

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.21619 of 2004

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India to direct the respondent to issue a patta in favour of first and second petitioners for an extent of Ac.2.50 cents and Ac.2.75 cents of dry land in Sy.No.18 of Hill Poramboke of Chinna Gummaluru Village, S. Rayavaram Mandal, Visakhapatnam District, as per Assignment Proceedings T.C.No.43/92/A, dt. 25.07.1992 and TC.No.39/92/A, dt. 25.07.1992 respectively.

First petitioner is the wife of late Allu Subba Rao, who retired as army personnel and to whom Acs.2.50 cents of dry land in Sy.No.18 of Hill Poramboke of Chinna Gummaluru Village, S. Rayavaram Mandal, Visakhapatnam District, was given by the respondent authorities, by proceedings in T.C.No.43/92/A dt. 25.07.1992, basing on the Mandal Inspector's Report dt. 22.07.1992, as he was landless poor armed personnel, and he was inducted into possession of the property by the Mandal Surveyor, S. Rayavaram immediately. Thereafter, the above said late Subba Rao during his life time reclaimed the land and started cultivating the same by raising cashew nut grove. In 1996, he died and after his death, first petitioner succeeded the property being legal heir.

Similarly, the second petitioner, who was also an Ex-Service man, granted land to an extent of Ac.2.75 cents in Sy.No.18 of Chinna Gummaluru Village, which is a hill poramboke, by Proceeding T.C.No.39/92/A, dt. 25.07.1992 subject to issuance of Patta, inducted into possession and reclaimed the land and started cultivation by raising Cashew Nut tope, which is 12 years old by the date of filing of the petition.

After granting permission to occupy the said land, late Subba Rao and second petitioner have been paying land revenue and after the death of Subba Rao, first petitioner being legal heir, paying the land revenue to their respective extents. The names of the petitioners were also mutated in the concerned revenue records, but no pattas were assigned or granted to the petitioners despite Letter dt. 28.08.2004 addressed to the District Collector, Visakhapatnam, requesting to issue pattas for the land granted to them, but the authorities concerned are trying to evict the petitioners forcibly from the property. Therefore, having no other alternative, the petitioners approached this court for the above said reliefs.

No counter is filed by the respondent.

Heard learned counsel for petitioners.

As seen from the material, husband of first petitioner and the second petitioner were granted land to an extent of Ac.2.50 cents and Ac.2.75 cents respectively in Sy.No.18 of Chinna Gummaluru Village, which is a hill poramboke, S. Rayavaram Mandal, Visakhapatnam District, by Proceedings T.C.No.43/92/A, dt. 25.07.1992 and T.C.No.39/92/A, dt. 25.07.1992, subject to certain conditions incorporated therein. One of the conditions under the grant is that the grant was subject to conditions in the D Form patta to be issued to them. Thus, the Revenue Receipts dt.22.2.1993, 30.08.1994, 08.11.1996, 08.11.1996 and 02.03.1998 go to show that the petitioners are paying land revenue to revenue authorities for the property covered by the grant and their names were also mutated in the revenue records from 01-04-2003 onwards. Thus, late Subbarao during his life time and thereafter his wife i.e., first petitioner herein and the second petitioner are in continuous possession and enjoyment of the property, in pursuance of the grant separately granted in their favour being Ex-Servicemen.

Since the respondent did not issue any D-Form patta assigning the land in favour of late Subbarao during his life time and after his death to the first petitioner and second petitioner for the respective land under separate grants, the first petitioner submitted a representation dt. 24.08.2004 to the District Collector, Visakhapatnam, requesting to grant D-Form patta in her favour. Similarly, the second petitioner also made a representation dt.25.08.2004 with the same request, but the respondent did not take any action on the representations made by them and no D-Form patta was issued to them.

Admittedly, late Subbarao was Ex-Service Man and he is entitled to assignment under B.S.O No.15 (11) under the head of Assignment of Lands to Ex-Servicemen and Serving Soldiers (Jawans). According to it, Ex-Servicemen of World Wars I and II shall not be eligible for grant of Government lands under this scheme of grant of lands to Ex-Servicemen as the last date for receipt of applications for lands from them was fixed as 1st July, 1952, and the same was expired long ago and if they had not applied before the above date, they should take their chance under the normal assignment rules. Old cases need not be reopened but only applications pending prior to 01-07-1952 shall be considered and lands assigned as per the existing rules (G.O.Ms.No.1090. Rev. Dt.13.07.1964).

Similarly Clause (ii) shows that Assignment of Land to Jawan who served/serving from the date of declaration of emergency due to Chinese aggression. All Jawans domiciled in Andhra Pradesh and serving in the defence

forces of India, will after demobilization be eligible for the assignment of lands in their own villages or elsewhere.

As per Notes-(d) Jawans, who are dismissed or discharged from service due to inefficiency or misconduct or whose character is assessed as bad on demobilization, are not entitled for grant of land under these rules. (G.O.Ms.No.547, dt. 16.04.1965)

But, it is not the case of the respondent that late Subbarao and second petitioner were dismissed or discharged from service due to misconduct or otherwise but they were demobilized as per the service conditions only. Therefore, late Subbarao, husband of the first petitioner, and second petitioner being Ex-Servicemen, are entitled to claim pattas for the land granted to them.

As per rules, a grant was made in favour of late Subbarao and a separate grant was also made in favour of second petitioner permitting them to occupy temporarily an extent of Ac.2.50 cents and Ac.2.75 cents respectively in Sy.No.18 (Hill Poramboke) of Chinna Gummaluru Village, S. Rayavaram mandal, Visakhapatnam District, subject to issuance of D-Form Patta and the conditions contained therein. Till today, no D-form patta was issued in favour of the petitioners and in fact no action was taken on the request made by them.

Hill Poramboke is a land belonging to Government and the Government may refuse to grant patta only in the following circumstances:

(a) "Poramboke" (tank-beds, fore-shore of tank-beds, cattle stands, grazing lands and reserved lands (reserved for depressed class members or for any public purpose, such as schools, play grounds, hospitals, maternity centres, reading rooms, extension of house-sites, Panchayat purposes, town sites and lands in the proximity thereof.

Authority:- Poramboke land was deleted and made available for assignment as per the Orders contained in Rule 1 of G.O.Ms.No.1724, Rev. Dept., Dt. 26.08.1959.

(b) Land which has been unoccupied for 18 months and adjoins a reserved forest or an unreserved block of a square mile or more until the Collector has consulted the District Forest Officer and considered any objections, he may have to its assignment;

(c) Lands containing topes or valuable trees not more than 25 per acre;

(d) Lands within cantonment limits;

(e) Lands reserved under Section 26 of the Forest

Act;

(f) Lands within Port Limits;

- (g) Lands near the sea coast within one furlong of high water mark of the sea;
- (h) Water-course porambokes, namely, margins of channels, streams, etc.,
- (i) Lands in the vicinity of aerodromes or landing grounds (i.e.) within a belt of 200 yards;
- (j) lands containing minerals, quarries, etc.,;
- (k) Padugais, i.e., land within the flood-bank of rivers, lanka lands not held on ryotwari tenure river accretion and reformed lands for which the former owners have ceased to pay assessment;
- (l) Lands where “Pati Matti” is available; and
- (m) Any other lands which are required or likely to be required for any public or any special purposes necessary for the provision of amenities to the community or connected with the development of the village”.

But, in the present case, it is not the case of any of the party that the land falls within the exempted lands and in fact Government Pleader for Revenue did not advance his argument though the matter was heard on the last occasion and he has not turn up to advance his arguments.

In these circumstances, this Court has no other option to dispose of the matter according to law. In view of the circumstances stated supra, this Court is of the considered opinion that the inaction on the part of the District Collector in issuing D-Form Patta for the land covered by grant in favour of late Subbarao and the second petitioner is illegal and not sustainable in the eye of law. Therefore, the petitioners are entitled to claim patta as they were permitted to occupy the land temporarily by way of grant in writing separately, subject to grant of D-Form patta, about 24 years ago.

In the result, this Writ Petition is allowed and by issuing of mandamus, directing the respondent to issue patta in favour of petitioner Nos. 1 and 2 separately for the land covered by the grant subject to their eligibility and permissibility in accordance with law within two months from the date of receipt of order through Court or from the petitioners whichever is earlier. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 04-03-2016.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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W.P.No. 21619 of 2004

Dt. 04-03-2016

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