

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 6898 of 2005

ORDER:

1) Heard Sri P.Sridhar Reddy, learned counsel appearing for the petitioner, Ms.Vasudha Nagaraj, learned counsel appearing for un-official respondents and Government Pleader for Revenue.

2) The present writ petition came to be filed with the following relief:

“seeking issuance of writ of mandamus declaring the order passed by the Chief Commissioner of Land Administration, respondent No.1 herein in his proceedings NO.BCW 3/ 690/ 2001 dated 02.11.2004 confirming the order passed by respondent No.2 in his proceedings D.Dis.(E1)/ 7906/ 99 dated 30.10.2001 cancelling the assignment of Ac.1.81 cents of dry land in Sy.No.63/ 2, Isukapalli Village, granted in favour of the petitioner by the then Tahsildar, Udayagiri in F.Dis.No.1423/ 88 dated 23.12.1978, as illegal, arbitrary and violative of BSO No.15; and set aside the orders passed by respondent Nos.1 and 2.”

3) The averments in the affidavit filed in support of the writ petition are as under:

As the petitioner herein claims to be a landless poor-cum-widow and taking into consideration her eligibility, Ac.1.81 cents of dry land in Sy.No.63/ 2 of Isukapalli Village was assigned to her vide proceedings F.Dis.No.1978/ 88 dated 30.12.1978. It is stated that originally the land was unfit for cultivation, but the

petitioner herein developed the same and made it cultivable. The grant of assignment was entered in the village accounts and she was granted assignment patta No.502 in 10-1 accounts. Pattadar pass book was also issued in the year 1980, in her favour. While so, during the year 1991, the respondent No.1 herein came down to Isukapalli Village and started interfering with her possession and enjoyment over the said land. Left with no other option, the petitioner filed O.S.No.113 of 1991 seeking permanent injunction. By an order dated 25.07.1991, in I.A.No.376 of 1991, the District Munsif Court granted interim injunction against respondent No.5 and his men. Subsequently, the suit was decreed in the year 1995. When the suit was pending, respondent No.5 made a representation seeking assignment of the land. The District Collector enquired into the matter and held that land be retained in favour of the petitioner and directed the authorities to implement the same and report compliance. Pursuant thereto, the R.D.O., Kavali issued proceedings dated 08.04.1993 and consequently directed the Mandal Revenue Officer to implement the orders of the District Collector and report compliance. The said proceedings have become final. Though respondent No.5 suffered the order in the hands of the District Collector he again made another representation to the Joint Collector, Nellore, along with a covering letter of local Member of Parliament. It is said that due to pressure, the Joint Collector issued a notice dated 27.01.1994 directing the petitioner to attend an enquiry. Questioning the same, the petitioner filed W.P.No.2445 of 1994.

By an order dated 17.02.1994, the impugned notice was suspended. Later, it was allowed with certain observations. It is stated that meanwhile respondent No.5 preferred A.S.No.4 of 1996 against the orders passed in O.S.No.113 of 1991. In the year 2001, the said appeal was dismissed. In the month of October, 2001 ie. after dismissal of first appeal, respondent No.2 herein passed an order dated 30.10.2001, canceling the assignment granted in favour of the petitioner. The order of the Joint Collector was challenged before the Chief Commissioner of Land Administration, raising various aspects. The stay application filed by the petitioner was rejected on 17.01.2002. Questioning the same, the petitioner filed W.P.No.9073 of 2002. By an order dated 18.07.2002, this Court while disposing of the writ petition, directed respondent No.1 to dispose of the appeal within two months and pending appeal granted stay of dispossession. The record reveals that subsequently on 02.11.2004, the appeal was rejected. Challenging the same the present writ petition is filed.

4) Two main grounds are urged by the learned counsel for the petitioner, which are as under:

- 1) Abnormal delay of more than 23 years in entertaining the application, filed by the respondents.
- 2) The authorities erred in canceling the assignment granted to the petitioner, without considering the civil Court order which has become final.

5) Learned counsel for the petitioner mainly argued that even if the matter was taken up suo-moto by the Joint Collector, the same can be done only within a reasonable period and definitely not after 23 years.

6) In order to appreciate the first argument namely the delay in initiating the proceedings before the Joint Collector, it would be necessary to refer to order dated 29.07.1999 passed in W.P.No.2445 of 1994. Though a copy of the order was not placed before the Court but the contents of the order are referred to in the order of the Joint Collector, which is as under:

“Set aside the notice issued, with a direction to the Joint Collector to initiate fresh proceedings by issuing appropriate show-cause notice containing adequate reasons which would be enable the petitioner to set forth her objections there to effectively.”

7) Pursuant thereto, fresh enquiry notice came to be issued to the petitioner and un-official respondents. Therefore, the plea taken by the petitioner that there was abnormal delay in entertaining the appeal may not have any legs to stand. Since the order referred to above was invited by the petitioner herself, she cannot now turned back and complain that the Joint Collector could not have initiated the proceedings, after a delay of 20 years. Since the fresh enquiry/fresh notice came to be issued pursuant to an order passed by this Court in W.P.No.2445 of 1994 which was filed by the petitioner herself, the proceedings cannot be quashed on the ground of delay.

8) The next ground urged by the learned counsel for the petitioner is that the order of the civil Court, which has become final, was not taken into consideration by any of the authorities while deciding the issue.

9) At this stage, it would be useful to refer to the findings of the appellate Court, which are as under:

“The defendant did not place any material to show that Ex.A3-D.Form patta was granted in favour of the plaintiff by mistake. On the other hand, the plaintiff produced Ex.A8 pattadar pass book which goes to show that plaintiff alone is the owner of suit schedule land. That apart Ex.A9 the certified copy of 10 (1) account clearly shows that plaintiff is the pattadar in respect of suit schedule land. In fact Ex.A10 No.2 adangal extract clearly shows that cultivation account in respect of suit land is booked in the name of plaintiff alone. Therefore, I see there is ample evidence both oral and documentary adduced by the plaintiff to show that she has title over the suit schedule land and she is in possession and enjoyment of the same since 1978. Thus the lower Court rightly held relying upon Exs.A1 to A11 that the plaintiff established her title and possession over the schedule land and entitled for permanent injunction.”.

10) Though there are orders of the civil Court in favour of the petitioner but the main ground relied upon by the Joint Collector in rejecting the request of the petitioner was that, V.A.O. in his enquiry found that Vadde Chinnaiah is labourer and that he was not getting any pension. It was also stated by him that the mother of Vadde Chinnaiah enjoyed the property prior to change of classification of land from grazing poramboke to Assessed

Waste; that the land was assigned in favour of Kilari Nagamma ie. Petitioner ignoring the enjoyment of Vadde Chinnaiah. In view of the above facts, it was held that Kilari Nagamma is not eligible for government land and that Vadde Chinnaiah is entitled for the assignment, as he is in possession of the said land.

11) The Commissioner, Appeals, simply dismissed the same confirming the findings of the Joint Collector.

12) A perusal of the material on record would show that, as against the orders passed by the civil Court in O.S.No.113 of 1991, filed by the petitioner for grant of permanent injunction, there are orders of the respondent authorities directing the M.R.O. to re-assign the land in favour of the un-official respondent. The order of the Joint Collector, which was passed in the month of October, 2001, is to the effect that the land shall be re-assigned in favour of Vadde Chinnaiah, but the order of the civil Court, which was passed in the month of September, 2001 is otherwise and a reference was made that the petitioner was having a DKT patta and she is in possession of the property. To this, it is urged pleaded by the respondents that since the petitioner is not a resident of that village, the authorities have cancelled the same and re-assigned the said land in favour of the un-official respondent.

13) But learned counsel for the petitioner would submit that the petitioner is a resident of same village and her name also appears at S.No.380 of Iskapally Voters List and S.No.338 of Udayagiri

Assembly Constituency Voters List. The impugned orders nowhere reference to the order of the civil Court and no material has to be placed to show that the petitioner was not resident of that village except the oral statement. Hence, the order under challenge is set aside and the matter is remanded back to the Joint Collector to consider the same by taking into consideration the order of the civil Court and pass orders afresh after giving opportunity to both the parties to adduce the evidence on the rival claims made, as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of the order. Till such time, *status quo* as on today shall be maintained, with regard to possession and entries in revenue records.

14) Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

15) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.08.2017

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