

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.28384 OF 2010

ORDER:

-

This writ petition is filed stating that the petitioner is the absolute owner and possessor of land to an extent of Ac.02-39 cents in R.S.No.407/3 of Balaramunipet, Machilipatnam, Krishna District and by virtue of assignment granted and D-Form patta dated 05-08-1980 was issued on payment of market value of Rs.1195/- for total extent. Since the date of assignment, the petitioner has been in continuous possession and enjoyment of said land without interference. The petitioner was also issued pattadar passbook and title deeds in respect of subject land and he has been paying taxes to the Government. When the petitioner intended to sell the land, he made a representation to the 1st respondent in the year 1996 to permit him to sell the same and the same was rejected vide proceedings in D.Dis.(E-8)6204/95, dated 12-01-1996. Against the same, the petitioner filed appeal before the Commissioner of Land Revenue, Hyderabad. The Special Commissioner of Land Revenue held that the assignment was made on payment of market value, hence the order of Collector is set aside and permitted the petitioner to alienate the land vide his order dated 20-09-1996. Thereafter, the petitioner made representation to the 1st respondent for issuance of 'No Objection Certificate' (NOC) for registration of land. The then District Collector issued proceedings as per the order of Special Commissioner of Land Revenue, Hyderabad by giving NOC for disposing of the assigned land in RS.NO.407/3 measuring an extent of Ac.02-39 cents and permitted the petitioner to alienate the subject land vide proceedings dated 19-09-2005. The petitioner made representation to the municipal authorities for change of land use and also paid an amount of Rs.38,872/- towards development charges. After enquiry, the Government issued GO.Ms.No.562, Municipal Administration and Urban Development (H1) Department dated 31-05-2005 granting permission to change the land use and the same was communicated to the petitioner. The petitioner came to know that

the 1st respondent passed order vide proceedings in Rc.No.E/1774/2010, dated 07-10-2010 directing

the 3rd respondent not allow any transactions for the subject lands.

Aggrieved by the same, the present writ petition is filed.

The respondents 1 and 2 filed counter stating that one B.Venakanna Babu, Advocate of Machilipatnam filed petitions before the 1st respondent alleging that D-form patta was granted in favour of the petitioner

assigning Ac.2-39 cents of land covered in R.S.No.407/3 of Balaramunipeta of Machilipatnam town on 05-08-1980 by the then Tahsildar. The same is earmarked as "Dumping Yard Zone" by the Government

vide GO.Ms.No.1039, MA, dated 18-12-1978. As such, the order of the Tahsildar, Bandar is invalid granting patta to the petitioner and the same is referred to the Tahsildar for enquiry and it was stated that assignment record was not traced out in the office. It is also stated that as per the report of the Tahsildar the subject land is only classified as "Madugu Poromboke" and subsequently, it was earmarked for "Dumping Yard Zone" of Machilipatnam. In GO.Ms.No.1039, M.A.,

dated 18-12-1979. The said land was assigned to the petitioner, who is an affluent person, on 05-08-1980 without obtaining consent of Municipality and without changing the classification of the land. The status of the petitioner does not come under BPL category and he is not eligible for assignment. Moreover, he was granted patta in posh locality situated in town limits. Hence, it cannot be assigned to any body

as per GO.Ms.No.1142, dated 18-06-1954 and G.O.Ms.No.1122, dated 26-01-1961 and it is not fit for cultivation and the maximum extent is only Ac.0-5 cents, to which only assignments were to be implemented. The incorporation of changes in the records was carried out only on payment of land tax and also fulfillment of conditions in D-Form patta. It is stated that permission for sale of the land was granted in pursuance of the orders of the Chief Commissioner of Land Administration (CCLA), Andhra Pradesh, Hyderabad, the RS No. was shown as 401/3, but not 407/3, which was not pointed out by any

level. It is stated assignment was not made on payment of market value and the CCLA, Hyderabad allowed the appeal. In pursuance of the order of CCLA, Andhra Pradesh, Hyderabad, the then Collector, Krishna in his proceedings dated 19-09-2005 has informed the Sub-Registrar, Bandar that there is no objection for disposal of Agricultural land Ac.02-39 cents in R.S.No.407/3 of Machilipatnam town. It is stated that the above land in Sy.No.407 was Ac.13-64 cents classified as "Madugu" and subsequently, it was subdivided as Sy.No.407/1 and 407/2. It is stated that the present land is reserved for 'Dumping Yard'. Hence, the 1st respondent issued proceedings dated 07-10-2010 to the District Registrar not to allow any transaction in R.S.No.407/3 admeasuring an extent of Ac.02-39 cents of Machilipatnam. It is also stated that Tahsildar has no powers to grant of town sites as per G.O.Ms.No.1142, Revenue, dated 18-06-1954 and BSO Section-II para 4 (ii) which speaks as follows:

ii) The assignment of the following classes
of land is prohibited.

a) Poramboke (tank beds, fore shore of tank beds, cattle stands, grazing lands and reserve lands
(reserved for depressed class members or for any public purpose such as schools, play grounds, hospitals, maternity centers, reading rooms extension of house sites, panchayat purposes, Town Sites and lands in proximity thereof.

It is also stated classification of land was changed without any report from the Collector. It is stated that the subject land fetch crores of rupees, which was irregularly assigned to the petitioner, who is a rich contractor and he succeeded in getting permission from the C.C.L.A., Hyderabad to dispose of the land and also obtained orders changing the classification of land from "Dumping Yard Zone" to "House Site." Hence, sought for dismissal of the writ petition.

Learned counsel for the petitioner submits when the order passed by Special Commissioner of land Revenue, Andhra Pradesh, in proceedings No.BCW5/258/96, dated 20-09-1996 permitting the petitioner to sell the land by holding that the assignment was made on payment of market value became final and when the grant of patta in favour of the petitioner is still valid and subsisting, the 1st respondent has no power to pass the impugned order directing the 3rd respondent not to allow the transactions to the subject land i.e. Ac.2-39 cents in R.S.No.407/3 of Balaramunipet, Machilipatnam.

On the other hand, learned Assistant Government Pleader for Revenue submits since assignment granted in favour of the petitioner is irregular, as he is not eligible and the said land was meant for 'Dumping Yard', there is prohibition for assignment in respect of 'Dumping Yard'. Overlooking all these factors, the Tahsildar granted patta in the year 1980.

The order passed by Special Commissioner of Land Revenue, dated 20-09-1996, permitting the petitioner to alienate the land by setting aside the orders passed by the District Collector issuing 'NOC' to the Sub-Registrar, Machilipatnam became final. When the order of Special Commissioner of Land Revenue had become final, the question of 1st respondent passing the impugned order does not arise. It is also stated that patta was granted in the year 1980. Till now, no proceedings were initiated for cancellation of patta. As long as patta granted in favour of the petitioner is valid and subsisting, 'NOC' granted by

the 1st respondent dated 19-09-2005 in pursuance of the order by Special Commissioner of Land Revenue, dated 20-09-1996 is valid even till today. Nothing is mentioned in the counter that any proceedings were initiated against grant of assignment. The impugned order also go to show that the orders passed by Special Commissioner of Land Revenue, dated 20-09-1996 has become final. As on today no further action has been taken on the same. In view of the above facts and circumstances of the case, I am of the opinion that the Collector is not empowered to pass the impugned order.

Accordingly, the writ petition is allowed and the impugned order is set aside. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

