

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 33294 of 2011

ORDER:

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Heard learned counsel for the petitioners and Government Pleader for Assignment. With the consent of both the parties, the main writ petition is heard at the admission stage itself.

The present writ petition came to be filed seeing issuance of writ of mandamus declaring the orders passed by the second respondent in Rc.No.5962/2011-A dated 17.11.2011 as illegal, arbitrary and violative of principles of natural justice.

The averments in the affidavit filed in support of the writ petition would show that in the year 1996 the petitioners herein were assigned lands admeasuring Ac.1.50 cents, Ac.1.33 cents and Ac.1.50 cents respectively in Sy.No.170 situated at Naragayapalem Village, Vinukonda Mandal, Guntur District vide proceedings in D.K.No.1/1406, 3/1406 and 2/1406 respectively. While the petitioners developed the land and were raising crops, the third respondent is said to have sent a report to the second respondent stating that the land in Sy.No.170 of Naragayapalem Village, was assigned in favour of the petitioners without affecting any changes in the records and without preparing the sub division records. It was further mentioned that the land has been illegally assigned in favour of the petitioners as the villagers are utilizing the same for burial ground. On receipt of the said report, the second respondent passed an order vide Rc.No.438/2007-A dated 07.03.2007 canceling the assignment granted in favour of the petitioners. Challenging the action of the second respondent in

canceling the assignment granted in favour of the petitioners, W.P.No.14754 of 2007 came to be filed before this Court. By an order, dated 06.09.2007, this Court set-aside the said order leaving it open to the respondents therein to take action in accordance with law. Subsequently, the second respondent again passed an order dated 27.03.2008 in Rc.No.438/07-A canceling the patta which was challenged before this Court in W.P.No.8902 of 2008. By an order dated 14.07.2011, this Court passed the following order:

“As the impugned order is not preceded by any valid notice, I deem it appropriate to set aside the order dated 27.03.2008 passed in Rc.No.438/07-A with a direction to the second respondent to issue notices to the petitioners, consider their explanation and pass appropriate orders. As the matter is pending for a long time and as it is stated that there is also representation by the villagers for allotment of a portion of the land for burial grounds, the second respondent shall complete the enquiry and pass appropriate final orders within a period of three months from today. There shall be a further direction that *status quo* as on today shall be continued with regard to possession till appropriate final orders are passed.”

Thereafter, the impugned order came to be passed on the ground that the petitioners have violated the conditions of DKT patta by not raising crops within a period of three years from the date of assignment. Challenging the same, the present writ petition came to be filed on the ground that the Revenue Divisional Officer has no jurisdiction to pass orders without there being an appeal against an order of Tahsildar.

No counter is filed on behalf of the respondents, but however the Government Pleader on oral instructions opposed the same.

The short point that arises for consideration is whether the Revenue Divisional Officer (second respondent) has jurisdiction to cancel the assignment without there being an order by the primary authority.

Paragraph 12 (3) of Board Standing Order 2015 deals with the terms and conditions of assignment. It would be useful to refer the same, which is as under:

“12 (3). **Terms and conditions of assignment:** The assignment of lands shall be subject to the following conditions.

a) Lands assigned shall be heritable but not alienable.
b) Lands assigned shall be brought under cultivation within three years.

c) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however be charges if the lands are irrigated with Government Water; and

d) Cultivations should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.

(i) For breach of any of the conditions (a), (b), (c) above, the Government will be at liberty to resume the land and assign it to whomsoever they like.

(ii) The lands assigned to landless persons may be mortgaged to the Government or to a Co-operative society recognized by the Government including a land Mortgage Bank, Nationalised Bank (that is a corresponding New Bank as defined in the Banking Companies Acquisition and Transfer of Undertakings Act, 1970), State of India and its Subsidiaries and all Scheduled Banks, or the Panchayat Samithi for obtaining any loan for the development of the land. The loan to be advanced will be paid in instalments not less than 3 depending upon the improvement effected on the land. No prior permission of the Government is necessary for such mortgage.

(iii) Tahsildar and Deputy Tahsildars in independent charge who are the assigning authorities shall be the

authorities competent to order resumption in case of a breach of the conditions of grant. In regard to appeals and revisions against such orders, the provisions in B.S.O. 15 relating to the orders of the assignment shall apply also to the orders relating to resumption.

As per 12 (3) (d) (iii) it is clear that it is only the Tahsildar and Deputy Tahsildar who are competent to assign the land to resume the land in case of breach of conditions of assignment patta. Therefore, the Revenue Divisional Officer will not have any authority to cancel the assignment granted in favour of the petitioners in the absence of an appeal. Further para 15 of the Board Standing Order 15 refers to the manner in which the appeals are to be filed. It would be useful to extract para 15 of Board Standing Order 15 which is as under:

“15. Appeals: From every original decision in darkhast cases whether it is passed by the Tahsildar, the Divisional Officer, or the Collector, one appeal shall be allowed, provided that it be made within 30 days of the date on which the original decision was pronounced or communicated if the appeal is from the Tahsildar to the Divisional officer or from the Divisional Officer to the Collector, and within 40 days if it be from the Collector to the Board. In computing the period of limitation, the day on which the decision appealed against was pronounced or communicated and the time requisite for obtaining a copy of that decision shall be excluded. On all copies issued shall be entered the date of the decision or communication, the date of the application for copy, the date on which the copy was ready for delivery and the date on which the appeal time expires. Any person interested in the matter may appeal. All appeals in darkhast cases should be stamped with a court fee label to the value of 5 rupees.”

From a reading of the above provisions it is clear that it is only the Tahsildar, who is competent to assign the land, cancel the assignment and resume the land. If any person is aggrieved

by an order of the Tahsildar has to prefer an appeal against the said order before the Revenue Divisional Officer.

Further, Section 4-A of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 deals with appeal against an order passed by the Mandal Revenue Officer to the Revenue Divisional Officer.

4-A Appeal: (1) Any person aggrieved by an order passed by the Mandal Revenue Officer under sub-section (1) of Section 4, may, within ninety days from the date of receipt by him of such order appeal to the Revenue Divisional Officer.

(2) Any person aggrieved by an order passed by the Revenue Divisional Officer under sub-section (1) of Section 4 may, within ninety days from the date of receipt by him of such order appeal to the District Collector.

A close perusal of the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 and also the Board Standing Orders, it is clear that the primary authority to assign the land and resume the land would be the Tahsildar except in cases falling under para 18 of the Board Standing Order 15 and the person aggrieved by the said orders can challenge the same by preferring an appeal before the Revenue Divisional Officer. In the instant case no such proceedings were initiated by the Tahsildar. On the other hand, on the basis of the report of Tahsildar, the Revenue Divisional Officer, without any notice to the petitioners is said to have cancelled the assignment granted to the petitioners. In view of the above, the order under challenge is set aside and the matter is remanded back to the Tahsildar to consider the same afresh, in accordance with law after giving notice to all the concerned.

With the above direction, the writ petition is disposed of.
No order as to costs.

Consequently, miscellaneous petitions, if any, pending in
this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

25.01.2016
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