THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P. No.5534 of 2007

O R D E R:

This Writ Petition is filed challenging the order dt.19.01.2007 of the 1st respondent reversing the order dt.25.03.2006 of the 2nd respondent under the Board Standing Orders.

2. The father of the 5th respondent by name Balla Adinarayana was employed as Additional Revenue Inspector in the Revenue Department of the State of Andhra Pradesh and he retired from the said post.

3. The 5th respondent, who is his son made an application for issuance of a Possession and Enjoyment Certificate for the land of Ac.0.03 cents which is adjacent to the 5th respondent's property.

4. It is admittedly a 'Village Poramboke Site' forming part of Acres 5.38 cents in survey No.20/1 of Seshapuram village.

5. On 22.02.2003 vide proceedings D.Dis.No.3, 4th respondent issued a possession certificate certifying that the 5th respondent was in occupation of the said site.

6. Petitioner challenged the same before the Revenue Divisional Officer, Tirupati(3rd respondent) stating that the land for which Possession Certificate was given to the 5th

respondent was a Village Poramboke Site and it could not have been given to him. He contended that the villagers of Seshapuram village also objected to the same and gave a representation on 11.05.2005 to the 3rd respondent stating that the land is required for public purposes, and that there is a public well existing in the land, for which possession certificate was issued to the 5th respondent, and sought cancellation of the same, on the basis of the said objections of the villagers.

7. However, without issuing any notice to the 5th respondent, the 3rd respondent cancelled the Possession Certificate issued to him by proceeding D.Dis.No.(G)/2142/2005 dt.14.10.2005 on the ground that it is required for public purposes.

8. The 5th respondent challenged the same by way of Appeal under the Board Standing Orders to the 2nd respondent-Joint Collector, Chittoor.

9. The Joint Collector, Chittoor by order dt.25.03.2006 took note of the fact that the father of the 5th respondent was a retired Additional Revenue Inspector in Revenue Department; Possession and Enjoyment Certificate was issued to the 5th respondent of a Village Poramboke Site; it was not a house site patta; the annual income of the 5th respondent was mentioned in the Enjoyment Certificate as

Rs.30,000/-; the 5th respondent's pleading that it was his own property is a false plea; that his enquiry also revealed that a drinking water well which has been used for public purposes is existing in the said land of Ac.0-03 cents; and it is required for public purposes. He held that the 3rd respondent took the right decision in canceling the Possession and Enjoyment Certificate issued to the 5th respondent by order dt.22.02.2003.

10. This was assailed by the 5th respondent before the 1st respondent.

11. By the impugned order in CCCL Proceedings BCW2/215/2006 dt.19.01.2007, the 1st respondent allowed the Revision. In the said order, having noted that the land for which Possession Certificate was given to the 5th respondent was a Village Poramboke Site , he stated that on application by the 5th respondent, after due enquiry was conducted by the MRO., Chandragiri Mandal and after publication of statutory A1 notice, enjoyment certificate was issued to the 5th respondent. He stated that though a drinking water well was existing in the said land and was being used for public purpose, the water of the well is not being used, that at present there is no water in the well and the petitioner was dumping cow dung heaps in the land. He therefore concluded that it is not house site patta and it is only a possession and enjoyment certificate of a Village

Poramboke Site which was under the enjoyment of the 5th respondent. He set aside the order dt.25.03.2006 of the Joint Collector, Chittoor.

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

13. Counsel for petitioner contended that the father of the 5th respondent, being a retired Additional Revenue Inspector in Revenue Department, manipulated and influenced the Mandal Revenue Officer for obtaining Enjoyment and Possession Certificate dt.22.02.2003 in favour of the 5th respondent, only with a malafide intention to grab the land and to cause inconvenience to the villagers. He stated that the 5th respondent, having obtained the said certificate filed through his father O.S.No.1024 of 2005 on the file of I Additional Junior Civil Judge, Tirupati against the petitioner and others for perpetual injunction and in I.A.No.1222 of 2005 he also sought temporary injunction, and only then, they came to know about the issuance of the said certificate by the 4th respondent to the 5th respondent on 22.02.2003. He also stated that the said IA was dismissed on 08.02.2006 on the ground that the 5th respondent was not in possession and enjoyment of the land. He contended that the 1st respondent ought not to have reversed the well-considered orders passed by the 3rd respondent on 14.10.2005 and by the 2nd respondent on 25.03.2005 on the basis of some report obtained from MRO, Chandragiri Mandal and ought to have

taken note of the plea of the 5th respondent that the Ac.0-03 cents was his private property.

14. The Government Pleader for Revenue appearing for respondents 1 to 4 supported the order passed by the 1st respondent. The counter affidavit filed on behalf of the 4th respondent also supported the said order. It is stated that the 5th respondent was in possession and enjoyment of the said site hereditarily, his acquisition of the said site was never in dispute and he was using the same for hayrick, cattle shed, and dumping yard and that was why the Possession Certificate was granted to the 5th respondent after allegedly following the procedure under Board Standing Order 15(4). It is stated that the 5th respondent went abroad after obtaining the Possession Certificate since he secured employment and thereafter came back and was exploring employment opportunities. It was denied that the father of the 5th respondent influenced the revenue officials to secure the possession certificate to the 5th respondent. It is also stated that there was an open well existing in the subject site for a long time, but as the years passed, the culture and habits of the inhabitants vastly changed, that said well is not in use and it had become defunct and the petitioner was using the place as a dumping yard. It is also stated that there is a provision of protected drinking water through tube wells and

by over head tanks by Rural Water Supply Schemes of the State Government.

15. Counsel for the 5th respondent refuted the contentions of the petitioner. He contended that the appeal preferred to the 3rd respondent was after inordinate delay of two years. In the counter affidavit filed by the 5th respondent's father, he admitted that he had worked in Revenue Department and had retired from the said department and that the 5th respondent had gone to Dubai for some work. He also admitted that I.A.No.1222 of 2005 filed before the I Additional Junior Civil Judge, Tirupati was dismissed. He stated that the Possession Certificate issued to the 5th respondent by the then MRO, Chandragiri was after issuing a statutory notice inviting objections and since no objections were received, after local inspection through the Mandal Revenue Inspector and based on the statements of Village Panchayat Secretary and Sarpanch of Seshapuram village, it was issued. It was also stated that the said site was under continuous possession and enjoyment of the 5th respondent's family for over 30 years. He reiterated the stand taken by the 4th respondent in the counter affidavit.

16. From the facts narrated above, it is clear that the 5th respondent's father was an employee of the Revenue Department and he had retired from service. Even the 5th respondent was wealthy and secured employment in Dubai

and he also had other property adjacent to the subject site of Ac.0-03 cents in survey No.20/1 of Seshapuram village.

17. It is not denied that this land is a Village Poramboke Site.

18. When the 5th respondent is not a landless poor person or a poor person at all, he could not be allotted any public property free of cost by the Revenue Department. Admittedly, even according to the 1st respondent, the Possession Certificate issued is not a house site patta. It cannot also be said to be any assignment.

19. In fact, the 5th respondent had contended before the 2nd respondent that it is his private property and even in the counter affidavit, he claimed it to be in his possession for more than 30 years. Therefore, it is obvious that the 5th respondent's father, who was employed in the Revenue Department misused his official position, occupied the village site and influenced the revenue officials to give a Possession Certificate in the name of 5th respondent. This is the shocking aspect of the matter.

20. As regards the contentions raised by the 5th respondent that the appeal was filed before the 3rd respondent by the petitioner with delay of about two years, admittedly no notice was issued to the petitioner before issuing the Possession Certificate for the subject land of Ac.0-03 cents and even the

villagers of Seshapuram also objected to the giving of the Village Poramboke Site to the 5th respondent and had pleaded that it is required for public purpose.

21. No material is placed by the respondents to show that the petitioner was aware of the issuance of Possession Certificate to the 5th respondent before filing of the civil suit O.S.No.1024 of 2005 by the father of the 5th respondent against the petitioner and others before the I Additional Junior Civil Judge, Tirupati. Therefore, it cannot be said that the appeal filed before the 3rd respondent by the petitioner is barred by limitation or delay.

22. In any event, 5th respondent challenged the order before the 2nd respondent who confirmed the order of the 3rd respondent not only on the ground that the petitioner's father was an employee of the Revenue Department but also on the ground that the subject site was not a house site and that the 5th respondent had an annual income of Rs.30,000/-. He also noted that the 5th respondent contended that it is his own property and there was a drinking water well which was being used for public purpose and it is required for public purpose.

23. It is unfortunate that the 1st respondent, without taking note of the fact that the 5th respondent's father was an employee of the revenue department, and that the 5th

respondent and his father by virtue of the said position enjoyed by 5th respondent's father, not only occupied subject site for considerable time though it was Village Poramboke Site intended for the benefit of the entire village, but also manipulated revenue officials for issuance of Possession Certificate in 5th respondent's favour.

24. Assuming that petitioner was dumping cow dung heaps in the subject land (which allegation is denied by the petitioner) that is no excuse to give possession certificate to the 5th respondent. Public property cannot be disposed of in this manner free of cost by the revenue department to families of retired revenue employees.

25. Therefore, this Writ Petition is allowed; the order dt.19.01.2007 of the 1st respondent in CCLA's Proceedings No.BCW2/215/2006 is set aside; and the respondents 1 to 4 are restrained from allowing the 5th respondent to enjoy the said land. The 5th respondent shall also pay costs of Rs.2,000/- to the petitioner.

26. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

11th April, 2017.
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