

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.4181 of 2005

ORDER:

The present Writ Petition came to be filed seeking issuance of a writ of certiorari calling for records pertaining to impugned proceedings in L.R.No.E1/6820/2000 dated 29.01.2005 passed by the first respondent, in allowing the revision filed by the fourth respondent, against the order of second respondent in File No.G/5446/1999 dated 28.09.2000, as illegal and improper.

2) The circumstances, which lead to filing of the Writ Petition, are as under:-

The petitioner herein claims to be an Ex-serviceman and also a landless poor person having no house anywhere in the erstwhile State of Andhra Pradesh. There was a proposal from the Government for assignment of house-sites in Sy.No.1031 at Mahaboobnagar, in terms of G.O.Ms.No.700 (Rev.) dated 20.06.1986. It is averred that basing on a false affidavit said to have been given by the husband of the fourth respondent, and on the basis of mis-representation, the third respondent assigned Plot No.12 admeasuring 205 sq. yards in Sy.No.1031/2 in his favour. It is averred that even before handing over the possession, it has come to the knowledge of the third respondent (M.R.O.) that the husband of the fourth respondent has suppressed many facts and accordingly he issued proceedings dated

13.06.1997, cancelling the assignment granted in favour of the husband of fourth respondent. Consequently on 14.06.1997, the patta certificate was issued in favour of the petitioner as he happens to be a landless poor person without having any house. A panchanama was said to have been conducted and possession was delivered to the petitioner. It is stated that basing on the patta certificate, the petitioner obtained permission for construction of a house, from Mahaboobnagar Municipality. While things stood thus, the husband of the fourth respondent died. Thereafter, the fourth respondent preferred an appeal against the order, cancelling the patta issued infavour of her husband. After considering all the aspects, the R.D.O., rejected the said appeal on 28.09.2000. Aggrieved by the same, the fourth respondent preferred an appeal before the first respondent under Section 158(1) of A.P. (T.A) Land Revenue Act 1317 Fasli. The said appeal was allowed and the orders passed by the R.D.O., and M.R.O., were set-aside. Aggrieved by the same, the present Writ Petition came to be filed.

3) The main ground urged by the learned counsel for the petitioner is that the husband of the fourth respondent obtained the patta by making false declarations, which is clearly born out from the record. The fact that the husband of fourth respondent was having a house as on the date of assignment is not disputed by him. It is stated that instead of remanding the matter back to find out the factual aspects, the first respondent erroneously allowed the same.

It is contended that as per G.O.Ms.No.700, the husband of the fourth respondent is not entitled for second assignment, as he is already in possession of a house constructed in a plot admeasuring 400 sq. yards. Hence, it is urged that the orders passed by the first respondent cancelling the assignment granted infavour of the petitioner, is bad in law.

4) On 04.03.2005 this Court while issuing rule nisi ordered *status-quo* obtaining as on that day to be maintained with regard to the nature and possession of the land in question.

5) A counter came to be filed by the unofficial respondent/fourth respondent disputing the averments made in the affidavit filed in support of the writ petition. According to her, the petitioner herein obtained the plot by playing fraud and also by making false declaration, which is evident from the record itself. It is stated that an application came to be submitted by the petitioner on 10.06.1997 to the third respondent, and the same was forwarded to the Mandal Revenue Inspector on 12.06.1997 for verification of the contents of the application. The Mandal Revenue Inspector submitted his report immediately on the next day i.e., on 13.06.1997, and without issuing any notice to fourth respondent, the third respondent cancelled the patta granted in the name of the husband of the fourth respondent. On the very next day i.e., on 14.06.1997, the third respondent granted patta in favour of the petitioner. It is submitted

that no explanation is forthcoming as to what made the authorities to cancel the allotment granted in favour of the husband of fourth respondent in such an hurried manner and without giving any notice to fourth respondent. He further placed on record, the evidence of the writ petitioner given in O.S.No.257 of 1999 on the file of the Junior civil Judge, Mahaboobnagar, to show that he was having a house in Hyderabad and though he is a resident of Hyderabad, made an application in Mahaboobnagar for grant of plot without any justifiable grounds. In order to appreciate the same, it would be useful to refer to the records and G.Os.

6) The official respondent/first respondent filed a counter stating that one D.A. Raju (husband of the fourth respondent) was allotted a house-site plot bearing No.12 admeasuring 205 sq. yards in Sy.No.1031/2 of Mahabubnagar proper vide Procgs No.C/3716/1992 dt:07.08.1992. Subsequently, the M.R.O., on coming to know the said fact, that the allottee was having a house bearing No.1-3-36/D at Rajendranagar street in Mahabubnagar town, cancelled the earlier allotment order by reallocating the said house site-patta to the petitioner herein. Aggrieved by the said order, the fourth respondent preferred an appeal to R.D.O., who confirmed the order of M.R.O., and dismissed the appeal. On that the fourth respondent again preferred an appeal to the Joint Collector, who set-aside the orders of both forums i.e., M.R.O., and R.D.O. and directed to restore the possession to the Revision Petitioner and allot another vacant plot at some other

place to the petitioner, if he is otherwise eligible. Pursuant to the said order, the present writ petition came to be filed.

7) As seen from the record, on 10.06.1997 the writ petitioner made a representation seeking allotment of house-site under defence category. In his representation, he has stated that he has no agricultural lands or even a house-site in Mahaboobnagar. He further stated that after the death of his father, himself and his mother were starving for food. He further stated that since the Government land is available in Mahaboobnagar town and as the Government is allotting house-plots, requested for a house-site within the limits of the town or in the surrounding areas. The said application which is dated 10.06.1997 was forwarded to the Mandal Revenue Inspector for enquiry and report on 12.06.1997. On the very next day i.e., on 13.06.1997, the Mandal Revenue Inspector submitted his report. Pursuant to which, on the same day i.e., on 13.06.1997, the M.R.O passed an order cancelling the patta granted in favour of the husband of the unofficial respondent. Absolutely, no notice was given to the fourth respondent, calling for an explanation before cancelling the patta issued to her husband. The reason given for cancellation of the patta is that the husband of the unofficial respondent was having a house bearing No.1-3-36/D at Rajendranagar, Mahabubnagar and therefore his case does not fall within the guidelines issued under G.O.Ms.No.700.

8) The material on record would show that before passing an order of cancelling the assignment made in favour of the husband of fourth respondent, no notice was given to show cause as to why the assignment should not be cancelled. As seen from the record, the application was made by the petitioner on 10.06.1997, which was forwarded to the Mandal Revenue Inspector on 12.06.1997 for enquiry and report. The report was submitted on 13.06.1997 and on the very same day itself, an order came to be passed cancelling the patta granted in favour of the husband of the unofficial respondent and thereafter on 14.06.1997, the authority recommended the name of the writ petitioner, for issuance of patta for the same land. Therefore, it can be said that the order passed by the primary authority was in total violation of principles of natural justice. Without considering this aspect, the Revenue Divisional Officer confirmed the same. However, the Joint Collector, who reversed, the order of the primary authority as well as that of the R.D.O., took the view that the husband of the fourth respondent was a freedom fighter and the house-plot was allotted to him under freedom fighters quota under G.O.Ms.No.185 dated 11.03.1997. Since there is no bar for a freedom fighter to own a house prior to allotment, the Joint Collector observed that the orders of the R.D.O., and M.R.O., were without verifying the factual aspects. Accordingly, he directed the M.R.O., to restore the possession of the house-site to the revision

petitioner therein and allot another plot at other place to the first respondent therein if he is otherwise eligible.

9) The learned counsel for the petitioner would submit that the husband of the fourth respondent filed a false affidavit by declaring that he has no plot/house and as such she is not entitled for any assignment of the plot in Mahaboobnagar town.

10) On the other hand, the learned counsel for the fourth respondent would submit that the writ petitioner alone gave a false declaration before the authorities stating that he has no house to live. While giving evidence in O.S.No.257 of 1999, the writ petitioner deposed that "he is having a house at Hyderabad and he was residing at Alwal, Hyderabad from the year 1986 along with his family. On an advice given by his friend, he made an application before the authorities at Mahaboobnagar for allotment of a house plot". In view of the above admission, the learned counsel for the fourth respondent would submit that the writ petitioner, who is a resident of Hyderabad is not entitled for a house-plot at Mahaboobnagar, more so when he has a own house at Alwal, Hyderabad. While denying the same, the learned counsel for the petitioner would submit that the suit in which the above evidence came to be given was dismissed and the pleas which are now taken before this Court more particularly with regard to evidence in the suit and the applicability of G.O.Ms.No.743 dated 30.04.1963 were never raised before the Joint Collector and as such

the same cannot be allowed to be raised in a Writ Petition filed by the petitioner. Hence, he submits that it would be just and proper if the matter is remanded to the Joint Collector to consider the same by taking into consideration the pleas which are now raised.

11) There is no doubt that the grounds, which are now raised by the fourth respondent, were never raised before the Joint Collector. At the same time, it is also to be noted that the fourth respondent was never heard by the primary authority before cancelling the same.

12) The learned counsel for the respondent also relied upon G.O.Ms.No.743 dated 30.04.1963, to show that a procedure is contemplated for allotment of land to the Ex-serviceman and an application made directly to the Mandal Revenue Inspector is not a valid one and that the entire procedure followed in cancelling and in allotment are *ex-facie* illegal. As per the said G.O., application for assignment of land shall be addressed to the Officer not below the rank of Tahasildar, which should contain the details viz., name and father's name, permanent residence, the period of service in the Army, the unit to which he was last attached and details of land applied for viz., District, Taluk, village S.No., classification, total extent applied for in the said survey number. These applications shall be routed through the Secretary, State Soldiers' Sailors' and

Airmen's Board and the applications should be duly certified by the officer Commanding the Regiment in which the Jawans serve.

13) Learned counsel for the petitioner would contend that even the fourth respondent is not entitled for any house as her husband is in possession of a house in Mahaboobnagar town. As per the averments in the counter, the fourth respondent has a house bearing Dr.No.1-3-36/D, Rajendernagar, Mahabubnagar, which is a small tenement and there are serious disputes regarding title and possession of the said house. The counter further states that suits have been filed for declaration of title of the said house. Since there is a dispute with regard to title, prima facie it cannot be said that the husband of the petitioner was owning a house in Mahaboobnagar town. It was also specifically averred in the counter that the husband of the fourth respondent participated in a freedom movement and has undergone punishment as well. These facts are not disputed by way of a reply.

14) Having regard to the rival contentions advanced and since the plea taken by the Government in the counter never fell for consideration before the Joint Collector, the matter is remanded back to the Joint Collector to hear the matter afresh by taking into consideration the pleas raised and decide the matter afresh in accordance with law. Till such time the *status quo* to be maintained in all respects and the writ petitioner, who claims to be in possession of

the property shall not alter, change or raise any constructions over the said property. It is needless to mention that the Joint Collector shall give priority to this matter and dispose of the same as early possible, preferably within a period of six months to eight months from the date of receipt of the order.

15) With the above direction, the Writ Petition is disposed of. No costs. As a sequel to it, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

Dt:30.08.2017
GM

JUSTICE C. PRAVEEN KUMAR

