

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 638 of 2014

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the Tahsildar in issuing eviction orders vide proceedings Roc.347/ 2013/ A dated 13.12.2013, as arbitrary and contrary to the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (for short "the Act") and violative of principles of natural justice.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner herein claims to have purchased land admeasuring Ac.2.60 cents in R.S.No.807/ 1 of Kalavapudi Village, Kalla Mandal, West Godavari District, for a valuable consideration from one Dantuluri Panduranga Raju. After purchasing the said land, he came to know that it was an assigned land. In spite of the same, he was paying land revenue which was accepted in the name of D.Panduranga Raju. While things stood thus, on 13.12.2013, the impugned eviction order came to be passed against one Vegesana Venkateswara Raju, stating that he is in possession of the land. It is the case of the petitioner that though he is in possession of the property, no notice was given to him. By issuing a notice to Vegesana Venkateswara Raju, the impugned order came to be passed. The action of the authorities in passing impugned orders of eviction and restoration of land in favour of original assignee without issuing any notice to the

petitioner, who is in possession of the land, is the subject matter of challenge in the writ petition.

3) By an order, dated 09.01.2014, while admitting the writ petition, this court granted interim suspension as prayed for.

4) A counter came to be filed by the respondent-Tahsildar disputing the averments made in the affidavit filed in support of the writ petition. It is their case that the petitioner was never in possession of the land and that a notice came to be served on the person, who is in possession of the property. It is stated that the original assignee alienated the land in favour of the petitioner by way of un-registered sale deed. Later on, the petitioner sold the land to Vegesena Venkateswara Raju by oral/un-registered sale deeds and as such Vegesena Venkateswara Raju is in possession of the property as on the said date. It is further stated that there is R.C.C. slab house bearing assessment No.524 constructed by the original assignee in which the said V.Venkateswara Raju is residing. During the course of enquiry, the said V.Venkateswara Raju is said to have stated that he purchased the said land for a sale consideration of Rs.44,00,000/- and a document to that effect is filed before the Court. Having regard to the above, it is stated that there are no merits in the writ petition and the same is liable to be rejected.

5) The original assignee, D.Panduranga Raju, filed W.P.M.P.No.34040 of 2013 seeking his impleadment as respondent No.2 and also filed counter along with the petition. A reading of

the averments in the affidavit filed would show that in the year 2012, as there was some interference by the father of the writ petitioner, he was constrained to file a suit vide O.S.No.116 of 2012 seeking injunction against the father of the writ petitioner. I.A.No.877 of 2012 which was also filed to implead the petitioner as second defendant was allowed on 01.08.2013. Thereafter, he made a representation to the Tahsildar, Kalla Mandal and the Revenue Divisional Officer, Narsapur, stating that the land which was allotted to him was taken possession by one Vegesana Venkateswara Raju and sought for restoration of the same. Pursuant to the said representation, notices were issued and subsequently land was restored in his favour. Having regard to the fact that the writ petitioner was never in possession of the land, he pleads dismissal of the writ petition.

6) The main ground urged by the learned counsel for the petitioner is that though the writ petitioner is in possession of the property, no notice was issued to him, before passing the impugned order. It is also urged that from a reading of the representation made by the original assignee (D.Panduranga Raju) before the Revenue Divisional Officer, no explanation is forthcoming as to how V.Venkateswara Raju came into possession of the property. It is urged that since the documents filed along with the writ petition show the name of the petitioner as a person in possession of the property, the authorities ought to have issued a notice to him before passing the impugned order.

7) Learned counsel appearing for the original assignee would contend that against an order passed by the Tahsildar, an appeal would lie before the Revenue Divisional Officer as such this Court ought not to have entertained the writ petition under Article 226 of the Constitution of India. Coming to the representation made by the original assignee to the R.D.O., it is urged that the land was given to the father of the petitioner on crop sharing at 40% and 60% and believing the father of the petitioner the original documents were handed over to him for the purpose of taking loan from financial institutions. Later on, at the instance of the creditors, the father of the petitioner gave away the documents to the financial institutions. It is stated that, at present, the land is in possession of V.Venkateswara Raju, as he claims to have purchased the same by paying Rs.44.00 lakhs which is reflected in the counter filed by the Tahsildar.

8) The Government Pleader for Revenue would contend that the writ petition is not maintainable as State is not made a party. It is his case that since there is a dispute with regard to factual aspect namely the person who is in possession of the property, the same cannot be decided, more so, when no legal document is filed to show as to who is in possession of the property.

9) The short question that arises for consideration is whether the Tahsildar was right in passing the impugned order?

10) Admittedly no admissible document is placed on record to show that the petitioner is in possession of the property. Though

the learned counsel for the petitioner relied upon certain documents, the same does not any way confer any right on the petitioner, as these document only show that the writ petitioner paid land tax on behalf of the original assignee. The said document fortifies the plea of the respondent that the land was given to the father of the petitioner on crop sharing in the ratio of 40%and 60% It is further urged that there is no explanation as to how the said V.Venkateswara Raju came into possession of the property. Admittedly, a suit came to be filed by the original assignee against the father of the petitioner, when he tried to interfere with the property. Taking advantage of the same, it is urged that the said suit came to be filed as the petitioner and his father are in possession of the land. I am afraid the said inference cannot be drawn for the reason that the suit was filed for injunction restraining them from interfering with the property.

11) It is also not in dispute that one Dantuluri Panduranga Raju is original assignee and he could not have alienated the land violating Section 3 of the Act. A representation given by original assignee to the Tahsildar, which is sought to be relied upon by either counsel, show that the land was given to the father of the petitioner on crop sharing in the ratio of 40%and 60%and for the purpose of raising loans, the original documents were said to have been handed over to the father of the writ petitioner, who inturn is alleged to have sold the land to his creditors instead of his own property. It is said that the father of the petitioner was indebted to a tune of Rs.3.50 crores. The letter dated 03.04.2013 written

by the Revenue Divisional Officer to the Tahsildar also indicate that during the period 2006-2007, land was given to the father of the petitioner on crop sharing basis at 40-60% and that he has handed over the original documents so as to facilitate the father of the petitioner to take loan from financial institutions. It also indicates that, at present, the land is in possession of V.Venkateswara Raju and he is taking steps of removing the bunds of the land and is changing the physical features of the said land including his house.

12) The counter filed by the Tahsildar show that during his enquiry, the said V.Venkateswara Raju, stated that he purchased the land and a house for a sale consideration of Rs.44.00 lakhs. Therefore, there is any amount of doubt as to whether the petitioner is in actual physical possession of the land. Though he claims to have purchased the said land from the original assignee but failed to place on record any document ie. any sale deed or any agreement of sale, to that effect. Having regard to the above, I see no grounds to interfere with the impugned order.

13) Accordingly, the writ petition is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15.03.2017
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