

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.7079 OF 2017

ORDER:

This writ petition is filed under article 226 of the Constitution of India seeking to issue a writ of mandamus to declare the action of the official respondents in declaring the unofficial respondents as Svai Jamadars and allotting plots to them under the Land Pooling scheme and denying the benefits to the petitioners, as illegal and arbitrary and consequently, set aside the proceedings initiated by the respondent authorities against the petitioners under the provisions of Act 9/77 as well as under the Rules of Land Pooling and consequently, direct the authorities to make a final declaration that the petitioners alone are eligible for the benefits of land pooling scheme and compensate them for the loss suffered during this period along with penal interest while allotting the residential and commercial plots to the petitioners as originally envisaged and put them in possession of the same.

Heard and perused the material available on record.

The petitioners submit that they belong to S.C. community and are landless poor. They were given assignment to small extents of land i.e. 40 cents, 90 cents etc., and they are eking out their livelihood by cultivating the said land. About 10 years ago, some persons got mining lease in the vicinity of the lands of the petitioners for excavation of granite and they asked the petitioners to lease their land for loading and unloading purpose. But the petitioners did not give any lease. Later the mining leases in favour of those persons were cancelled. The Government of Andhra Pradesh issued proceedings in December 2014 declaring the village of the petitioners as part of AP capital City area, and Land

Pooling Scheme (LPS) was notified in 25 villages of Tullur, Mangalagiri and Tadepalli Mandals including the village of the petitioners. The 4th respondent issued a publication under Form 9.1 on 09.07.2015 which contains the names of the petitioners as enjoyers and assignees of the subject land. Under LPS, the Government announced benefits to the persons whose land will be taken. The 4th respondent also entered into the development agreement cum irrevocable GPA with the petitioners and the Government paid annuity to the petitioners for the year 2015. While so, on 01.04.2016, the petitioners received notice from the 4th respondent, whereunder it was stated that in August 2015, the Tahsildar, Tullur Mandal, declared that the petitioners have violated the provisions of the Act 9/77 by alienating the land to respondents 8 to 10. Immediately, the petitioners submitted their explanations. Without conducting any enquiry and without passing any final orders and without canceling the assignment in favour of the petitioners, the authorities have declared the respondents 8 to 10 as Svai Jamadars and allotted the plots to them under LPS. The petitioners have not filed any appeal.

The 4th respondent filed a counter affidavit denying the allegations made by the petitioners and stating that the petitioners are the allottees of the above said land and that the said land is a rocky land and no crop was raised by the petitioners and that they are not in occupation of the land nor cultivating the same. They have alienated the land in favour of respondents 8 to 10 by violating the provisions of the Act 9/77. By suppressing these facts, the petitioners have entered into the development agreement with the 4th respondent and since the respondents 8 to 10 have not filed the consents, the first annuity amount

was paid to the petitioners. The petitioners are not entitled for the benefits under LPS such as yearly annuity or reconstituted plots. After noticing the mistake, notices were issued to the petitioners directing them to re-pay the annuity amount and also to return the development agreements. Thereafter, the 7th respondent issued notices to the petitioners dated 01.04.2016 for violation of the provisions of the Act, asking them to submit their explanations for alienating the assigned land. The petitioners offered their explanations and after perusing the explanations, the 7th respondent passed final orders on 26.05.2016 cancelling the assignment in favour of the petitioners and resuming the land. Against the said orders, the petitioners have not filed any appeal.

The respondents 8 to 10 filed counter affidavit stating that the petitioners are not entitled for any benefit under the Land Pooling scheme since they sold out their lands to them for a valid consideration under Agreements of Possessory sale executed by them. It is further submitted that the respondents 8 to 10 never asked the petitioners to lease out the subject land to them for loading and unloading the mining material and since the petitioners are not in a position to cultivate the land, they sold out the same to these respondents for a valid consideration and after receiving the sale consideration, the petitioners are claiming the benefits under LPS.

Heard and perused the material available on record.

While arguing the matter, it is submitted on behalf of the official respondents that the petitioners have already filed the appeal and the same is pending before the authority concerned. Therefore, if the petitioners seek any remedy with regard to cancellation of assignments

in their favour, they can agitate their grievance before the authority concerned.

At this stage, learned counsel for the petitioners submitted that the official respondents are insisting the petitioners for refund of the annuity already paid to them and therefore, the official respondents may be directed not to insist the petitioners for refund of the said amount till disposal of the appeal. Learned counsel for the official respondents stated that they have no objection for the same.

Considering the facts and circumstances of the case and since the petitioners have approached the competent authority by filing an appeal in respect of the issue involved in this writ petition, this Court is of the view that this writ petition can be disposed of with the following direction:

The Writ Petition is disposed of directing the official respondents not to insist the petitioners for refund of the annuity amount paid to the petitioners till disposal of the appeal filed by the petitioners before the competent authority. No order as to costs. Miscellaneous petitions, pending if any, shall stand closed.

June 21, 2017

KTL

RAJA ELANGO, J