

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.45792 OF 2016

ORDER :

This writ petition is filed seeking writ of mandamus calling for the records relating to the issuance of the impugned order by the 2nd respondent vide proceeding No.D.Dis.E4/648/2008, dated 02.07.2016 directing the eviction of both the petitioners and declare the same as illegal and arbitrary and consequently to direct the respondents to alienate 0.36 cents in Sy.No.26/4 to the petitioners as recommended by the 3rd respondent vide proceeding Lr.No.Rc.B.308A/2012, dated 17.06.2013.

2. It is the case of the petitioners that the 1st petitioner was assigned land admeasuring 0.50 cents in Sy.No.26/1 of Bukkapuram village by the Tahsildar of Mahanandi in Proceeding R.Dis.88/2005, dated 18.05.2005. After the assignment, the 1st petitioner had dug a borewell and had constructed a small shed and also planted trees in the subject land and living there. He also obtained electricity connection bearing S.C.No.1263 on 12.10.2003 and the Gram Panchayat had also allotted House No.5-47, Bukkapuram for the shed. It is stated that the 1st petitioner is the member of the 2nd petitioner Church and that he had requested for assignment of 0.36 cents of land in Sy.No.26/4 (sub-divided in Sy.No.26/1) to the 2nd petitioner and also offered to pay the basic value of the land at the rate of Rs.80,000/- per acre. The said request was approved by the resolution of the Gram Panchayat. It is stated that the 1st petitioner being a

Christian, had constructed a small prayer room in the subject property which has been called as Maranatha Vishwasa Mandiram, where people come and offer their prayers. On the advise of the villagers, the 1st petitioner made a request to the 4th respondent for cancellation of the assignment of 0.50 cents made in his favour and alienate the land to an extent of 0.36 cents to him on payment of basic value. Basing on the same, the 4th respondent submitted alienation proposal in the year 2008 by giving all the necessary particulars. That the 3rd respondent vide his Lr.No.RC.B.308A/2012 dated 17.06.2013 had categorically recommended for alienation in favour of the 2nd petitioner. The 3rd respondent had cancelled the assignment made in favour of the 1st petitioner in proceeding No.773/2007, dated 06.11.2009. While so, the 2nd respondent issued the impugned order in proceeding No.D.Dis.E4/648/2008, dated 02.07.2016 directing the eviction of the petitioners and the 4th respondent issued consequential order directing the petitioners to vacate the land vide proceedings LDC No.439/2016, dated 11.11.2016. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 4th respondent denying the averments in the affidavit filed in support of the writ petition stating that an extent of Acs.3.35 cents in Sy.No.26 of Bukkapuram Village of Mahanandi Mandal of Kurnool District is classified as 'Rastha Poramboke' and the said Rastha passes to Mahanandi, which is an important pilgrim centre in Kurnool District. It is stated that the then Tahsildar, Mahanandi has

assigned an extent of 0.50 cents in Sy.No.26/1 to K.Prabhakara Rao, without getting changes of classification in the land and without following due procedure under assignment Rules. That the 1st petitioner instead of cultivating the land, he had erected two sheds one is being used as prayer hall and another is as pastor's residence, as such, the assignee had not used the subject site for agriculture purpose. That as per the Collector's Orders, the Revenue Divisional Officer, Nandyal, has issued orders in proceedings Rc.B.773/2007, dated 06.11.2009 cancelling irregular assignment made by the then Tahsildar as the RDO, Nandyal, is competent authority under BSO 15. When once the assignment was cancelled, digging of bore well, construction of shed and plantation of trees are illegal. The then Tahsildar, Mahanandi had inspected the land and observed that the land is classified as Rastha Poramboke, but it is not being used as Rastha purpose as new BT Road formed by the R & B authorities. After inspection, the then Tahsildar, Mahanandi had recommended for transfer of the land to an extent of Ac.0.36 cents in Sy.No.26/4 of Bukkapuram Village from Rastha Poramboke to AW land for alienation of land in favour of Maranatha Viswasa Samajam, Vijayawada. That proposals were submitted to the District Collector, Kurnool, through RDO, Nandyal. The District Collector, Kurnool returned the proposals to the RDO in Rc.No.E4/648/2008, dated 11.08.2008 requesting the RDO, Nandyal to examine the proposals keeping in view of the objection of flow of vagu and restriction thereon and to

submit report. The RDO, Nandyal submitted proposals to the District Collector vide proceedings No.RCB.308/A/2012, dated 31.07.2012, who in turn informed the RDO, Nandyal duly marking a copy to the Tahsildar, Mahanandi and Sri G.Moses Chowdary, President, Gayathri Nagar, Vijayawada that they shall not encourage for transfer of classification of Rastha Poramboke or such type of porambokes where there is no public interest involved and accordingly, proposals were rejected. The District Collector, Kurnool had also directed the RDO, Nandyal for eviction of the encroachments in the subject land and cancel the D-form patta, if any, granted. Subsequently, the District Collector instructed the RDO, Nandyal for eviction of the encroachments vide proceedings D.Dis.E4.648/2008, dated 02.07.2016. The RDO, Nandyal instructed the Tahsildar, Mahanandi vide letter RCB.4586/2016, dated 27.07.2016 to take action for eviction of encroachments made in Sy.No.26/4 to an extent of 0.36 cents of Bukkapuram Village, Kurnool. As per the orders of the District Collector, Kurnool, the Tahsildar, Mahanandi issued endorsement to the petitioners seeking their eviction vide proceedings letter L.Dis.No.439/2016, dated 11.11.2016 and also stated that their request for issuance of patta cannot be considered. It is stated that even though the 3rd respondent has recommended the assignment, on payment of basic value, the District Collector, Kurnool had rejected the proposals as the District Collector, Kurnool is competent to change of classification. It is stated that the patta granted to the

petitioner was already cancelled in the year 2009 and when said order is in vogue, the writ petitioner does not have any right to continue in the land and that since he is an encroacher of the Government Land, a notice under the provisions of the Land Encroachment Act has been issued on 08.08.2016 and that when the petitioner refused to receive the notice, after completion of notice period, an order under Section 6 of the Act was passed on 01.09.2016, as such, there is no illegality or irregularity in the orders passed by the authorities. It is stated that after following due process of law, respondents are trying to evict the petitioners from the subject lands.

4. Reply affidavit is filed by the petitioners denying the averments in the counter affidavit reiterating the averments in the affidavit filed in support of the writ petition stating that the petitioner filed OS No.379/2012 before the Principal Junior Civil Judge, Nandyal, against Kodamula Daniel and four others alleging that the defendants are disturbing the petitioner's possession .

5. Heard learned counsel for the petitioners and learned Assistant Government Pleader for Revenue.

6. In this case, it is to be seen that the 1st petitioner was assigned land to an extent of 0.50 cents in Sy.No.26/1 of Bukkapuram Village by the Tahsildar of Mahanandi vide proceedings R.Dis.No.88/2005, dated 18.05.2005. When the 3rd respondent had cancelled the assignment made in favour of the

1st petitioner in proceedings No.773/2007, dated 06.11.2009, the same has not been challenged by the 1st petitioner.

7. In the counter affidavit, it is categorically stated that the allotment made in favour of the 1st petitioner was irregular, as the then 4th respondent has no power to grant assignment. The said contention of learned Assistant Government Pleader is not disputed by the learned counsel for the petitioners either during arguments or in the writ affidavit. In the writ affidavit, it is admitted by the petitioners that the proceedings issued against the 1st petitioner on 06.11.2009 has become final. The above fact goes to show that the petitioners did not have any right over the subject land. Only in order to overcome the proceedings issued by the 3rd respondent on 06.11.2009, canceling the assignment made in favour of the 1st petitioner, the 1st petitioner under the name and style of 2nd petitioner, again made an attempt seeking for assignment of the very same land. Though the 4th respondent recommended for assignment of the land and the 3rd respondent sent proposal vide letter dated 17.06.2013 to the 2nd respondent, the 2nd respondent rejected the same holding that transfer of classification of Rastha Poramboke cannot be permitted where there is no public interest involved. Basing on the said letter, The R.D.O, Nandyal vide proceedings dated 27.07.2016 directed the 4th respondent to take necessary action for eviction of the encroachments made in sy.No.26/4 to an extent of 0.36 cents of Bukkapuram village of Mahanandi Mandal and also for cancellation of D-form patta. In pursuant to the

same, the 4th respondent through proceedings dated 11.11.2016 directed the petitioners to vacate the subject premises. The 4th respondent also issued notice under AP Land Encroachment Act (for short 'the Act') and that the said aspect of issuing notice under the Act is also not denied in the reply affidavit and opposed in the writ affidavit. When resumption orders were passed, the said aspects were not denied by the petitioners. In the counter affidavit it is also stated that there is vagu poramboke passing through the land and if assignment of land is granted same will effect the flow of water.

8. In view of above facts and circumstances, it cannot be said that the 3rd respondent has not applied his mind while passing impugned orders. Though, it is the case of the petitioners that when 4th respondent recommended for assignment of classification of land, the 2nd respondent rejected the same. It is to be seen that the recommendation made by the 4th respondent, cannot be automatically be accepted by the 2nd respondent. It is for the 2nd respondent to consider and pass orders. The 2nd respondent has exercised discretion and did not agree for accepting the recommendation of the 3rd and 4th respondents and this Court cannot sit in appeal over the decision of the 2nd respondent by exercising power of judicial review under Article 226 of the constitution of India. These are all matters which are to be dealt with by the authorities under the Act.

9. Another aspect for which this writ petition cannot be entertained is that the petitioner has suppressed issuance of notice under Section 7 of the Act.

In view of above facts and circumstances, this writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stands dismissed.

A.RAJASHEKER REDDY, J

25.04.2017

kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 45792 OF 2016



Date: 25.04.2017

kvs

