

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 3936 of 2010

ORDER:

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The present writ petition is filed seeking issuance of a writ of mandamus, declaring the action of respondent Nos.1 to 3 in trying to dispossess the petitioner from the land admeasuring Ac.1.76 cents in Sy.No.543/1, Ac.1.00 cents in Sy.No.543/1G and Ac.0.90 cents in Sy.No.546/A3, situated at Nallapadu Village, Guntur Rural Mandal, Guntur District, on the instigation of respondent Nos.4 to 8, as illegal and arbitrary and consequently direct respondent Nos.1 to 3 not to interfere with the peaceful possession and enjoyment of the petitioner in respect of the above said land.

The averments in the affidavit filed in support of the writ petition are as under:

As the petitioner was a landless poor, the third respondent was pleased to grant D-Form patta in respect of the land admeasuring Ac.1.76 cents in Sy.No.543/1, Ac.1.00 cents in Sy.No.543/1G and Ac.0.90 cents in Sy.No.546/A3, situated at Nallapadu Village, Guntur Rural Mandal, Guntur District, vide D.K.T. Patta No.948/94F on 01.12.1994. It is stated that since then the petitioner is in possession and enjoyment of the said land; pattadar pass book and title deed were also issued in favour of the petitioner and his name was also entered into the revenue records. While things stood thus, respondent No.4 filed R.C.No.1986/2007/E2 before respondent No.1 therein aggrieved by the orders of the Revenue Divisional Officer dated 23.04.2005

passed in R.C.No.1290/2005A in cancelling the pattas granted in his favour. The petitioner was shown as second respondent in the said proceedings. It is stated that while the matter was pending before the first respondent, vide proceedings in R.C.No.1986/07/E2, the un-official respondents herein started trying to encroach upon the land of the petitioner with political and muscle power. The averments in the affidavit filed along with the writ petition would also show that respondent Nos.4 to 6 herein filed O.S.No.438 of 2005 and 434 of 2005 on the file of the II Additional Junior Civil Judge, Guntur, against the petitioner herein seeking permanent injunction, but however they withdrew the same. The averments in the affidavit also shows that respondent Nos.4 to 6 also filed W.P.No.9142 of 2005 against the petitioner and others, but after filing of the counter the same was withdrawn.

When one P.Sambasiva Rao, who is strong supporter of respondent No.3, started interfering with the possession and enjoyment of the petitioner over the above said land, the petitioner filed O.S.No.2256 of 2006 on the file of the III Additional Junior Civil Judge, Guntur, which was decreed on 07.03.2007 granting permanent injunction restraining the defendant therein and his men from interfering with the plaintiff's peaceful possession and enjoyment of property measuring Ac.1.76 cents in Sy.No.543/1, Ac.1.00 in Sy.No.543/1G and Ac.0.90 cents in Sy.No.546/A3 situated at Nallapadu Village. Alleging that respondent Nos.4 to 6, who are highly influential, are trying to interfere with the possession and enjoyment of the petitioners though they have lost in different forums, the present writ petition came to be filed.

During pendency of the writ petition, the petitioner died and his legal representatives were brought on record by an order dated 21.01.2015 passed in W.P.M.P.No.39567 of 2014.

Respondent Nos.5 and 6 filed their counter denying the averments made in the affidavit filed in support of the writ petition. The counter would show that D.K.T. patta which was issued in favour of the first petitioner was cancelled by the Joint Collector, Guntur and that the same was confirmed in revision filed before the Chief Commissioner of Land Administration. It is stated that since the D.K.T. patta itself stood cancelled, nothing survives in the writ petition and the same is liable to be dismissed.

Respondent No.3 filed his counter denying the allegations made in the affidavit filed in support of the writ petition. It is stated that issuance of patta in favour of the first petitioner is without any basis and the same was done without following the procedure contemplated under the Act. It is stated that the patta was issued in the year 1994 ie. before the conversion of land from Poramboke to Assessed Waste Dry, as such the patta said to have been issued in favour of the first petitioner is not valid as per record. It is further stated that the patta which was issued to respondent No.4 in the year 2005 after the conversion proceedings, creates a doubt about the validity or otherwise of pattadar pass books in the year 2004. Since, respondent No.4, who got D-Form patta bearing No. 998/94 dated 25.10.1995 was also issued pattadar pass books in the year 2004 and also paid market value in the year 2005, no reasons are forthcoming as to why the market value was paid by respondent No.4, without there being any insistence for payment of market value by respondent No.1 nor was it a condition precedent for granting D-Form patta. In the counter, it is stated that the same is done with an intention to grab the property. Therefore, it is contended that patta which has been issued to respondent No.4 and others deserves to be cancelled and accordingly, the Revenue Divisional Officer cancelled the pattadar

pass books issued to the assignees. Respondent No.3 is alleged to have sent a report to the Sub-Divisional Police Officer, Guntur Rural, stating that the land which is subject matter of the dispute in the present case, was claimed by Namala Koti Babu (first petitioner) and also by respondent No.4 and others, which according to them were issued in different proceedings. Both of them were found claiming the same land which was resumed by respondent No.2 from respondent No.4 vide proceedings Rc.No.1290/2005-A dated 23.04.2005 for the purpose of allotment as a play ground to the Zilla Parishad School, Nallapadu Village. The averments in the counter further shows that vide proceedings R.C.No.1986/2007-E2 dated 28.03.2011, respondent No.1 has categorically cancelled the pattas claimed by the first petitioner and also respondent No.4 with a direction to respondent No.3 to resume the land and enter the same as Vagu Poramboke in Prohibitory Order Book. Aggrieved by the same, the second petitioner, who is the wife of the first petitioner, filed an appeal before the Chief Commissioner of Land Administration, Andhra Pradesh, who confirmed the order of cancelling the pattas as it was classified as Vagu Poramboke. In view of the above, it is submitted that there are no merits in the writ petition and the same is liable to be dismissed.

When the Court asked the Government Pleader to find out as to who is in possession of the said land, the Tahsildar filed an additional counter on 31.07.2015 stating that the Mandal Revenue Inspector (Rural), Guntur, inspected the land and submitted his report dated 23.07.2015 stating that Nallamala Kotibabu (first petitioner), to whom the land was assigned expired on 06.09.2010. As per 1424 F (July 2014 - June 2015) his wife Smt. Namala

Hanumayamma cultivated the above land with paddy and at present the same is vacant but in possession of the wife of the first petitioner.

From the above, it is clear that initially the land which is subject matter of dispute in the present writ petition was assigned in favour of the first petitioner; thereafter in favour of respondent No.4 after conversion from Poramboke to Assessed Waste Dry and then the same was cancelled. The said facts get support from the order of the Joint Collector dated 28.03.2011 wherein, it has been held as under:

“The issue of patta to Namala Koti Babu in the year 1994 is without any base/record and as per the procedure of assignment. Further, this patta was issued in the year 1994 i.e. before the conversion proceedings. Therefore, the patta said to be issued is not valid as per record. The issue of Pattadar Pass Books in the year 2008 for the patta issued in 1994 is with malafide intention only. The Tahsildar, Guntur, who has issued patta is to be taken to task, since he issued pattadar pass books without proper verification of record. Therefore, the D-Form patta issued to Namala Koti Babu in the year 1994 is cancelled.

Though the patta was issued to Chukkapalli Kodandaramaiah in the year 1995 ie. after conversion proceedings, the issue of pattadar pass books in the year 2004 is creating a doubt about its validity. Since, Chukkapalli Kodandaramaiah, who got the D-Form Patta bearing No. 998/94-F dated 25.10.1995 in the year 1995, got pattadar pass books in the year 2004 and who has also paid the market value in the year 2005. The reasons for payment of Market Value by Chukkapalli Kodanda Ramaiah, Chukkapalli Mallikarjuna Rao and Smt. Mikkilineni Usha Rani were not known and without any orders, since no insistence for payment of market value either from the officers or it is a part of a condition of assigning D-Form patta. So, it is clearly establishes that the assignees said to have paid the market value with an intention to grab the land in question and to have

a valid say in the future, which is not proper and justifiable as no proceedings is there from the Revenue Officers either from Revenue Divisional officer or Tahsildar fixing the market value for payment of market value. Therefore, the patta issued to Chukkapalli Kodanda Ramaiah and others deserve cancellation and accordingly the Revenue Divisional Officer is properly cancelled the pattadar pass books issued to the above assignees.”

This Court while issuing notice before admission, directed the respondents not to interfere with the petitioner’s possession over the subject land, without following due process of law. Probably, in view of the orders passed by this Court, the legal heirs of the first petitioner, more particularly the wife continued to be in possession though the assignment made to her husband was cancelled. In fact, the order dated 28.03.2011 show that in view of the interim order passed by this Court, the possession of the petitioners over the said land was not disturbed but however the assignment granted to them was cancelled. It is stated by the Government Pleader that since the petitioners are found to be in possession of the land, though not having right or title over the property, the authorities would follow the procedure while taking possession of the land from the petitioner, since the said land has been classified as Vagu Poramboke.

For the reasons stated above, the writ petition is disposed of, directing respondent Nos.1 to 3 not to dispossess the petitioners from the land admeasuring Ac.1.76 cents in Sy.No.543/1, Ac.1.00 cents in Sy.No.543/1G and Ac.0.90 cents in Sy.No.546/A3, situated at Nallapadu Village, Guntur Rural Mandal, Guntur District, without following due process of law, if they are in possession of the property.

No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

07.08.2015
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