

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.29149 OF 2008

ORDER :

1. This Writ Petition is filed by the petitioner to declare the action of the 2nd respondent in rejecting the request of the petitioner for grant of Pattadar Passbook by proceeding No.E5/2263/2005 dt.13.10.2006 in respect of an extent of Acres 5.00 guntas of survey No.1032 of Jawaharnagar, Shamirpet Mandal, Ranga Reddy District.

2. Petitioner's father Abdulla Khan was an ex-serviceman.

3. It is not in dispute that in 1950 or so, the State Government embarked upon a proposal to assign land to ex-servicemen. To facilitate the same, the Government earmarked an area of Acres 5977.03 guntas of land in Jawaharnagar and other villages vide G.O.Ms.No.25, dt.23.10.1952. It assigned the land to Labour Department to rehabilitate ex-servicemen personnel.

4. As per the Government orders in Memo dt.09.01.1958, a Co-operative Society known as Jawaharnagar Cooperative Land Colonization Society (for short 'the Society) was registered and the said land was transferred to the Society under the custody of Registrar of

Cooperative Societies. The Society allotted land to 149 ex-servicemen.

5. It was alleged that this was done without proper regularization and since there were allegations of mismanagement against the managing committee of the Society, the District Collector by proceedings dt.27.10.1968 superseded the Committee and appointed the Cooperative Sub-Registrar as Special Officer to manage the affairs of the Society.

6. Prior to the super-session of the Society, petitioner's father Abdulla Khan was allotted an extent of Acres 5.00 guntas in survey No.1032 of Jawaharnagar village, Shamirpet Mandal with registration No.20886 vide letter No.75/Jn/66, dt.21.03.1966.

7. Petitioner's father died on 06.11.1995.

8. On 17.04.2004, petitioner applied to the Office of the Collector, Ranga Reddy District for issuance of Pattadar Passbook and Title Deed and also for 'No Objection Certificate'.

9. Thereafter, the Collector appears to have called for a report from the 4th respondent-Mandal Revenue Officer.

10. The 4th respondent conducted enquiry with regard to the eligibility of the petitioner and enquired about the possession of the petitioner and his family members.

11. Petitioner alleges that even the Panchayat Secretary of Jawaharnagar Gram Panchayat, Shamirpet Mandal, submitted a report on 30.11.2004 recommending the case of the petitioner and that the Revenue Inspector, Shamirpet Mandal also verified and found that the petitioner is in possession of the land.

12. The Mandal Revenue Officer (4th respondent) sent a report dt.15.03.2005 to the Revenue Divisional Officer (3rd respondent) stating that the verification of the record revealed that the then Tahsildar, Medchal had initially prepared a certificate in favour of petitioner's father, but it was not distributed and that the Mandal Revenue Inspector, Shamirpet Mandal reported that the land of Acres 5.00 guntas claimed by petitioner was ploughed by the legal heirs of the original allottee and the Panchayat secretary also enquired regarding the legal heirs of the original allottee and stated that the petitioner is the legal heir of the original allottee. So he therefore recommended for issuance of patta certificate to the petitioner in respect of survey No.1032 to an extent of Acres 5.00 guntas in Jawaharnagar village.

13. Thereupon, the Joint Collector-II, Ranga Reddy (2nd respondent) passed the impugned order. After adverting to the history of the case, the report dt.15.03.2005 of the Tahsildar, order passed on 28.01.1986 in W.P.No.524 of 1980 filed by the petitioner's father, the order dt.23.06.1986 in W.A.No.485 of 1986, and order dt.25.03.2004 in W.P.No.3911 of 1992 and batch, he concluded that the petitioner's father name is found in the list of 102 original allottees at Sl.No.86 and therefore the petitioner's father is an original allottee of the Society, that the applicant is the son of the original allottee, that he is in possession of the land of an extent of Acres 5.00 guntas in survey No.1032, but that on a personal inspection by him (the 2nd respondent), he observed no traces of cultivation on the land, attempts were made to convert the land to non-agricultural use and there were traces of land being converted into plotted area with stones and plotting.

14. Assailing the same, this Writ Petition is filed.

15. Counsel for the petitioner contended that once it is found that the petitioner's father was allotted land by the Society and his case was recommended for issuance of patta on a personal inspection made by the 4th respondent, but the said patta was not issued, the 2nd respondent should have

accepted the same and directed issuance of pattadar passbook to the petitioner accepting that he is the legal heir of the original allottee by the Society. It is contended that on a mere assumption that there is no traces of cultivation on the land, the impugned order has been passed and that such a finding is contrary to the report of the 4th respondent dt.15.03.2005 which specifically stated that the land was being ploughed by the legal heirs of the original assignee i.e., the petitioner.

16. The Government Pleader appearing for the respondents contends that petitioner's father was a party in W.P.No.524 of 1980 wherein he had specifically prayed for allotment of patta as per the allotment orders issued in proceedings No.75/Jn/66 dt.21.03.1966, that such prayer was rejected by this Court in W.P.No.524 of 1980 on 28.1.1986, and that the dismissal of the said Writ Petition was also confirmed in W.A.No.485 of 1986 by order dt.23.06.1986. He therefore contended that once the claim of the petitioner's father for issuance of patta was rejected by this Court, the petitioner cannot re-agitate the same issue and that the claim of the petitioner is barred by *res judicata*. He further contended that the petitioner is not even in possession of the land of Acres 5.00 guntas in survey

No.1032 and that the 2nd respondent had found that petitioner was not cultivating the land and had attempted to change it to non-agricultural use and on that ground also, petitioner is not entitled to pattadar passbook and the order passed by the 2nd respondent is valid.

17. Though the Writ Petition is of the year 2008, no counter affidavit has been filed by the respondents and the contentions of the Government Pleader are considered.

18. It is pertinent to note that the allotment letter in favour of the petitioner's father, Abdulla Khan, was of Acres 15.00 guntas in survey Nos.1024/3, 1032 and 1033 of Jawaharnagar village. On perusing the pleadings in W.P.No.524 of 1980 it is noticed that, in that case petitioner's father as well as other petitioners therein contended that they have been allotted lands more than Acres 5.00 guntas under allotment letters issued by the Society, that there is an attempt to resume the land by the Government to the extent it was in excess of the Acres 5.00 guntas of land pursuant to a policy decision taken by the Government (confining the assignment only to the extent of Acres 5.00 guntas), that they challenged this action of the Government to resume the area in excess of Acres 5.00 guntas in their possession as

one without jurisdiction, illegal and void and against the principles of natural justice.

19. Thus the grievance of the petitioner's father and others in W.P.No.524 of 1980 was to save the entire extent of land allotted to them under their respective allotment letters, even though the same was in excess of Acres 5.00 guntas, which the State Government had decided to be the limit of assignment per person.

20. On 28.01.1986 in the said Writ Petition, this Court held that once a policy decision is taken by the Government to allot only Acres 5.00 guntas of dry land or Acres 2.20 guntas of wet land, and it is being implemented, the petitioners cannot claim, by virtue of their enjoyment of property all the land allotted to them (which was more than Acres 5.00 guntas) and they should not be allowed to retain the full extent of land allotted to them beyond Acres 5.00 guntas. The Court held that the petitioners were in possession not in their own right but as a member of the Society for the benefit of the Society and that even though they had improved the area beyond Acres 5.00 guntas in their occupation, they cannot oppose the policy of the Government to take away the area beyond Acres 5.00 guntas, so that it can be distributed to other eligible persons. It

specifically stated that if a member is in possession of a particular category each namely his/her possession of Acres 5.00 guntas should not be disturbed.

21. Dissatisfied with the said order, the petitioners in W.P.No.524 of 1980 preferred W.A.No.485 of 1986.

22. The Division Bench confirmed the order to the extent only that it directed the State to take away the land in excess of Acres 5.00 guntas allotted to the appellants/petitioners in W.P.No.524 of 1980, but however granted liberty to the appellants to make appropriate representation to claim compensation, if any, for the extent of land required to be surrendered out of the land in their possession, which they claimed to have developed and to receive such compensation if any, that might be determined by such an authority in respect of the area which the petitioners might be so required to surrender.

23. Thus, the Division Bench also did not say that the petitioners therein were not entitled to retain Acres 5.00 guntas of land allotted to them by the Society.

24. Curiously, the 2nd respondent in the impugned order states that in the order dt.28.01.1986 in W.P.No.524 of 1980, the High Court observed that question of assignment @

Acres 5.00 guntas to each individual does not arise. There is no such observation in the order dt.28.01.1986 in W.P.No.524 of 1980 and this is pure imagination of the 2nd respondent.

25. What was decided in W.P.No.524 of 1980 and W.A.No.485 of 1986 was only whether the petitioner's father and other allottees, who are parties therein, were entitled to retain more than the extent of Acres 5.00 guntas which had been allotted to them by the Society. Nowhere it was decided that the petitioner's father was not entitled to retain Acres 5.00 guntas also, which was the minimum permissible extent for assignment as per the policy of the State Government.

26. Therefore the contention of the Government Pleader that claim of the petitioner's father for patta for the extent of Acres 5.00 guntas in survey No.1032 was rejected in W.P.No.524 of 1980 which was confirmed in W.A.No.485 of 1986, is not accepted.

27. The Government Pleader further contended that the petitioner was not in possession of the land.

28. This contention is also not correct, because the 4th respondent had submitted a report to the 3rd respondent on

15.03.2005 stating that the petitioner was ploughing the land and he is in possession of the land. In fact even the 2nd respondent states in the impugned order that the petitioner is in possession of the land. No revenue record of any nature is produced by the respondents to contend that the petitioner or his father was never in possession of the said land. Therefore, this contention is also rejected.

29. Lastly, it was contended that the 2nd respondent had found that the petitioner is not cultivating the land.

30. The actual observations of the 2nd respondent during personal inspection are as under:

- “a. There is no trace of cultivation on the land.
- b. On the contrary, attempts are made to convert the land to non-agricultural use.
- c. There are traces of land being converted into plotted area with stones and plotting.”

31. I have already recorded that the 4th respondent in his report dt.15.03.2005 categorically asserted that the land was ploughed by the petitioner. It may be that when the 2nd respondent went to the land, there was no cultivation in the land and his statement that attempts were made to convert the land into non-agricultural use cannot be taken to mean

that there is conversion of land into non-agricultural use even if that may have been the intention of petitioner.

32. As per G.O.Ms.No.1406, dt.25.07.1958, where lands are assigned by the Government, it is required that the said land should be brought under cultivation within three years. It is not the case of the respondents that within three years of delivery of possession by the Society, the petitioner's father did not bring the land into cultivation. Admittedly the allotment to the petitioner's father by the Society was in 1966. On the basis of an inspection made 40 years later in 2006, without quoting any revenue record, the 2nd respondent cannot say that the petitioner has not cultivated the land for the period between 1966 and 2006. Therefore, it is clear that the impugned order is based on irrelevant considerations and is perverse. So it cannot be sustained.

33. Accordingly, the Writ Petition is allowed; the impugned order of the 2nd respondent dt.13.10.2006 is set aside and the 2nd respondent is directed to issue pattadar passbook to the petitioner to the extent of Acres 5.00 guntas in survey No.1032 of Jawaharnagar Village, Shamirpet Mandal, Ranga Reddy District. There shall be no order as to costs.

34. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

23rd March, 2017
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