

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.13266 and 27411 of 2012

COMMON ORDER:

Heard Mr. M.V. Suresh for petitioners and Mr. Durga Reddy, learned Government Pleader for respondents.

2. The subject matter of these writ petitions is same but the orders under challenge are as follows:

In WP.No.13266 of 2012, petitioners challenge the order of the Joint Collector, Nalgonda District/second respondent in File No.F2/5119/2001 dated 10.04.2012 as illegal, arbitrary and pray to quash the same.

In WP.No.27411 of 2012, petitioners challenge the order of the Chief Commissioner of Land Administration, State of Telangana, Hyderabad in proceedings No.BCW3/246/2012 dated 06.07.2012 and pray to quash the same as illegal and unsustainable.

3. The circumstances relevant for the disposal of the writ petitions, alone are briefly stated.

The case of first petitioner is that the Tahsildar, Rammannapet Mandal, on 16.03.1970, recorded panchanama whereunder arrangement for exchange of land in Sy.No.615 with land in Sy.No.691 was agreed and accepted with petitioner No.2. Accordingly, it is alleged, the Tahsildar vide reference No.B2/2739/70 dated 18.06.1970 assigned an extent of Ac.1.26 guntas and again vide proceedings No.B2/2739/70 dated 18.07.1970 assigned an extent of Ac.0.11 guntas in faovur of first petitioner. The first petitioner claims to be in

possession and enjoyment of total extent of Ac.2.00 guntas of land in Sy.No.691 of Rammannapet village.

4. While the matter stood thus, the Tahsildar issued show cause notice for cancellation of assignment made in favour of first petitioner on the ground that the first petitioner has failed to bring the assigned land under cultivation. On 20.06.1978, the Tahsildar cancelled the assignment of agricultural land in Sy.No.691 assigned in favour of the first petitioner. The cancellation of assignment and resumption is the subject matter of appeal before the Joint Collector/third respondent.

The petitioners filed WP.No.3318 of 2001 and prayed as follows:

“... to issue an order or direction or a Writ one particularly in the nature of Writ of Mandamus directing the Respondents to declare the first petitioner as owner and Pattadar of Land of one Acre and 26 guntas of dry land situate at Ramannapet Village and Mandal, Nalgonda district declaring the actions of the Respondents as illegal, untenable and against the facts and principles of natural justice and violative of provisions of Andhra Pradesh rights in land Pattadar pass book Acts and consequently orders of all Respondents merged with orders of Government passed in Memo.No.14140/A.S.4(2/95) dated;1.5.1998 issued by the Government of Andhra Pradesh Revenue Department directing the eviction of the first petitioner above from the land of Ac.1-26 gts in the Sy.No.691/ of Ramannapet Village and Mandal, Nalgonda District ...”

On 23.06.2009, the writ petition was disposed of and the operative portion of the order is excerpted only for the limited purpose of appreciating the illegality committed by the third respondent/Joint Collector in passing the impugned order in WP.No.13266 of 2012.

The operative portion reads thus:

“In view of the above, the orders passed by the respondent authorities are set aside and the matter is

remanded to the 3rd respondent-Joint Collector, Nalgonda District, to consider the matter afresh right from the day on which the panchanama dated 16.03.1970 was said to have been conducted and pass appropriate orders as per law, after hearing the parties, within a period of three months from the date of receipt of a copy of this order. Till such time, the possession of the 1st petitioner shall not be disturbed. However, in case if it is not possible for the 3rd respondent to confirm the assignment made in favour of the 1st petitioner, he shall invoke the provisions of the Land Acquisition Act for the land acquired from the 2nd petitioner and pay compensation as required under the law.”

5. The third respondent, after remand, has passed the order dated 10.04.2012 impugned in WP.No.13266 of 2012. The order records following findings and dismisses the appeal filed by the petitioners.

The operative portion of the order impugned reads as follows:

“Hence, this office vide letter No.F2/5119/2011, dt.25.04.2011 has sought clarification from the Secretary to the Chief Commissioner of Land Administration, AP, Hyderabad in this issue. The CCLA vide D.O.Lr.No.BCW3/246/2011, dt.06.03.2012 has communicated the sale deed dt.17.03.1970 executed by Sir Muthineni Narsaiah S/o Mallaiiah in favor of Sri A. Hafeez, Tahsildar, Ramannapet representing the Govt. of A.P., and directed to take necessary action in pursuance of the order of the Hon'ble High Court dt.23.06.2009.

As seen from the said sale deed dt.17.03.1990 executed by Sri Muthineni Narsaiah which is available in CLR/BCW6/945/1992, the land was sold the land for an extent of Ac.02.00 in Sy.No.615 to Sri A. Hafeez, Tahsildr, Ramannapet representing the Govt. of A.P., for consideration of Rs.200/-.

All that this panchanama, dt.16.03.1970 says this Sri Muthineni Narsaiah had agreed to give his land in Sy.No.615 for an extent of Ac.02.00, and in lieu of that an extent of Ac,01.26 was agreed to be given to Ogge Bixapathi. However, on the next date i.e., on 17.03.1990 Sri Muthineni Narsaiah sold this land to the Government for a consideration of Rs.200/- and

therefore the panchanama dt.16.03.1970 cannot be a binding, to the extent of giving land to Sri Ogge Bixapathim, since the land in Sy.No.615 was never given to the Government free of cost. When land was sold by Sri Muthineni Narsaiah to Govt., then there is no binding on the Govt. to give any land to Sir Ogge Bixapathi, in lieu of Sy.No.615.”

6. It is not in dispute that a revision under Section 166(B) of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli, was taken on file bearing No.BCW3/246/2012 and revision was disposed of on 06.07.2012. The fact in issue between parties on this revision is that petitioners contend that they have not moved the Chief Commissioner of Land Administration and it is a *suo motu* revision and on the other hand, the case of respondents is that the petitioners filed further revision before the Chief Commissioner of Land Administration and the appeal was taken on file and disposed of. Be that as it may, what is important from the order of Chief Commissioner is that the Chief Commissioner has recorded the following finding against the order of the Joint Collector dated 10.04.2012:

“5. After the above clarification received by the Joint Collector, dt 10/4/2012 that this order was made by him without hearing the case himself, and thus did not provide any opportunity to the petitioners of being heard by him. It is now brought to my notice that Aggrieved by the orders of Joint Collector, Nalgonda dated: 10.4.2012 the petitioner has filed the W.P.No.13266/2012 on the ground that the new officer did not hear the matter and prayed the High Court to set aside the order of Joint Collector dt 10/4/2012.

6. In my opinion this is a serious violation of principle of natural justice, and therefore, the order of Joint Collector dt 10/4/2012 is liable to be set aside. Accordingly the order of Joint Collector dt 10/4/2012 vide proceedings No.F2/5119/20011 is set aside, and this court makes the following order.

...

...

9. In view of the above there can not be a case for any one to claim compensation in respect of S.No.615 (Acres. 2.00 Gnts) or 691 (Acre 1.26 Gnts), and also that patta granted in respect of S.No.615 was rightly cancelled.

7. From the findings recorded by the Chief Commissioner of Land Administration, it is clear the order of the Joint Collector dated 10.04.2012 is already set side and the prayer in WP.No.13266 of 2012 is already granted. Now complaint of the petitioners against the order of the Chief Commissioner of Land Administration is that the Chief Commissioner has committed very same mistake which the Joint Collector has committed while passing order dated 10.04.2012 viz. that considering new grounds for sustaining the order canceling the assignment and resuming the land.

8. With the assistance of the learned counsel appearing for both parties, I have carefully perused the order dated 10.04.2012 of the Joint Collector, Nalgonda and also the order of the Chief Commissioner of Land Administration dated 06.07.2012.

9. This Court is of the view that new grounds have been considered for sustaining the order of Tahsildar, Rammannapet Mandal and appeal and revision have been dismissed. The consideration of new grounds is impermissible in law. Though learned counsel appearing on both sides persuaded this Court to examine the merits of the facts in issue between the parties, having regard to the order of remand passed in WP.No.3318 of 2001, no view on facts in issue is expressed. The orders impugned in these two writ petitions are set aside on the short ground that new circumstances are considered by

Joint Collector and the findings are unsustainable. Hence, the matter is remanded to the Joint Collector, Nalgonda for disposal afresh of case pending in File No.F2/5119/2001. The possession of petitioners shall not be disturbed during the pendency of the appeal before the Joint Collector, Nalgonda and also till a decision is taken and communicated.

The writ petitions are ordered as indicated above. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

September 6, 2016
DSK

S. V. BHATT, J

