

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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WRIT PETITION No. 26569 of 2011

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ORDER:

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The present writ petition came to be filed seeking issuance of writ of mandamus, declaring the action of the respondents in proposing to cancel the assignment patta issued vide proceedings No.145/84, dated 18.01.1986 by the Mandal Revenue Officer, Sabbavaram, in respect of land admeasuring Ac.4-57 cents in Sy.No.109/2 of Vangali Village, Sabbavaram Mandal, Visakhapatnam District, as illegal, arbitrary, improper, unlawful and without jurisdiction; and consequently restrain the respondents from interfering with the possession and enjoyment of the petitioner over the said land.

The averments in the affidavit filed in support of the writ petition would show that the petitioner, who is a retired Merchant Navy Employee, was granted provisional assignment of dry land admeasuring Ac.4-57 cents situated in Vangali Village, Sabbavaram Mandal, Visakhapatnam, vide proceedings dated 18.01.1986 patta No.145/84, under Ex-Servicemen Quota. Since then, the petitioner claims to be in possession and enjoyment of the said land raised cashew tope in the said land and also raised dry crops in the said land prior to planting of tope. Pursuant to an application made by the petitioner for grant of D-Form patta, the District Collector, Visakhapatnam, informed the petitioner that D-Form patta cannot be granted in respect of the said land, as it was earmarked as "Gedda Poramboke". It is said that without initiating any proceedings under Land Acquisition Act, the respondents are now planning to take over the said land as they wanted to acquire the vast extent of land abutting thereto for establishment of a Company or a University. Hence, the present writ petition.

A counter came to be filed by the second respondent denying the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that the land admeasuring Ac.66.59 cents situated in Sy.No.109 of Vangali Village is classified as "Gadda Poramboke Land" as per revenue records. The contention of the writ petitioner that the land admeasuring Ac.4.57 cents in Sy.No.109/2 of Vangali

Village, Sabbavaram Mandal was assigned vide proceedings No.145/84, dated 18.01.1986 is not correct, as his name was never incorporated in the Revenue Records. As per village account No. 10 (1) of Vangali Village, land to an extent of Ac.25.07 cents was assigned to Kosuri Chikkalu, Vepada Somunaidu, Jetti Sanyasamma, Anni Simhachalam, Yerra Koti, Kanumareddy Musili and Akella Sadhu and D-Form Pattas were issued to them for agricultural purpose under landless poor category. As per village Account No.4C of Vangali Village, twelve individuals were registered as 4-C encroachers in respect of land admeasuring Ac.18.00 cents. It is said that the land admeasuring Ac.14.09 cents is a Vagu and rain water flows through it. The name of the petitioner does not find place in the enjoyment column in revenue records. The counter further discloses that as per circular Rc.No.511/1996 E/ dated 09.12.1996 issued by the District Collector, Visakhapatnam, the assignment of government lands in urban agglomeration Mandals ie., Sabbavaram Mandal is prohibited. It is further stated that the land in Sy.No.109/2 of Vangali Village is proposed to be used for construction of several government institutions but not for "Zindal or Maritime University". It is thus contended that the petitioner is neither in possession of the land nor was he granted any provisional patta.

While issuing notice before admission, this Court by an order, dated 22.09.2011, ordered status-quo existing as on that day with regard to possession of land admeasuring Ac.4.57 cents in Sy.No.109/2 situated at Vangali Village, Sabbavaram Mandal, Visakhapatnam District, for a period of two (02) weeks. The record does not anywhere disclose extension of status-quo order, but the counsel for the petitioner contends that the petitioner is in possession of the property since then and the allegation of the respondents that the petitioner has nothing to do with the land is absolutely false.

As seen from the material placed by the petitioner, proceedings dated 18.01.1986 came to be issued by the Mandal Revenue Officer, showing assignment of land tentatively in favour of the petitioner subject to payment of cost of trees if any and that the D-Form patta to be issued after sub-division work is completed. The said proceeding appears to have been acknowledged by the petitioner. The sub-division statement of the said land is also place on record. But the Mandal Revenue Officer, Sabbavaram Mandal is said to have issued proceedings in the year 2006 itself stating that D-Form patta in respect of the said land cannot be given as it was

classified as "Gadda Poramboke Land". Though, the petitioner claims to have been given a provisional assignment in the year 1986 but the same has been disputed by the Government Pleader, since assignment granted to the petitioner is not reflected in the revenue records. If any provisional assignment is granted in favour of the petitioner, the same cannot be resumed without following due process of law.

The record also reveals that in the year 1990, the petitioner herein filed O.S.No.319 of 1990 before the Principal District Munsif, Anakapally, wherein permanent injunction was granted in favour of the petitioner restraining the defendants therein from interfering with the peaceful possession and enjoyment of the petitioner over the schedule property. It is no doubt true that the order obtained from the civil Court was an ex parte order, but the petitioner is placing strong reliance on the provisional assignment patta and the sub-division made thereafter to show that the land was assigned to him under Ex-Servicemen quota and he is in possession of the same.

The Government Pleader for Assignment states that even in sub-division statement of the land, the name of the petitioner is not reflected. It is his case that the patta alleged to have been granted in favour of the petitioner never emanated from the record.

The material available on record does not conclusively establish that the land was assigned to the petitioner but however in the counter filed by respondent No.2, it has been averred that the petitioner by misleading the Court is trying all means for allotment of D-Form patta. Relying upon the said averment in the counter, learned counsel for the petitioner would contend that even assuming for a moment that the petitioner is an encroacher, still the respondents have to follow a procedure to throw out an encroacher. At the same time, the counter also states that the petitioner is not in possession of the said land though he is claiming to be in possession of the land by taking shelter on the ground that provisional D-Form patta is as good as D-Form patta. Even assuming for a moment that the petitioner was not assigned the land as per the revenue records, in view of the averments in the counter that the petitioner has encroached on to the land, the respondent authorities shall not dispossess him without following due process of law.

Accordingly, the writ petition is disposed of, directing the respondents to follow due process of law while dispossessing the petitioner from the land

admeasuring Ac.4-57 cents in Sy.No.109/2 of Vangali Village, Sabbavaram Mandal, Visakhapatnam District. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

16.11.2015

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