

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.9154 of 2005

Dated : 24.03.2015

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Between:

Baradi Rajeshwara Rao, S/o.Rajaiah,

Aged 80 yrs, Occu : Business,

R/o.H.No.6-1-53/E,

Rani Satiji Road, Adilabad.

.. Petitioner

And

The State of A.P., rep., by

District Collector, Adilabad & 3 others

.. Respondents

This Court made the following :

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ORDER :

The petitioner prays for issuance of writ of mandamus declaring the action of the respondents 1 to 3 in allotting Ac.8.00 in Survey No.38/1 to the 4th respondent without initiating proceedings under the Land Acquisition Act, 1894 and without paying compensation as illegal and unconstitutional.

2. The petitioner claims to have purchased land to an extent of Ac.8.00 in Survey No.38/1 of Batti Sawargaon (T) Village, Adilabad District by way of registered sale deed, dated 29.08.1969 and another in the year 1974 from Bandari Nagaiah. Pattedar pass books and title deeds were issued. In the year 1985 lay out was sanctioned by the Gram Panchayat and in the revenue records the name of Bandari Nagaiah has been reflected from 1962-63 till 1994-95 and from 1994 onwards in pahani patrikas the name of the petitioner is reflected. While so, Ac.22.00 in Survey No.38/1 of Batti Sawargaon (T) and Ac.4.00 in Survey No.34 of Bhuktaphur Village was allotted to the District Jail Superintendent, Adilabad-4th respondent for construction of Sub-Jail. Out of Ac.22.00 in Survey No.38/1, Ac.8.00 purchased by the petitioner was also included. Possession was handed over to the 4th respondent in the year 2004, without notice to the petitioner. When the work commenced for construction of Sub-Jail, the petitioner came to know that the land belonged to him was also included in the said allotment. In response to the legal notice, respondents 1 and 4 informed the petitioner that no land in Survey No.38/5 was allotted to the 4th respondent. The petitioner was also informed by the Assistant Director, Survey and Land Records, that no Jamim Sethwar was prepared for Survey No.38/5 and that no land with sub-division No.38/5 was available.

3. Learned counsel for the petitioner contends that the petitioner is a *bona fide* purchaser having purchased the land from Bandari Nagaiah as early as in the year 1969 and 1974, and the revenue authorities have issued pattadar pass books and title deeds. The action of the respondent-authorities in not following the procedure mandated by law while allotting the land for public purpose belonging to the petitioner is illegal. Petitioner is deprived of right to own the property by illegal means and the same is liable to set aside.

4. Learned Assistant Government Pleader submits that the huge extent of land in Survey No.38 of the subject village was assigned to landless poor persons including Sri Bandari Nagaiah in the year 1961. As the conditions of assignment were not fulfilled by them, after following due process, the District Collector, Adilabad passed orders on 30.04.1981 cancelling the assignment made and the land was reverted back to the State and the very same land was allotted to the 4th respondent for construction of Sub-Jails Complex in the year 1985-86. In February, 1986 possession was handed over to the 4th respondent.

5. Learned Assistant Government Pleader, on instructions, submits that the Sub-Jail complex has been constructed. Even assuming that purchase was made by the petitioner, such purchase is contrary to the assignment granted to Bandari Nagaiah and therefore is illegal. As per the order of the Government in G.O.Ms.No.1406 dated 25.07.1956, no assignee can alienate the land and any such alienation becomes illegal. Therefore, no rights have accrued to the petitioner. He further submits that the entire exercise of cancellation of allotment and subsequent allocation of land to the 4th respondent was completed by the year 1986. The petitioner kept quiet all along and instituted this writ petition in the year 2005. The petitioner lacks bonafides and made frivolous contentions.

6. As noticed above, the assignment granted to Bandari Nagaiah was cancelled as early as on 30.04.1981 and the said cancellation has become final. As a consequence to cancellation of assignment the land reverted back to the State and the State in-turn allotted this land to 4th respondent. Allocation of land to the 4th respondent and consequential steps taken by the 4th respondent is not under challenge. As per the averments made in the writ affidavit, the petitioner was aware of the cancellation of assignment; allocation of the land to the 4th respondent; and the purpose of allocation by the year 2004.

7. According to the admission of the petitioner in the affidavit filed in support of the writ petition, in the pattedar pass book and title deeds issued to the petitioner Survey No.38/5 is reflected on the extent of land claimed by him. In the sketch enclosed at Page 29 of the additional material papers filed by the petitioner, Survey No.38/5 is shown in addition to Survey No.38/1. In the said sketch also Survey No.38/1 is shown as belonging to Jail Complex. Even assuming that the petitioner has purchased land from Bandari Nagaiah, the fact that the pattedar pass book and title deeds obtained by him would reflect Survey No.38/5, shows that the land claimed by the petitioner and land which was allotted to 4th respondent is not same. As per the records of Survey and Settlements, there is no Survey number bearing No.38/5. Therefore, the very claim of the petitioner that the land purchased by him was allotted to the 4th respondent appears to be frivolous.

8. As noticed above, the relief sought was against allotment of Ac.8.00 of land in Survey No.38/1 to the 4th respondent without following the due process as

mandated by the Land Acquisition Act, 1894, but the proceedings of the District Collector dated 30.04.1981 cancelling the assignment made to Bandari Nagaiah and proceedings of allotment of land to the 4th respondent are not under challenge. In the absence of such a challenge, even assuming that those orders are patently illegal, no relief as sought for by the petitioner can be granted. Furthermore, the revenue records relied by petitioner show different survey number.

9. Furthermore, the fact that the petitioner kept quiet for about 20 years before raking up the issue militates against the claim of the petitioner. In the meantime issue of allotment was finalized and possession was handed over to jails department and the jail complex has come up. Thus, even assuming that the claim of petitioner is valid, interference on the subject allotment in exercise of equitable jurisdiction in favor of petitioner at this stage is not just and equitable.

10. Having regard to above findings and based on the material placed on record, it cannot be said that the State has acted illegally in allotting the subject land to the 4th respondent and the issue of following the procedure as mandated by the Land Acquisition Act, 1894 does not arise as the subject land vested in the state long before such allotment. I see no merit in the writ petition.

11. Accordingly, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

_____ **P.NAVEEN RAO,J**

24th March, 2015

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