

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.6628 of 2012

ORDER:

Heard the learned Counsel for the petitioners and the learned Standing Counsel for the 1st respondent. None appeared for the 2nd respondent nor a counter-affidavit is filed.

2. The petitioners state that they are the owners of the land of an extent of 60 square yards each bearing plot Nos.1 and 2 in Mulagada village, Gajuwaka Mandal, Visakhapatnam District. The land was assigned by the 2nd respondent for construction of house. Though the petitioners raised a house, it was damaged in the heavy rains. The husbands of the petitioners died. When they wanted to take up construction in the 2nd week of January 2012, they came to know that in a part of the land a community hall was constructed by the 1st respondent. When the construction was in progress, the petitioners submitted a representation to the 1st respondent and the same was received on 23.01.2012 and when no action was taken, the present writ petition was filed.

3. Initially, a counter-affidavit was filed by the 1st respondent stating that the site under reference situated in Sy.No.55 of Mulagada village belongs to the Government and it was classified as hill poramboke as per revenue records. Since the land belongs to the Government, it was proposed to construct a community hall for community purpose consisting of ground floor + 1st floor. The department obtained sanction of the 1st respondent for an amount of

Rs.16.75 lakhs and the work was entrusted to a contractor on 09.11.2010. The construction of the community hall was completed except for minor works. By the time of filing the writ petition, the 1st respondent was not aware of the assignment made in favour of the petitioners.

4. When this Court got a doubt with regard to the construction of the community hall, the 1st respondent was directed to file an additional counter-affidavit, pursuant to which, an additional counter-affidavit was filed stating that the local people of Himachal Nagar in Ward No.47 submitted a representation to the Corporation to construct a community hall in a portion of the land in Sy.No.55 of Mulagada village, which is a Government land classified as hill poramboke. Accordingly, tenders were called on 08.09.2008 and the work was entrusted to the lowest tenderer. The community hall was constructed consisting of Ground + 1st floor much prior to filing of the writ petition. It is also stated that the writ petition did not disclose the alleged assignment and the proceedings under which the assignment was made by the 2nd respondent.

5. Learned Counsel for the petitioners submitted that though the proceedings were not mentioned in the affidavit filed in support of the writ petition, the copies of documents under which the assignment was made were annexed to the writ petition at page Nos.9 and 11. He further submitted that on 23.01.2012 a representation was made to the Commissioner, Greater Visakhapatnam Municipal Corporation clearly indicating the

description of the proceedings under which the land was assigned and even after receiving the said representation, no action was taken.

6. It is clear from the above averments that the petitioners were assigned 60 square yards each in Sy.No.55-P bearing plot Nos.1 and 2 as could be seen from the papers filed along with the writ petition. A perusal of the form of order of assignment of house sites shows that it was issued under the provisions of Board Standing Order subject to certain conditions and those conditions are not found in the order. The Tahsildar, who is arrayed as respondent No.2 has not filed any counter-affidavit and in the absence of the same, this Court is not in a position to hold that the assignment alleged to have been made in favour of the petitioners was a valid assignment and it was subsisting as on the date of construction of the community hall.

7. In the circumstances, the Writ Petition is disposed of giving liberty to the petitioners to submit a copy of the orders of assignment to the 1st respondent within a period of eight weeks from the date of receipt of a copy of this order and on receipt of the same the 1st respondent shall call for a report from the 2nd respondent with regard to the genuineness of the assignment made in favour of the petitioners on the basis of the documents produced by them; depute a surveyor in order to ascertain the extent of land occupied by the construction of the community hall and take necessary action for payment of compensation in case the assignment was genuinely made in favour of the petitioners. If the assignment was found to be

false or it was subsequently cancelled by the competent authority, the 1st respondent shall pass an appropriate order. The entire exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

06-12-2016

Gsn

