

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.22518 of 2015

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ORDER:

Heard.

The petitioner is aggrieved by the order, dated 08-07-2015 passed by the 4th respondent, whereby while rejecting the explanation of the petitioner, the 4th respondent directed resumption of the land admeasuring Ac.1-30 cents in R.S.No.272/4 of Dubacherla Village, Nallajarla Mandal, West Godavari District, The 4th respondent in the said order found that original assignee was one Kokkiripati Lakshmayya and the petitioner was unauthorized alienee of the assigned land and hence, the Mandal Revenue Inspector is directed to take possession of the land in question.

That order is questioned in this writ petition primarily on the ground that the very foundation of the impugned order is erroneous and the 4th respondent would not have any jurisdiction, as the petitioner herself is the assignee as per the order of assignment in File No.1672005 (D.T.), dated 19-08-2005 granted in her favour and that she never alienated and continues to be in possession of the land in question. It is also stated that the petitioner gave specific reply to the notice issued by the 4th respondent bringing to his notice that the petitioner herself is the assignee of the land in question and later she was also granted pattadar pass books and title deeds and she herself continues to be in possession and neither there is any alienation nor violation of any conditions of assignment. The 4th respondent has noticed the said explanation of the petitioner, but merely because the alleged original assignee has not submitted any explanation, straight away came to the conclusion that the petitioner is an encroacher of the land in question.

In view of the conflicting stand taken by the 4th respondent and the petitioner, I am of the view that it is just and proper to ascertain as to whether the petitioner is an assignee or the said Kokkiripati Lakshmayya is the assignee of the aforesaid land. It is also clear that if the petitioner is an assignee and she continues to be in possession, there cannot be any violation of conditions of assignment or the rules and consequently, no such proceedings could have been initiated by the 4th respondent. The enquiry into the factual aspects requires verification of files and the records and in stead of entertaining the writ petition and going into the said factual disputes, I deem it appropriate that a superior revenue officer examines the entire matter from the prospective as mentioned above. The order of the 4th respondent impugned herein is clearly appealable before the 3rd respondent.

In the circumstances, therefore, it is appropriate to permit the petitioner to file an appeal before the 3rd respondent against the impugned order, so that the 3rd respondent would be in a position to call for the records, examine the matter and take appropriate decision in the matter as to whether the order of the 4th respondent impugned herein is justifiable on facts and in law.

Since the petitioner prima facie establishes that she is the assignee by producing patta certificate under Ex.P-1 and states that pattadar pass book was also issued in her favour by the then Tahsildar, I deem it appropriate that pending consideration and disposal of the appeal before the 3rd respondent, the impugned order shall remain stayed, so that the petitioner's possession remains protected, however, subject to the orders that would be passed by the 3rd respondent. The 3rd respondent shall ensure proper verification of the record and then decide the matter in accordance with law, after notice to the affected parties.

Accordingly, the writ petition is disposed of. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall

stand closed.

VILAS V.AFZULPURKAR, J

Date: 23-07-2015

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.18093 of 2015

23-06-2015

Prv