

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12557 OF 2009

ORDER:

The case of the petitioner is that she was assigned land admeasuring Ac.2.38 cents in Sy.No.171/2 situated at Kothapally Sivar, Tandur Mandal, Adilabad District by the Government on 25.01.2000 vide proceeding No.D/2890/99. Thereafter, the official respondents after verifying the records and conducting enquiry issued pattadar passbook vide patta No.48 and title deed in favour of the petitioner in the year 2000 and since then she has been in continuous possession of the said land by constructing a tiled house. She also dug a borewell in the year 2001 with the permission of authorities and obtained electricity connection in the year 2003. In the year 2003, when the respondents 5 to 7 tried to encroach into the land of the petitioner, she filed a suit in O.S.No.41/2003 before Junior Civil Judge, Asifabad for permanent injunction restraining the respondents 5 to 7 and initially the Court below granted interim injunction in favour of the petitioner on 10.07.2003 and subsequently the suit was decreed by order dated 27.02.2004 and has become final and no appeal was filed by the respondents 5 to 7 against the same. While so, the 3rd respondent at the instance of the respondents 5 to 7 issued a notice to the petitioner on 21.05.2008 directing the petitioner to show cause as to why she should not be evicted from the subject land. In pursuance to the said notice, the petitioner submitted representations to the 3rd respondent on 19.06.2008 and requested to drop the further proceedings. But the 3rd respondent without conducting enquiry

and without affording any opportunity passed the impugned order dated 09.07.2008 and directed the 4th respondent to take over the land into government custody. When the 3rd respondent tried to evict the petitioner from the subject land without communicating the impugned order, she filed W.P.No.19122 of 2008 before this Court and this Court vide order dated 04.09.2008 disposed of the said writ petition granting liberty to the petitioner to avail the remedy of revision before the 2nd respondent while granting status-quo. Immediately after receiving the copy of the order, the petitioner filed Revision before the 2nd respondent along with suspension petition on 25.09.2008. When 2nd respondent failed to pass orders in the same, petitioner filed W.P.No.28646 of 2008 and this Court granted status-quo but later the said writ petition was withdrawn by the petitioner by order dated 12.01.2009. After several adjournments, the 2nd respondent without considering the contentions raised by the petitioner dismissed the Revision vide order dated 30.04.2009 in proceedings No.B1/3314/2008, confirming the order of the 3rd respondent issued vide proceedings No.G/382/08, dated 09.07.2008. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 1st respondent stating that the impugned order is passed after giving sufficient time and opportunity to the petitioner and after going through the evidence and records called from the respondents 3 and 4. It is stated that the Mandal Revenue Officer, Tandoor assigned the land in Sy.No.171/2 to an extent of Ac.2.38 cents to original assignee one Chekati Kista Goud and that the petitioner has purchased the said land from the original assignee in the year 1995 through an

unregistered sale deed. It is also stated that the husband of the petitioner was an employee of Singareni Collaries Company Limited and petitioner is having sufficient means to lead comfortable life and does not come within the meaning of landless poor. As such, the action of the MRO, Tandoor in assigning the land to the petitioner is not in accordance with law and is liable for cancellation. The petitioner obtained perpetual injunction in O.S.No.41/2003 restraining the respondents 5 to 7 from interfering with the subject land, who are claiming to be the legal heirs of the original assignee. Later, the respondents 5 and 6 filed appeal under Andhra Pradesh Assigned Lands (POT) Act, 1977 before the 3rd respondent and the 3rd respondent after going through the record came to the conclusion that petitioner is not a landless poor and subsequent sale is in contravention of the Act by both the petitioner and respondent No.5 to 7 and passed the order dated 09.07.2008 and finally sought for dismissal of the writ petition.

Counter affidavit is filed by the respondents 5 to 7 stating that the petitioner has approached this Court by suppressing several facts, as such she is not entitled for grant of any relief. It is stated that the petitioner obtained exparte decree of injunction in O.S.No.41 of 2003 by manipulation and that they have never received any notice from the Court. It is further stated that one Chakati Kista Goud, son of Raja Goud who is the paternal uncle of the petitioner was assigned land, being a landless poor person and he was in possession and enjoyment of the same, till his death in the year 1995. Taking advantage of his death, the husband of the writ petitioner got prepared certain documents purporting to be sale deed

said to have been executed by Chakati Kista Goud dated 10.10.1995 and another by way of re-assignment to the petitioner by Tahsildar dated 25.01.2008 are self contradictory and sought for dismissal of the writ petition.

Learned Senior counsel Sri S.Satyam Reddy appearing for the petitioner submits that petitioner was assigned land vide proceedings in D/2890/99 dated 25.01.2000 and she never sold the said land to any other person, as such notice dated 21.05.2000 issued under Rule 3 of the A.P.Assigned Lands (POT) Rules 1977 is not maintainable. He also submits that the respondents 5 to 7 have not produced any evidence to show that they are legal heirs of the original assignee and when enquiry was conducted by the MRO, in pursuance to the directions of the RDO, it is stated that the original pattadar had no legal heirs. As such they have no locus standi to file an appeal against the proceedings of assignment dated 25.01.2000. He further submits that before passing the impugned order, no opportunity was afforded to the petitioner and even the Revision filed by the petitioner is not considered in proper perspective. Learned counsel relied on the judgment reported in ***Golla Narasappa @ Bhutappa v. Joint Collector, Ananthapur, Ananthapur District***¹.

On the other hand, learned Assistant Government Pleader for Revenue by referring Section 3 of the Act submits that land has to be assigned to land less poor person, and it means “a person who owns an extent of land not more than two and half acres of dry or wet land or such other extent of land as has been or may be specified by the Government in this behalf from time to time and

¹ 2008 (6) ALD 194

who has no other means of livelihood” but in the present case petitioner’s husband was working in Singareni Collaries and that the petitioner is also getting pension.

Sri L. Prabhakar Reddy, learned counsel appearing for respondents 5 to 7 submits that the order dated 25.01.2000 is issued without notice to the respondents 5 to 7, who are legal heirs of the original assignee Chikate Kista Goud, as such they preferred an appeal before the 3rd respondent and 3rd respondent rightly allowed the same. He also submits that when the petitioner has made application, the 4th respondent should not have passed the order dated 25.01.2000. He also submits that the findings of the appellate authority cannot be interfered with by exercising judicial review under 226 of Constitution of India.

When the respondents 5 to 7 filed appeal before the 3rd respondent, the 3rd respondent called for detailed report from the 4th respondent vide Lr.No.G/382/2008, dated 20.03.2008 and Tahsildar issued notices to the petitioner as well as the respondents 5 to 7. Both attended the office of the Tahsildar on 22.04.2008. The respondents 5 to 7 in their statements made before the 4th respondent stated that there are no legal heirs to the deceased pattadar and the statements made by them were not denied or disputed in their counter affidavit, which goes to show that they are not legal heirs of the original assignee Chikate Kista Goud. When that is the case, it is not understood how the respondents have locus standi to file the appeal against the proceedings dated 25.01.2000. While issuing the proceedings dated 25.01.2000, notices were issued to the petitioner as well as the original assignee. If that is the case,

the appeal filed by the respondents 5 to 7 cannot be maintained as they themselves stated that there are no legal heirs to the original assignee.

In view of the above facts and circumstances, the contention of the learned senior counsel appearing for the petitioner that when even according to the respondents 5 to 7 there are no legal heirs to the original assignee, the appeal at their instance would not have been entertained has to be accepted. In view of the same, it is not required to go into other contentions raised by the respondents.

Accordingly, the writ petition is allowed setting aside the order in Revision dated 30.04.2009 in proceedings No.B1/3314/2008, passed by the 2nd respondent, so also the order of the 3rd respondent issued vide proceedings No.G/382/08, dated 09.07.2008. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending, if any shall stand closed.

A.RAJASHEKER REDDY, J

22.11.2016
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