

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 15877 of 2011

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents 2 and 3 in issuing impugned proceedings in Roc.No.1010/2010/A, dated 16.07.2010 issued by the 2nd respondent and also consequential proceedings of the 3rd respondent in Roc.No.A/531/2011, dated 20.05.2011 as illegal, contrary to law and violative of principles of natural justice and Article 300-A of Constitution of India and consequently direct the respondents to restore the possession back of the land Ac.1.05 cents in R.S. No.205/1, 246/13, 247/12, 249/19, 241/11 and 233/43 of Ayodhyalanka village, Achanta Mandal, West Godavari District to the petitioner by setting aside the impugned order dated 16.07.2010.

The averments in the affidavit filed in support of the Writ Petition are as under :

As the petitioner was a landless poor, land to an extent of Ac.1.05 cents in R.S. Nos.250/1, 246/13, 247/12, 249/19, 241/11 and 233/43 of Ayodhyalanka village, Achanta Mandal, West Godavari District was assigned to him by the Revenue Authorities by way of granting 'D' form patta. Since then the petitioner is said to be in

continuous possession and enjoyment of the said land. It is stated that taking advantage of the absence of the petitioner in the village, some of the persons in collusion with the respondents herein tried to encroach upon the patta land and started construction of houses. In view of the same, he made a representation dated 18.01.2010 requesting the Authorities herein to issue an attested copy of 'D' form patta as he lost his original 'D' form patta. In response to the said application the 3rd respondent herein by a memo dated 02.02.2010 asked the petitioner to submit certificate to the effect that the original 'D' form patta is not submitted in any banks in Achanta Mandal and seed Bank at Tanuku. In response to the same, the 3rd respondent is alleged to have issued proceedings No.A/531/2010, dated 09.04.2010 informing the proposal to cancel the 'D' form patta. The 3rd respondent is said to have issued a notice dated 26.05.2010 in Form No.I under Rule 3 of A.P. Assigned Lands (Prohibition of Transfers) Rules, 2007 asking the petitioner to show cause as to why the assignment made in his favour should not be cancelled and consequently resumed the land on the ground that the petitioner has transferred the land in contravention of the provisions of the Act. The petitioner submitted an explanation on 09.06.2010 denying the transfer and the illegal and highhanded act of the third parties in trying to occupy the said land with the

help of the respondents. In the said reply, the Writ Petitioner also sought for possession of the land. The inaction of the respondents to the representation made led to filing of W.P.No.25668 of 2010 before the High Court and the same was disposed of by an order dated 08.10.2010 directing the respondent No.3 herein to complete the proceedings and pass orders within a period of two months. As no orders came to be passed inspite of that direction, the petitioner made representations on 06.02.2011 and 14.03.2011. He also initiated contempt proceedings against the 3rd respondent in the Court. On receipt of the notice in contempt proceedings, the 3rd respondent forwarded proceedings dated 20.05.2011 enclosing a copy of the proceedings of the 2nd respondent dated 16.07.2010 vide Roc.No.1010/2010/A stating that the 2nd respondent has already issued proceedings dt:16.07.2010 for resumption of the said land holding that the petitioner has violated the condition Nos.1, 2 and 22 mentioned in 'D' form patta. Challenging the same, the present Writ Petition is filed.

No counter is filed on behalf of the respondents.

Learned counsel for the petitioner mainly submits that the proceedings dated 16.07.010 issued by the second respondent is *ex facie* illegal and violative of principles of natural justice. According to him, a show

cause notice dated 26.05.2010 in Form I came to be issued calling for explanation of alleged violation of the rules. As stated earlier, the petitioner submitted detailed explanation on 09.06.2010 and 23.06.2010 but there was no reply or order from the respondents. According to him, the impugned proceedings said to have been passed by the 2nd respondent are without jurisdiction, for the reason that the 3rd respondent-Tahasildar, Achanta Mandal, alone is competent to conduct enquiry and pass an order. Against an order passed by the 3rd respondent an appeal would lie to the 2nd respondent and thereafter a Revision to the first respondent. According to him, the 2nd respondent passed the order in haste basing on the reports said to have been submitted by the 3rd respondent without conducting any enquiry. According to him, when a show cause notice was issued by the 3rd respondent, calling for the explanation, it is strange how the 2nd respondent without conducting an enquiry can pass the order. Relying upon an order passed by Tahasildar dated 02.02.2010, he submits that even before issuance of Form I notice the Tahasildar passed an order stating that the land which is subject matter of dispute in the present case has been taken into possession by the LRI, Doddipatla and handed over the same to the Village Revenue Officer for safe custody. According to him, the

3rd respondent as well as the 2nd respondent have come to a conclusion even before issuing a show cause notice to the petitioner and the same stands vitiated as they failed to follow the principles of natural justice. In support of the same, he relied upon the judgment of this Court in **DASARI NARAYANA RAO AND ANOTHER V. DEPUTY COLLECTOR AND MANDAL REVENUE OFFICER, SERILINGAMPALLI, R.R. DISTRICT AND OTHERS**^[1].

Apart from the orders passed by the Authorities the 3rd respondent/Tahasildar issued a notice in Roc.No.A/531/2009(A), dated 26.05.2010 in Form I under Rule 3 of A.P. Assigned Lands (Prohibition of Transfers) Rules 2007, asking the petitioner to show cause as to why the assignment made in his favour should not be cancelled and the land be resumed to the Government. An explanation to the said notice was given on 09.06.2010 denying the transfer and also seeking restoration of possession of the land. Though the notice under Form I was given by the Tahasildar and an explanation to the show cause notice was given to the Tahasildar on 09.06.2010 and 23.06.2010, but the Revenue Divisional Officer without conducting an enquiry and without giving an opportunity to the petitioner passed the impugned order, basing on the report of Tahasildar, Achanta Mandal dated 20.03.2010. From the above, it is clear that the material relied upon by the R.D.O., namely

the report of the Tahasildar, was presented much prior to the issuance of Form I notice. Apart from that the Tahasildar is the appropriate Authority to pass orders under the Act, against which a statutory appeal is provided to the petitioner. In fact this Court in **ANDHRA PRADESH STATE ELECTRICITY BOARD EMPLOYEES UNION, CHITTOOR DISTRICT V. JOINT COLLECTOR, CHITTOOR**^[2]

held as under :

“It is also necessary to extract Rule 3 of the Rules made under Act 9 of 1977, which is as under: 3. Procedure for eviction of the transferee and taking possession and restoration of assigned lands :- The District Collector or the authorized officer shall, before taking action under clauses (a) and (b) of sub-section (1) of Section 4 of the Act, issue a notice in form-I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. This notice shall be served by delivering a copy to him or to some adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence, or on some conspicuous part of the land acquired by him after the expiry of fifteen days specified in the notice, the district Collector, or the authorized officer shall consider the representation, if any, received with reference to the said notice and pass such order as he thinks fit and proper. If it is held that the provisions of sub-section (1) of Section 3 of the Act have been contravened in respect of any assigned land a copy of the order shall be communicated to the village officer for taking possession of the land and thereupon the land shall be disposed of in accordance with sub-clause (b) of clause (1) of Section 4 of the Act.

In the light of the above mandatory provisions, there can be no dispute that before taking possession of the assigned land after evicting the person in possession, it is mandatory to issue a notice in Form-I and give an opportunity to the person in possession to make his representation against the proposed action. Admittedly, no such opportunity was provided to the petitioner-Union before passing the impugned order and the assignment of the year 1933 was cancelled on an erroneous assumption that the petitioner-Union had purchased the land in question from the legal heirs of the assignee in violation of

the conditions of 'd Form Patta.

9. It is also relevant to note that under section 4 of the Act 9 of 1977 an order of eviction and restoration of the assigned land can be passed by the District Collector or any other officer not below the rank of mandal Revenue Officer authorized by him for the said purpose. Where such an order is passed by the Mandal Revenue Officer, an Appeal lies to the Revenue Divisional officer under Section 4-A of the Act, and in case such an order is passed by the revenue Divisional Officer, Appeal lies to the District Collector. Section 4-B of Act 9 of 1977 provides for a further remedy of revision to the District Collector in respect of the order passed by the Revenue divisional Officer in the Appeal, or to the government in respect of any other proceeding.”

In view of the above, the order under challenge is set-aside and the Authorities are directed to proceed with the matter by taking into consideration the explanation given by the Writ Petitioner and pass orders in accordance with law.

Accordingly, the Writ Petition is allowed. No order as to costs. Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:17.08.2015
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[\[1\]](#) 2010(6) ALD 536

[\[2\]](#) 2008(4) ALT 638