

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.19004 of 2009

ORDER:

Heard Mr. K. Murali Krishna, counsel for the petitioners, Assistant Government Pleader (Revenue) for respondents 1 to 3 and 8, Assistant Government Pleader for Assignment, Mr. A.Prabhakar Sarma, counsel for respondent Nos.5 to 7 and Mr. N.Aswarth Narayana for respondent Nos.9 and 10.

The petitioners challenge proceedings D.Dis.A4/2105/96, dated 11.05.1998 of Joint Collector, Ananthapur District/3rd respondent and the proceedings No.BCW1/341/2007, dated 01.05.2009 of the Commissioner (Appeals)/8th respondent, as illegal, arbitrary and unconstitutional. The petitioners pray for declaring that they are entitled to retain Ac.3-00 in Sy.No.803-2 and Ac.3-00 in Sy.No.803-3 of Talamaria Village, Kothacheruvu Mandal, Anantapur District (for short 'petition land').

The circumstances relevant for disposing the writ petition are stated thus:

The petitioners applied for assignment of Government land claiming that the petitioners are landless poor persons and satisfy the eligibility criterion of Government under Board Standing Orders and also the instructions issued by the Government from time to time. According to petitioners, the

1st respondent, after enquiring into the applications and also being satisfied that the petitioners are entitled for assignment of Government land, on 27.02.1990 assigned petition land to petitioners. The petitioners ever since claim to be in possession and enjoyment of petition land. The 1st respondent through communication RC.No.628/94 (B), dated 24.08.1995 read with 27.12.1995 forwarded report to respondent Nos.2 and 3 on the extent of actual enjoyment of petition land and also encroachment by respondents 4 to 7 or Sivaijamedar (SJ). The 3rd respondent, basing on the reports received from the 1st and 2nd respondents, has taken up enquiry into assignment of petition land to petitioners without following the procedure stipulated under the Board Standing orders. The petitioners were not given opportunity and the 3rd respondent, after verifying the record of assignment of petition land recorded the following conclusions:

“I am of the opinion that the assignment was made in favour of Sri R.Satyamaiah and Sri T.Prasad in DAR Dis.28/99 dated 27.02.1990 without verifying the field position. Thus the assignment is liable for cancellation. Hence, the assignment made in favour of T.Satyamaiah and Sri T.Prada in DAR Dis.28/99 dated 27.02.1990 in respect of land in S.No.803-2 and 803-3 of Talamaria Village are hereby cancelled. The Mandal Revenue Officer, Kothacheruvu is hereby directed to assign the land in S.No.803-2 and 803-3 of Talamaria Village its all the S.J.dars as per their enjoyment on grounds after observing their eligibility.”

and finally cancelled the assignment dated 27.02.1990 in favour of petitioners. The 1st respondent further directed to

assign the petition land to all the SJ's, as per their enjoyment on ground, after verifying their eligibility.

The order of 3rd respondent was the subject matter of appeal before 8th respondent and 8th respondent set aside the order of Joint Collector dated 11.05.1998 and accepted the case of petitioners that they alone are entitled for confirmation and continuation of assignment of petition land. Respondent Nos.4 to 7 filed WP.No.34299 of 1998 and this Court vide order dated 21.03.2007 set aside the order of 8th respondent and remanded the matter for consideration and disposal afresh. The 8th respondent after remand, through order dated 01.05.2009 dismissed the appeal filed by the petitioners herein.

This Court finds it convenient, particularly keeping in view the limited ground urged by the counsel for petitioners, to excerpt the following portion of the order of 8th respondent, dated 01.05.2009.

“7. As seen from the lower court record, it is evident that the assignment was made only basing on rough sketch. The S.Jdars are all get nearly Ac.2-00 to Ac.2.23 acres of land from their share. The assignees have also get nearly Ac.1-00 of share from their father's property. The assignees themselves have admitted that some portion of the land is under the possession and enjoyment of (1) Sri Harijana Paradesi (2) Sri Harijana Gowrappa (3) Smt.Thimmakka and (4) Sri Narayanappa. The assignees have failed to prove that Sri Gowrappa, Paradesi etc., have encroached a portion of lands in Sy.No.803-2 and 803-3 of Talamaria Village only after its assignment made in favour of Sri T.Satyamaiah and Sri T.Prasad. It is proved that the assignment was made in favour of Sri T.Satyamaiah and Sri T.Prasad without verifying the filed position. The Joint Collector, Anathapur

cancelled the assignment made in favour of Sri T.Satyamaiah and Sri T.Prasad in DAR Dis.28/99 dated 27.02.1990 in respect of Sy.No.803-2 and 803-3 of Talamaria Village, Kothacheruvu Mandal and directed to assign the land in S.No.803-2 and 803-3 of Talamaria Village its all the S.J.dars as per their enjoyment on ground after observing their eligibility.

8. In the circumstances stated above, it is held that the Joint Collector, Ananthapur District have also taken a correct decision and I see no reasons to interfere with the order D.Dis.A4/2105/96 dated 11.05.1998 of the Joint Collector, Ananthapur District and the Appeal deserves no consideration on merits as well as facts. Accordingly, the appeal is dismissed.”

Learned counsel for the petitioners contends that the entitlement or eligibility of petitioners is not doubted and the assignment was granted by verification of revenue records and also ground possession. Now contrary view on or report by respondent on actual possession is untenable. According to him, when the application for assignment was considered, SJ's were not in possession and even assuming SJ's are in possession of some extent in the petition land, such possession cannot be treated as possession by SJ's of entire extent assigned in favour of petitioners. According to him, the orders impugned in the writ petition are liable to be set aside and assignment be confirmed in favour of petitioners.

Mr. Prabhakar Sarma, for respondents 5 to 7 contends that though the petitioners prayed for *mandamus*, the present writ petition is more in the nature of writ of *certiorari*, testing the order impugned in the writ petition on the requirements of writ of *certiorari*, according to him no ground worth considering by this Court is made out by the petitioners. He

further contends that under the Board Standing Orders, SJ's are entitled for preferential consideration at the time of assignment of land. In the case on hand, such requirement was overlooked and on thorough examination by the assigning authority, viz., field verification report no exception to the findings can be taken. The 3rd respondent being the authority to recall the assignment, after examining the entire record, held that the assignment of petition land is irregular and illegal. The 8th respondent being an appellate authority also recorded finding, that procedure was not followed by the then Tahsildar while assigning the petition land in favour of petitioners. From the above, he contends that this Court ought not to take note of the *ipsi dixit* assertions of petitioners, which are inconsistent with the reports of authorities and prays for dismissing the writ petition.

Learned Assistant Government Pleader for Assignment relies upon the findings of the 3rd and 8th respondents and submits that the Government is entitled to not only prioritise the assignees but also correct the errors, if any, in the matter of assignment and prays for dismissing the writ petition.

I have perused the record and taken note of the respective submissions of counsel appearing for the parties. For brevity, I do not propose to reiterate the averments or the contentions canvassed by the counsel appearing for the parties.

The point for consideration is whether recalling of assignment of petition land made in favour of the petitioners on the ground that the claim of SJ's is not considered is tenable or not?

The operative portion of orders of respondents 3 and 8 is excerpted. The findings of fact now recorded by 3rd respondent against the assignment in favour of the petitioners is that the assignment is irregular and respondent Nos.4 to 7, who are cultivating the land in the neighbourhood, have encroached the petition land. The assignment in the case on hand has been made basing on a rough sketch and if the actual enjoyment of land by S.J's was considered then it would have transpired that SJ is entitled to get nearly Ac.2-00 of land and nothing remains for consideration for assignment in favour of petitioners. A further finding is recorded that after considering SJ's claim for assignment, still a portion of land would be available for assignment in favour of petitioners as well.

From the above findings, it is clear that the 3rd respondent taking note of entitlement of SJ's, irregularity in assignment in favour of the petitioners and entitlement of each one of them i.e., petitioners, respondents 4 to 7, disposed of the application. Now the case of the petitioners is that in exclusion of respondents 4 to 7, petition land has to be assigned or confirmed in their favour. The petitioners or respondents 4 to 7 are beneficiaries of assigned land neither

can claim on priorities and it is for Government to consider and pass orders. The orders now passed *prima facie* appear to be on material relevant for this purpose and no exception can be taken. May be the eligibility of petitioners still remains a favourable point in favour of the petitioners for appropriate orders, as observed by the 3rd respondent for granting more land, if available in the same village. Though some attempt is made by Mr.Murali Krishna to persuade the Court to direct reconsideration of entire issue by the 1st respondent, this Court is not persuaded to accept his submission but to meet the ends of justice, while dismissing the writ petition this Court considers it appropriate to direct the 1st respondent to take note of findings already recorded on the eligibility of petitioners for assignment of Government land and to the extent of availability of land assignment orders are passed in favour of the petitioners as well.

Writ petition is dismissed with the above observation.

No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S.V.BHATT, J

Date: 30.08.2017
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