

THE HON'BLE SRI JUSTICE M.GANGA RAO

W.P.NO.2282 OF 2006

ORDER:

The present Writ Petition, under Article 226 of the Constitution of India, is filed against the proceedings dated 31.12.2005 of the 1st respondent-The Commissioner, Appeals, vide No.BCW3/3/442/2003 confirming the order dated 01.05.2003 of the 2nd respondent-The Joint Collector in D.Dis.(E2)/6263/1998.

2. The petitioners state that the first petitioner was assigned land to an extent of Acs.3-14 cents in survey No.104/2 of Noonegundlapalle Village, Bangarupalyam Mandal, Chittoor District, on application, by the Tahasildar, after due enquiry vide DKT No.309/4/79 on 10.01.1970. Since then, he was in possession of the land. After filing of the writ petition, the first petitioner died. Since then, his sons i.e. petitioners 2 and 3 are in possession and enjoyment of the said land.

3. Thereafter, the 2nd respondent, based on the report of the Revenue Divisional Officer, behind the back of the petitioners, illegally and contrary to law cancelled the assignment of land vide D.Dis.(B2)/8333/97 dated 28.01.1998. Aggrieved by the same, the first petitioner preferred an appeal before 1st respondent in CLR's proceedings No.BCW3/300/98. As the appellate authority has not granted interim stay pending the appeal, the first petitioner filed W.P.No.8462 of 1998 before this Court and obtained an interim order of *status quo*, pending appeal before the 1st respondent. The 1st respondent remanded

the matter to the 2nd respondent to follow the rules on the subject of time limitation and set aside the cancellation order of the 2nd respondent vide order dated 14.10.1998. After remand, again the 2nd respondent, illegally, contrary to law, unjustly and against the spirit of the remand order, cancelled the assignment made in favour of the first petitioner on 10.01.1970 vide order dated 01.05.2003 in D.Dis.(E2)/6293/98. Aggrieved by the orders of the 2nd respondent dated 01.05.2003, the first petitioner preferred an appeal before the 1st respondent. Since the 1st respondent has not passed interim orders pending the appeal, the 1st petitioner filed Writ Petition No.15215 of 2003. This Court disposed of the said writ petition on 25.07.2003 directing the 1st respondent to dispose of the appeal within a period of six weeks therefrom, and till then directed that the first petitioner shall not be evicted. Thereafter, the 1st respondent dismissed the appeal vide order dated 31.12.2005 in appeal No.BCW3/3/442/2003. Aggrieved by the same, present writ petition came to be filed.

4. The 3rd respondent filed a counter affidavit along with vacate petition stating that one Sri Y.Nadebba S/o.Y.Chinnaswamy and Golla Subramanyam of Mittapalli Village, have submitted a representation to the Collector, Chittoor District, for assigning the land admeasuring Acs.3.14 cents in survey No.104/2 of Noonegundlapalli Village, in their favour. On the said representation, the Collector called for report from the Revenue Divisional Officer. The Revenue Divisional Officer submitted the report stating that the land in survey No.104/2 admeasuring Acs.3-14 cents was originally

assigned to one Sri P.Subba Reddy, the 1st petitioner herein, vide DKT No.309/4/79 dated 10.01.1970. During the enquiry, it was found that the 1st petitioner was having Ac.1-50 cents of wet land and Ac.1-86 cents of dry land even at the time of assignment of land in survey No.104/2. Hence, the Revenue Divisional Officer, Chittoor, has recommended for cancellation of DKT patta granted in respect of land in survey No.104/2 admeasuring Acs.3-14 cents under BSO-15(18). Thereafter, the 2nd respondent after perusing the records, passed orders dated 28.01.1998 in D.Dis.No.B/20/8333/97 cancelling the assignment made in favour of the 1st petitioner. Thereafter, appeals and writ petitions were came to be filed. Ultimately, the 1st respondent dismissed the appeal vide order No.BCW 3/442/2003 dated 31.12.2005. The Collector is the competent authority to cancel the assignment made under 'mistake of fact' or 'irregular assignment' vide G.O.Ms.No.912 dated 03.08.1985 and BSO-15 (18)(1). The orders passed by the respondents are perfectly in accordance with law and passed after following the due procedure.

5. Heard both sides and perused the material on record.

6. Sri S.V.Muni Reddy, learned counsel appearing for the petitioner, would contend that the 2nd respondent, based on the report of the Revenue Divisional Officer, cancelled the assignment patta granted in favour of the 1st petitioner and the 1st respondent also confirmed the order of the 2nd respondent on wrong appreciation of facts and law, holding that the first petitioner was not eligible for assignment of the land as he was

in possession of the land admeasuring Ac.1-50 cents of wet land and Ac.1-86 cents of dry land at the time of assignment and total extent worked out to Acs.8-00 of dry land, contrary to BSO 15 and illegal and liable to be set aside. The shares of all the major members of the joint family have to be computed on the basis of the notional partition. The respondents have no power to cancel the assignment after 33 years of assignment. He would further contend that the impugned orders of the 1st and 2nd respondents are contrary to law and BSO. He placed reliance on the judgments in *Chepuri Venkateswarlu vs. Joint Collector, Ongole, Prakasam District*¹ and *Madamaneni Chinnaswamy vs. Joint Collector, Chittoor*² wherein this Court held that BSO 15 para 3 prescribed that only landless and poor persons, who directly engaged themselves in cultivation, shall be eligible for assignment according to the procedure prescribed in paragraph 11. Para 2 (ii) of BSO 15 defined landless poor person as one, who owns not more than Ac.2.50 cents of wet or Ac.5.00 of dry land and is also poor. Under Note No.1, the question whether a person is poor or not is left to the discretion of the assigning authorities and under Note No.2 the share of each member of a joint family as also the enjoyment of the income of the joint family will be taken into consideration for deciding whether or not he is a landless poor person.

7. Learned AGP would contend that the second respondent cancelled the assignment made in favour of the first petitioner based on the report of the RDO, which is as per BSO

¹ 2008 (6) ALT 555

² 2009 (1) ALT 424

15 and the first respondent confirmed the same considering all the contentions of the first petitioner and there is no illegality or irregularity in the order passed by the first respondent.

8. It is to be seen that this Court in WP.No.8462 of 1998 passed an interim order directing to maintain *status quo* as on 28.01.1998 pending appeal before the 1st respondent. In W.P.No.15215 of 2003 also this Court directed the appellate authority not to evict the 1st petitioner till disposal of the appeal. Even in the present writ petition also while admitting the writ petition, this Court on 07.02.2006 granted interim direction and the same was made absolute on 08.06.2011.

9. The 1st petitioner was assigned land to an extent of Acs.3-14 cents in survey No.104/2 of Noonegundlapalle Village of Bangarupalyam Mandal, Chittoor District, vide DKT No.309/4/79 dated 10.01.1970. The said patta was cancelled by the 2nd respondent initially, based on the report of the Revenue Divisional Officer, holding that the petitioner was a member of the joint family and he was having Ac.1-50 cents of wet land and Ac.1-86 cents of dry land at the time of assignment of the land admeasuring Acs.3-14 cents in survey No.104/2 in the year 1970. The total extent of land worked out to Acs.8.00 cents of dry land including the land assigned. As such, the assignee is having more than Acs.5-00 cents of land and not eligible for the assignment of government land at the time of assignment of the land, which is factually incorrect and contrary to the assignment rules.

10. At this stage, it is necessary to consider the relevant provisions of the Board Standing Orders. BSO 15 para 3 prescribes that only landless and poor persons, who are directly engaged themselves in cultivation, shall be eligible for assignment, according to the procedure prescribed in paragraph 11. BSO-15 (2) defines landless poor person as one, who owns not more than Acs.2-50 cents of wet or Acs.5.00 of dry land and is also poor. Under Note-1 thereto, it is made clear that the question whether a person is poor or not is left to the discretion of the assigning authorities and under Note-2, it is stated that the share of each member of a joint family as also the enjoyment of the income of the joint family will be taken into consideration for deciding whether or not he is a landless poor person. As per BSO-15 (18), the Collector has power to cancel assignment, within three years of assignment. *In spite of* specifically pleaded and remanded the matter by the 1st respondent on time limit, original and appellate authorities-2nd and 1st respondents have not considered the same. Even assuming that the 1st petitioner had Ac.1-50 cents of wet land and Ac.1-86 cents of dry land, total comes to Acs.4-86 cents (Acs.1.50 X 2= Acs.3-00 cents+ Ac.1-86 cents) only. As such, the 1st petitioner should be treated as landless poor person as he had less than Acs.5-00 of dry land and eligible for assignment of land. Hence, the findings of the respondents that the 1st petitioner had Ac.1.50 cents of wet land and Ac.1-86 of dry land are very vague and erroneous as there is no legal evidence in support of the same and are contrary to BSO-15 as they have not taken the share of joint family. Hence, for the reasons

stated supra, the order of cancellation and order of the appellate authority under D.Dis.(E2)/6263/1998 dated 01.05.2003 and No.BCW3/3/442/ 2003 dated 31.12.2005 are set aside.

11. Accordingly, the Writ Petition is allowed. No costs. Miscellaneous Petitions pending, if any, shall stand closed.

M.GANGA RAO, J

14.12.2017
TSNR

