

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No.358 OF 2017

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Appeal, under clause 15 of Letters Patent, is preferred against the dismissal order dated 28.02.2017 passed by the learned Single Judge in W.P.M.P. No.19904 of 2016 in W.P. No.16116 of 2016.

2. The parties hereinafter are referred to as arrayed in the Writ Petition.

3. The Writ Petition was filed under Article 226 of the Constitution of India seeking to declare the action of the 2nd respondent in canceling the grant of assignment vide proceedings D.Dis./E2/1281/2015 dated 05.06.2015 and the consequential dismissal of the statutory appeal by the 1st respondent vide BCW1/162/2015 dated 11.04.2016 as illegal; and consequently, to direct the respondents to continue the assignment of the petitioners as valid.

4. The record reveals that the 2nd respondent-Joint Collector passed orders dated 05.06.2015 canceling the pattas granted in favour of the petitioners holding as follows:

"As seen from the report of Revenue Divisional Officer, Kadiri submitted vide Rc.3337/2014/C, dated 01.10.2014 he has reported that the land in Sy.794-2 ext.12.54 Ac of Peddannavaripalli (V) Talupula (M) is classified as A.W. land and later out of it an ext.5.00 Ac was assigned in favour of Smt.J.Bharathi W/o.Krishnaiah and an ext.3.66 Ac was assigned in favour of Smt.Marri Sumalatha W/o.Marri Suryanarayana without sub division and that they are not eligible for assignment, and that the land in question is being used as Rastha,

Burial ground and for other public purposes and that the assignee Smt.J.Bharathi's husband Sri Krishnaiah is working as a Government school teacher in Kadiri Municipal UP School for girls of Kadiri and settled at Kadiri town. Further the Revenue Divisional Officer, Kadiri, has reported that the land in Sy.794-2 ext.3.66 Ac was assigned in favour of Smt.Marri Sumalatha W/o.Marri Suryanarayana by the then Tahsildar Talupula and the assignee's husband was already having an ext.of 4.53 Ac of land in Sy.No.884 Ext.1-97, Sy.No.805 Ext.2.32 Ac and Sy.No.769-2 Ext.0.24 (total 4.53 Ac) and as such she is not eligible for assignment. The land in question is being used as Rastha, Burials and for other public purpose."

In view of the above I confirm the earlier orders issued in DDis No.E2/7705/2014 Dt.29.10.2014 and accordingly the land in Sy.No.794-2 Ext.5.00 Ac and Sy.No.794.-2 Ext.5.00 Ac and Sy.No.794-2 Ext.3.66 Ac assigned to Smt.J.Bharathi W/o.Krishnaiah and Smt. Marri Sumalatha W/o.Marri Suryanarayana of Peddannavaripalli (V) Kadiri (M) vide D.A.R.Dis.

5. The aforesaid order was confirmed by the 1st respondent-appellate authority, vide proceedings No.BCW1/162/2015 dated 11.04.2016, observing as follows:

"On hearing the arguments of the counsel for the petitioner and for the respondents 4 and 5 and based on the report of the Joint Collector, Ananthapuram it is revealed that the Land in Sy.No.794/2 measuring extent Ac.12.54 cents of Peddannavaripalli Village, Talupula Mandal of Ananthapuram District is classified as A.W.land and being used as Rastha, Burial Ground and for other public purposes. The husband of the assignee, Smt.Marri Sumalatha, W/o.Suryanarayana is having patta land for an extent of Ac.4.53 cents and the husband of the other assignee, Smt. J.Bharathi is a Government School Teacher. Hence, the appellants are not eligible for assignment.

Therefore, the order of the Joint Collector, Ananthapuram D.Dis.E2/1281/2015, dated 5.6.2015 is upheld and the appeal is dismissed."

6. The petitioners filed W.P.M.P. No.19904 of 2016 in W.P. No.16116 of 2016 before the learned Single Judge to suspend the operation of the impugned proceedings dated 05.06.2015 and 11.04.2016 and also to direct the respondents to permit the petitioners to hold and cultivate the lands in Sy.No.794/2 in an extent of Acs.3-66 cents to the 1st petitioner and Acs.5-00 cents to the 2nd petitioner out of Acs.12-54 cents situated at Peddannavaripalli village, Thalupula Mandal, Anantapuramu District, pending disposal of the writ petition. The learned Single Judge on 12.05.2016, while ordering notice before admission, granted interim stay of the impugned proceedings for a period of eight weeks and the same was extended from time to time. Ultimately, on 28.02.2016, the learned Single Judge dismissed W.P.M.P. No.19904 of 2016, vacating the interim order granted on 12.05.2016, holding that the matter was once remanded and an opportunity of hearing was afforded to the parties and that the said aspects were not seriously disputed and that there is no need to extend the interim order granted earlier. Challenging the same, the petitioners preferred the present appeal.

7. Heard Sri K. Venkat Rao, learned counsel for the appellants-petitioners, learned Government Pleader for Land Acquisition appearing for respondent No.1, learned Government Pleader for Revenue appearing for respondent Nos.2 to 4, and Sri V.R.Reddy Kovvuri, learned counsel for respondent Nos.5 and 6.

8. Learned counsel for the appellants would submit that the writ petitioners are personally cultivating the subject land with the aid of a bore-well, which was dug up long back; there are above 300 fruit bearing trees; the

learned Single Judge failed to note the orders impugned in the writ petition are *ex facie* irregular; the learned Single Judge failed to note that there are standing crop and fruit bearing trees, though photographs are filed; the learned Single Judge ought to have continued the interim order protecting the rights of the petitioners and due to non-extension of interim orders, the petitioners are put to irreparable loss; the respondents are trying to forcibly dispossess the petitioners from the subject land; respondent No.2 without opportunity of hearing the petitioners, had passed order of cancellation of pattas; respondent No.1 also without opportunity had confirmed the order passed by respondent No.2; both the respondents erred in doing so; the writ petitioners also submitted that both were landless poor persons and the husband of petitioner No.1 was gifted the land after the assignment so also the husband of petitioner No.2 got employment after the land was assigned in the year 2006 and respondent Nos.1 and 2 erred in appreciating the same and without any justifiable reason and cancelled the pattas granted in favour of the petitioners; and ultimately, prayed to set aside the order passed in W.P.M.P. No.19904 of 2016 in W.P. No.16116 of 2016 on 28.02.2017 and extend the interim order passed in the said petition on 12.05.2016 till final disposal of the writ petition.

9. On the other hand, the learned Government Pleader for Revenue would submit that the pattas of the subject land are not granted in accordance with the rules, however, respondent No.2 after thorough enquiry, had cancelled the same, the said cancellation was upheld by respondent No.1 in the statutory appeal; and there is no standing crop or fruit bearing trees, as contended by the petitioners. Throughout the hearing, Tahasildar concerned, by name Sri Pullanna, was present and, on instructions from him, learned

Government Pleader for Revenue would submit that the revenue authorities have taken possession of the subject land. The learned Government Pleader for Revenue would further submit that the husband petitioner No.2 was a Government School Teacher and the husband of petitioner No.1 was having an extent of Acs.4-53 cents of land in Sy.No.884, Sy.No.805, and in Sy.No.769-2; so the petitioners are ineligible for assignment; and ultimately, prayed to sustain the impugned order.

10. Learned Single Judge has observed in the order under appeal the respondent No.4 filed counter disputing about the existence of any standing crop in the subject land, no reply is filed by the petitioners rebutting the same, earlier the matter was remanded and an opportunity of hearing was afforded to the parties, more so the findings of facts arrived are at by both the authorities (respondent Nos.1 and 2) and in view of the same, declined to extend the interim order granted on 12.05.2016. During hearing before this Court, the writ petitioners have submitted (i) death certificate of Marri Papulamma, showing her date of death as 10.09.2010; (ii) two patta certificates, dated 05.01.2008 and 11.11.2006, with regard to handing over of subject land to them, (iii) two pattadar passbooks bearing Nos.42031 and 17930, showing the subject land in their possession; and (iv) nine photographs showing some small plants scattered over the land. Learned Government Pleader for Revenue, having taken instructions from Sri Pullanna, Tahasildar concerned, stated that there are no plants or any plantation over the subject land. As observed by the learned Single Judge in the order under appeal, the writ petitioners have not filed any reply affidavit to show that the subject lands are being cultivated by them and there are more than 300 fruit bearing trees as contended by them. On the other hand, there

is specific mention in the writ petition that 60 feet wide road was laid in the land belonging to petitioner No.2 covering an area of Acs.3-00 cents. The contention of the respondents is that the subject lands are part and parcel of road and grave yard. Learned Government Pleader for Revenue, having taken instructions from the Tahasildar concerned-Sri Pullanna, has submitted that a notice to take possession was given to the writ petitioners on 24.03.2017 and the possession of the subject land was taken by the revenue authorities on 27.03.2017. There is a specific finding of respondent No.2 that the pattas were erroneously granted in favour of the petitioners and they were cancelled on the ground of husband of petitioner No.1, having Acs.4-53 cents of land and petitioner No.2's husband is Government School Teacher and they are ineligible for grant of assigned lands. Further more, the writ petitioners have made vague allegations that the husband of petitioner No.1 was not having any land and the husband of petitioner No.2 was a private teacher on the date of assignment of land. To substantiate the same, they have not filed any document or placed any convincing material to uphold the same. Filing of death certificate of Marri Papulamma showing her date of death as 10.09.2010 and contending that the land of Acs.4-53 cents was devolved upon the husband of petitioner No.1 on her demise, is not tenable, as there is no record to show that this submission is made to the revenue authorities before the grant of patta of the subject land in favour of petitioner No.1.

11. In the circumstances of the case, unless there is a perverse finding or patent irregularity in the order under appeal, no interference is warranted in this intra-court appeal filed under Clause 15 of the Letters

Patent. All the contentions raised on behalf of the writ petitioners are untenable and the appeal is devoid of merits and it is liable to be dismissed.

12. In the result, the impugned order dated 28.02.2017 passed in W.P.M.P. No.19904 of 2016 in W.P. No.16116 of 2016 is confirmed and the writ appeal is dismissed.

13. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

(Dr. SHAMEEM AKTHER, J.)

Date:12-04-2017

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