

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.9236 OF 2008

ORDER:

Heard Mr.J.Narayana Swamy for petitioners and the Assistant Government Pleader (Assignment) for respondents.

The petitioners pray for the following relief:

“.....declaring the action of respondent No.1 in passing the impugned orders R.Dis.No.(B)/559/2007 dated 25.7.2007 and R.Dis.No.(B)/558/2007 dated 25.7.2007 in respect of Survey Nos.115-5 & 115-4 to an extent of 5-00 Acres each of A.Narayanapuram Village, Ananatapur Mandal & District without paying compensation to the petitioners under Land Acquisition Act as illegal, arbitrary, in violation of principles of natural justice and contrary to the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 and Rules thereunder and liable to be set aside and consequently direct the respondents to pay compensation to the petitioners for the above lands under Land Acquisition Act....”

At the outset, I would like to remark that the prayer appears to be in the nature of prohibition, but from the reading of the writ affidavit, this Court could appreciate that the petitioners in the instant writ petition are complaining against threatened dispossession of petitioners from subject matter of the writ petition without recourse to law by respondents. Therefore, by taking into consideration the totality of circumstances, the writ petition is heard and disposed of by this order.

The case of petitioners is that on 10.06.1962, the then Tahsildar, Anantapuramu assigned an extent of Ac.5-00 acres in Sy.No.115-5 of A.Narayanapuram Village in favour of P.Hanumanthappa, father of petitioners. On 23.03.1962, an extent

of Ac.5-00 in Sy.No.115-4 was assigned in favour of one P.Lakshmi Naidu, brother of 1st petitioner. After the demise of both P.Hanumanthappa and P.Lakshmi Naidu, it is alleged, the 1st petitioner is the legal heir and as per assignment conditions enjoying the property. On 18.04.1969, a registered gift deed was executed in favour of 1st petitioner. On the application of petitioners, the assignment was transferred vide order TA.Dis.No.15/91 dated 26.05.1982 in favour of 1st petitioner. Thus, the petitioners claim to be in possession and enjoyment of subject matter of the writ petition for the past several decades. The cause of action for filing the writ petition is that the respondents, with a view to assigning house site pattas under a welfare programme implemented by the State, are contemplating to assign subject land to beneficiaries. The legal objection against such assignment is that as long as the assignment in favour of petitioners is subsisting, issuing house site pattas to beneficiaries is illegal, arbitrary and unconstitutional. Hence, the writ petition.

Respondent No.1 filed counter affidavit alleging that the then Tahsildar, Ananthapuramu resumed land vide R.Dis.Nos.B/558/2007 & B/559/2007 dated 25.07.2007 and steps were also taken for issuing house site pattas to beneficiaries vide H.S.R.Dis.No.25/1417 dated 06.11.2007. It is alleged that the beneficiaries have also constructed houses in the subject matter of writ petition. The 1st respondent further alleges that the subject matter of writ petition is lying waste without cultivation for quite some time and resumption order was passed by accepting the substituted services of notice as sufficient notice and finally proceedings dated 25.07.2007 were issued.

In view of the reply, it is clear the assignment in favour of P.Hanumanthappa and P.Lakshmi Naidu is not in dispute, but restoration of land in favour of Government is claimed. Therefore, what remains for consideration is - whether the respondents before cancelling the assignment followed the procedure stipulated under the Board Standing Order or under Act 9 of 1977.

The petitioner filed additional documents through W.P.M.P.No.3685 of 2017 and by way of reply, it is stated that petitioners are in possession and enjoyment of the subject matter.

The respondents, in the case on hand, are admitting assignment in favour of predecessor-in-interest of 1st petitioner and also transfer of assignment in favour of successor-in-interest of the assignee. The respondents by specifically pleading that resumption order was passed on 25.07.2007 have come under obligation to discharge the onus that cancellation of assignment or resumption of land, for whatever reason, is in accordance with the procedure stipulated in this behalf. The counter affidavit admits that substituted service of notice was followed in the cancellation of assignment and proceedings dated 25.07.2007 were issued. The proceedings refer to the alleged omission of assignees not continuing to cultivate the land as one of the reasons. This Court appreciates the circumstances under which these reasons are discerned by respondents and has reason to conclude this reason availed for passing an order of resumption and thereafter assign the land to beneficiaries under the welfare programme. The procedure followed for claiming restoration of assigned land, in the case on hand, does not satisfy the principles of natural justice or the

requirements of applicable law. Hence, it is held that the respondents shall not interfere or disturb or dispossess petitioners from Sy.Nos.115-5 & 115-4 of an extent of Ac.5-00 each in A.Narayanapuram Village, except in accordance with law. In view of the findings recorded above, the proceedings dated 25.05.2007 are also set aside.

The writ petition is, accordingly, allowed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, stand closed.

21st August, 2017

Lrkm



S.V.BHATT, J