

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY
WRIT PETITION No.18759 OF 2004

ORDER:

This writ petition is filed for issue of Writ of Mandamus declaring the proceedings of the 3rd respondent in L.Dis.No.38/1412F dated 18.02.2003 as illegal and void and to declare that the 4th respondent is not entitled for patta for land to an extent of Ac.1.76 cents in survey No.1477/5, 6 and 7 of Ramakrishnapuram Hamlet of Peddalanka Village, Kalidindi Mandal of Krishna District, in his favour.

2) It is the case of the petitioner that the Tahasildar, Kaikaluru, issued D-Form patta in his favour on 03.08.1970 assigning an extent of Ac.0.66 cents in Survey No.1477/7 and Ac.0.90 cents in Survey No.1477/6 and he is in possession of the same besides Ac.0.20 cents of land in Survey No.1477/5 which belongs to Government. Thus, he is in possession of Acs.1.76 cents of agricultural land.

3) As the petitioner was unable to cultivate the same, father of the 4th respondent was entrusted with cultivation of land and accordingly he was cultivating. As there was a dispute with regard to cultivation of land, petitioner filed O.S.No.89/2002 on the file of Senior Civil Judge's Court, Machilipatnam, for recovery of possession and other consequential reliefs, obtained a decree dated 31.03.2008. Later, he filed Execution Petition, recovered possession of property from 4th respondent and his father.

4) While the matter stood thus, the third respondent issued D-Form patta in favour of 4th respondent assigning a total extent of Acs.2-26 cents in same survey number i.e. Survey Nos.1477/1 and 5

to 7 subject to certain conditions, in L.Dis.No.38/1412F without canceling D-Form Patta issued in favour of the petitioner thereby issue of D-Form Patta in favour of 4th respondent by 3rd respondent is illegal and arbitrary and thus the petitioner prayed to declare the same as illegal.

5) Respondent Nos.1 to 3 filed counter denying issue of patta in favour of the petitioner as no material was available with the Office and pleaded ignorance of civil litigation in O.S.No.89/2002 on the file of Senior Civil Judge's Court, Machilipatnam, between petitioner, 4th respondent and his father. The respondents further contended that as the whereabouts of the petitioner were not known to the respondents, they did not take any steps to cancel the D-Form Patta though the petitioner has violated the conditions of assignment, more particularly, sub-section (2) of Section 3 of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act'). The respondents also admitted about issue of D-Form Patta for an extent of Acs.2-26 cents in favour of 4th respondent and that he is cultivating the same and finally the respondents prayed to dismiss the writ petition.

6) The core issue involved in this matter is 'issuance of Patta in favour of 4th respondent without canceling the patta issued in favour of petitioner for an extent of Acs.1-56 cents and without dispossessing the petitioner from an extent of Ac.0.20 cents in survey No.1477/5, without following the procedure prescribed under Section 4 of the Act'.

7) The respondents did not dispute specifically about issuance of D-Form Patta in favour of the petitioner except pleading

ignorance due to non-availability of records in the office. D-Form patta issued in favour of the petitioner is produced before this Court evidencing assignment of Acs.1-56 cents of agricultural land in survey No.1477/7 and 6 subject to conditions contained therein. Respondents 1 to 3 admitted assignment of land of an extent of Acs.2-26 cents in survey No.1477/1 and 5 to 7, which is inclusive of land assigned to the petitioner herein. It is not the case of respondents 1 to 3 that they initiated any proceedings under Section 4 of the Act to recover possession, for violation of terms and conditions contained in D-Form patta except contending that the whereabouts of the petitioner were not known to the respondents to initiate any such proceedings, but the same cannot be accepted as civil litigation is pending before Senior Civil Judge's Court, Machilipatnam, between petitioner, 4th respondent and his father for recovery of possession in respect of the same land. Even otherwise, a specific procedure is provided under Section 4 of the Act for breach of Section 3 of the Act. It is the specific contention of respondents 1 to 3 that the petitioner has violated the provisions of Section 3 (2) of the Act. In the present case, the petitioner himself admitted about cultivation of land by father of 4th respondent on behalf of the petitioner, but not on lease. He also filed a suit in O.S.No.89/2002 on the file of Senior Civil Judge's Court, Machilipatnam, for recovery of possession alleging that 4th respondent and his father are in unlawful possession. Accepting the contention of the petitioner, the Senior Civil Judge, Machilipatnam, decreed the suit and also ordered the Execution Petition recovered possession of property from 4th respondent and his father. Therefore, it is difficult to prove at this stage that the petitioner has violated the terms and conditions of D-Form Patta by leasing out the property to 4th respondent and his father. However, it is left open to respondents

1 to 3 to decide whether the petitioner has violated the terms and conditions of assignment, more particularly, Section 3 (2) of the Act. A specific procedure is contemplated under Section 4 of the Act for violation of terms and conditions of assignment. Appropriate Authority can take possession of the assigned land after evicting the person in possession in such a manner as may be prescribed and re-assign the said resumed land other than those lands/areas as may be notified by the Government from time to time. The Rules under the Act laid down the specific procedure for services of notices by issuing Form-II but no such notice was issued to the petitioner for proposed cancellation of patta for violation of conditions contained in Section 3 (2) of the Act.

8) It is evident from the record that D-Form patta issued in favour of the petitioner is not yet cancelled till today by following necessary procedure. Therefore, issuing patta in favour of 4th respondent in L.Dis.No.38/1412F dated 18.02.2003 is illegal since the petitioner is the owner in pursuance of D-Form patta dated 31.07.2003. Till the assignment granted in favour of the petitioner is set aside, he is deemed to be the owner of the land covered by D-Form Patta. Hence, the patta granted in favour of 4th respondent for an extent of Ac.1-56 cents in survey No.1477/7 and 6 of Mulaupparagudem, Kaikalore Tq, Krishna District, is illegal and invalid. However, respondent Nos.1 to 3 are at liberty to take necessary steps to cancel the patta, if, any of the conditions contained in D-Form Patta issued in favour of the petitioner are violated. Hence, the action of respondents 1 to 3 in issuing patta in L.Dis.No.38/1412F dated 18-02-2003 in favour of 4th respondent is declared as illegal and arbitrary.

9) In the result, the writ petition is allowed giving liberty to

respondents 1 to 3 to take appropriate action as per the provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977. There shall be no order as to costs.

10) Miscellaneous petitions pending in the writ petition, if any, shall stand closed.

M.Satyanarayana Murthy, J

18th March, 2016.

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