

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.21940 of 2005

ORDER:

Assailing the issuance of show cause notice dated 08.06.2015 under Rc.No.E3/3333/2005 by the District Collector, Ongole, the present Writ Petition is filed on the ground that the Collector has no jurisdiction to issue the same and that the said notice was issued with an abnormal delay.

The averments in the Writ Petition show that pursuant to a Welfare Scheme, house-sites were granted to the Non Gazetted Officers (N.G.Os.) during the year 1999-2000 after collecting market value in the entire Prakasam District. It is said that the Mandal Revenue Officer, Addanki, Prakasam District granted house-site pattas to 27 N.G.Os., in the year 1995. As the petitioners were not having any house-site, the second respondent herein granted similar house site pattas to the petitioners in respect of land covered by Survey No.98 of North Addanki revenue village. Each of the petitioner was granted Ac.0.02 ½ cents of land in the said Survey number. It is said that the petitioners paid the market value as directed by the second respondent and at the time of grant of patta the 2nd respondent instructed that market value will be fixed in due course and the same will be raised by way of demand at a later point of time. The averments further disclose that as the 2nd respondent did

not issue the final demand, the petitioners were not able to construct any house in the said plots. While things stood thus, a show cause notice came to be issued by the Collector asking all the petitioners to submit their explanation as to why assignments granted in their favour should not be cancelled. The said notice appears to have been issued pursuant to a representation made by one Alakunta Srinivasarao alleging that revenue officials granted the Government land with a view to benefit them. Aggrieved by the action of the 1st respondent in issuing the notice, the present Writ Petition came to be filed raising the ground of jurisdiction and limitation.

Respondents 1 and 2 filed counter disputing the averments made in the affidavit. It is stated that the petitioners are Government employees and they were granted house-site pattas by the then Mandal Revenue Officer, Addanki on 23.09.1998, in Sy.No.98 in North Addanki village which way classified as Assessed Waste Dry as per RSR and without conversion of land into village site poramboke and without fixation of Market value by competent authority. It is stated that the then Mandal Revenue Officer issued pattas at his whims and fancies and without following any procedure. On observing that there was material irregularity in granting house site pattas, the District Collector issued show cause notices in Rc.E3/3333/2005, dated 06.09.2005 to the petitioners to show cause as to why the house site pattas granted to

them should not be cancelled under B.S.O. 15(18)(1) and also directed them to submit written explanation within the stipulated time. It was further said in the notice that if they fail to submit written explanation, it would be construed that they have nothing to explain or represent their case and orders would be passed on the material available.

It is further stated that one Alakunta Srinivasarao, President B.C. United Forum, Addanki filed petitions on 22.08.2005 and 27.08.2005 alleging that the Revenue employees grabbed Government site to an extent of Ac.0.25 cents worth Rs.20 lakhs; constructions were started in the said site to basement level and to stop the said constructions. It is alleged that previously one hotel worker erected a house after making the ground even, but the revenue employees removed the said house, obtained house site pattas illegally and started constructions.

After verification, the second respondent basing on the report submitted by petitioner Nos.1 and 3 observed that the petitioners filed applications for grant of house sites and recommended for grant of house sites to an extent of Ac.0.03 cents each subject to payment of market value and pending conversion of land. The said land is vacant and classified as Cheruvu Thotti and as the petitioners are not having any house or house site, DKT pattas for the plot Nos.11 to 16 were granted on

25.09.1998 subject to payment of market value. The petitioners in remitted Rs.500/- each towards market value. It is further stated in the counter that they have no authority to remit the said amount without there being any conversion of land from assessed waste to village site and without fixation of market value by the District Collector. As per RSR the land is classified as assessed waste and the Mandal and a layout was also prepared which was signed by the then M.R.O. on 22.09.1998 with 16 plots measuring each Ac.0.03 cents and the petitioners were granted house site pattas for plot Nos.11 to 16.

It is stated in the counter that the procedure for grant of house sites is that applications for grant of house sites and form A1 notices shall be published in the village and affix the same in the notice board of the Gram Panchayat. For conversion of any communal poramboke land, the Gram Panchayat should pass resolution. After following the above process only the proposals should be submitted to the concerned. The market value will be fixed by the Collector or by the C.C.L.A. or by the Government for grant of house sites. In the present case there was no conversion of land, no fixation of market value and even no prior permission from the Collector and no consent from Gam Panchayat, Addanki were obtained. Without following the above procedure, the then M.R.O., granted pattas to the employees. As such the 2nd

respondent submitted his report to the 1st respondent. The 1st respondent after verifying the records and having been satisfied that there is material irregularity while granting of house sites by the then M.R.O., issued show cause notices in Rc.E3/3333/2005, dated 06.09.2005 to all the 6 petitioners to show cause as to why the house site pattas should not be cancelled. But without giving any explanations, they filed the present Writ Petition. It is further stated that the petitioners are having the following pucca houses, the details of which are as under:

S.No.	Name of the Assignees	D.No. of the house owned by them
1.	D.Durgamba	Having pucca house at Bapatla village of Guntur District.
2.	A.Ananda Rao	Pucca house at Ongole of Prakasam District bearing D.No.37-1-388.
3.	D.Parisuddarao	-----
4.	P.Brahmanandam	Having Pucca house at Addanki bearing D.No.32-210.
5.	P.Venkata Ramanarao	Having pucca house at Addanki bearing D.No.40-57.
6.	T.Venkata Padmavathi Devi	Having pucca house at Addanki bearing electricity No.8809.

It is submitted that by the counsel for the respondents the petitioners approached the Court with unclean hands with a view to avoid further course of

action to be followed by the Collector as per procedure in vogue and prayed for dismissal of the Writ Petition.

The 2nd respondent, Tahasildar, Addanki filed Additional counter stating that the suit schedule land covered in plot Nos.11 to 16 to an extent of Ac.0.18 cents in S.No.98 of North Addanki village of Addanki Mandal was unauthorizedly encroached by the Police Department of Addanki Mandal by way of erecting fence with 42 concrete pillars and also erected a board stating that the site belongs to police Department and that the trespassers would be punished under the Act and Rules. On coming to know the same, he took action by removing the fencing and board. He reported the same to the Collector with a request to direct the District Authorities to take further action and the same is still pending.

As stated earlier, the main ground urged by the learned counsel for the petitioners is that the proceedings were initiated beyond the period of limitation. Relying upon the time limit of three years fixed in para 18 of Board Standing Orders 15, the learned counsel for the petitioners strenuously contends that entire proceedings are barred by limitation. It would be appropriate to refer to the same which is as under :

“12. This now takes me to the last limb of the case as to the period of limitation prescribed for cancellation of such assignment. The learned Counsel on both sides invited my attention to Para 18 of the Board Standing Order-15. Para 18 read as follows: " (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is presented is final and no second

appeal shall be admitted. But if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him set aside, cancel or in any way modify the decision. The Board of Revenue may set aside, cancel or in any way modify the decision of an officer subordinate to it within three years if it is satisfied that the decision was grossly inequitable; it may also exercise similar powers without any limit of time where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. All revision petitions in darkhast cases should be stamped with a Court fee liable to the value of two rupees.

(2) The State Government, may, at any time, either suo motu or on application made to them, call for an examine the records relating to any decision or order passed or proceeding taken by any authority or office subordinate to them under the preceding subparagraph for the purpose of satisfying themselves as to the legality or propriety of such decision or order or as to the regularity of such proceeding and pass such order in reference thereto as they think fit. The Government may stay the execution of any such decision order or proceeding pending the exercise of their powers under this subparagraph in respect thereof. "

Relying upon the said provision, the learned counsel for the petitioners submits that even assuming that there was any misrepresentation or fraud, the second respondent should have initiated the proceedings for cancellation of the assignment within three years as provided in para 18. But it is to be noted that there was an amendment to Para 18 of the Board Standing Order 15 regarding limitation by way of G.O.Ms.No.812 dated 08.02.1985 wherein the phrase "three years" mentioned in Para 18 was substituted with the phrase "at any time".

Therefore, the impugned order cannot be said to have been passed beyond the period of limitation. The said finding of mine is supported by the judgment of this Court in **P.Anasuyamma and another v. The Commissioner of Land Revenue, Government of Andhra Pradesh, Hyderabad and another**^[1].

The next ground, which has been raised by the learned counsel for the petitioners, is with regard to jurisdiction of the District Collector in issuing the impugned order. Proviso 2 of para 18 of the Board Standing Order 15 states that the State Government, may, at any time, either suo motu or on application made to them, call for and examine the records relating to any decision or order passed or proceeding taken by any authority or office subordinate to them under the proceeding sub-paragraph for the purpose of satisfying themselves as to the legality or propriety of such decision or order as to the regularity of such proceeding and pass such order in reference thereto as they think fit.

In the instant case, the allegation is that the land was illegally and irregularly assigned to the writ petitioners. The enquiry made by the Tahasildar, who presented a report, shows that the 1st petitioner herein was a Mandal Revenue Inspector, Addanki, the 2nd petitioner was the Surveyor, the 3rd petitioner was a Junior

Assistant in M.R.O. Office, 4th petitioner a Typist in M.R.O., Office and 5th petitioner is the wife of the then Mandal Revenue Officer, Addanki. The assignment of land to Kottam Koteswara Rao was cancelled on his request and the same was granted to his daughter i.e., 6th petitioner. Therefore, the question would be whether the petitioners would fall within the meaning of “landless poor” as defined in Section 2(3) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977. As per Section 2(3) of the Act “Landless poor person” means a person who owns an extent of land not more than 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land or such other extent of land as has been or may be specified by the Government in this behalf, from time to time and who has no other means of livelihood. In view of the above, the Mandal Revenue Officer, Addanki submitted his report and sought for cancellation of the assignments made to the writ petitioners, as it was found that the then Mandal Revenue Officer instead of submitting proposals to the District Collector, Ongole has granted pattas as if the applicants were dire in need for house sites which was done without proper verification. Apart from that, it is to be noted that all the four petitioners were employees of the very same Mandal Revenue Office, within whose jurisdiction the lands fall. Though the learned counsel for the petitioners submits that the petitioners are still in possession of the

land but the counter filed by the respondents show that on 25.12.2015, the police department of Addanki Mandal encroached by way of erecting fencing with 42 concrete pillars which was resisted by the respondents. The same was reported to the Collector, Ongole with a request to take necessary action and the same is said to be pending consideration before the Collector. Further, the impugned order is only with regard to submitting the explanation as to why the pattas granted to them should not be cancelled in view of material irregularity. Having regard to the findings arrived at, the question of quashing the show cause notice on the ground of limitation or lack of jurisdiction cannot be accepted.

Accordingly, the Writ Petition is dismissed. However, it is always open to the petitioners to submit their explanations in which event the same shall be dealt with in accordance with law un-influenced by the observations made in this order. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

C.PRAVEEN KUMAR,J

Dt:19 .02.2016
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