

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.2490 OF 2005

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ORDER:

This writ petition is filed under Article 226 of the Constitution of India to declare that the action of the respondents, in attempting to dispossess the petitioner from an extent of Ac.0.95 cents situated in Sy.No.155/2 of Gambhiram Village, Anandhapuram Mandal, Visakhapatnam District from 12.02.2005 without acquiring the same under the provisions of Land Acquisition Act, as illegal.

02. It is the case of the writ petitioner, from the beginning, that she is in possession and enjoyment of the land of an extent of Ac.0.95 cents in S.No.155/2 of Gambhiram Village, Anandhapuram Mandal, Visakhapatnam District and the said property was devolved upon her from her father-Peetala Chandri Naidu, who is the original owner of property, and she is paying land revenue to the Government and her father name was mutated in the revenue records. Therefore, she became owner of the property as legal heir of Peetala Chandri Naidu. But respondents are attempting to dispossess the petitioner from the said land without following due process of law and without issuing notice under the Land Acquisition Act, and thereby the act of the respondents is illegal and highhanded. Therefore, prayed to declare the action of the respondents as illegal and arbitrary.

03. The respondents filed counter denying the material allegations *inter alia* contending that the said Gambhiram Village was an estate village and taken over by the Government in the year 1956. According to the Settlement Fair Adagangal, R.S.No.155(2) measuring an extent of Ac.2.56 cts., co-related to Original Survey No.122, stands registered as Assessed Waste Dry. It was later sub divided into R.S. Nos.155 (2), (3) and (4) and the land to an extent of Ac.1.23 cents

covered by R.S. No.155(2), which is the subject matter of the writ petition, was assigned to Peetala Chandri Naidu by granting D-Form patta No.732 and later his name was mutated in the revenue records, he was in possession till his death. During the course of field inspection conducted by special staff, it came to the notice of the respondents that the petitioner is trying to sell away the assigned land as house site and offered unauthorized house sites plots formed therein to intending purchasers, disregarding the provisions of law i.e. under the A.P. Act 9 of 1977. It is also further contended that according to Section 4(3) of the A.P. Act 9 of 1977, the assigned land cannot be alienated, but it is heritable.

04. As per the assignment, the original assignee has to bring the land into cultivation within the specified time, otherwise raise construction if it is urban area. But in utter violation of the terms and conditions of the patta, the original assignee, Peetala Chandri Naidu, did not bring the property into cultivation. However, the land in question was abutting to NH5, closed to R & B road which diverts from NH5 at Anandapuram (Mandal Headquarter) and runs through Pendurthi (Mandal Headquarters) and Sabbavaram (Mandal headquarters) and upto Anakapalli (Municipal Town), where it joins or merges with NH-5. It has acquired a great potential value as building site. The market value of the house site in that locality has gone up to Rs.30 lakhs per acre. Thus, the petitioner though not related to the original assignee, Peetala Chandri Naidu, claiming ownership, with a view to grab the property.

05. As the alleged claim of the petitioner is illegal, the Mandal Revenue Officer issued Form-I in Rc.No.282/2002/A/ dated 20.07.2002 to the petitioner herein to show cause as to why it should not be considered that she had acquired the assigned land in question in contravention of sub-Sections 1 and 2 of Section 3 of the A.P. Act 9 of 1977 and as to why she should not summarily be evicted from the

assigned land. But the petitioner having received the notice did not appear before the Mandal Revenue Officer. Therefore, summary eviction proceedings were passed. Aggrieved by the said proceedings, the petitioner did not prefer any appeal and later possession was taken by the respondents by beating of drum in the Village and by proclamation. Therefore, the petitioner is not in possession as on today, in view of taking delivery of possession of the property under Sections 3 and 4 of the A.P. Act 9 of 1977.

06. The respondents specifically denied the relationship pleaded by the petitioner with Peetala Chandri Naidu, the original assignee, while contending that the said Peetala Chandri Naidu belongs to Yadava community whereas the petitioner belongs to Viswa Brahmin community, thereby they are not related to each other, hence the question of succeeding the estate by the first petitioner does not arise. Even the Settlement Fair Adangal disclosed that original assignee, Peetala Chandri Naidu, was the owner of the property and the petitioner is related to one Shiva Koti Samba Murthy, pattadar of land in S.No.156/1. Therefore, being relative of Samba Murthy, she is not entitled to claim relief and prayed for dismissal of the writ petition.

07. During pendency of the writ petition, the first petitioner, Smt.Sivakoti Ratnamma @ Ratnam died, and her legal representatives were brought on record as petitioners 2 to 11 vide order in W.P.M.P. No.3233 of 2011 dated 08.03.2011.

08. During the course of the argument, Smt.N (P) Anjanadevi, learned counsel for the petitioner, contended that the petitioner is the daughter of Peetala Chandri Naidu and that the respondents did not deny the relationship of first petitioner with Peetala Chandri Naidu. Therefore, she, having succeeded the estate as per the provisions of Hindu Succession Act, is entitled to protect the possession till she is duly evicted by due process of law or till the property was acquired

under the provisions of Land Acquisition Act. She has drawn attention of this Court to the notice in Form-I which was not served on the petitioner at any point of time, since the notice in Form I does not bear the thumb impression of the first petitioner. Therefore, without serving notice, the respondents are not entitled to recover possession of the property, and if any attempt is made to dispossess, it is illegal and violative of principles of natural justice and prayed to pass appropriate order declaring the action of the respondents as illegal and arbitrary.

09. Per contra, learned Assistant Government Pleader for Revenue (Andhra Pradesh) would contend that the said land was originally assigned to Peetala Chandri Naidu after taken over the Village Anandapuram being the estate Village, and she is not related to Peetala Chandri Naidu. Therefore, she cannot claim any right over the property by way of succession from Peetala Chandri Naidu and apart from that the property assigned to the original assignee-Peetala Chandri Naidu is not alienable and it is only heritable. Therefore, the first petitioner being a third party not related to the original assignee-Peetala Chandri Naidu, but belongs to Viswa Brahmin community, cannot be treated as a legal heir and not entitled to claim any right in the property. Therefore, the petition is liable for dismissal and prayed to dismiss the writ petition accordingly.

10. It is the case of the petitioner, from the beginning, that she is the daughter of the original assignee-Peetala Chandri Naidu. But the respondents specifically denied the relationship of first petitioner with Peetala Chandri Naidu in paragraph 8 at page 4 of the counter, while contending that Peetala Chandri Naidu belongs to Yadava community, whereas the first petitioner belongs to Viswa Brahmin Community. In such a case, it is the duty of the petitioner to produce documentary evidence to show that she is the daughter of original assignee-Chandri Naidu and she does not belongs to Viswa Brahmin Community by caste. For the reasons best known to the petitioner, no iota of

evidence is brought on record to establish her relationship with Chandri Naidu-original assignee to whom Ac.1.23 cents in R.S.No.155/2 was assigned by patta No.732. In the absence of proof of relationship between the first petitioner and the original assignee, the question of succeeding the estate of Chandri Naidu by the petitioner does not arise under the provisions of Hindu Succession Act. Thus, she failed to establish her relationship with the original assignee, Chandri Naidu.

11. It is the specific contention of the respondents, from the beginning, that she is in possession of the property i.e., assigned land and that having found in regular field operations that she is trying to alienate the property in contravention of Section 3 of the A.P. Act 4 of 1977. The respondents issued show cause notice to Peetala Chandri Naidu in D.R.No.941/71 dated 05.01.2002 complaining the violation of condition Nos.2 and 3 of the patta, but it was addressed to Shivakoti Ratnamma @ Ratnam, wife of late Nagarju, the first petitioner herein by RPAD.

12. The contention of the petitioner is that no proof of sending notice either to Peetala Chandri Naidu or to the first petitioner by RPAD is filed before the Court, and in the absence of proof of service, recovery or resuming the land under the provisions of A.P. Act 9 of 1977 is in violation of principles of natural justice. Therefore, on this ground alone, the action of the respondents can be declared as illegal.

13. No doubt, no evidence is brought on record evidencing service of notice on the first petitioner or on original assignee, but it is evident from the record that it was sent by RPAD as per the endorsement. When the so-called notice was sent by RPAD, presumption in illustration No.(d) of Section 114 read with Section 16 of the Indian Evidence Act, 1872 can be drawn that the notice was sent

in ordinary course of its business and it is deemed to have been served, but the presumption is rebuttable. However, no evidence is brought on record in proof of sending notice by RPAD i.e. by producing postal receipt or acknowledgment etc. Therefore, presumption under Section 114 of the Indian Evidence Act, 1872 cannot be drawn by the court to conclude that notice is deemed to have been served on the first petitioner in Form-I. At the same time, in Form-I the first petitioner allegedly signed with date 24.07.2002, but whereas the petitioner is only a thumb impression holder and she affixed her thumb impression on the writ affidavit as well as on the vakalath. Thus, the question of her signing on the notice issued by the respondent does not arise, even on vakalath, the petitioner affixed her thumb impression, but not signed as 'Shivakoti Ratnamma nissani'. Therefore, the alleged endorsement on form-I regarding due service cannot be accepted.

14. According to the show cause notice and notice in Form-I, the first petitioner is in possession of the property, but her possession is illegal and she failed to establish her lawful title to the property, having allegedly succeeded the same from Chandri Naidu under the provisions of Hindu Succession Act. However, an opportunity is to be afforded to the petitioner by the respondents to explain as to how she came into possession of the property, but without affording any reasonable opportunity to the petitioner, the respondent passed an order dated 13.01.2003 summarily evicting the first petitioner from the property and allegedly took possession of the property under panchanama and delivery receipt dated 14.02.2003, thus, it is evident from the record that the original assignee was Peetala Chandri Naidu and the petitioner failed to establish that she is the daughter of Peetala Chandri Naidu-original assignee by producing evidence, however, she was in possession and enjoyment, even according to the respondents in view of issue of show cause notice in Form-I and in utter disregard of condition Nos.2 and 3 of original grant i.e., assignment. Even if the

respondents found that the first petitioner is in unlawful possession, she cannot be evicted except by due process of law and that apart due service of show cause notice and Form-I notice are not established in view of discrepancy I pointed out in the earlier paragraph. Therefore, the order passed by the respondents evicting the first petitioner summarily and taking delivery of possession by panchanama and under delivery receipt have been passed without following due process of law and that the resumption order passed by the respondents is violative of principles of natural justice, consequently proceedings taken up by the respondents cannot be sustained.

15. Hence, I hold that the interference of the respondents with the possession of first petitioner and attempting to evict the petitioner from possession of Ac.0.95 cents in S.No.155/2 is illegal and consequential proceedings are not binding on the first petitioner. Therefore, the highhanded action of the respondents is declared as illegal, further the respondents are permitted to initiate fresh proceedings under the provisions of the A.P. Act. 9 of 1977 and resume the possession of the property of an extent Ac.0.95 cents in S.No.155/2 of Anandhapuram Village in accordance with law.

16. With the above direction, the writ petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 01.04.2016

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