

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 5065 of 2006

Date :12.8.2016

Between :

Ganta Ramachandrudu S/o late Adanna
R/o Mantikonda village, Kurupam mandal
Vizianagaram district and others

Petitioners

And

The Agent to the Government
District Collector, Vizianagaram
Vizianagaram district and others

Respondents

The Court made the following:

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ORAL ORDER:

This writ petition is filed praying to grant the following relief.

“Writ, order or direction more particularly one in the nature of Writ of Mandamus, directing the respondents not to assign the schedule lands in Patta Nos.12/1 to 12/2, 14/3 to 14/12; 18/1 to 18/4; 26/6 to 26/10; 28/5; 36/6; 37/1; 38/9 to 38/22 both wet and dry lands of an extent of Ac.22.00 acres in Mantikonda Village, Kurupam Mandal, Vizianagaram district to any 3rd parties without conducting any enquiry and without notice to us and consequentially to assign pattas to us in the above lands and to pass such other order or orders as this Hon'ble Court may deem fit and proper”.

2. Petitioners claim that they are in possession and enjoyment of agricultural land mentioned in the prayer portion of the writ petition for more than 50 to 60 years. They claim to be residents of Mantikonda village, Kurupam mandal, Vizianagaram district and belong to Schedule Tribe community living in the agency area. According to petitioners, they were granted provisional pattas, and as a consequence, are in possession and enjoyment and eking out their living by cultivating the lands assigned to them. While so, in the recent past, very same land was sought to be assigned to others and in the process the Mandal Revenue Officer was trying to dispossess them. Hence, this writ petition.

3. According to learned counsel for petitioners, petitioners were in possession and enjoyment after it was assigned to them and their pattas cannot be cancelled nor can they be dispossessed without following the due process. According to learned counsel for petitioners, petitioners are sought to be dispossessed on the ground that they are not Schedule Tribes and are not living in tribal area and as such action is ex facie illegal. The competent authority has issued caste certificates declaring them as belonging to Schedule Tribe and therefore trying to dispossess the petitioners on that ground and trying to assign the subject land to others would amount to arbitrary exercise of power and authority.

4. Counter affidavit deposed by Sri Ch.Ramakrishna, Mandal Revenue Officer denies the allegations made in the affidavit filed in support of the writ petition. According to the deponent, the claim of petitioners that they

belong to Schedule Tribe category in agency area is not relevant for consideration of the issue in this writ petition.

5. According to respondents, as early as on 30.11.1974, the Special Deputy Collector (Tribal Welfare) cum Settlement Officer, Elvinpeta, passed orders against petitioners. The gist of the order is extracted in para 2 of the counter. Reading the order extracted would disclose that though the provisional patta was granted to petitioners during the course of enquiry, petitioners claimed that they were granted Ryotwari patta and therefore the question of granting pattas as assignees would not arise. However, no material was produced in support of their contention that they were in possession and enjoyment of the land after having acquired title to the subject properties. There was no material to show that they were paying cist. Having regard to the said facts, the Special Deputy Collector (Tribal Welfare) disallowed the claim of the petitioners for grant of Ryotwari pattas and ordered that the land should be classified and recorded as 'assessed waste lands', which vests in Government. Accordingly, provisional pattas were declared as null and void. This order of the Settlement Officer has become final.

6. Learned counsel for petitioners sought to contend that this order was not served on the petitioners and therefore no further steps could be taken by the petitioners. Even assuming what is stated by the learned counsel for the petitioners is true, it is to be noticed that counter affidavit was filed on 14.7.2006, wherein specific plea was taken about issuance of the proceedings of the Special Deputy Collector on 30.11.1974. No endeavor was made by the petitioners to apply for the copy of the said proceedings nor to file petition for production of the documents referred to therein. For the first time, after 10 years of filing of the counter affidavit, this plea is sought to be raised now.

7. Be that as it may, the averments made in the counter affidavit would disclose that proceedings were issued against petitioners as early as on 30.11.1974. The validity or otherwise of the said proceedings cannot be gone into in the absence of a challenge to the said proceedings. Thus, no relief as sought for can be granted to the petitioners when the proceedings

dated 30.11.1974 are staring at them. Accordingly, writ petition is dismissed. However, liberty is granted to the petitioners to avail such remedies as available to them under law, if so advised. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:12.08.2016
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