

HON'BLE SRI JUSTICE R.KANTHA RAO

AND

HON'BLE SRI JUSTICE S.RAVI KUMAR

Writ Appeal No.1278 of 2008

and

Contempt Case No.1415 of 2009

-

Date: 06-3-2015

Between

Eluru Gosamrakshana Samithi,

Rep. by its Secretary,

Kurapati Panduranga Rao

... Appellant/Petitioner

and

The Govt. of AP,

Rep. by its Secretary,

Revenue Dept.,

Secretariat Bldgs, Hyderabad;

and 4 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

AND
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Writ Appeal No.1278 of 2008

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Common Judgment: (per R.Kantha Rao, J.)

The petitioner is Eluru Gosamrakshana Samithi, represented by its Secretary. On an application made by the petitioner-Samithi, the Government through orders in G.O.Ms.No.1627 (Revenue Q) Department, dated

13-12-1977, issued a grant in respect of land measuring Ac.74-90 cents in Survey No.997 situated in Koppaka village to the petitioner's Society under Board Standing Order (BSO) 19-A for cattle and dairy farms with special conditions. Admittedly, the possession of the entire land was delivered to the petitioner. The petitioner having accepted all the conditions took possession of the land which was granted under the aforesaid G.O. According to the petitioner, they have been paying the assessment and cess thereon for the land and they assert that they have been complying with all the conditions attached to the grant and also BSO 19-A. It is further submitted by the petitioner that it spent an amount of Rs.10 lakhs for reclamation of the land laying of roads, digging bore wells, purchase of motors and laying of pipes for raising fodder grass and also for laying or roads, construction of sheds etc. It is submitted by the petitioner that the

1st respondent passed the impugned Memo dated 26-02-1994 directing the Collector, West Godavari district at Eluru to enhance the proposed lease rent of Rs.100/- per acre with reference to the present market value as on 27-9-1987 and the Collector was requested to send the revised proposals through the Commissioner

of Land Revenue for reducing the extent of land to Ac.32-00 cents for lease. The version of the petitioner is that the above orders have come to the notice of the petitioner on 14-11-1995 and the petitioner was made to understand that the Government was contemplating to take back Ac.42-90 cents of land out of Ac.74-50 cents granted to the petitioner under BSO 19-A originally and the petitioner was also made to understand by the aforesaid Memo that the grant was proposed to be converted into lease.

2. The version of the petitioner is that since the land was allotted to them under BSO 19-A, it is only a grant which cannot be converted into a lease and the petitioner submitted in the writ petition that if it was to be a lease the petitioner would not have accepted the proposals taking the land on lease. It is under these circumstances, the petitioner filed W.P.No.26218 of 1995 to declare the impugned order of the 1st respondent dated 26-02-1996 as illegal, arbitrary and against the principles of natural justice and to declare the same as null and void.

3. The learned single Judge having heard the learned counsel appearing for the petitioner as well as the learned Government Pleader for Revenue representing the respondents, passed the order which is as follows:

“Eluru Gosamrakshana Samithi is voluntary organization registered under the Societies Registration Act, 1960. Its aim is to develop Goshala to entertain abandoned, infirm, old and sick cows so as to prevent cow-slaughter. The petitioner made a representation to the Government on 10.02.1977 seeking grant of land admeasuring Acs.74.90 (subject land, for brevity) in survey No.997 for cattle and dairy form, for a period of ten years. Considering the same, the District Collector and the Commissioner of Land Revenue (respondents 3 and 2 herein respectively) sent reports to the Government. Initially, the Government issued Memo No.919/Q1/77-5, dated 27.10.1977, permitting the petitioner to enter the subject land pending final orders of grant of land. Subsequently, the Government issued G.O.Ms.No.1627, dated 13.12.1977, granting the subject land subject to conditions under Board Standing Order (BSO) 19-A. The petitioner statdly fulfilled all the conditions of grant including the condition of payment of assessment and cess, and using the land following the technical advice of the officers of upkeep of the animals.

In 1994, the Government by Memo No.76921/ASN.1(1)/89, dated 26.02.1994 requested the District Collector – the third respondent – to send revised proposals for the purpose of revised lease rent and also for reducing the extent of leased land to Acs.32.00. The petitioner filed the present writ petition assailing the said Memo.

This writ petition was admitted on 22.11.1995. The impugned Government Memo was also suspended by reason of the orders passed in W.P.M.P.No.32310 of 1995. The respondents have not filed any counter affidavit so far.

It is the contention of the petitioner that the allotment of land in December, 1977, by the Government is a free grant and the proposal to levy rent is impermissible under BSO 19-A. It is also further contention that without any notice to the petitioner, the area under its occupation can neither be reduced nor the leased amount can be collected.

BSO 19-A deals with grant of lands for cattle and/or dairy forms. BSO 19-A(iii) deals with conditions of grant and BSO 19-A(v) deals with levy of full assessment. The relevant BSO reads as under.

19-A (iii). Conditions of grant:-

(a) Omitted

(b) The lands will be exempt from payment of assessment for the first five years. But water-cess will be charged under the ordinary rules, if any, Government water is used for irrigation.

19-A (v). Levy of full assessment:- The lands will be fully assessed by the Collector at the end of the period mentioned in clause (iii)(b) supra. If the land is unassessed, the Collector will determine the assessment to be levied, with due regard to the fertility of the soil, etc.

BSO 19-A (vii) deals with resumption of the land enabling the Government to resume the land wholly or in part with any buildings thereon, after one month's notice in the event of infringement or failure to fulfil the conditions of grant/order when the land is required for public purpose or for conducting mining operations.

Apart from BSO 19-A while granting the land to the petitioner vide G.O.Ms.No.1627, dated 13.12.1977, the Government made the grant subject to conditions under BSO 19-A specifically stipulating that the petitioner should pay assessment and cess thereon for the entire extent and in case of default of payment of assessment, the Government can resume the land. The impugned memo was issued by the Government considering reports from the District Collector, dated 09.02.1989 and 27.02.1993 as well as that of the Commissioner of Land Revenue, dated 19.04.1993. Impugned Memo seeks to reduce the area of lease from Acs.74.90 to Acs.32.00. The same is always permissible under the BSO 19-A. Secondly, the submission of the petitioner that the land was allotted as a free grant cannot be accepted as the same runs contrary to BSO 19-A as well as conditions of grant. Further more, it is well settled that the Government as a grantor can always resume the land and/or levy necessary assessment by way of lease or premium on the land allotted. However, as rightly pointed by the learned counsel for the petitioner before reducing the area or enhancing the lease amount, the Government ought to issue notice to the grantee. This was not done. Therefore, though this Court is not inclined to invalidate the impugned order, it observes that the first respondent should issue notice to the petitioner before taking action as proposed in the impugned Memo after receiving the proposals from the District Collector, if not, already received.

The writ petition, subject to above observations, is dismissed. No costs."

The aforesaid order passed by the learned single Judge is challenged by the petitioner (appellant in the present writ appeal).

4. Before taking up the issues for consideration, the following admitted facts are required to be noticed:

Admittedly, a grant was issued to the petitioner in respect of Ac.74-90 cents of land in Survey No.997 situated in Koppaka village under

BSO 19-A enquiry for 10 years. As on today, the entire land is in possession of the petitioner-Samithi. The respondents-Government issued notice only to resume Ac.42-90 cents of land on the ground that the entire land is not being utilised by the petitioner and leaving remaining Ac.32-00 cents of land to the petitioner. The learned single Judge expressed the view that the impugned Memo which sought to reduce the area of lease from

Ac.74-90 cents to Ac.32-00 cents is permissible under BSO 19-A. The learned single Judge was also of the view that the submission made by the petitioner that the land was allotted as free grant cannot be accepted as the same was contrary to BSO 19-A as well as the conditions of the grant. It is also the observation of the learned single Judge that the Government, which is the grantor, can always resume the land or levy necessary assessment by way of lease or premium on the land allotted.

5. The learned single Judge however accepted the contention of the petitioner that before reducing the area in respect of which the grant was issued to the petitioner for enhancing the lease amount, the Government ought to have issued notice to the grantee but the same was not done. Thus, the learned single Judge concluded that though he is not inclined to invalidate the impugned order, felt that the 1st respondent ought to have issued notice to the petitioner before taking any action as proposed in the impugned Memo after receiving the proposals from the District Collector.

6. In support of his observations, the learned single Judge has not given any elaborate reasons and merely reached certain conclusions. We are of the view that the scope of determination of issues involved in the present writ appeal is very limited since obviously before proposing the action to resume the part of the land and enhancing the rent, no notice was issued to the petitioner-Samithi. We would like to state for the limited purpose that any action proposed by the Government for assessment or enhancing the cess

shall be subject to the conditions of the grant under BSO 19-A. The learned counsel appearing for the petitioner submitted at the hearing of the writ appeal that the petitioner-Samithi is inclined to pay assessment or cess that is to be levied by the Government, including arrears, if any, fixed.

7. In the circumstances aforementioned, without going into the merits of the case, we dispose of the writ appeal directing the respondents-Government to issue proper notice to the petitioner in the event of proposing any reduction of the land which was allotted to the petitioner under the grant or for fixing/enhancing any amount or cess and whenever on such notice being received by the petitioner, the petitioner is at liberty to raise all objections before the Collector or any authority appointed by the Government and the authority shall adjudicate the objections raised by the petitioner and pass appropriate orders in accordance with law without being influenced by any of the observations made either in the writ petition or in the writ appeal. The writ appeal is accordingly disposed of. The miscellaneous petitions, if any, pending in this writ appeal shall stand closed.

No costs.

Contempt Case No.1415 of 2009:

8. Since the possession of the land has not been taken by the Government, we do not think that any order of this Court is violated, merely because the Government has issued notice to the petitioner to be present at the time of survey of land it cannot be said that the order is flouted. Therefore, the contempt case is closed.

The applications, if any, pending in this contempt case are closed.

R.KANTHA RAO, J.

S.RAVI KUMAR, J.

06th March, 1015.

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