

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.28547 of 2009

ORDER:

The present Writ Petition is filed seeking issuance of writ of mandamus to declare the action of the 1st respondent/District Collector, Ranga Reddy District, in issuing impugned Lr.No.LP1/5623/2008, dated 17.02.2009, wherein he directed the 4th respondent/Deputy Collector & Tahasildar, Balanagar Mandal, to resume the land in Sy.No.90/A, admeasuring Ac.15-15 Guntas situated at Kukatpally village, Balanagar Mandal, Ranga Reddy District by evicting the petitioners therefrom and make necessary correction in the Revenue Records by deleting the names of the petitioners as pattadars of the said land, as illegal, unlawful and contrary to the orders passed by this Hon'ble Court in W.P.No.1685 of 2004 and W.P.No.21914 of 2005.

The averments in the Affidavit filed in support of the Writ Petition show that by virtue of long standing possession of the subject land by one late Chowdary Kistaiah, the Additional Collector, Hyderabad vide Letter No.257/259 dated 15.03.1952 sanctioned patta in his name. The said late Chowdary Kistaiah is the eldest brother of late Chowdary Ramchandraiah, who is the father

of the petitioners herein. Since the date of grant of the above patta, said Chowdary Kistaiah became its pattadar and accordingly the Government issued supplementary Sethwar in his favour and since the date of Khasra i.e., 1954-55 the name of Chowdary Kistaiah was being shown as pattadar of the said land and the name of the father of the petitioners i.e., late Ramachandraiah was shown as its possessor. Subsequently, disputes arose between Kistaiah and Ramachandraiah, which resulted in filing O.S.No.3 of 1967 seeking perpetual injunction by Ramachandraiah, which was subsequently dismissed. However, in the appeal, i.e., A.S.No.17 of 1971, filed by said Ramachandraiah there was a compromise between the parties. In view of the compromise, the land in Sy.No.90/A admeasuring Ac.15.15 guntas was exclusively allotted to the share of the father of the petitioners and the same was being mutated in R.O.R., and pattadar passs books and title deeds were also issued. While mater stood thus, the respondents 7 to 11 submitted an application dated 16.11.2000 to the 4th respondent for grant of succession in respect of the land in Sy.No.90/A admeasuring Ac.15.15 guntas claiming themselves to be the owners of the said land. The 4th respondent rejected their claim holding that the father of the petitioners is the pattadar. Then, the respondents 7 to 11 preferred an appeal before the 3rd respondent in File No.C/545/2001

and 3rd respondent while dismissing the appeal held that neither the petitioners nor their father late Ramachandraiah are owners of the above land and that the said land is a Government land. Holding so, he passed an order dated 12.01.2004 directing the 4th respondent to evict the petitioners from the said land and resume the same in favour of the Government. Then the petitioners and their father filed W.P.No.1685 of 2004 before this Court questioning the resumption order, which was partly allowed by setting aside the eviction order, but, however, liberty was given to the petitioners to approach the 2nd respondent by filing a Revision under Section 9 of R.O.R. Act. Subsequently, a Revision came to be filed before the 2nd respondent vide File No.D5/2132/2004, but the 2nd respondent while dismissing the Revision directed the 4th respondent to evict the petitioners from their possession and resume the same by making necessary entries in the R.O.R. Aggrieved by the same, the petitioners filed W.P.No.21914 of 2005 showing respondents 7 to 11 herein as parties to the said proceedings. While admitting the said Writ Petition, the Court suspended the operation of the order under challenge by its order dated 06.10.2005. When, the 4th respondent tried to disturb the possession of the petitioners, Contempt Case No.37 of 2006 came to be filed against the 4th respondent, wherein the 4th respondent denied any interference in violation of interim

order. Recording the same, the contempt case was closed. After hearing all the parties, W.P.No.21914 of 2005 was allowed which has become final as no further proceedings were initiated. While so, the father of the petitioners by name Ramachandraiah died on 20.08.2009 and thereafter the petitioners became absolute owners of the said land. Then the respondents 5 to 13 illegally encroached upon a part of the above land and erected a statue of Dr.B.R.Ambedkar with an intention to grab the entire land. Pursuant thereto, a suit was also filed for recovery of the possession. While the matter stood thus, the 5th respondent made a representation to 1st respondent asking him to resume the above land by making necessary entries in the Revenue Records. The petitioners allege that the 1st respondent without properly understanding the orders passed by this Court in W.P. No.21914 of 2005, communicated a letter bearing Lr.No.LP1/5623/2008 dated 17.02.2009 directing the 4th respondent to resume the above land by correcting the entries in the R.O.R., under Section 166-B of A.P. (TA) Board of Revenue Regulations 1358 Fasli. It is said that while communicating the said letter, the 1st respondent neither issued any notice nor gave an opportunity to the petitioners. It is said that taking advantage of the said impugned letter dated 17.02.2009, the Revenue authorities and respondents 5 to 13 are continuously interfering with

their possession and enjoyment of land by the petitioner. It is further said that the 4th respondent is taking steps to resume the land by making correction of the entries in the R.O.R., without giving any notice to the petitioner. Questioning the action of the respondents and seeking suspension of the operation of the impugned letter No.LP1/5623/2008 dated 17.02.2009, the present Writ Petition came to be filed.

A counter came to be filed by the respondent No.4 stating that as per the pahani for the year 1953-54 of Kukatpally village, the total land in Sy.No.90 which is to an extent of Ac.20-36 gts is classified as Poramboke Sarkari and belongs to Government. It is also stated that the entries in Khasra Pahani for the year 1954-55 have been tampered as no orders are received for any change. It is further stated that there is no evidence to show that a Patta in the name of late Choudary Kishtaiah has been sanctioned and if so, the entries in Khasra Pahani for the year 1954-55 against Sy.No.90 would have been incorporated in the name of Choudary Chinna Kistaiah. It is submitted that the orders in O.S.No.3 of 1967 and A.S.No.17 of 1971 are not found in the records of Revenue department as the official respondents were not parties therein. The name of the father of the petitioners is said to have been recorded by virtue of compromise decree between private parties, in collusion with each other, so as

to knock away the valuable Government land wherein the Government was not party. It is said that One Purra Balraj and others have filed an application requesting grant of succession of land admeasuring Ac.15.15 gts in Sy.No.90, but the same was rejected and later the said Purra Balraj and others preferred an appeal which was dismissed holding that neither the appellants nor the respondents 2 to 6 have any right and accordingly declared that the said land belongs to Government. It is averred that the Revenue Divisional Officer, Chevella was directed to evict the respondent from subject land, resume the same and make necessary entries in the Revenue Records.

Meanwhile, this Hon'ble Court passed the following order in W.P.No.1685 of 2004 :

“The impugned order to the extent directing the M.R.O. to evict the petitioner from the lands in question alone is set aside. The writ petition is accordingly allowed. However, it is always open for the respondents to initiate necessary action and petitioner is at liberty to challenge the order directing change of entries and cancellation of pattadar passbooks by filing a revision under Section 9 of the Act.”

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Later the petitioners herein filed a Revision before the Joint Collector-II, Ranga Reddy District, under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, who by his order dated 30.07.2005 held as under :

“The findings of the Revenue Divisional Officer, Chevella division are found to be correct and non evidence to the contrary has been produced. Therefore, it is clear that the lands in question are Government lands. Hence, revision petition is dismissed. The Mandal Revenue Officer is directed to resume the land forthwith, evict encroachments, if any and make necessary entries in revenue records. The Mandal Revenue Officer, Balanagar is further directed to take

effective steps for safeguarding the land in question.”

Aggrieved by the same, the petitioners filed W.P.No.21914 of 2005 before this Court, wherein this Court passed the following order:

“the orders of the first respondent (Joint Collector-II, Rangareddy District 2nd respondent herein) dated 30.07.2005, confirming the orders of the second respondent (RDO, Chevella) dated 12.04.2004, insofar as these orders direct the 3rd respondent (M.R.O) to resume the land forthwith by canceling of the entries in the revenue records are set aside. It is however open to the state to pursue appropriate remedies for safeguarding or resuming possession of the lands from the petitioners, if the State is satisfied that the lands are Government Lands.”

A careful examination would show that the then Collector, Ranga Reddy has passed orders vide LP1/5623/2008, dated 17.02.2009 directing the Deputy Collector and Tahasildar, Balangar to take immediate action for correction of entries in the Revenue Records and take possession of the land under the A.P. Land Encroachment Act. It is also stated in the counter that the field staff of the Revenue Authorities have interfered over illegal encroachments that took place in the land in Sy.No.90 of Kukatpally village as the suit land is Government land and classified as Poramboke Sarkari. It is further stated that the unauthorized and manipulated entries which have been recorded in the Khasra Pahani have no base and the petitioners have no evidence to conclude that it is a patta land and thus it is said the present petition is filed only to grab the land.

It is stated in the reply affidavit filed by the petitioners that initially the Additional Collector passed an order vide letter No.257/259, dated 15.03.1952, which was addressed to the Tahasildar West in which the land of the petitioners in Sy.No.559 has been allotted to the 'Dhed Community' as the said land is very nearer to the inhabited area and suitable for construction of houses. In lieu of the same, the Additional Collector issued orders vide letter No.257/259, dated 15.03.1952 transferring patta of the land in Sy.No.90 by collecting 16 times the land revenue as fees in favour of late Kistaiah. It is further stated that to recover possession from the petitioners, the Government ought to have filed a civil suit before the court of competent jurisdiction but can not pass an order like the impugned letter dated 17.02.2009. It is stated that the family of the petitioners are in possession and enjoyment of the land in Sy.No.90 from the year 1952 till date without there being any interruption and, therefore at this stage the respondents cannot resort to the summary proceedings of seeking eviction of the petitioners from the land in question and also seek correction of the entries in the Revenue records. Even the Government has allotted land to Purra Balraj and others in another Survey Number at Kukatpally but same was erroneously alienated by them to third parties and they further claiming that the land in Sy.No.90 which is the land of the petitioners has also been allotted in their favour.

Therefore, the contention of the 4th respondent that there is no evidence to show that the land in Sy.No.90 has been converted into patta land is absolutely false.

The learned counsel for the petitioners mainly argued that the second respondent herein has no authority or jurisdiction to pass the impugned order. In view of the earlier orders passed by this Court in W.P.No.1685 of 2004 and W.P.No.21914 of 2005, the second respondent could not have directed the Tahasildar to take action for correction of entries in revenue records under Section 166-B of A.P. (TA) Board of Revenue Regulations, 1358 and also possession of land under the A.P. Land Encroachment Act. It is his argument that the order of this Hon'ble High Court in W.P. No.21914 of 2005 clearly shows that if the State is of the opinion that the property belongs to the State and that by some illegal or irregular procedure, the name of the petitioners are reflected as pattadars in the revenue records, the State is required to take recourse to appropriate substantive proceedings under some available and appropriate legislative environment. That being the position, he submits that the impugned proceedings cannot be termed as substantive proceedings. He further submits that no notice was given to the petitioners before taking this extreme step.

On the other hand, the learned Government Pleader for Revenue would submit that filing of the Writ Petition is

premature and no cause of action arose for entertaining the writ petition. It is his case that since no action was initiated pursuant to the impugned letter, the question of passing any order in favour of the petitioners would not arise. He further submits that the order of this Court in W.P. No.21914 of 2005, relied upon by the learned counsel for the petitioners, prescribes taking possession of the land if the State is satisfied that the lands are Government lands. Basing on the averments made in the Counter filed by the respondents, he submits that land which is subject matter of dispute is a Government land and the provisions of A.P. (TA) Record of Rights in Land Regulation are not applicable to the case on hand. In view of the above, he submits that the corrections sought to be made in the revenue records cannot be found fault with.

In order to answer the plea as to whether the Writ Petition was filed without any cause, the learned Senior Counsel took me through the contents of the writ affidavit and also the counter-affidavit to show as to how the Writ Petition is not pre-mature. In paragraph 5 of the affidavit filed in support of the writ petition it has been specifically averred that taking advantage of the impugned letter dated 17.02.2009, the respondents 5 to 13 herein have been making complaints to the police authorities and the municipal authority are interfering with the possession and enjoyment of the said land by the petitioners. It is further

averred that the 4th respondent i.e., the Deputy Collector & Tahasildar, Balanagar Mandal, without giving any notice or opportunity is taking steps to resume the land after making entries in the revenue records as directed by the 1st respondent. Therefore, the averments made in the affidavit, which are referred to above, clearly indicate that the 4th respondent at the instigation of respondents 5 to 13 is alleged to have been interfering with the enjoyment and peaceful possession of the land said to have been held by the petitioners herein. It is specifically averred that the 4th respondent herein is trying to resume the land by making entries in the revenue records. Strangely the official respondents, who filed their counter, did not deny the said fact. On the other hand, the counter filed by the 4th respondent clearly shows that the field staff of the revenue authorities have interfered over the illegal encroachments that took place in Sy.No.90 of Kukatpally village, as the petitioners have no right or claim in any manner. It would be useful to refer to para 6 of the counter which is as under:

“6. Further it is submitted that it is fact that the field staff of the Revenue Authorities have interfered over the illegal encroachments took place in the land in Sy.No.90 of Kukatpally village as the petitioners have no right or claim in any manner. The suit land is Government land which is evident from the oldest revenue record/pahani for the year 1953-54 in which the suit land is classified as Poramboke Sarkari.”

From the above, it is clear that the field staff of the

Revenue Department are interfering with the land of the petitioners. Merely because, the authorities felt that it is a Government land, they have no authority or right to interfere with the possession and enjoyment of the petitioners over the property without following the due process of law. Therefore, the argument of the learned counsel for the Government Pleader that there is no cause of action or that the petition is pre-mature, cannot be accepted.

Coming to the main issue viz., as to Whether the second respondent was justified in passing the impugned order, it may be useful to refer to the orders passed by this Court in earlier writ petitions. In W.P.No.1685 of 2004 which was filed for calling the records, this Hon'ble Court held as under :

“In view of the same, the impugned order to the extent directing the M.R.O., to evict the petitioners from the lands question alone is set aside. The writ petition is accordingly partly allowed. However, it is always open for the respondents to initiate necessary action and petitioner is at liberty to challenge the order directing change of entries and cancellation of pattadar passbooks by filing a revision under Section 9 the Act.”

A reading of the above order would clearly show that the order therein directing the M.R.O., to evict the petitioners from the lands in question was set aside, but however the official respondents therein were given liberty to initiate necessary action and the petitioners were also given liberty to challenge the entries and cancellation

of pattadar passbooks by filing a Revision under Section 9 of the Act. The Revision preferred by the petitioners was also dismissed.

Aggrieved by the order passed by the authority, the petitioners preferred W.P.No.21914 of 2005 calling for records pertaining to case No.D5/2132/2004, dated 30.07.2005 of the 1st respondent/Joint Collector, Ranga Reddy District, wherein this Hon'ble Court observed as under :

“Further the provisions of the Act are not applicable to government lands qua section 12 of the Act. It does not appear that the proceedings could have been initiated against the petitioners under the provisions of the Act for deletion of their names and issuance of patta pass books by the Mandal Revenue Officer. Therefore, if the State felt or was satisfied that the property belongs to the State and by some illegal or irregular procedure, the petitioners are reflected as pattedars in the revenue records, the State is required to take recourse to appropriate substantive proceedings under some available and appropriate legislative environment and if there be no such enabling legislation, then by recourse to the judicial process by way perhaps a civil suit before the court of competent jurisdiction. The order of the second respondent as confirmed by the first respondent directing eviction of the petitioners and restoration of lands to the government are patently beyond the limits of appellate and revisional jurisdiction under Sections 5 and 9 of the Act.

On the aforesaid analysis, the order of the first respondent dated 30.07.2005 confirming the order of the second respondent dated 12.01.2004, insofar as these orders direct the third respondent to resume the land forthwith by cancellation of the entries in the revenue records (which currently show the petitioners to be pattedars) are set aside. It is however open to the State to pursue appropriate remedies for safeguarding or resuming possession of the lands from the petitioners, if the State is satisfied that the lands are government land. ”

From the two orders referred to above, it is clear that

in the first Writ Petition i.e., W.P. No.1685 of 2004, this Court while allowing the Writ Petition in-part, set-aside the order to the extent of directing the Mandal Revenue Officer to evict the petitioners from the lands in question. However, this Court observed that it is always open to the official respondents to initiate action against the petitioners if the property is held to be a Government property. This Court also directed the petitioners to avail the revisional remedy under Section 9 of the Act. Insofar as the order passed in W.P. No.21914 of 2005 is concerned, the Court held that if the State is of the opinion that the property belongs to the State, they were directed to take recourse to appropriate substantive proceedings available and appropriate legislative environment and if there be no such enabling legislation, then by recourse to the judicial process by way of perhaps a civil suit before the court of competent jurisdiction.

In view of the judgments of this Court, the impugned order which is nothing but a reiteration of the earlier orders passed by the authorities in the earlier two rounds of litigation and which were not accepted by this Court, cannot be sustained. Hence, the order under challenge is set-aside leaving it open to the respondents to initiate appropriate proceedings in accordance with law in terms of the order passed by this Court earlier.

With the above direction, the Writ Petition is

disposed of. No costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

Dt:17.11.2015
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