

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.15699 of 2005

ORDER:

Heard Mr.M.Sree Rama Chandra Murthy, counsel for petitioner and the Assistant Government Pleader (Assignment) for respondents.

The petitioner calls in question the proceedings of Collector in Rc.No.235/1997 E2, dated 10.07.2005 canceling the proceedings in Rc.No.8518/83 B2 dated 14.11.1983, as illegal, violative of principles of natural justice, arbitrary and unconstitutional.

Learned counsel have been heard on preliminary objection raised by petitioner namely violation of principles of natural justice and not affording opportunity to petitioner by 1st respondent, while passing the order impugned in the writ petition. For disposing of the said objection, the reference to following dates and events are sufficient.

On 20.08.1983, the petitioner requested for allotment of site on market value for establishment of "Mani's Institute for Child Health". The 1st respondent through proceedings in Rc.No.8518/83 B2 dated 14.11.1983 alienated an extent of Ac.1-00 in S.No.2 of Yendada Village, Visakhapatnam

District on market value of Rs.7,500/- per acre. The alienation is conditional in nature and reads thus:

"Rc.No.8518/83, B.2 Dt.14.11.1983

Collector's Office,
Visakhapatnam

PROCEEDINGS OF THE COLLECTOR, VISAKHAPATNAM
PRESENT:S.V.PRASAD, I.A.S.,

Sub: LAND-Alienation of Land-Visakhapatnam Taluk and District-Yendada village S.No.2 Part Alienation of Land in favour of Mani's Institute of child Health-Orders-Issued.

Read: 1.Application dated 20.08.1983 from Mrs.G.Nagamani, Akkayyapalem, Visakhapatnam.
2.Letter Rc.No.1683/83, B.1, Dt.30.09.1983 of the Tahsildar, Visakhapatnam.
3.Letter Rc.No.1683/83, B.1, Dt.21.10.1983 of the Tahsildar, Visakhapatnam.

ORDER:

An extent of Ac.1-00 in S.No.2 part of Yendada village, Visakhapatnam Taluk, is hereby allotted on market value at Rs.7,500/- per acre to Smt. G.Nagamani W/o Dr.G.Sundara Rao, for setting up of a Medical Institution of Pediatric patients called 'Mani's Institute for Child Health'.

The land allotted shall be used for purpose for which it is allotted and for no other purpose. If the condition of allotment is violated, the land shall be resumed back to Government.

The Tahsildar, Visakhapatnam is requested to deliver the land to Smt.G.Nagamani, Akkayyapalem, Visakhapatnam after collecting the market value, and report the date of handing over possession of the land. He is also requested to submit alienation proposals in complete shape with scrutinized sub-division record within 15 days.

Sd/-Jannat Hussai
JOINT COLLECTOR,
VISAKHAPATNAM
Sd/-
For Collector, Visakhapatnam"

The respondents after personal inspection of subject matter of writ petition and taking *prima facie* view of the matter that the petitioner failed to construct 'Mani's Institute for Child Health' decided to initiate action for canceling the allotment and restoring the land to Government. It is not in dispute that Mandal Revenue Officer/2nd respondent issued

show cause notice in Rc.No.1088/2004/Spl.R.I/Dt.16-04-2005 to petitioner as to why the allotment through proceedings dated 14.11.1983 ought not be cancelled. The petitioner, on 07.05.2005 submitted detailed explanation on various steps, the petitioner claims to have taken in furtherance of establishing 'Mani's Institute for Child Health'. The 2nd respondent through his letter dated 13.05.2005 sought clarification from the 1st respondent. The 1st respondent by recording the following findings cancelled the allotment and directed restoration of land in favour of the Government.

"The individual finally requested the Mandal Revenue Officer, Visakhapatnam to drop further action on the Show Cause notice.

The Mandal Revenue Officer in his report dated 13.05.2005 has sought instructions in the matter.

In this case much time is taken by the allottee right from the year 1983 and kept the land un developed as if the Government may not question about the land use and when notices are issued, simple explanations are given without any valid reason, it is therefore decided that the allottee Smt.G.Nagamani has no idea of construction of Hospital Building and the land is kept only to raise Garden etc., which is gross violation of the Condition of allotment made in the year 1983.

Therefore, the explanation offered by Smt.G.Nagamani w/o G.Sundara Rao is not accepted and it is hereby ordered canceling the allotment in her favour in S.No.2/1 measuring Ac.1-00 in Endada village in the year 1983.

The Mandal Revenue Officer, Visakhapatnam, is directed to resume the land immediately and report compliance.”

Mr.Sree Rama Chandra Murthy contends that the 1st respondent committed an illegality by not affording opportunity to petitioner while issuing the proceedings impugned in the writ petition. According to him, the Mandal Revenue Officer at any rate, is not competent under Board Standing Orders to cancel the allotment made for market value by the District Collector. The steps taken by the Mandal Revenue Officer through show cause notice dated 16.04.2005 etc., are required to be at best considered as preliminary enquiry into the matter and 1st respondent ought to have given opportunity to petitioner to prove her case that the petitioner is interested in establishing the hospital and cancellation of allotment is not warranted.

The Assistant Government Pleader tries to persuade this Court that the complaint against violation of principles of natural justice is more procedural and without substance, because according to petitioner the opportunity either given by 2nd respondent or 1st respondent would satisfy the requirement of law. She alternatively contends that the proceedings impugned in the writ petition can be considered as show cause notice issued by the Collector, leaving open all

the objections to be raised by petitioner and the Collector may pass orders. She prays for dismissing the writ petition.

I have perused the record and taken note of respective submissions. At this juncture, this Court prefers to refer to proceedings dated 14.11.1983 which has two facets, namely, the allotment of land on market value and allotment is subject to condition that petitioner establishes a hospital as undertaken by her, through the letter dated 20.08.1983. The respondents have undertaken physical inspection of subject matter of the property. According to them, the petitioner did not and could not adhere to condition imposed by proceedings dated 14.11.1983. Assuming a few circumstances are available for initiating action, the 1st respondent who has allotted the land is the competent authority to look into the matter and afford an opportunity to petitioner and thereafter pass orders as are deemed fit.

In the case on hand, the 2nd respondent issues show cause notice and seeks clarification from 1st respondent on the proposed decision to cancel the allotment. If the 1st respondent desires to proceed in the matter, the 1st respondent would have complied with the requirement of law, if the petitioner is heard by 1st respondent and decision taken in this behalf.

The proceedings impugned in the writ petition are set aside. The 1st respondent is directed to commence from the stage of receiving the report from the 2nd respondent through letter dated 13.05.2005, afford opportunity to petitioner and pass orders, as are deemed fit in the circumstances of the case. The said exercise is directed to be completed within two (02) months from the date of receipt of copy of this order. The parties are directed to maintain *status-quo* as on today till a decision is taken and communicated by 1st respondent. The petitioner, if is interested in filing further explanation, the petitioner can do so within one (01) month from the date of receipt of copy of this order.

Writ petition is ordered accordingly and the matter remitted to 1st respondent. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 08.02.2018
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