

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 23368 of 2006

ORDER:

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Heard learned counsel for the petitioners and Government Pleader for Assignment.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the impugned memo No.E1/4040/2006, dated 29.09.2006 issued by the third respondent as illegal and contrary to the directions of this Court in W.P.No.6056 of 2006.

The facts which lead to filing of the writ petition are as under:

The first petitioner along with petitioner Nos. 2 to 4, who are her children, claim to be owners and possessors of land covered in Sy.Nos. 228, 229, 230, 232, 233 and 235 of Chandanagar Village. They also encroached government land admeasuring Ac.0.07 gts. situated in Sy.No.234 which is adjacent to their land. The petitioners made an application on 21.09.1994 seeking regularization of their encroachment as they raised a cattle shed thereon. The respondent No.1 conducted enquiry, fixed the market value of the said land at Rs.15.00 lakhs per acre and recommended for regularization of possession of the petitioners over the said land on payment of market value. In spite of that, respondent No.4 failed to take any action. Challenging the same, the petitioners filed W.P.No.6056 of 2006 seeking a direction to the respondents to consider their case for regularization of the said land. By an order, dated 13.04.2006 this Court passed the following order:

“ When the matter is listed before this Court on 27.03.2006, the learned Assistant Government Pleader for Revenue (General) sought time to get instructions in the matter. Today, after getting instructions in the matter, the learned Assistant Government Pleader submits that the land in Survey No.234 admeasuring Ac.0.07 guntas is adjacent to the lands of the petitioners and that they raised a cattle shed in the said land. A reference is made to G.O.Ms.No.1490 to submit that as Chandanagar village falls under ban area, alienation cannot be considered. However, the learned Assistant Government Pleader submits that any order for alienation of land has to be

issued by the Government after considering the report of the fourth respondent. As the application of the petitioners is pending since long time, it would be appropriate to direct the respondents 4 and 5 to consider the applications made by the petitioners which were forwarded by the respondents 1 and 2, within a period of three months from the date of receipt of a copy of this order. The learned Assistant Government Pleader does not dispute petitioners' possession as on today."

Thereafter, the third respondent issued an impugned memo dated 29.09.2006 rejecting the request of the petitioners for regularization. Challenging the same the present writ petition is filed.

Learned counsel for the petitioners submits that the impugned order came to be passed without taking into consideration the order passed by this Court in W.P.No.6056 of 2006. He further submits that there is no reference to the order of this Court as such the same is liable to be set-aside.

On the other hand, the Government Pleader for Assignment opposed the same.

A perusal of the order passed by this Court in W.P.No.6056 of 2006 show that as the application of the petitioners was pending since long time, this Court found that it would be appropriate to direct respondent Nos.4 and 5 therein to consider the application made by the petitioners, which was forwarded by respondent No.1 and 2, within a period of three months from the date of receipt of a copy of the said order. The said order was passed on 13.04.2006. In spite of the same, the impugned memo dated 29.09.2006 is silent with regard to the order passed by this Court. Though a direction was given to respondent Nos.4 and 5 to consider the application of the petitioners, but respondent No.3 issued the impugned memo. There is no reference to delegation of power by respondent No.4 and 5 in favour of respondent No.3. Since the impugned order came to be passed contrary to the orders passed by this Court in W.P.No.6056 of 2006, the same is liable to be set aside.

Accordingly, the writ petition is disposed of by setting aside the impugned memo No.E1/4040/2006, dated 29.09.2006 issued by the third respondent and consequently directing the Commissioner of Land Revenue, Hyderabad and the State of Telangana, rep. by its Principal Secretary, Revenue Department, Hyderabad, to consider the representation made by the petitioners, in terms of the order in W.P.No.6056 of 2006, at the earliest. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.12.2015

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