigned to various persons who are landless poor, who requires such assignment. When the possession was sought to be granted to those persons, the petitioners prevented taking possession by those assignees and have forcibly occupied by referring to an interim order passed by this Court. Learned Assistant Government Pleader therefore, submits that there are no *bona fides* in prosecuting litigation and are not entitled to the relief claimed by them. Since the petitioners are never in possession, the claim of dispossession is not valid.

7. The brief analysis of rival contentions would show that there are claims and counter claims on the issue of assignment. The petitioners seriously dispute the stand of the respondents that they are not the residents of the village and that they are gainfully employed. Though in the counter affidavit it is specifically averred on the aspect of petitioners living elsewhere and doing business, those averments are vague. For example with reference to the first petitioner, it is stated that he is residing in Kurnool town for the past 30 years and doing real estate business. Similarly against the 4th petitioner it is stated that he is residing in Visakhapatnam for the past 20 years and doing Manufacture of Bricks business. No material is filed to support such assertions in the counter affidavit. The said assertions are categorically denied by the petitioners. In the reply the petitioners claimed that their names are enrolled in the voters list and the entries in pahanies and adangals support their enjoyment of lands and that they are residing in the village.

8. In the additional counter affidavit, the respondents admit the fact that the petitioners are in possession.

9. Having regard to the same and the relevant facts are seriously in controversy, I deem it appropriate to remit the matter back to the District Collector, Nellore to conduct an enquiry as to the status of petitioners with reference to their entitlement for assignment, their residence and occupation and whether any such assignment was granted to them earlier. The District Collector shall give opportunity to the petitioners to present the documents in support of their claim regarding assignments

made, possession and enjoyment, residence and occupation. If the District Collector has already collected material which substantiates the contentions as stated in the counter filed in this Writ petition the same information should be furnished to the petitioners and they be given opportunity to controvert the same. Since the very same lands were also assigned to other persons, such of those persons in whose favour the land is assigned should also be put on notice. The petitioners and those assignees are also entitled to personal hearing. After giving due opportunity and on detail consideration of the relevant material on record, the District Collector shall pass orders dealing with each of the contentions and communicate the same to the petitioners. Until the decision is arrived at and orders are communicated to the petitioners, the status quo obtaining as on today shall be maintained. The entire exercise shall be completed within a period of four months from the date of receipt of copy of this order and the petitioners shall cooperate in conducting enquiry by the District Collector. If the petitioners do not cooperate and seek to prolong the issue, it is open to the District Collector to finalize the issue and pass the orders based on the material available on record.

10. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO,J

26th March, 2015

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