HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.491 of 2012

ORDER:

Aggrieved by the order passed by the 1st respondent in Case No.D.Dis (E5)2549/2005 dated 19.02.2011 reversing the orders passed by the respondents 2 and 3, the present Writ Petition is filed.

The averments in brief are as under :

The 1st petitioner was assigned Ac.4.20 cents of dry land in Sy.No.658/4P situated in Krishnapuram village hamlet of Budawada in Marripadu Mandal vide proceedings F.Dis.No.54/1402/92 dated 19.09.1992. The 2nd petitioner, who is the son of the 1st petitioner, was also assigned Ac.1.79 cents in Sy.No.658/1 and Ac.3.21 cents in Sy.No.658/3 in all Ac.5.00 cents of dry land in vide proceedings F.Dis.No.53/1402/92 dated 19.09.1992. The names of the petitioners were entered in revenue records and they have been put in possession. It is said that after assignment the petitioners raised horse gram and

Kandi crops, which was also recorded in the Adangals and revenue accounts during Faslies 1402 and 1403. Pattadar passbooks and title deeds were also issued to them under the provisions of the Act, 1971. Agricultural loans were also obtained from Pinakin Grameena Bank, Nandipadu Branch on 24.01.2006. While things stood thus, the 3rd respondent herein passed an order vide proceedings dated 02.07.1999, cancelling the assignment, on the ground that the land was not brought under cultivation within a period of 3 years from the date of assignment, thereby violating condition No.2 of the patta. Aggrieved by the same, the petitioners preferred an appeal before the 2nd respondent/Revenue Divisional Officer, who allowed the appeal on 05.01.2000 and remanded the matter back to the 3rd respondent for denovo enquiry. Aggrieved by the order of remand, the petitioners preferred an appeal before the 1st respondent/Joint Collector, who by his order dated 12.10.2001 dismissed the appeal holding that the assignment granted in favour of the petitioners is not proper and they are not eligible for grant of assignment. The said order was confirmed by the Commissioner of Appeals in Revision Petition filed by the petitioners. Thereafter the petitioners herein filed W.P. No.14169 of 2003 before this Court, which was dismissed holding as under :

> "The impugned order is passed by the appellate authority after considering the decision of the Joint Collector. Both the grounds namely that the petitioners did not cultivate the lands and no evidence was produced before the authority have been proved and the authority noticed these two aspects and firmed the order passed by the Joint Collector."

Challenging the same, the petitioners herein preferred Writ Appeal No.2005. By an order dated 10.03.2005, a Division Bench of this Court allowed the appeal setting aside the impugned order. The relevant portion of the order is as under :

> "The Writ Petition is disposed of restoring the order dated 05.01.2000 passed by the Revenue Divisional Officer, Kavali with a direction to the Mandal Revenue Officer to proceed as per the directions contained in the above order. It is needless to add that the Mandal Revenue Officer will pass appropriate orders in accordance with law uninfluenced by the observations made by the Joint Collector as well as the Commissioner of Appeals in their respective orders."

Pursuant to the orders passed by this Court, the 3rd respondent i.e., Tahasildar held an enquiry to find out as to whether the petitioners have violated any of the conditions of the "D" form patta more particularly condition No.2. By an order dated 30.10.2005 the 3rd respondent, after considering the entire material on record and after hearing all the necessary parties, held as under :

> "As such I am of considered view that the resumption proceeding passed by my predecessor is not in accordance with law. Since there is cultivation on ground within the stipulated period covered by condition No.2 of "D" form. When the land is cultivated within 3 years from the date of grant, it does not attract the condition No.2 of "D" form and thus the resumption proceedings so passed is considered to be against to the principles of natural justice. Therefore I hereby order that the lands in the Survey Nos.658/1 and 658/3 Ac.5-00 and survey No.658/4P Ac.4.20 of Budawada village are hereby restored to Sri M.Pulla Reddy and Smt. M.Audilakshmamma respectively for the reasons explained in foregoing paras."

Aggrieved by the order of the 3rd respondent the respondents 4 and 5 herein preferred an appeal before the 2nd respondent i.e., the Revenue Divisional officer, who dismissed the same vide proceedings D.Dis (F)792/2006 dated 18.02.2009 confirming the orders passed by the 3rd respondent. The appellate authority also observed that 4th respondent was already assigned the agricultural land and as such she is not eligible for assignment and her daughter the 5th respondent is not a resident of the village. Challenging the said order, the unofficial respondent preferred a Revision before the 1st respondent, who by his order dated 19.02.2011 allowed the same. It would be necessary to refer to the relevant portion of the order, which reads as under :

"Hence the respondents have obtained assignment pattas in their favour in respect of land in question irregularly and fraudulently by misrepresentation of facts, though they are not eligible for grant of assignment at the time of grant of land in question in their favour during the year 1992. According to the provisions of BSO 15(18) irregular assignment pattas granted to the ineligible persons on the basis of misrepresentation of facts have to be cancelled.

The respondents Sri Muthukundu Pulla Reddy S/o. Narasimha Reddy and Smt. Muthukundu Audilakshmamma W/o. Narasimha Reddy have also obtained pattadar pass books and title deeds in their favour in respect of land in question vide Khata No.693 and 694 in pattadar pass book and title deed bearing Nos.J205203 and J 205202 respectively.

In view of the circumstances reported by the Tahasildar, Marripadu, the irregular assignments made in favour of Sri Muthukundu Pulla Reddy S/o. Narasimha

Reddy and Smt. Muthukundu Audilakshmamma W/o. Narasimha Reddy in respect of land measuring Acs.1.79 in S.No.658/1 and Acs.3.21 in S.No.658/3 (Total land Acs.5.00) and Acs.4.20 in S.No.658/4P of Budawada village vide F.Dis.No.53/1402/92 dated 19.09.1992 and F.Dis.No.54/1402/92 dated.19.09.1992 respectively are hereby cancelled under the provisions of BSO 15(18). The Tahsildar, Marripadu is directed to take possession of the land in question from the assignees and assign the same land to the eligible land less poor of the Budawada village, duly considering the case of the petitioner No.2 Smt. Gandikota Sulochana W/o.Srinivasulu, subject to her eligibility, after following due procedure as per the assignment rules existing in force."

Assailing the said order, the present Writ Petition is filed on the ground that the said order was passed without giving proper opportunity to the petitioners to represent their case.

R-4 and R-5/unofficial respondents filed their counter stating that the petitioners have violated condition No.2 of the patta since there is no proof of petitioners cultivating the land within a period of 3 years from the date of assignment. It was stated that the said assignment was granted under a mistake of fact as the petitioners' family was having land in an extent of Ac.6.48 cents at the time of granting assignment.

R-3/Tahasildar also filed his counter

disputing the averments made in the affidavit filed in support of the Writ Petition. The said counter though filed by the Tahasildar runs in tune with the order passed by the Collector stating that the writ petitioners' family is having morethan Ac.5.00 of land at the time of assignment of land in question and the same was done under a mistake of fact.

The main ground urged by the learned counsel for the petitioners is that the petitioners were not provided with the ground of Revision and no opportunity was given to them to address the 1st respondent with regard to the grounds raised in the Revision. He further submits that the notice and the cancellation of assignment in the earlier round of litigation was on the ground that the petitioners have violated the condition No.2 of "D" form patta, which fact was not accepted by the Tahasildar and the Revenue Divisional Officer. But, however, the Joint Collector took a different view and cancelled the assignment on the ground that the petitioners are not entitled for any assignment, which was not the case either before the Tahasildar or the Revenue Divisional Officer.

The learned counsel appearing for

respondents 4 and 5 and learned Government Pleader for Revenue reiterated their averments in the counter.

Insofar as the first ground raised by the learned counsel for the petitioners viz., no proper opportunity was given to them to contest the matter on the grounds raised in Revision, it would be necessary to refer to the order under challenge. A perusal of the said order would show that after taking the case on file, notices were given to the parties concerned to represent their case. During the course of hearing on 24.10.2009 both the parties are said to have advanced their arguments and thereafter it was reserved for orders on 24.10.2009 itself. Later the learned counsel for respondents filed Memo before the Joint Collector on 29.10.2009 with a request to reopen the case and furnish a copy of the Revision petition filed by the unofficial respondents and also to give an opportunity to advance arguments on the grounds raised in the Revision. Hence, the case was posted for hearing on 18.12.2010 and the order also indicates that the copies of the Revision petition filed by the respondents and the material relied upon by them was furnished to the writ petitioners herein on 18.12.2010 only. From the above, it is clear that the material and grounds of Revision were furnished to the writ petitioners on 18.12.2010 to which date the case was posted for hearing. The order is silent as to whether the matter was adjourned to another date enabling the petitioners herein to advance arguments basing the material on record does not disclose that the petitioners have agreed to advance arguments on that day itself. But, however, an order came to be passed on 19.02.2011, allowing the said Revision.

The learned counsel for the petitioners mainly submits that neither the grounds of Revision were furnished to the petitioners on 18.12.2010 nor were they heard on the grounds raised in the Revision. The Counter filed by unofficial respondents is silent on the said aspect. The Tahasildar who filed the counter on behalf of the 3rd respondent though states that an opportunity of hearing was given to the writ petitioners but in my view he is not competent person to speak about the proceedings which took place before the Collector since his presence on 24.10.2009 or on

18.12.2010 was not recorded in the order. Therefore, the Tahasildar could not have answered the issue raised by the petitioners herein. No counter came to be filed on behalf of the Joint Collector.

Having regard to the above circumstances, the order under challenge is set-aside and the matter is remanded back to the 1st respondent/Joint Collector directing him to furnish a copy of the Revision petition filed by the unofficial respondents herein, if not furnished till date and decide the issue involved after giving opportunity to the writ petitioners and the unofficial respondents, in accordance with law.

With the above direction, the writ petition is disposed of. 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.

JUSTICE C. PRAVEEN KUMAR

Dt:05.02.2016
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