

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

WRIT PETITION No.23881 of 2011

Between:

Smt.D.Sharada W/o.Late D.N.Pandu, aged about 56 years,
Occ: House hold r/o.Bolarum, Secunderabad and others.

---Petitioners

And

The District Collector, Medak District and others.

---Respondents

DATE OF JUDGMENT PRONOUNCED: 03-08-2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of Judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.23881 OF 2011

ORDER:

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This writ petition is filed seeking issuance of writ of mandamus declaring the notice dated 22.11.2006 bearing No.B/1436/2006 issued by the 2nd respondent, as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

The purport of the impugned notice is that it treats the husband of the 1st petitioner as an assignee and informs the petitioners that the petition land is required for public purpose and the respondents are intending to resume the same. The petitioners were called upon to submit their explanation within 15 days from the date of receipt of the notice.

It is the case of the petitioners that during the life time of the husband of petitioner No.1, he purchased land to an extent of Ac.10-00 guntas of land in Sy.No.148/45 of Kalakal Village, Toopran Mandal, Medak District under registered sale deeds bearing Nos 1196 of 1985 and 1173 of 1985, dated 25-04-1985, 27-04-1985 respectively from Smt.Chilampally Vimala Devi. Later her husband got mutated his name in revenue records. It is stated that her husband died on 16-06-2006 leaving the petitioners as legal heirs and successors and as such they are in possession and enjoyment of the same. The vendor of husband of petitioner No.1 by name Vimala Devi purchased the said land from one Katari Venkata Narsamma and inturn said Venkata Narsamma purchased the said land from one Mallaiah under registered sale deed bearing No 39 of 1980,dated 28-12-1979. The

said Mallaiah was granted patta under a freedom fighters scheme through proceedings No.D2/459/1969 dated 03-02-1970. The assignment was to an extent of Ac.10-00 guntas in Survey No.148 of Kalakal village. It is matter of record and also not disputed that the freedom fighter enjoyed the property for about nine years and on 28.12.1979, he sold the said land in favour of one Katari Venkata Narsamma. Thereafter, the property has been subjected to two sale transactions and finally, the husband of petitioner No.1 purchased the same through two registered sale deeds dated 25-04-1985 and 27-04-1985.

The grievance of the petitioners is that the respondents have committed an illegality by treating the land in their possession firstly as an assignment in favour of husband of petitioner No.1 and secondly that the respondents have no power to resume the land by reference to public purpose or violation of one of the conditions in the assignment. The petitioners complain that both the grounds are illegal and unavailable in view of the fact that the assignment was in favour of a Freedom Fighter.

The 2nd respondent filed counter-affidavit, admitted that the subject land was assigned in favour of one Kottur Mallaiah under Freedom Fighters Scheme and that it has been sold and purchased under a series of documents and at present the petitioners are in enjoyment of subject land. It is further stated that possession of the said land has been taken by the Government to establish Industrial Automotive Parts Manufacturing Estate in Toopran Mandal and it is for this purpose, the petition land including contiguous lands to an extent of Ac.348.24gts. is resumed. It is further stated that the petitioners are entitled for payment of exgratia in the event of resuming the assigned land and nothing else.

Heard learned counsel for the petitioners and learned

Government Pleader.

On 06-09-2011, this Court directed both the parties to maintain status quo. In similar circumstances, this Court in W.P.No.2952 of 2009 held as under:

“If the assignment stands different from regular D-Form assignment, I am of the opinion that the offer of the respondents to pay exgratia for resumption is not legal and also not in accordance with Article 300-A of the Constitution of India. The petitioners can be deprived right in property only in accordance with law and not otherwise. The notice impugned in the writ petition is set aside. If the respondents intend to secure the land of the petitioners, it is needless to observe that by taking recourse to the provisions of the Land Acquisition Act and payment of compensation, the land shall be taken from the petitioners”.

The undisputed facts in the writ petition disclose that the petition land is not an assigned land strictly in conformity to the conditions of D-Form. This was an assignment in favour of a freedom fighter. The restriction imposed under the assignment to a freedom fighter is that the assignee shall not alienate the assigned land for a period of 10 years. By virtue of Government Orders issued from time to time, the assignees under freedom fighters scheme have been facilitated to enjoy the property as absolute owners including the right to alienate after completion of 10 years. The respondents are not disputing the Government orders issued from time to time. The Freedom Fighter sold the land way back 1985. It is not disputed at Bar that a Freedom Fighter is free to sell the property after 10 years. Since the case on hand is identical to the case referred to above, the writ petition has to be allowed.

Accordingly, the writ petition is allowed. No costs. Miscellaneous petitions pending, if any, in this writ petition shall stand disposed of.

JUSTICE C. PRAVEEN KUMAR

03-08-2015

Nvl