

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 11929 of 2012

ORDER:

Challenging the proceedings dated 12.04.2012 passed in BCW/5/535/2009 issued by the Chief Commissioner of Land Administration wherein and whereunder the orders passed by the Revenue Divisional Officer and Joint Collector, Kurnool vide proceedings Rc.No.C/6/2005, dated 24.01.2004 and No.E1/3171/.95, dated 21.06.2007, are set-aside, the present Writ Petition is filed for issuance of Certiorari to quash the same as illegal and arbitrary.

The facts in issue are as under :

The petitioner as well as the 5th respondent and her father claim to have been living in Sy.No.572/2 and 743/2 of Kallur village in an extent of Ac.0.64 cents. The petitioner and 28 others occupied the lands in the above survey numbers and they were eking out their livelihood by doing some petty business. The petitioner herein was doing business in Golisoda in the Government land which was allotted to T.T.D., (Tirumala Tirupathi Devasthanam) for construction of a Kalyana Mandapam. Total extent of land admeasuring Ac.1.72 cents was alienated in favour of T.T.D., for construction of a Kalyana Mandapam.

Anticipating that the petitioner and others would be evicted from the said land, they approached this court by way of filing W.P.No.5643 of 1977. By an order dated 09.11.1977 this Court disposed of the said writ petition directing the Government to assign the Ac.0.64 cents of land, which is under occupation of hut dwellers, as per their eligibility. In the year 1984 the petitioners along with others have filed W.P.16726/1984 in view of the threat of dispossession from their land without compliance of the earlier order. A counter came to be filed stating that there is no threat of dispossession from the authority and that the authorities were trying to finalize the assignment proceedings. In view of the above, the said writ petition was disposed of restraining the respondents therein from interfering with the possession of the petitioners pending finalization of the assignment proceedings. Pursuant to the orders passed by this Court, the Government assigned lands to 27 out of the 34 encroachers on payment of market value, as per G.O. Memo No. 3454/A2/78 dated 08.01.1979 duly preparing a lay out. The petitioner herein was allotted plot No.6 and the father of the unofficial respondent was allotted plot No.5 in the year 1995. No patta was issued to the petitioner herein since he failed to pay the market value. It is said that the petitioner continued to make representations to the authorities seeking issuance of patta in respect of a site situated at the entrance of TTD Kalyana Mandapam,

where he was running a small cooldrink shop. His request could not be considered since it was the entrance point to TTD Kalyana Mandapam. Further, Plot No.6 which was allotted to the petitioner remained vacant as he did not pay the market value for issuance of patta. Aggrieved by the action of the revenue authorities in not allotting an alternative site, the petitioner herein along with some others approached this Hon'ble court by way of filing W.P.No.13371 of 2002.

From the orders passed by this Court on 27.01.2010, it is clear that if the plot No.6 is still available with the Government and if it is not allotted to any other person, the respondent No.1 i.e., the District Collector was directed to consider assignment of the said plot to the petitioner herein on market value. As the request of the 5th respondent for regularizing plot No.6 in her favour was not finalized, she filed W.P.No.1557 of 2004 before this Hon'ble Court. By an order dated 29.01.2004, this Court directed the Mandal Revenue Officer not to evict the 5th respondent from plot No.6 without initiating any proceedings as long as the patta granted to the 5th respondent is not cancelled. Pursuant to the order passed by this Court, the M.R.O., Kallur issued notice u/ss.7 and 6 of the Land Acquisition Act on 21.07.2004 and 26.11.2004 respectively directing the 5th respondent to

vacate the land. Challenging the same the petitioner therein again filed W.P.No.23826 of 2004 before this Hon'ble Court which was dismissed at the admission stage by directing the petitioner to avail the remedy of appeal in accordance with law. Accordingly, R-5 filed an appeal before the R.D.O., who vide his proceedings dated 24.01.2005 in Rc.C/6/2005 dismissed the said appeal. Against the said order, the 5th respondent herein filed a Revision before the Joint Collector apart from filing O.S.No.211 of 2005 seeking injunction against the petitioner herein. The Joint Collector vide his order dated 21.06.2007 in Rc.E-13171/1995 dismissed the Revision holding that the occupation of Government site which was already assigned does not confer any right of ownership or adverse possession on the 5th respondent. The suit i.e., O.S.No.211/05 filed by the 5th respondent was also dismissed for default on 02.01.2007. Aggrieved by the orders passed by the Joint Collector, the 5th respondent herein filed another Revision before the Commissioner, Appeals office of Chief Commissioner and Land Administration, Andhra Pradesh, who allowed the same directing the Collector to issue house site patta in favour of the unofficial respondent herein on payment of current market value, in accordance with the order of the collector dated 30.10.2010 and consequently set-aside the patta granted in favour of the writ petitioner on 13.12.2009.

Challenging the said order the present writ petition is filed.

The learned counsel for the petitioner mainly contended that the 5th respondent herein has no right to claim allotment of plot in her favour since she was not a party to any of the earlier proceedings before the Hon'ble High Court. It is submitted that the request of one of the petitioners in W.P.No.13371 of 2002 was rejected by this Court on the ground that the petitioners therein were not parties to the proceedings and since the 5th respondent herein stands on the same footing as that of the petitioners therein, her request also could not be considered though she is in illegal occupation of the land. He further submits that the unofficial respondent was a minor as on the date of allotments and having regard to the circumstances, the father of the unofficial respondent was allotted plot No.5. Therefore, the question of allotment of plot on the market value to an encroacher by ignoring the assignment already made in favour of the petitioner is illegal and improper. It is his case that the order of the commissioner is totally contrary to the orders passed by this court in Writ Petition No.13371 of 2002.

A counter came to be filed by the 5th respondent disputing the averments made in the writ petition. According to her, the order of Tahasildar and R.D.O., are contrary to the proceedings of the Collector dated

30.10.2000 and as such no reasons are forthcoming as to how the M.R.O., Kallur issued house-site patta to the petitioner in the year 1995. It is further stated that the petitioner herein never objected for the constructions made in plot No.6 and 22 years later the petitioner herein has come forward with a false claim only with a view to harass the respondents.

The Tahasildar also filed his counter stating that as per the directions of the Collector, he issued notices under section 6 and 7 of the A.P.Land Encroachment Act to evict the encroachers. Aggrieved by the same, the 5th respondent preferred an appeal before the R.D.O., Kurnool, which was dismissed on 24.01.2005. Challenging the order of the R.D.O., the 5th respondent again preferred Revision before the Joint Collector, who upheld the orders passed by the R.D.O. It is his case that their action was in tune with the orders passed by this Court in WP.13371/2002, and hence pleads for dismissal of the writ petition.

Before proceedings further, it would be appropriate to extract the relevant portion of the order dated 27.01.2010 passed in W.P.No.1337 of 2002, which is as under:-

“It is stated by the learned counsel for the petitioners that during the pendency of the writ petition, petitioner No.1 was evicted from the plot in his occupation and the said piece of land is presently in possession of the TTD. The learned counsel for the petitioner

submitted that the respondents may be directed to assign plot No.6 in favour of petitioner No.1. Though PlotNo.6 was already allotted to petitioner No.1, he has not paid the market value. If the said plot is still available with the Government and the same was not allotted to a third party, respondent No.1 shall consider assignment of the said plot to petitioner No.1 on market value. With regard to the claim of petitioner No.2, it is not denied that she was not a party to either of the earlier two writ petitions or that her name is not included in the list of the 27 beneficiaries. This evidently shows that she was never in possession of any property. Therefore, no relief can be granted to petitioner No.2.

Subject to the above, the Writ Petition is disposed of.”

It is to be noted that the said order was passed in the year 2010 after considering the documents and the earlier orders passed by this Court. In the said order, this Court categorically observed that if the said plot is still available with the Government and if the same is not allotted to third party as on that date, the District Collector was directed to consider the allotment of plot to the petitioner herein on market value. The request of other petitioner was denied as she was neither a party to either of the earlier two writ petitions or that her name was not included in the list of 27 beneficiaries.

The impugned order which came to be passed after setting aside the orders passed by the Tahasildar, R.D.O., and Joint Collector, mainly relied upon the proceedings dated 30.10.2000. The said proceedings were issued by the Collector to the M.R.O., directing him to collect fresh market value as per the latest market value from the encroacher, issue patta and intimate the same to the office of the Collector. The said letter came to be

passed on the basis of a note order of the Joint Collector dated 28.10.2000 and Lr.RC.B/576/99 dated 01.07.2000. The subject in the said order was with regard to the request made by the petitioner for allotment of a site adjacent to TTD Kalyana Mandapam on the present market value. Writ Petitions came to be filed before this Hon'ble Court after the letter dated 30.10.2000. The material on record also discloses that the M.R.O., evicted the unofficial respondent from plot No.6, and also sealed the premises. The impugned order also indicate that the unofficial respondent was evicted from plot No.6, without making a final order of eviction in pursuance to the notice u/s.6 of the Land encroachment act issued by the M.R.O. on 26.11.2004, which was found fault with by the Commissioner in the impugned order. But the said order which was passed by the M.R.O., in the month of November, 2004 was confirmed in revision by the Joint Collector. It is further to be noted that on 27.01.2004, the writ petitioner paid Rs.3,995/- through challan dated 01.10.2004 with a request that plot no.6 be handedover to him. Since the value of the land was much higher, the M.R.O., wrote a letter to the Collector seeking instructions about the action to be taken on this issue. The collector by his letter dated 30.10.2000 has ordered for collecting fresh market value from encroachers before issuing house site pattas. Since the patta came to be issued in

the year 2009 itself by collecting less amount than the prevailing market value it was held to be void. The impugned proceedings also show that the authority has disagreed with the observations of the joint collector that the occupation of the government site does not confer the right of ownership or adverse possession since no assignment was made in favour of the petitioner on the date of the order. But one circumstance, which the Commissioner, Appeals failed to consider, though referred to while narrating the facts, is the order passed by this Court in W.P.No.13371 of 2002 dated 27.01.2010. In the said order it has been specifically stated that if the land is still with the Government, the petitioner should be offered with the said land on market value. The said order was not taken into consideration while passing the impugned order. It is also to be noted that Plot No.6 was initially assigned to the petitioner but for some reason or the other he could not pay the market value and was pursuing the authorities to allot a plot near the entrance point of the TTD Kalyana Mandapam. In the process plot No.6 was alleged to have been encroached upon by the unofficial respondent who was allotted plot No.5 along with her father. Since no patta was granted to the respondent No.5 herein till the date of passing of the impugned order i.e., 12.04.2012, the Commissioner should have taken into consideration the order passed by this Court in the writ petition.

As observed earlier, the commissioner found fault with the authorities for issuing patta in favour of the petitioner by collecting a meager amount ignoring the market value prevailing in the year 2000 and while setting aside the same, directed the Collector to issue patta in favour of the unofficial respondent on payment of market value, which in my view runs contra to the directions given by this Court in the year 2010.

Accordingly, the order under challenge is set-aside and the matter is remanded back to the court of Commissioner, Appeals, office of Chief Commissioner Land Administration, A.P., to pass appropriate orders in accordance with Law after considering the observations of this Court in W.P.No.13371 of 2002 dated 27.01.2010. The said exercise should be completed as expeditiously as possible preferably within a period of four months from the date of receipt of this order. Till such time *status quo* as on to day to be maintained in all respects in respect of plot No.6. It is needless to mention that the Commissioner, Appeals, office of Chief Commissioner Land Administration, A.P., shall pass orders after hearing the petitioner and unofficial respondent. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

Date:07.01.2016

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