

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.19798 of 2012

ORDER:

This writ petition is filed seeking the following prayer:

“to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus declaration the action of the 2nd respondent in not ordering for restoration of 5 acres of Sy.No.20/1 of Ganjikunta Village of Mydukur Mandal in Kadapa District in favour of the petitioner in his order in Ref.A/320/2011, dated 24.11.2011 and also in not restoring the same as per the order of the 1st respondent in his L.Dis.No.E5/552/2012, dated 09.02.2012 as illegal, unjust, arbitrary, malafide, misuse of official power and also against Section 4(1)(b) of A.P.Assigned Lands (Prohibition of Transfers) Act, 1977 and consequently direct the 2nd respondent to restore the land in Sy.No.20/1 of Ganjikunta Village of Mydukur Mandal in Kadapa District to the petitioner and also amending the order Ref.A/320/2011, dated 24.11.2011 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The case of the petitioner is that while he was working in Military, he applied for grant of assignment of land in his native place i.e., Ganjikunta Village, Proddatur Taluk, Kadapa District. Considering his eligibility and entitlement as per the provisions of Board Standing Orders, he was granted Ac.5.00 cents of land in Sy.No.20/1 of Ganjikunta Village with DKT.No.2089/79 in the year 1970 by the then Tahsildar. Immediately, after the assignment, he brought the land under cultivation and cultivated it till 1990. He also obtained crop loan of Rs.6,500/- in 1978 from Kadapa District Cooperative Central Bank, Proddatur, by depositing D.K.T.Patta and repaid loan after several years. But the bank did not return

original D.K.T.Patta on the ground that the same was misplaced and issued certificate on 18.01.2011 to that effect. Later, he could not cultivate his land due to his health problems and he was shifted to Proddatur. But the petitioner's land was encroached by third parties. After repeated representations to the respondents, the 2nd respondent-Tahsildar passed orders in Ref.No.A/320/2011 dated 24.11.2011 directing the concerned Mandal Revenue Inspector to resume the land from the encroachers. Encroachers have not filed any appeal against the same. Now, the grievance of the petitioner is that the 2nd respondent having resumed the land ought to have restored the same to him as per Section 4(1)(b) of the Act and the same is not incorporated in the said order. Hence, he submitted a representation to the 1st respondent, who in turn in his proceedings dated 09.02.2012 directed the 2nd respondent to inspect the land personally and take necessary action for removal of encroachments and also for restoration of land. In spite of repeated requests made by the petitioner, the 2nd respondent has not restored the land. Hence, this writ petition.

Counter is filed by the 2nd respondent admitting the assignment of subject land to the petitioner and the same was occupied by encroachers. The Mandal Revenue Inspector, Mydukur inspected the subject land and submitted report stating that the petitioner alienated the same without cultivating the land, that he was not residing in Mydukur Mandal for the past 30 years; that the land is in possession of third parties for the past 25 years by erecting bore well with electric connection and that there is a clear contravention of the provisions of Sections 3(1) and 3(2) of the Act, that the subject land is liable for resumption in exercise of powers conferred under Section 4(1) and 4(1)(a) of the Act and

that the subject land has been resumed to the Government vide proceedings Ref.No.A/320/2011 dated 24.11.2011.

Learned counsel for the petitioner submits that though the proceedings dated 24.11.2011 has become final since no appeal is filed against same. As per Section 4(i)(b) of the Act, the original assignee is entitled for resumption once. But the 2nd respondent while passing orders has not considered the same and the 1st respondent has passed orders on 09.02.2012 and the 2nd respondent should have taken necessary action for resumption of land in terms of Section 4(1)(b) of the Act.

In the present case, no appeal is filed by the petitioner against the resumption order dated 09.02.2012, as he has no grievance against the same. But his grievance is that the subject land has to be restored in his favour under Section 4(1)(b) of the Act. Section 4(1)(b) of the Act reads as follows:

“(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor person in accordance with the rules for the time being force:

Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and incase the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.”

As per the norms, the petitioner is eligible for restoration of land once after the alienation. Though the appeal lies against the impugned order, the petitioner has not filed any appeal. But this aspect has not been considered by the respondents and in the counter also the same is silent.

Since the subject land is resumed to the Government, the 2nd respondent is directed to consider the case of the petitioner for

resumption of land in terms of 4(1)(b) of the Act and take action in accordance with law, within a period of three months from the date of receipt of a copy of this order.

With the above direction, this writ petition is disposed of.

Miscellaneous petitions, pending if any, shall stand closed.

A.RAJASHEKER REDDY, J

Date: 16-02-2016

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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