

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.14190 OF 2011

ORDER:

The case of the petitioners is that their father was assigned land to an extent of Ac.04-70 cents in Sy.No.16/3, Pulluru Village, Khajipet Mandal, Kadapa District vide proceedings No.B1/DKT/381/1378, dated 02-07-1969. Till his demise, the father of the petitioners cultivated the subject land and thereafter, the petitioners are cultivating the same and eking out their livelihood for a period of 20 years. On 30-05-1989, the then Mandal Revenue Officer (M.R.O.)-5th respondent issued show-cause notice to the father of the petitioners alleging that he has not brought the subject land under cultivation within three years from the date of assignment as mentioned in the assignment conditions and for that he has given reply stating that the schedule land has been leveled and brought the same under cultivation within three years. It is also stated that the father of the petitioners has cultivated the subject land and the same is recorded in village adangals. Even though, resumption order was passed on 10-08-1989 by M.R.O. Aggrieved by the same, the father of the petitioners filed O.A.No.635 of 1989 on the file of Principal District Munsiff, Kadapa. The said suit was dismissed holding that said Court has no jurisdiction

to try the matter, as assignment was cancelled by proceedings dated 10-08-1989 and thereafter, the appeal was preferred before the 4th respondent and the same was allowed by order dated 25-11-2002 vide proceedings No.D.Dis.No.678/E/90 by setting aside the resumption order dated 10-08-1989 and restored the assignment in favour of father of the petitioners and set aside the assignment granted in favour of respondents 6 and 7 to an extent of Ac.1-15 cents each and also cancelled pattadar passbooks and title deeds issued to them and pattadar passbooks were issued in favour of father of the petitioners. Questioning the orders of the 4th respondent, the respondents 6 and 7 preferred revision before the 3rd respondent-Joint Collector. By order dated 30-03-2008, the Joint Collector allowed the said revision. Against the same, the petitioners preferred appeal before the 2nd respondent. Pending revision before the Joint-Collector, the father of the petitioners expired and the petitioners were brought on record as legal representatives of original assignee i.e. Maram Subbaiah. Initially, the 2nd respondent granted status-quo to be maintained by the parties pending appeal. By order dated 09-03-2009, the 2nd respondent confirmed the order of the Joint Collector. Against the same, the petitioners preferred revision before the 1st respondent and

the 1st respondent confirmed the same by impugned order dated 21-04-2011 in G.O.Ms.No.475, Revenue (Assignment-IV) Department. Aggrieved by the same, the present writ petition is filed.

This Court granted order of status-quo on 07-06-2011. Vacate stay and counter affidavit is filed by the respondents 6 and 7 disputing that the father of the petitioners is not a landless poor person and he is having ancestral properties and disputing the possession of the father of petitioners by stating that they are in possession and enjoyment of the subject land and cultivating the same personally and thereafter, DKT patta was granted to an extent of Ac.2-30 cents out of Ac.04-70 cents in Sy.No.16/3 of Pulluru Village, Khajipet Mandal, Kadapa District to both of them equally. Since 2002, after the orders of 4th respondent, they are not cultivating the said land. It is also stated that there is no period of limitation for the revenue authorities to cancel assignment, in case of any violation of conditions laid down under the DKT patta and sought for dismissal of writ petition.

Both counsel argued the main writ petition itself and requested to dispose of the writ petition itself.

Learned counsel for the petitioners submits that assignment was granted in favour of the father of the

petitioners in the year 1969 and a show-cause notice for cancellation of the same was issued in the year 1989 after long lapse of 20 years, which is not permissible under law and he also submits show-cause notice was issued on the ground that assigned land was not brought under cultivation within a period of three years from the date of assignment. Though the father of the petitioners filed explanation denying the same, the M.R.O. by order dated 10-08-1989 passed resumption orders on the ground that he has inspected the land on 11-06-1989 and land in full extent was not brought under cultivation, which is erroneous. He further submits that the revisional authorities have gone beyond the scope of show-cause notice by observing that the land was in possession of third parties and confirmed the order of resumption, though the appellate authority rightly considered the issue and set aside the order of resumption. The order of M.R.O. as well as revisional authorities is beyond the scope of show-cause notice, which is in violation of principles of natural justice. In support of his contentions, he relied on judgment of **Joint Collector Ranga Reddy District v. D.Narsing¹**.

Learned counsel for the respondents 6 and 7 submits that the petitioners filed appeal before the 4th respondent

¹ (2015) 3 Supreme Court Cases 695

after long lapse of time, meanwhile, the respondents were assigned subject land and the petitioners have not filed any proof to show that they brought the land under cultivation within three years from the date of assignment and also submits that there is no bar for initiating the proceedings for cancellation of patta, if conditions are violated. He also submits that after assignment of land in favour of the respondents 6 and 7 in the year 1989, they were granted pattadar passbooks and title deeds and the petitioners have not sought for cancellation of the same. He also submits that the 3rd respondent-Joint-Collector clearly held that the petitioners paid land revenue at a time for 15 years, after the resumption orders are passed and taking the same into account upheld the resumption order passed by the M.R.O. He also submits that as per evidence on record, one G.Krishna Reddy was in possession of the subject land, which also goes to show that the father of the petitioners was not cultivating the same.

Admittedly, the father of the petitioners was assigned land in the year 1969, show-cause notice for cancellation of assignment of land was issued on 30-05-1989 on the ground that the subject land was not brought under cultivation within three years of assignment. The father of petitioners submitted explanation stating that he has

removed bushes in the subject land and raised garden by spending the amount in the year 1970 and regularly cultivating the same till that day and asserted that he has not violated any conditions of D-Form patta. But the 5th respondent-M.R.O. in his order observed that he has inspected the land on 11-06-1999 and found that full extent of land was not under cultivation. The allegation in the show-cause notice was that the subject land was assigned in the year 1967, but it was not brought under cultivation within three years of assignment. Whereas the order of M.R.O. goes to show that on 11-06-1999 full extent of land was not under cultivation. This all goes to show that the said finding is beyond the scope of show-cause notice. Even the condition in patta is that land should be brought under cultivation within three years from the date of assignment, not as on the date of inspection by the M.R.O. and more so, the show-cause notice issued after a period of 20 years.

The R.D.O. while allowing the appeal filed by the father of the petitioners by order dated 25-11-2002 held as under:

“The then Mandal Revenue Officer, Khajipet has resumed the above land in S.No.16/3 extent 4-70 acres of Pullur (v) of Khajipet Mandal vide Ref.No.B.574/89, dated 15-08-89 and taken the application of the defendants on 16-08-1989. The entire process has been completed and given D-form to the defendants

by 1-9-89. A1 notice was published on 17-08-89 but the statutory period even 15 days has also not given for grant of assignment which means, the then Mandal Revenue Officer, Khajipet has intentionally cancelled the assignment made in favour of Maram Subbaiah, S/o.Subbaramaiah, to assign the same to the defendants.”

On perusal of the above observation, it is found that the resumption order of M.R.O. was on 15-08-89, the application of respondents was on 16-08-1989 and D-form pattas were granted to the respondents 6 and 7 on 01-09-1989 and it appears that M.R.O. had intentionally cancelled the assignment made in favour of the father of the petitioners, and by holding so, the R.D.O. allowed the appeal. The R.D.O. passed orders by canceling the pattas issued in favour of the respondents 6 and 7. In the revision filed by the respondents 6 and 7, the Joint Collector observed that one G.Krishna Reddy was in possession of the lands, though the said allegation was not found in the show-cause notice. The order of Joint Collector was confirmed by the 2nd respondent by order dated 24-03-2008 without considering the plea raised by the petitioners that resumption order was passed after lapse of 20 years of assignment and further the 1st respondent also without considering the issues raised by the petitioners confirmed the orders passed by the 2nd respondent.

In the judgment cited supra, the Supreme Court held in para No.17 as follows:

“In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law.”

The Mandal Revenue Officer, Joint Collector as well as the Commissioner of Land Administration and the 1st respondent has not considered the issue in proper perspective.

In view of above facts and circumstances and law laid down by Apex Court, I am of the view that the impugned order is liable to be set aside. However, this will not preclude the respondents 6 and 7 from making application for assignment of any other land.

Accordingly, the writ petition is allowed. The impugned order is set aside. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

11-11-2016
nvl



