

IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH

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W.P.No. 20147 of 2015

Between:

M. Narsamma and another

... Petitioners

and

The State of Andhra Pradesh and others

-

... Respondents

DATE OF JUDGMENT PRONOUNCED: 10.9.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1 | <u>Whether Reporters of Local newspapers may be allowed to see the Judgments?</u> | No |
| - | | |
| 2 | <u>Whether the copies of judgment may be marked to Law Reports/Journals</u> | No |
| - | | |
| 3 | <u>Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?</u> | No |

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THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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W.P. NO. 20147 of 2015

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ORDER:

A vacate stay petition has been filed and with the consent of the learned counsel for the parties, the main writ petition itself was taken up for hearing. Heard Mr. Ganta Rama Rao, learned senior learned counsel appearing for the petitioners, learned Government Pleader for Revenue appearing for the respondents 1 to 3 and Mr. S. Laxminarayana Reddy, learned counsel appearing for the respondent No.4.

The writ petition is primarily directed against the order passed by Revenue Divisional Officer, Adoni, Kurnool district-2nd respondent in Rc B/1056/2015, dated 19.3.2015 whereby the assignment of land admeasuring 442 sq. feet, plot No.2 and 476 sq. feet, plot No.2 made in favour of 1st petitioner and 2nd petitioner respectively in Sy.No. 384 situated at Mandagiri village, Adoni Mandal, Kurnool district cancelled. It appears from the record that

the 4th respondent, claiming title over the said lands, issued a notice dated 2.1.2006 alleging that the 1st petitioner had taken the said plot on rent and failed to pay the rents and consequently the 4th respondent required the 1st petitioner to vacate the said land and also to pay the arrears. The said notice was replied to by the 1st respondent by claiming that it is, in fact, a Government land and was assigned to them by the Government, as such the 4th respondent has no right to seek eviction or arrears of rent as claimed in the notice. It appears that thereafter the 4th respondent has filed O.S.No. 173 of 2009 on the file of the Senior Civil Judge, Adoni against both the petitioners claiming declaration of title and for possession in respect of the aforesaid land. While the said suit was pending between the 4th respondent and the petitioners, the petitioners state that they were served with the impugned order canceling the assignment of lands made in their favour. Under the impugned order the 2nd respondent found that there is a decree passed by the Senior Civil Judge, Adoni, dated 5.6.1987 in O.S.No. 221 of 1982 declaring the title of 4th respondent to the said property as against the Government and therefore, the Government could not claim title to the property and

consequently cancelled the assignments made in favour of the petitioners under the impugned order.

The learned Government Pleader for Revenue appearing for the respondents 1 to 3 has not been able to file a counter-affidavit though the matter was adjourned from time to time and several opportunities were given to them to file their counter.

The petitioners have questioned the impugned order *inter alia* on the ground that they had no notice of any such proceedings before the 2nd respondent and therefore, the impugned order on that ground itself is not sustainable. Evidently a reading of the impugned order also does not show that it was preceded by any notice to the petitioners. In the normal circumstances, therefore, I would have remitted the matter back to the 2nd respondent for fresh consideration, particularly when the 4th respondent also did not dispute the same and accepts that no notice was issued to the petitioners before the impugned order was passed. However, such a course of remitting the matter back to the 2nd respondent is not necessary to be adopted in this case in spite of finding that the impugned order was made against the petitioners without notice to the petitioners. The reasons therefor are as follows,

It is not in dispute that there is a decree of competent court in O.S.No. 221 of 1982, dated 5.6.1987 declaring that the 4th respondent is the owner of the entire land and consequently the title in favour of the Government stands displaced, as the Government was only defending the said suit. When the title of the 4th respondent granted by the aforesaid decree is not questioned by the Government, the land ceases to be a Government land and therefore, the assignment made in favour of the petitioners by the Government cannot any more be sustained. Even if assuming that the petitioners' rights to the assigned land are affected on account of the impugned order, no purpose would be served by remitting the matter back to the 2nd respondent as the Government itself does not defend its own ownership in view of the decree and consequently the decree as on today is binding on the Government. It is also well settled that principles of natural justice cannot be applied in a straight jacket manner and its applicability would depend upon the purpose for which it would be applied. In my view, therefore, the impugned order based on the said decree in favour of the 4th respondent and against the Government is indefensible either by the Government or also by the petitioners. Hence the impugned order is upheld.

It appears that based on the impugned order, the 4th respondent approached the respondents 2 and 3 seeking implementation of the impugned order and the 3rd respondent issued a notice under Section 7 of the A.P. Land Encroachment Act to the petitioners on 10.6.2015, proceeded further by passing an eviction order and enforced it by way of panchanama and the possession of the land was delivered to the 4th respondent by the 3rd respondent.

The learned senior counsel appearing for the petitioners has rightly contended that the action of the 3rd respondent in evicting the petitioners by applying the provisions of the A.P. Land Encroachment Act is without jurisdiction and it cannot be sustained, when the Government itself accepts that it has no title over the lands. I agree with the said proposition that once the Government disowns its title and passed an order of cancellation of assignment based on that, it has no further jurisdiction to invoke under the A.P. Land Encroachment Act as the said land does not any more belong to the Government. Hence the further acts of the 3rd respondent in proceeding against the petitioners under the A.P. Land Encroachment Act, dispossessing the petitioners from the

lands and delivering possession to the 4th respondent, are entirely without jurisdiction and cannot be approved.

The learned counsel for the 4th respondent has contended, as stated in the counter-affidavit, that the petitioners themselves voluntarily vacated the lands and took away their belongings and further the fact that the petitioners were evicted from the lands on 19.6.2015 is not controverted and the possession was delivered to the 4th respondent by the 3rd respondent. The said contention cannot be accepted, as the petitioners were contesting the litigation in O.S.No. 173 of 2009 and it is impossible to accept that they would voluntarily vacate the lands. Moreover the panchanama conducted by the 3rd respondent itself shows that it is the 3rd respondent who has used the process of A.P. Land Encroachment Act and taken possession from the petitioners.

As noticed above, the decree of the competent civil court in O.S.No. 221 of 1982 binds the respondent-State and in fact they have accepted the same and have cancelled the assignments made in favour of the petitioners. Thus it is accepted by the respondents 1 to 3 that the land in question cannot any more be said to be owned by the State and thereby the provisions of the A.P. Land Encroachment Act become inapplicable to such

land. In view of that, the subsequent actions of the respondents particularly the Mandal Revenue Officer in issuing the notice to the petitioners under Section 7 of the A.P. Land Encroachment Act and dispossessing the petitioners and restoring the possession to the 4th respondent have to be held without jurisdiction. The effect of such actions on the part of the respondents 1 to 3 have resulted in the 4th respondent recovering possession of the property even before his suit for possession viz., O.S.No. 173 of 2009 is adjudicated and decided by the learned Senior Civil Judge, Adoni. The aforesaid legal position is evidently indefensible by the respondents 1 to 3 and as such it is necessary to direct the restoration of the possession to the petitioners.

The writ petition is, therefore, disposed of with the following directions,

- (1) That the impugned order is not interfered with for the reasons mentioned above and it is upheld;
- (2) That subsequent actions of the 3rd respondent based upon the impugned order under the A.P. Land Encroachment Act including dispossession of the petitioners is declared without jurisdiction and illegal;
- (3) That the 3rd respondent is

directed to restore the possession of the lands to the respective petitioners by restoring status quo ante as was existing prior to the date of panchanama i.e., 19.6.2015 within four weeks from the date of receipt of a copy of this order;

(4) That the 4th respondent and the petitioners are at liberty to prosecute and defend O.S.No. 173 of 2009 on the file of the Senior Civil Judge, Adoni as permissible under law and the possession delivered to the petitioners in pursuance of the direction above shall abide by the result of the decree in the said suit;

(5) That the petitioners are also at liberty to seek appropriate redressal of their grievance against the impugned order, if they so choose before an appropriate forum in accordance with law;

Miscellaneous applications including the vacate stay petition, if any, shall stand closed. No order as to costs.

VILAS V. AFZULPURKAR, J

Dt. 10.9.2015
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