

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.10540 OF 2012

ORDER :

Heard counsel for the petitioner; the Government Pleader for Revenue appearing for respondents 1 to 6; and Sri L.J.Veera Reddy, Counsel for 7th respondent.

2. Petitioner had filed this Writ Petition challenging the G.O.Ms.No.1324 Revenue (Assignments-VI) Department, dt.02.11.2010 issued by the 1st respondent.

3. Petitioner contends that the land admeasuring Ac.4-80 cents in survey No.1020/9 of Ammanigudipadu Village, Yerragondapalem Mandal, Prakasam District was assigned to him in the year 2001 on the ground that he is a landless poor person; that Pattadar Passbook and Title Deeds were issued to him; and his name was also mutated in 1B record and Adangal.

4. It appears that the 7th respondent had filed an application on 20.05.2008 before the 5th respondent alleging that the same land had been assigned to him vide proceedings No.DAR/2327/79, dt.13.08.1970 and he was also granted Pattadar Passbook by the Mandal Revenue Officer of Yerragondapalem. The 7th respondent contended that his assignment is long prior to the alleged assignment in favour of the petitioner and without canceling the 7th respondent's

assignment, the petitioner could not be assigned the same land.

5. The 5th respondent issued notice to the petitioner and after hearing the submissions of the petitioner, opined that the assignment in the year 2001 in favour of the petitioner was irregular, since there was no evidence of the cancellation of the assignment made to the 7th respondent after following due procedure; and that without canceling the assignment made in 1970 to the 7th respondent, no subsequent assignment could have been made to the petitioner. He also stated that the petitioner was not a resident of the village, where the assigned land is located and that the petitioner did not produce any records. He directed the 6th respondent to evict the petitioner and handover the land to the 7th respondent.

6. This order was questioned by the petitioner by way of Revision under the Board Standing Orders before the 4th respondent.

7. The 4th respondent dismissed the said Revision. He noted that the file relating to the assignment made to the petitioner was not traced, but the file relating to the assignment made to the 7th respondent was traced; that the entry of assignment to the petitioner in the DK Register was also not noted, and the 6th respondent reported that the signature in

the photocopy of the DK patta issued to the petitioner was not signed by the Mandal Revenue Officer and that his signature appeared to be forged. He also stated that it is not known to whom the DK patta was granted without following Assignment Rules and that there is no recorded evidence in the office of the 6th respondent to show that the petitioner was granted DK Patta.

8. Petitioner questioned the same by way of further Revision before the 1st respondent.

9. By the impugned order dt.02.11.2010 the said Revision was also dismissed accepting the reasons given by the respondents 5 and 4 in their orders.

10. Thereafter, the petitioner filed this Writ Petition.

11. On 13.04.2012, this Court granted interim suspension of the order dt.02.11.2010 passed by the 1st respondent.

12. The respondents 1 to 6 filed counter affidavit through the 6th respondent and the 7th respondent filed WV.MP.No.2919 of 2012 to vacate the order dt.13.04.2012.

13. In the counter affidavit filed by respondents 1 to 6, they reiterated that in 1970 there was an assignment in favour of the 7th respondent and without the said assignment being cancelled, the petitioner was assigned the same land, and the

record of the assignment made to the petitioner was not traced, while the record of assignment to the 7th respondent was available. They contended that without canceling the assignment in favour of the 7th respondent, there could not have been any assignment in favour of the petitioner. It was contended that the 7th respondent is also not eligible for assignment of the land and that the 7th respondent cannot claim the subject land, since the family of the 7th respondent had sufficient lands.

14. However, it is not disputed by respondents 1 to 6 in the counter affidavit that no action was taken to cancel the assignment made in favour of the 7th respondent till date.

15. The 7th respondent had filed counter affidavit supporting the orders passed by the respondents 1, 4 & 5. He also pointed out that he had obtained injunction in I.A.No.1348 of 2008 in O.S.No.316 of 2008 from the Principal Junior Civil Judge, Markapur against the Writ Petitioner and that the petitioner is not cultivating the land in view of the said order. He contended that he was in possession of the subject land in view of the civil Court's order and the petitioner is trying to disturb his possession and enjoyment of the subject land. He also contended that the Writ Petition was filed in the year 2012 challenging the order dt.02.11.2010, passed 2 ½ years prior to the filing of the Writ Petition by the 1st respondent, and that the

authorities have rightly held that the signature of the Mandal Revenue Officer in the photocopy of the DK Patta produced by the petitioner is a forged one.

16. Petitioner has not filed any rejoinder to the plea of the 7th respondent that the 7th respondent had obtained interim injunction order from the Civil Court and did not place any material to show that the said order is not subsisting as against the petitioner as on today.

17. Counsel for the respective parties reiterated the standing of their clients.

18. From the facts narrated above, it is clear that the 7th respondent was assigned the subject land in proceedings DAR/2327/79 in the year 1979. Admittedly this assignment in favour of the 7th respondent was never cancelled and no proceedings were taken for cancellation of the assignment made to the 7th respondent at any point of time.

19. Without canceling the assignment made to the 7th respondent of the subject land in 1979, it was not open to the respondents 1 to 6 to assign the same land to the petitioner for whatever reason.

20. Admittedly, there is no record available in the office of the 6th respondent about the assignment made to the petitioner,

while the assignment record relating to the 7th respondent was available. This also throws doubt about the claim of the petitioner that there was valid assignment of the land in his favour.

21. The above concurrent findings of fact by respondents 5, 4 and 1 are based on appreciation of evidence on record and cannot be said to be perverse or based on no evidence. Even before this court, petitioner has not been able to produce any material to show that the assignment of the land to the 7th respondent was validly cancelled by the respondents 1 to 6 prior to the assignment allegedly made to the petitioner. Therefore, I am of the opinion that there is no error apparent on the face of the record in the orders passed by respondents 5, 4 and 1 warranting interference of this Court under Article 226 of the Constitution of India.

22. Therefore, this Writ Petition fails and it is accordingly dismissed. There shall be no order as to costs.

23. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

10th June, 2016
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