HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

<u>**WRIT PETITION No.2496 of 2017**</u>

<u>**ORDER**</u>:

Questioning the action of the first respondent in issuing the impugned notice dated 20.01.2017 proposing to conduct hearing for cancellation of 'D' form patta granted in favour of the petitioners in respect of the land admeasuring Ac.14.06 cents situated in R.S.No.536/2 of Jaggaiahpeta village and Mandal, Krishna District, as arbitrary and illegal, the present Writ Petition came to be filed.

2. The facts in issue are as under :-

Assignment of agricultural land was made by the 3rd respondent in favour of the petitioners in the year 2004. Later the names of the petitioners were mutated in the revenue records and also in Form No.1 B register. The entries clearly disclose about grant of 'D' form patta and its proceedings. The pattadar passbooks and title deeds were issued in favour of the petitioners. While things stood thus, the 3rd respondent issued a show-cause notice to the petitioners under Section 7 of the A.P. Land Encroachment Act, 1905 directing the petitioners to submit their explanation, alleging that they are in possession of Government land. An explanation came to be submitted by the petitioners on 04.07.2015 stating that they have been granted assignment over the said land and grant of assignment is also reflected in the revenue records. It is said that 3rd respondent verified the revenue records and dropped further proceedings. Later on, exercising the revisional powers under Board Standing Order (BSO) No.15(18), the 1st respondent issued a notice dated 20.01.2017 stating that the 2nd respondent herein has recommended for cancellation of 'D' form patta granted in favour of the petitioners. It was further stated in the said notice that the petitioners shall appear for hearing on 27.01.2017 at the premises of the 1st respondent. Challenging the same, the present Writ Petition came to be filed.

3. The main ground urged by the learned counsel for the petitioners is that as per Board Standing Order (BSO) 15(18)(1), the Collector is entitled to conduct enquiry, with regard to any material irregularity in the procedure or the decision being grossly inequitable or it exceeds the powers of the Officer, who passed it, or it was passed under mistake of fact, fraud or misrepresentation, within a period of three years only from the date of assignment. If the period of three years exceeds, Government is competent to conduct the said enquiry under BSO.15(18)(2). It is his contention that as the 3rd respondent granted 'D' form patta in the year 2004; as the impugned notice does not disclose as to why the 2nd respondent intend to cancel the 'D' form patta and since the period of three years expires by

2007, the 1st respondent has no jurisdiction to exercise powers under Section BSO.15(18)(1).

4. By an order dated 25.01.2017, this Court granted interim directions as prayed for.

5. Immediately thereafter a counter affidavit along with vacate petition came to be filed, opposing the same. It is urged that the Union of India and State Government of Andhra Pradesh have taken up construction of houses to weaker section in Jaggaiahpet town, pursuant to which Tahasildar, Jaggaiahpeta has taken up verification of Government lands during the year 2015. At that time R.S.No.536/2 was classified as 'Anadheenam", was found suitable as it was nearer to the town for construction of houses. On verification, it was found that the petitioners herein got 'D' form pattas and pattadar passbooks illegally. After a detailed verification, a report was submitted to the Collector, Krishna District through the Sub Collector, Vijayawada recommending cancellation of the said 'D' form pattas. Then the Collector, Krishna issued notices to the petitioners to appear before him for hearing. Aggrieved by the same, the petitioners approached this Court. It is urged that as the pattas were granted in favour of the petitioners, illegally without following the

procedure, and in collusion with the then VRO, who is none other than the husband of 1st petitioner, prays to dismiss the Writ Petition.

6. The learned Government Pleader for Revenue would contend that the argument of the learned counsel for the petitioners that the Collector has no jurisdiction to pass orders beyond the period of 3 years is incorrect. According to him, there is an amendment, pursuant to which, the limitation of three years prescribed under BSO 15(18) has been deleted.

7. Heard Sri P.Nagendra Reddy, learned counsel for the petitioners and the learned Government Pleader for Revenue for respondents.

8. The learned counsel for the petitioners would submit that the Collector has got no suo-moto power to conduct hearing of the matter without there being any complaint from any authority or an individual. Though this plea was not raised in the petition, the learned counsel for the petitioner addresses the same, as it goes to the root of the matter.

9. The same is refuted by the learned Government Pleader for Revenue contending that merely because the word suo-moto is not used in BSO.15(18)(1), it does not by itself mean that the Collector has no suo-moto power to conduct the enquiry.

10. In order to appreciate the same, it would be useful to refer to BSO.15(18)(1) and (2), which reads as under:-

"(18) Revision :- (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of is final and no second appeal shall be admitted. But, if, at any time after the passing of the original or appellate decision, the collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraued or misrepresentation he may set aside, cancel or in any way modify the decision passed by an officer sub-ordinate to him. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him.

(2) The Commissioner of Land Revenue may at any time either suo-moto or on an application made to him call for an examine the records relating to any decision or order passed or proceeding taken by the Collector under the preceding sub-paragraph for the purpose of satisfying himself as to the legality or property of such decision or order or as to the regularity of such proceedings and pass such order in reference without giving the respondent a notice to show cause against the action proposed to be taken adversely to him. The Commissioner of Land Revenue may stay the execution of any such decision, order or proceedings pending the exercise of his powers under this subparagraph in respect thereof.

(3) The State Government may at any time, either suo-moto or on an application made to them, call for an examine the records relating to any decision or order passed or proceeding taken by any authority or Officer subordinate to them under the preceding subparagraphs for the purpose of satisfying themselves as to the legality or propriety of such decision or order or as to the regularity of proceeding and pass such order in reference there to as they think fit. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him. The Government may stay the execution of any such decision order or

proceeding pending the exercise of their powers under this sub-paragraph in respect thereof. "

11. A reading of the above two provisions makes it clear that the period of three years, prescribed for the purpose of initiating enquiry, has been dropped/deleted. As things stand today, no time limit is fixed for the purpose of initiating enquiry. It is true that in BSO.15(18)(2) and (3) the word 'suo-moto' has been specifically mentioned, giving 'suo-moto' power to the State Government and Commissioner, Land Revenue. Though the word '*suo-moto*' is not specifically mentioned in clause (1) of BSO 15(18), but a reading of the provision would lead to an irresistible conclusion that the Collector has also got 'suo moto' power to enquire into the allegations made. The word "if the Collector is satisfied" referred to in BSO 15(18)(1) gives ample authority to the Collector to suo-moto exercise his power, though the word "suo-moto" was not used. It is not necessary that there should be a formal complaint or a representation, for the purpose of conducting an enquiry. Information in any form, if comes to the knowledge of the District Collector, would enable him to initiate proceedings under BSO 15(18)(1). In fact a learned Single Judge of this Court in **Smt. Munganda Venkataratnam and others v. Joint Collector, West Godavari District, Eluru and another**[1] held that it is only the collector, who has got the power of cancellation of

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[1] 2006(2) ALT 44

assignment and not by any other authority including the Joint Collector. Such being the position, the Collector can definitely initiate proceedings on his own.

12. Accordingly, the Writ Petition is dismissed. However, the petitioner shall submit his explanation to the notice issued, within a period of two weeks from today. Pursuant thereto, the authorities concerned shall pass appropriate orders in accordance with law. No costs. Miscellaneous Petitions, pending if any, in this Writ Petitions hall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:07.04.2017
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