

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

W.P.No.13808 OF 2007

AND

W.P.No.10017 OF 2007

COMMON ORDER:

Since these writ petitions are inter-related to each other, they are disposed of by this common order.

2. W.P.No.10017 of 2007 came to be filed questioning the action of the 4th respondent in issuing the show cause notice in proceedings No.E4/ 1460/ 2007, dated 27.04.2007 purporting to exercise the revisional powers under Section 166-B of A.P. (T.A.) Land Revenue Act, 1317 Fasl, to invalidate the assignment of land made to the vendor of the 1st petitioner, late Major Harikishan Das in the year 1965, in relation to the land admeasuring Ac.5.00 in Pagannaguda Village, Hamlet of Turkayamjal Village, Hayathnagar Mandal, Ranga Reddy District as illegal and arbitrary.

3. W.P.No.13808 of 2007 is filed by the Welfare Association represented by its members, questioning the action of the respondents in interfering with the possession of the petitioners in respect of 44 plots in Survey Nos.277, 278 and 279 part of Pagannagua, Hamlet of Turkayamjal Village, Hayathnagar Mandal, Ranga Reddy District, as illegal and arbitrary.

4. As seen from the prayers in the writ petitions, one relief is in respect of land admeasuring Ac.5.00 in Survey No.279/ A, whereas other relief is in respect of lands in Survey Nos.277, 278 and 279 part.

5. The facts in issue are as under:

One Major Harikishan Das, who was an ex-serviceman, was given written permission to occupy land admeasuring Ac.5.00 in Survey No.279 of Turkayamjal Village, Hyderabad East vide file No.D1/ 2469/ 1965. It is stated that his name was recorded as a pattadar by way of issuing supplementary sethwar. Since he has every right to sell the property after 10 years, sold the same in favour of the writ petitioners, under a registered sale deed dated 28.06.2004 vide document No.9868/ 2004. While things stood thus, the respondents started threatening to dispossess the petitioners without following due process. Then the petitioners filed W.P.No.7882 of 2007, which was dismissed on 17.04.2007, with an observation that the respondents cannot take back possession without following due process of law. Thereafter, they filed Writ Appeal No.349 of 2007, which was disposed of on 26.04.2007 confirming the said findings. The 4th respondent, Joint Collector, issued the impugned show-cause notice vide proceedings dated 27.04.2007, purporting to exercise power under Section 166 B of the A.P. (Telangana Area) Land Revenue Act, 1371 Fasli. Various reasons were set out in the show cause notice as to why temporary permission made in favour of Major Harikishan Das should not be cancelled.

6. Challenging the said show cause notice, W.P.No.10017 of 2007 came to be filed. Later, this Court, by order dated 09.05.2007, granted interim order.

7. A counter came to be filed along with the vacate stay petition. After considering the matter at length, this Court by an order dated 29.08.2007, made the stay absolute in W.P.No.10017 of 2007.

8. In W.P.No.13808 of 2007 status quo was granted on 02.07.2007 and the matter was directed to be listed for final hearing.

9. This Court, while making the interim order absolute, observed that there is no dispute that the land admeasuring Ac.4.19 guntas in Survey No.279 of Pagannaguda, Hamlet of Turkayamjal Village, Hayathnagar Mandal, Ranga Reddy District was assigned to Major Harikishan Das, an Ex-serviceman. There is also no dispute that he alienated the land to the petitioners in W.P.No.10017 of 2007 under valid sale deed after obtaining necessary permission from the revenue authorities. In respect of the same, the land was also said to have been alienated in favour of APSRTC in the year 1993.

10. As seen from the material filed in both the writ petitions, permission was temporarily granted to Major Harikishan Das to occupy the land admeasuring Ac.5.00 in Survey No.279 of Turkeyamanjil Village. The said Form-G, i.e., permission to occupy land, further indicates that permission to occupy shall not confer the right to mine on the land or collect minerals therefrom. It further states that Major Harikishan Das is not empowered to transfer the occupancy, without obtaining sanction from the

Tahsildar. This was issued in the year 1965. There is no dispute about the same. In the year 2004 i.e. on 18.06.2004, the Collector, Ranga Reddy District issued a memo stating that the land was assigned to Major Harikishan Das under an ex-serviceman quota and hence, no objection was issued for sale/registration purpose subject to the following conditions:

“This NOC is not a bar to any proceedings pending or liable to be initiated under the ULC or APLR (COAH Act against the above mentioned land.

The undersigned reserves the right to cancel the NOC if it is found to be issued by the mistake of fact or misrepresentation or it is issued in contrary to the village record or it is found to be assigned land or ceiling surplus land or any mistake notice in future in the matter.”

11. After obtaining said memo on 18.06.2004, these lands were said to have been sold in favour of the writ petitioners and some registered sale deeds were also executed. Thereafter, electricity connections were also given to the occupants of the land.

12. The writ petitioners in W.P.No.13808 of 2007 are those persons, who are said to have purchased the land (plots) from the writ petitioners in W.P.No.10017 of 2007. It is stated that the land mentioned in W.P.No.10017 of 2007 was divided into plots and were sold to these petitioners under a registered sale deeds. Hence, they also filed writ petition questioning the action of the respondents in interfering with the same.

13. Counters came to be filed disputing the averments in the affidavit filed in support of the petition. It is stated that the land in Survey No.279/1 is classified as Gairan Sarkari and that the grantee has only written permission to occupy the land with certain conditions. But the same will not confer any right in him. It is further stated that the very assignment in favour of Major itself is contrary to G.O.Ms.No.681, dated 18.04.1964 since assignment is made only to the Jawans, but not to the Majors. It is further stated that as lands were not brought under cultivation within three years from the date of assignment and in view of the representation dated 01.02.1998, wherein he requested the District Collector to handover the physical possession, which was under the encroachment, is sufficient to reject the request. It is further stated that since the name of the assignee was not carried out in revenue records of the year 1990, the land was treated as a Government land and the same was alienated in favour of APSRTC in the year 1993 vide G.O.Ms.No.130, dated 09.02.1993. It is stated that subsequent alienation supersedes the temporary allotment made in favour of Major Harikishan Das. It is further stated that APSRTC is in possession of the land after paying required charges and, therefore, the argument that the petitioners are being dispossessed from the said land, is incorrect. It is further stated that after dismissal of W.P.No.7882 of 2007, steps were taken for cancellation of assignment and, accordingly, notice was issued to the assignee. It is further stated that, since alternative

remedy is available to the petitioners, they could not have approached this Court questioning the said notice.

14. So far as the counter of the 5th respondent/ Sarpanch in W.P.No.10017 of 2007 is concerned, he states that the total extent of land in Survey No.279 is Ac.67.39 guntas. The entire land is Government land vide MRO/ HYT Lr.No.C/ 527/ 97, dated 11.06.1997 and 30.08.1997. The Government has allotted Ac.5.00 each to one R.Nagaiah, Narasimham and G.Ramakrishna under the quota of Ex-Servicemen vide Proceedings No.B1/ 4704/ 1965, B1/ 2397/ 1965 and B/ 1/ 4718/ 1965 respectively. The Revenue authorities surveyed the entire land and Sub-divided the said land as Survey No.279/ 1. The Sub-divisions 2, 3 and 4 were allotted to the above said Ex.Servicemen. The land admeasuring Ac.12.25 cents was allotted to CCLA Employees Co-op. Housing Society as per G.O.Ms.No.2107, dated 05.12.2005 and the land admeasuring Ac.27.15 guntas was allotted to Rajiv Gruha Kalpa Housing Society (A.P. Housing Board) vide Lr.B./ 469/ 2008, dated 01.03.2008. It is said that no land was allotted to any other persons or to any society in the said survey number.

15. It is further stated in the counter that one Mr.Ganesh Reddy tried to grab the land by taking advantage of temporary allotment made in favour of Harikishan Das, who is Major. It is his case that the revenue authorities created a file for the said purpose in the year 1997 and showed that the lands were allotted to Harikishan Das and also granted permission for alienation. According to him,

there is no sanctioned layout from the authorities concerned and the said land admeasuring Ac.12.00 in Survey No.279/1 was allotted to APSRTC for construction of a bus depot.

16. Counters also came to be filed by APSRTC which are in line with the stand taken by the official respondents.

17. Reply affidavit came to be filed disputing the same.

18. Learned counsel for the petitioners mainly submits that issuance of notice purported to be under Section 166-B of the Act, nearly 40 years after assignment, is illegal and improper and he relied upon the judgment of the Apex Court in Joint Collector, Panga Reddy District and another v D.Narasing Rao and others¹ and also the Division Bench judgment of this Court in Lanka Mohan and others v State of Telangana, rep. by its Chief Commissioner of Land Administration, Nampally Road, Hyderabad and others² to show that though there is no limitation for giving notice under Section 166-B of the Act but the same has to be issued within a reasonable time.

19. When notice is sought to be issued for cancellation of assignment granted about 30 years back, it cannot be said that it was issued within a reasonable time. Had it been a simple case of cancellation of assignment as pleaded, after such a long lapse of time more so, when the party acquired substantial right over the property by possession, this Court would have interfered in view of

¹ 2015(3)SCC 695

² 2017 (2) HLT 161 (D.B.)

the ratio laid down in the two judgments referred to above. But the said notice does not indicate that it was under Section 166-B of the Act. Even assuming it to be one, number of disputed facts are sought to be raised.

20. Apart from that larger question that arises for consideration is:

“Whether there is exist land as claimed by the petitioners or whether the land claimed by the petitioners is inclusive of the land allotted to APSRTC or whether the land allotted to APSRTC is different from the assigned land or land permitted to be occupied by the Government?”

21. Admittedly, the temporary assignment was granted in the year 1965. It may be true that though assignment was granted to a person, who did not enter into the land, since 1965 and no claim was made by any of the authorities till 2007. If really the reason for the action is that the assignee failed to fulfill the conditions of the assignment, or the authorities came to know on the basis of the representation made in the year 1998, no reasons are forthcoming as to why no steps were taken till 2007. It is to be noted that impugned notice for cancellation of patta granted to the petitioners came to be issued in the year 2007. If the authorities were aware about the alleged violation in the year 1998, in respect of the land said to have been assigned, of course, temporarily in the year 1965, no explanation is forthcoming as to why the authorities kept quiet till 2007, more so when permission to Major Harikishan Das to sell the land was granted in the month of June, 2004, by the Collector.

22. The plea now raised is that the records were manipulated in the year 1993 and the revenue authorities created files for the said purpose in the year 1997 to show as if the land was allotted to Harikishan Das and also permission being granted for alienation in favour of Ganesh Reddy. It is further pleaded that the land was assigned to APSRTC in the year 1993 itself and that they have taken permission to convert Ac.12.00 of land. It is now pleaded that the said Harikishan Das was permitted only to occupy the land, which does not confer any right on him. Such being the position, where there are number of disputed questions of fact, and having regard to subsequent events (Sale to APSRTC) etc., it would be just and proper, if the petitioners explain their stand to the show cause notice dated 27.04.2007 within six weeks from today and then contest the matter. In the event of giving explanation the authorities shall deal with the same and pass order in accordance with law at the earliest. Till such time *status-quo* as on today to be maintained in all respects.

23. Accordingly, both the writ petitions are disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

C. PRAVEEN KUMAR, J

Date: 22.09.2017
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