

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

W.P.No.20140 OF 2012

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Revenue (A.P.) appearing for respondent Nos.1 to 4.

2. With the consent of both the parties, the Writ Petition is disposed of at the admission stage itself.

3. This writ petition is filed seeking to issue a writ of *Mandamus* to declare the action of respondent No.4 in resuming the land of the petitioner to an extent of Ac.2.38 cents in R.S.No.22/2 situated in Soravaram, hamlet of Rolupadi Village, Tiruvuru Mandal, Krishna District, without affording an opportunity to the petitioner, vide Rc.A/150/2010, dated 11.12.2010, as illegal and arbitrary, and consequently, to direct respondent No.4 to redeliver the said land to the petitioner.

4. The factual matrix of the case, which lead to filing of the present writ petition, is as under:

The petitioner was assigned the aforementioned land under Freedom Fighter Quota since her late husband was a freedom fighter and the same was permitted to be alienated after expiry of ten years from the date of assignment. However, the petitioner never alienated the same and continued to own the said land. While things stood thus, respondent No.4 – The Tahsildar, Tiruvuru, without giving any opportunity or notice to the petitioner, passed the order, dated 11.12.2010, resuming possession of the land of the petitioner at the behest of respondent No.5. The reason for taking possession of the land is that the petitioner entered into an agreement of sale and also

lease in relation to the land in question. It is stated that no agreement of sale was executed and no alienation was effected by the petitioner at any time. It is said that due to her advanced age, she had leased out the land to one Rachanbanti Venkatadri since there is no prohibition in BSO-15 in that regard. After a period of ten years from the date of assignment, which expired by 12.10.1994, the petitioner is free to sell the land. Respondent No.5, with a *mala fide* intention, appears to have approached the authorities which resulted in the impugned action being taken. Hence, the present writ petition is filed.

5. A counter came to be filed by respondent No.4 denying the averments made in the petition. It is stated that Kallepalli Thulasamma and others filed a complaint before the A.P. Lokayuktha, Hyderabad on 27.4.2010. An enquiry was conducted by the then Tahsildar, Tiruvuru and a report was submitted before the Lokayuktha stating that land admeasuring Ac.2.38 cents in R.S.No.22/2 of Rolupadi Village is a Ceiling Surplus land and it was assigned to Smt Veerapaneni Rajya Lakshmi, W/o.late Ranga Rao under Freedom Fighter Quota. Later, Kambala Sessaiah, S/o.Lakshmaiah of the same village purchased the said land from original assignee by means of an unregistered agreement dated 16.4.1990. It has been stated that it is a clear case of alienation of assigned land in violation of terms and conditions of D-Form patta and the Tahsildar, Tiruvuru was directed by the Revenue Divisional Officer, Nuzvid to initiate action under POT Act. Accordingly, the Tahsildar resumed the land on 11.12.2010 and kept the same with the Village Revenue Officer, Rolupadi for safe custody. It is said that even though the petitioner got land under the Freedom Fighter Quota, the assignee should obtain prior permission from the District Collector to sell such assigned land and as such, there is no illegality in resumption.

6. The main ground urged by the learned counsel for the petitioner is that since the assignment was under the Freedom Fighter Quota, the

petitioner has got right to alienate the same after ten years in view of G.O.Ms.No.1045 Revenue (Assn-I) Department, dated 15.12.2004. He further submits that the allegation of alienation is absolutely false since there is no document to show that she has alienated the land in favour of Sessaiah. The counsel placed on record the statement of encumbrance of property and also adangals of the year 2015 to show that the petitioner is still in possession of the property.

7. Learned Government Pleader took time to produce the original record so as to verify as to whether there is any document showing sale of land in favour of Sessaiah or grant of lease in favour of any third party.

8. It is to be noted that there is no document showing sale of land by the petitioner in favour of Sessaiah or grant of lease in favour of any third party. The resumption order dated 11.12.2010 indicate that it was passed by the Tahsildar pursuant to the enquiry made by the Hon'ble Lokayuktha on a complaint made by respondent No.5 and others. The resumption order as well as the entire record does not anywhere indicate issuance of notice to the petitioner before passing the impugned order thereby, violating principles of natural justice.

9. For the reasons stated, the order under challenge is set aside and the Writ Petition is allowed leaving it open to the respondents to initiate action, if any, in accordance with law. There shall be no order as to costs.

10. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Date: 16.11.2015

AMD

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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