

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.19863 of 2012

ORDER:

-

Heard learned counsel for the petitioner and learned counsel for the respondents. With the consent of both the parties, the writ petition is disposed of at the admission stage itself.

The present writ petition came to be filed seeking to declare the impugned proceedings dated 02.04.2012, passed by the first respondent in D.Dis.No.C/3843/2010 confirming the orders dated 28.03.2008, passed by the second respondent in Rc.No.A/347/2008 resuming the land admeasuring Acs.2.01 cents situated in Survey No.459/1B2B of Koppolu Village, Ongole Mandal, Prakasam District as illegal and arbitrary and consequently set aside the impugned proceedings dated 02.04.2012 with a direction to the respondents to follow due procedure enunciated in Land Acquisition Act, if they want to acquire the said land.

The averments in the writ petition are that while the father of the petitioner became disabled at the time of discharging his duties in Indian Army, the Government as per G.O.Ms.No.743, dated 30.04.1963, assigned land admeasuring Acs.2.01 cents in Survey No.459/1B2B situated at Koppolu Village, Ongole Mandal vide D.K.Patta No.179/79, dated 06.06.1970. Since the date of assignment of the said land in favour of the father of the petitioner, the family of the petitioner was in possession and enjoyment of the said land. While things stood thus, father of the petitioner died in the year 1999 and since then the mother of the petitioner and the petitioner were looking after the said land. The averments in the affidavit also disclose that after the death of the father of the petitioner, the second respondent-Tahsildar issued pattadar pass book in favour of the petitioner in the year 2005. While things stood thus, the second respondent resumed land assigned to the father of the petitioner on the ground that the father of the petitioner violated the conditions of patta granted in his favour. The said order of resumption is dated 28.03.2008 which is merely 38 years after the assignment of land to the father of the petitioner. It is also stated that the said notice was issued in the name of the father of the petitioner, who died in the year 1999 and the same was affixed in the notice board of Gram Panchayat, which according to the petitioner, was not known to him. Challenging the said action of the respondents, who are trying to take back the land, the present writ petition is filed.

Learned counsel for the petitioner would submit that the order of resumption is illegal and contrary to the provisions of Land Acquisition Act. He submits that once the land is assigned to an ex-service man, as per G.O.Ms.No.743, he has every right to sell the same after the expiry of ten years period from the date of initial allotment. Such being the position, he submits that the question of violation of conditions whatsoever would not arise at all and the general conditions imposed in assignment has no application in a case where a land is assigned to an ex-service man. He further submits that when the petitioner preferred an appeal before the first respondent for treating the land in dispute as a private land, besides challenging the resumption orders, his plea was bluntly denied by the first respondent on the ground that the petitioner failed to produce any material evidencing that the said land was assigned to an ex-service man and that there are no records available in the office showing assignment except an entry in the Adangal. In this regard, learned counsel for the petitioner submits that it is strange as to how the respondents came to the conclusion that the father of the petitioner violated certain conditions, when there are no records available with the respondents.

Learned Government Pleader filed his counter opposing the same on the ground that the impugned order came to be passed when it was found during verification that no cultivation was done by the father of

the petitioner in the land which was assigned to him for the purpose of cultivation.

The short question that falls for consideration is; whether the land which was assigned to an ex-service man, pursuant to the G.O. issued by the Government, can be resumed?

The said issue is no more *res integra* in view of the judgments of this Court in W.P.Nos.1773 of 2008 and 18435 of 2009.

This Court in W.P.No.1773 of 2008, after referring to the judgments in ***Sekhari Aaruna Kumari Vs. District Collecotor, Visakhapatnam***^[1] and ***Madamaneni Chinnaswamy (died) per LRs. Vs. Joint Collector, Chittoor***^[2], held that power to cancel the D-Form patta or resume the land by the revenue authorities must be exercised within a reasonable time and that if D-Form patta was to be cancelled, the grounds on which it is sought to be cancelled have to be stated so as to enable the assignee to show cause.

Further, the learned Single Judge observed that as per the conditions of D-Form patta, if the land is to be brought under cultivation within three years from the date of its issuance, and if the petitioner fails to bring the land under cultivation, within three years from the date of its issuance, then the respondent No.3 therein ought to have issued notice calling upon him to show cause as to why the D-Form patta should not be cancelled, immediately after expiry of three years from the date of issuance of the D-Form patta. But the respondents therein issued show cause notice after lapse of nearly 30 years, which makes it difficult to ascertain as to whether the land was brought under cultivation within three years from the date of issuance of D-Form patta or not. Having regard to the facts and circumstances of the case therein and in view of the abnormal delay in issuing show cause notice, the learned Single Judge set aside the order canceling D-Form patta.

Similarly, in ***B.Adinarayana Murthy Vs. Collector, Anantapur District and another***^[3], a learned Single Judge of this Court observed that even if the power of resumption is available to the authorities, such a power cannot be exercised after a lapse of 34 years.

The issue in the present case is identical to the cases referred above. In the present case, the land was assigned in favour of the father of the petitioner in the year 1970 and the same came to be cancelled in the year 2008 on the ground that no cultivation was done in the said land within three years of its assignment. The said order was challenged by way of appeal before the first respondent, who confirmed the same. Challenging the order of the appellate authority, the present writ petition came to be filed. Having regard to the facts stated above and the cases referred to above, the order is liable to be set aside on two grounds. They are as under:

(i) The land which is still in possession of the petitioner is sought to be assigned to third persons on the ground that the land was not put to cultivation within three years from the date of assignment. If really the father of the petitioner has violated the terms of assignment, the authorities should have taken steps immediately thereafter, or at least 5 or 6 years later, but not after 38 years from the date of assignment. It would be difficult to state as to whether the land was put into cultivation within three years from the date of allotment, at this point of time.

(ii) The notice which has been issued in the name of the father of the petitioner was not served on the family members of the petitioner. It is stated in the counter that the said notice was refused and as such the same was kept on the notice board of the gram panchayath. When the father of the petitioner passed away in the year 1999, which fact is not disputed by the respondents, he would not have been available for refusing to receive notice in the year 2008. On the said ground also the orders under challenge are liable to be set aside.

For the aforesaid reasons, the writ petition is allowed setting aside the impugned order dated 02.04.2012 passed by the first respondent in D.Dis.No.C/3843/2010 in respect of land to an extent of Acs.2.01 cents situated in Survey No.459/1B2B of Koppolu Village, Ongole Mandal, Prakasam District. No costs.

Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.08.2015
vhb

[\[1\]](#) 2002(3) ALT 571
[\[2\]](#) 2009 (1) ALT 424
[\[3\]](#) 2000 (1) ALD 168