

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 19000 of 2011

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the 1st respondent/Joint Collector, Anantapur in granting stay of operation of the issuance of possession certificate, without any notice to the petitioner, vide his order in D.Dis.No.6302/2011(E4) dated 27.06.2011 as illegal, arbitrary and violation of principles of natural justice and consequently set-aside the order in D.Dis.No.6302/2011(E4) dated 27.06.2011.

The averments in the affidavit filed in support of the Writ Petition are as under :

The 3rd respondent/Tahasildar granted house site patta along with possession certificate to an extent of Ac.0-03 cents in Sy.No.131-2 of Somaldoddi village, Anantapur Mandal and District in File No.1081 dated 15.10.2008 to the petitioner. From the date of granting possession certificate the petitioner was put in possession and he accordingly constructed a hut by obtaining permission from Panchayat Secretary. While things stood thus, the 4th respondent filed a Revision before the 1st respondent on the ground that the possession certificate

is a fabricated and fake basing on the endorsement made by the 3rd respondent dated 13.04.2011 in Rc.No.1900/A/10, for cancellation of possession certificate issued in favour of the petitioner. The averments in the affidavit further disclose that the petitioner filed O.S.No.111 of 2011 against the 4th respondent seeking injunction. Along with the said suit, I.A.No.129 of 2011 was filed seeking temporary injunction. After hearing both sides the Principal Senior Civil Judge, Anantaur, granted temporary injunction against the 4th respondent, his men and agents from interfering with the peaceful possession and enjoyment of the petition schedule property. It is further stated that after coming to know that the civil court has granted injunction, the 4th respondent got an endorsement on 13.04.2011 in Rc.No.1900/A/10 from the 3rd respondent stating that the records pertaining to issuance of possession certificate in favour of the petitioner were not traced by the office of the 3rd respondent. Basing on the endorsement the 4th respondent filed the Revision before the 1st respondent, the 1st respondent granted stay of operation of the issuance of possession certificate without giving any notice to the petitioner. Challenging the action of the 1st respondent, the present Writ Petition came to be filed.

Heard the learned counsel for the petitioner and

the learned Government Pleader for respondents 1 to 3 and the learned counsel for 4th respondent.

The main ground urged by the learned counsel for the petitioner is that no notice was given to the petitioner by the 1st respondent before passing the impugned order.

Per contra, the learned Government Pleader for Revenue and also the learned counsel for the 4th respondent submit that notices were served on the writ petitioner before the orders are passed by the Joint Collector.

The counter filed on behalf of the 3rd respondent would show that subsequent to the filing of the Revision by the 4th respondent, the first respondent summoned the records pertaining to alleged assignment made in favour of the petitioner on 15.10.2008 and after perusing the same, the Joint Collector came to the conclusion that the said house site patta is fake one. It is stated that the land was originally assigned to one Sri Harijana Peddanna in the year 1969 and later restored to the legalheirs of the original assignee. It is further stated that the entries in the house site grant register do not disclose any such assignment being made in favour of the petitioner and that the said patta is a fake one. But, the counter is silent as to the service of the notice on the petitioner._

A perusal of the record which has been placed before this Court would show that on 08.06.2011 an interim order came to be passed by the Joint Collector, Anantapur, granting stay, as sought for by the 4th respondent herein and thereafter the case was posted for hearing on 18.06.2011. The Tahasildar was also directed to submit records immediately. Though the counter filed by the Government Pleader is silent as to the issuance of notice to the writ petitioner, the instructions received by him show that a notice was issued by the 1st respondent to be served through Tahasildar, Anantapur. But no material is placed before this Court showing serving of notice on the writ petitioner. As stated earlier, the Counter which has been filed before the Court is silent with regard to the issuance of service of notice on the writ petitioner.

Further, in the written instructions dated 31.08.2015, it was mentioned as if notice was sent to be served through Tahasildar. Even in the said instructions it was not stated as to whether the said notice was served. In view of the above, it can be said that the order under challenge came to be passed without hearing the writ petitioner, in whose favour the possession certificate was issued in respect of the lands to an extent of Ac.0.03 cents in Survey No.131-2 of Somaladoddi village, Anantapuram.

Hence, the Writ Petition is allowed setting aside the

order under challenge and consequently directing the first respondent to hear the matter afresh after giving notice to the writ petitioner. It is needless to mention that the 1st respondent shall dispose of the matter within 3 (three) months from the date of receipt of the copy of this order. All the parties shall cooperate and see that the proceedings are completed within the prescribed time. No order as to costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date:02.09.2015

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