

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No. 28653 OF 2008

ORDER:

Heard Sri Gangadhar Chamorthy for petitioner and the Assistant Government Pleader for respondents.

The petitioner challenges proceedings No.B/259/08/3, dated 30.06.2008 (corrected as 30.08.2008), as illegal, violative of principles of natural justice and unconstitutional.

The petitioner claims that through registered deed, dated 03.08.2004, he purchased Ac.3.07 cents in RS.No.102 of Kothwalguda Village, Shamshabad Mandal from Mohd. Khasim, S/o. Mohd. Gulam Hussain/4th respondent. According to petitioner, the order impugned in the writ petition is passed without notice to him or affording opportunity to him.

On 30.12.2008, this Court ordered as follows:

“Pending further orders, status quo obtaining as on today as to the nature and possession of the land, which is the subject matter of the impugned order, shall be maintained.”

Respondent No.2 filed counter affidavit and petition to vacate the order, dated 30.12.2008. The 2nd respondent on the allegation of violation of principles of natural justice states thus:

“I respectfully submit that while the matters stood thus, it came to light that one Mr. Kondaiah is cultivating the land on ground and the original assignee was not in the said land and hence notice No.B/259/2008 dated 28.06.2008 was issued to the said Kondaiah and the original assignee Mr. Mohd. Khasim. Since the original assignee could not be traced, the said notice was pasted to a stick planted on the land. Since no explanation was forthcoming, order was passed by this respondent resuming the land to the Government vide Procgs.No.B/259/08/3 dated 30.08.2008. The land was taken into custody vide panchanama on 14.10.2008.

It is further respectfully submitted that the land cannot be sold to third parties and the land assigned is only heritable but not alienable. It is further found during the enquiry that the original assignee Mr. Mohd. Khasim has sold away the land through registered sale deed No.3805/2004 dated 03.08.2005 to the writ

petitioner herein and hence for the violation of conditions of patta, the land was resumed after issuing notice and after following due process of law. The land was already taken into Government custody on 14.10.2008.”

The Assistant Government Pleader fairly states that the stand taken in paragraph 3 of the counter affidavit contradicts the reasons stated in paragraph 4 of the counter affidavit. Further, admittedly, the transaction, dated 03.08.2004, in favour of petitioner is noted by the 2nd respondent, but, before passing the order of resumption of assigned land from petitioner, the petitioner was not put on notice or opportunity was afforded.

On the short ground of violation of principles of natural justice and the statutory requirement of issuing notice in Forms 1 and 2 was not followed by 2nd respondent, the impugned order in the writ petition is set aside. The writ petition is ordered. The 2nd respondent is directed to issue notice to petitioner and if the circumstances warrant, proceed in accordance with law. No order as to costs.

Miscellaneous petitions, if any, shall also stand disposed of.

S.V. BHATT, J

Date: 10.08.2016
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