

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.24821 of 2008

ORDER:

Heard Si V.Jithender Rao for petitioners, the Assistant Government Pleader for Revenue and Smt.M.Bhaskara Lakshmi for the 5th respondent.

The petitioners pray for Writ of Certiorari to call for the records leading upto and inclusive of order, dated 27-09-2008 in File No.BCW5/252/2008 and quash the same as illegal, arbitrary and amounts to refusing to exercise the jurisdiction conferred on the 1st respondent.

The operative portion of order, dated 27-09-2008 reads as follows:-

“As seen from the lower court records and also Director (Appeals) order dated 28.11.2007, wherein the Joint Collector was directed to inspect scheduled land personally, but it was not complied, only Tahsildar inspected and enquired. He has also not discussed in his order about the points mentioned in earlier order. As per Board Standing Orders 15(4)(ii)(h) the assignment of Watercourse porambokes, namely margins of channels, streams etc., are prohibited. It was not available on the record whether the assignment was made to the appellants herein after change of classification. In view of the above, the case requires further examination at the

level of Joint Collector and therefore, the orders of the Joint Collector dated 27.02.2008 are set-a-side and the case is remanded back to the Joint Collector for further enquiry and after making personal inspection of the subject lands, pass orders such as deemed fit according to rules after giving opportunity to the appellant as well as respondents herein (emphasis added).

The writ petition is substantially against the order of remand.

Mr.V.Jithender Rao has drawn the attention of the Court to various orders passed by the Revenue Divisional Officer, Vizianagaram and the Joint Collector, Vizianagaram on previous occasions. He, however, fairly submits that to examine whether the reasons stated by the 1st respondent in the order dated 27-09-2008 are corrected or not, the orders passed by respondents 2 to 4 on previous occasions may not be very relevant.

To appreciate whether the remand now ordered by 1st respondent is tenable or not, the following circumstances are referred to.

The petitioners herein aggrieved by the order of the 2nd respondent in Rc.No.1868/05/E2, dated 11-09-2006 filed appeal before the 1st respondent in Case No.BCW5/589/2006. The 1st respondent accepted the objections raised by the writ

petitioners herein and allowed the appeal, remanded the matter with specific directions. The directions issued by 1st respondent through order dated 28-11-2007 are extracted for appreciating the illegality committed by the 2nd respondent after remand.

“Heard the arguments. Perused the connected records, written submissions, grounds of appeal and other material papers filed. As per the report of the R.D.O. Vizianagaram it was revealed that the assignees have got Ac.2-20 cts of Wet lands and Ac.7.23 cts of dry land in the name of Mandi Nageswara Rao S/o.Satya Rao and Ac.2.31 cts of Wet and Ac.8.41 cts of Dry in the name of Mandi Parvathi W/o.Nageswara Rao. It is not mentioned whether they have acquired the above lands before the assignment or after the assignment. As per Board Standing Orders 15(4)(ii)(h) the assignment of Water-course porambokes, namely margins of channels, streams etc., are prohibited. It was not available on the record whether the assignment was made to the appellants herein after change of classification. In view of the above, the case requires further examination at the level of Joint Collector and therefore, the orders of the Joint Collector dated 11.9.2006 are set-a-side and the case is remanded back to the Joint Collector for further enquiry and after making personal inspection of the subject lands, pass such orders as deemed fit according to rules after giving opportunity to the appellants herein.”

The 2nd respondent on 27-02-2008 admittedly without personally inspecting the subject matter of the writ petition, but basing upon the report submitted by the Tahsildar, Denkada Mandal, Vizianagaram District, dismissed the appeal.

The 5th respondent in this writ petition, who was impleaded, as one of the respondents, filed the appeal before 1st respondent. In my considered view, the reasons recorded by the 1st respondent for remanding the case afresh cannot and could not be faulted for the 1st respondent while disposing of the appeal filed by the writ petitioners specifically directed the 2nd respondent to personally inspect subject lands and pass appropriate orders.

As there was deviation in the procedure and also the 2nd respondent did not conform to the directions of 1st respondent, in the considered view of this Court, the order impugned in the remand was justified in the fact situation of this case.

The counsel for petitioners requests the court to direct the 2nd respondent, on remand, to pass orders within a reasonable time.

The Assistant Government Pleader submits that the Joint Collector will dispose of the appeal as directed by 1st respondent, through order dated 27-09-2008, within eight weeks from the date of receipt of a copy of this order.

His statement is placed on record.

The writ petition is dismissed, however with a direction to the 2nd respondent to complete the enquiry within eight weeks from the date of receipt of a copy of this order. It is needless to observe that the 2nd respondent keeps in mind the directions given by the 1st respondent vide order dated 28-11-2007.

The parties are directed to maintain status-quo as regards possession during pendency of the appeal before the 2nd respondent, till a decision is taken and communicated to parties.

Miscellaneous petitions, if any, pending shall stand closed.
No order as to costs.

Dt: 20-09-2016
Prv



S. V. BHATT, J

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Prv

