

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.19097 of 2006

ORDER :

The petitioner is an ex-serviceman who was discharged from the Indian Army on account of suffering from disability.

2. He served in the Indian Army from 26.11.1962 to 16.03.1965.
3. With a view to rehabilitate ex-servicemen, the then State Government of Andhra Pradesh in 1950 initiated action to assign land to them and earmarked Acs.5977.03 guntas for the said purpose in eleven villages.
4. G.O.Ms.No.25 dt.23.10.1952 was issued for assigning the land to Labour Department for rehabilitation of ex-servicemen personnel.
5. A Co-operative Society known as Jawaharnagar Co-operative Land Colonization Society (for short, 'the Society') was registered as per Government orders in Memo dt.09.01.1958.
6. Though the above extent of land was transferred to the Society, it was under the custody of the Registrar of Co-operative Societies. The Society issued allotment letters to 140 ex-servicemen.
7. Petitioner alleges that he approached the society after his retirement in 1965 and being satisfied with his credentials, he was put in possession of an extent of Ac.5.00 in Sy.No.700 of Jawaharnagar Village by the Society and subsequently Vide. Ref.7474

dt.25.11.1975, an allotment letter was also issued to him. He claims to have paid land cess from 1965 to 1991 for this land and brought the land under cultivation.

8. When there were allegations of mismanagement against the Managing Committee of the said Society, the District Collector by proceedings dt.27.10.1968 superseded the Managing Committee and appointed the Executive Sub-Registrar as Special Officer to manage the affairs of the said Society.

9. On a representation given by Members of the Society, the District Collector recommended to the Government for resumption of the land from the Society under the custody of the Registrar of Co-operative Societies and for assignment of land to the eligible ex-servicemen directly.

10. This proposal was accepted by the Government vide G.O.Ms.No.17 dt.05.01.1976 and the Government directed that this land be resumed from the Society and disposed of by way of individual assignment to ex-servicemen for whom the scheme was originally intended on priority basis and stated that the balance available land be distributed to eligible other landless poor of the area.

11. Later, a memo dt.27.05.1976 was issued directing the authorities to follow the guidelines in G.O.Ms.No.1142 dt.18.06.1954 which contained revised guidelines or rules for assignment of Government lands. The said Memo provided that the land allotted under the scheme of assignment should be maximum Acs.5.00 dry

land or Acs.2.50 guntas of wet land, and that it should be brought under cultivation within three years. The guidelines also provided that the land is heritable, but not alienable. It was made clear that the land would be assigned only to those ex-servicemen who are in continues possession subsequent to allotment in their favour by the Society.

12. The Zilla Sainik Board issued certificate dt.16.04.1982, certifying that petitioner was an ex-serviceman who served the Indian Army from 26.11.1962 to 16.03.1965, and that he was discharged from service on being found medically unfit for further service.

13. But as per G.O.Ms.No.17 dt.05.01.1976, the land in possession of the petitioner was not resumed by the Government and there is no proceeding of resumption of land from the petitioner at all. The Society in fact issued proceedings dt.08.04.1976 showing that it had allotted land to petitioner of extent 5 acres in Survey No.700 of Jawaharnagar Village.

14. For a brief period, there was a ban of assignments by the then Government from 19.08.1978 vide G.O.Ms.No.1409 Revenue (Q) Department, but the ban was lifted by a Memo No.2270/Q1/78-3 dt.24.04.1979.

15. After the lifting of the ban, the District Collector, Ranga Reddy District addressed proceedings No.D1/20234/79 dt.1.8.1979 to the Tahsildar, Medchal Taluq, to issue pattas to ex-servicemen who are in possession of the land. Thereupon, the Tahsildar, Medchal Taluq

issued a notification No.B6/195/76 dt.5.10.1979 stating that as per Government instructions lands were being assigned to several persons including the petitioner in Jawaharnagar Village, and if anyone has objection to the assignment he should file objections on or before 10.10.1979. The petitioner's name was mentioned in the said notification at S.No.370.

16. The Zilla Sainik Board, Ranga Reddy District also addressed letter No.1287/Lands/82-3 dt.16.04.1982 to the Tahsildar, Medchal, Ranga Reddy District, mentioning that the petitioner's credentials as ex-serviceman had been verified and he was recommended for issuance of patta certificate for the land in Survey No.700.

17. Later, when there was a threat from unsocial elements to evict the petitioner from the land of Acs.5.00 in Survey No.700, proceedings in Lr.No.D1/6825/91 dt.10.09.1991 were issued by the Collector, Ranga Reddy District to the Sub-Divisional Police Officer, Malkajgiri, Ranga Reddy District, to give protection to petitioner.

REJECTION OF CLAIM OF PETITIONER BY MRO ON 26.02.1992

18. However, the Mandal Revenue Officer, Shamirpet Mandal, Ranga Reddy District, informed the petitioner vide proceedings No.B/372/89 dt.26.02.1992 that his request for assignment of the land in the village cannot be acceded to since assignments had been prohibited by G.O.Ms.No.1409 dt.19.08.1978.

ORDER DT.25.03.2004 IN W.P.No.3912 of 1992

19. The petitioner herein challenged the same by filing W.P.No.3912 of 1992 before this Court. This Writ Petition was heard along with several other Writ Petitions and a common order was passed on 25.03.2004 giving certain guidelines for assigning the land to ex-servicemen, such as the petitioner. The following are the guidelines :

“(i) Wherever the Ex-serviceman has actually in possession of the land and has brought the land under cultivation within a period of three years from the date of allotment to JCLCS, the Mandal Revenue Officer shall consider the case and regularize the possession by issuing D-Form Patta in favour of Ex-serviceman or his legal heir wherever necessary;

(ii) It shall be open to all the Ex-servicemen who are petitioners before this Court to appear before the Mandal Revenue Officer, Shamirpet Mandal on 15.04.2004 with a representation and necessary material with regard to the status as Ex-serviceman, and with regard to possession and other particulars when the Mandal Revenue Officer may fix a date for proper enquiry and complete the enquiry within a period of two months thereafter;

(iii) The Mandal Revenue Officer shall submit a detailed report containing case-wise details to the Joint Collector, Ranga Reddy District who shall sanction / issue patta to eligible Ex-servicemen. Till this enquiry is completed, there shall be status quo as on today with regard to possession;

(iv) Insofar as writ petitions in the third group mentioned hereinabove, i.e., WP.Nos.17041 of 2002, 24015 of 2002, 24819 of 2002, 25681 of 2002, 962 of 2003, 2369 of 2003, 13312 of 2003, 14580 of 2003, 18491 of 2003 and 18703 of 2003, the matters are disposed of giving liberty to all the petitioners to seek appropriate relief from the Mandal Revenue Officer for assignment of land. As the allegation that they are in possession of the land is denied, no

orders as to possession can be passed in their favour, and the interim orders passed by this Court stand vacated;

(iv) *It shall be made clear that in no case Ex-serviceman or any other person shall be allotted more than Acs.5.00 of agricultural dry land or Acs.2.50 of wet land; and*

(vi) *As it is reported that in WP.Nos.23914 of 2002, 20427 of 2003 and 21470 of 2003 the petitioners purchased land admeasuring less than 400 Sq.Yards from Ex-servicemen for the purpose of construction of house, if they are eligible under relevant Government orders, on payment of market value, their cases may be considered.*

20. After the said order was passed, the petitioner gave a detailed representation on 15.04.2004 to the Mandal Revenue Officer, Shamirpet Mandal, Ranga Reddy District, with supporting documents and sought grant of assignment as per the applicable Government orders as directed in the above order of the High Court.

THE REPORT DT.20.01.2005 OF THE MANDAL REVENUE OFFICER, SHAMIRPET MANDAL

21. In view of the said representation of petitioner, the Mandal Revenue Officer, Shamirpet Mandal, submitted a report in Ref.No.B./582/1/04 dt.20.01.2005 to the Joint Collector, Ranga Reddy District. In the said report, he noted that petitioner had submitted a representation dt.15.05.2004 with xerox copies of documents; that on verification thereof, it is found that copy of allotment letter said to be from the Society were bogus and it is not as per norms; that petitioner submitted an allotment letter allegedly issued by the Society which did not bear any number, but it contained only a date dt.25.11.1975; that the Society issued allotment letters in four batches totaling to 149

members, but petitioner's name was not found in the allotment list given by the Society of the 149 members; that though the Zilla Sainik Board had certified on 27.07.1982 that petitioner was discharged on the ground that he was medically unfit, as per G.O.Ms.No.743 dt.30.04.1963, Jawans who were dismissed or discharged from service due to inefficiency or misconduct or whose character is assessed as bad on demobilization were not eligible for grant of land under the Rules.

22. The Mandal Revenue Officer also claimed to have done a spot inspection on 05.06.2004 along with the Mandal Surveyor and other Executive staff and claims to have noted that the petitioner was found to be in possession of the land, that he was doing agriculture for a very long time, that there were a number of mango trees existing on the land apart from a bore-well with electrical connection, two residential rooms, one shed and a tiled house and there was a barbed-wire fencing around the land. He also recorded that petitioner's name was recorded in the Pahani in the possession column in 1982.

23. He then stated that out of 149 original members of the Society, an enquiry was conducted to determine their eligibility by the then Tahsildar, Medchal Taluq by giving advertisement in daily newspaper, that patta certificates were prepared for 102 eligible members and 40 members were given such patta certificates, but the remaining 62 were not distributed. He then concluded as under :

“1. The petitioner is neither in the list of 149 original member of the society nor in the list of 102 to whom the then Tahsildar has prepared patta certificates in the year 1979 vide patta No.B/195/76. The document produced by the petitioner is a bogus one showing that he got allotment from the JCLCS.

2. He has discharged from service on Medical grounds.

3. The village Jawahar Nagar is falling within the ten miles belt area of twin cities, where assignment was originally prohibited vide G.O.Ms.No.1122 Revenue Department dated 29.06.1961 and subsequently the said village was included in Annexure-IV of the G.O.Ms.No.1409, Revenue (Q) Department dated 19.08.1978 where the assignment is totally prohibited.

4. There is a relaxation in respect of the lands of the Jawaharnagar land colonization society for the Ex-serviceman in terms of Government Memo No.2270/Q/78-3 dated 24.04.1979.

As per the above shown facts the petitioner is not eligible in terms of Court orders in the reference first cited as he is not a JCLCS allottee. But he is in the possession over the land since long time and he is an ex-serviceman.”

FINDINGS OF THIS COURT ON THE SAID REPORT OF THE MRO DT.20.01.2005

24. Admittedly, the Zilla Sainik Board had certified on 27.07.1982 that petitioner was discharged on the ground that he was medically unfit. G.O.Ms.No.743 dt.30.04.1963 referred to by the Mandal Revenue Officer stated that Jawans who were dismissed or discharged from service due to inefficiency or misconduct or whose character is assessed as bad on demobilization were not eligible for grant of land under the Rules. The Mandal Revenue Officer implied that the petitioner’s case would fall within the above category of dismissed or

discharged persons, but how this is so, is not explained by the Mandal Revenue Officer. When the Zilla Sainik Board certified that the petitioner was discharged from Army on the ground of being medically unfit, the Mandal Revenue Officer cannot hold that it is equivalent to the petitioner being dismissed or discharged from service on the ground of inefficiency or misconduct or bad character.

25. There is reference by the Mandal Revenue Officer in the report dt.20.01.2005 to an alleged enquiry by the Tahsildar to advertisement in newspapers about the eligibility of the 149 persons. When this alleged enquiry was done and on what basis it was done is not disclosed by the MRO. Copy of the said report is also not filed by respondents.

26. Moreover this point about the alleged enquiry by the Tahsildar to advertisement in newspapers about the eligibility of the 149 persons, was also raised before the learned Single Judge who decided W.P.No.3912 of 1992 and batch on 25.03.2004. Notwithstanding the same, still the Court directed a fresh enquiry to be conducted by the Mandal Revenue Officer, Shamirpet Mandal. This indicates that this Court did not accept that such alleged enquiry by the Tahsildar was a valid enquiry.

27. But instead of doing any fresh enquiry as directed by the Court in its order dt.25.03.2004 in W.P.No.3912 of 1992 and batch, the Mandal Revenue Officer relied upon the same enquiry allegedly conducted to come to the conclusion that the petitioner's allotment

letter was a bogus document. It shows that the Mandal Revenue Officer, Shamirpet has no regard for the order dt.25.03.2004 passed by this Court in W.P.No.3912 of 1992.

28. In my considered opinion, without conducting any separate enquiry as mandated by this Court and seeking documents from the Society or the Registrar of Co-operative Societies or of the person in-charge appointed by the Registrar as to the persons to whom allotment letters have been made, it was not open to the Mandal Revenue Officer, Shamirpet Mandal to hold that the allotment letter claimed by the petitioner to have been issued to him by the Society, is a bogus one.

29. Though it is also stated in the report of the Mandal Revenue Officer dt.20.01.2005 that the Village of Jawaharnagar falls within the ten miles belt area of twin-cities where assignment was originally prohibited vide G.O.Ms.No.1122 Revenue Department dated 29.06.1961, and that it was also included in Annexure – IV of G.O.Ms.No.1409 Revenue Department dt.19.08.1978, it is admitted in the counter-affidavit filed by 5th respondent that the Government had issued orders for relaxation of the ban in respect of lands in the Society for the ex-servicemen vide Government Memo No.2270/Q/78-3 dt.24.04.1979. Therefore, this objection also cannot be taken by the respondents for denying assignment of land to petitioner.

30. Also, on what basis the Mandal Revenue Officer came to the conclusion that the allotment letters issued by the Society were in four batches with certain reference numbers and that the petitioner's allotment letter did not bear any reference number and so it should be bogus, is not known. It thus appears that on conjectures and surmises such a conclusion has been drawn by the Mandal Revenue Officer.

IMPUGNED ORDER DT.28.04.20016 OF THE JOINT COLLECTOR, RANGA REDDY IN REF.E5/456/2002

31. Basing on this report dt.20.01.2005 of the Mandal Revenue Officer, Shamirpet, the Joint Collector, Ranga Reddy District, passed orders in Ref.No.E5/456/2002 dt.28.04.2006 declining assignment of the land to the petitioner giving two reasons, viz., : (a) that the petitioner's name was not found in the list of 102 original allottees, and so he was not original allottee to the Society; and (b) that therefore, he did not bring the land under cultivation within three years from the date of the allotment.

FINDINGS ON THE JOINT COLLECTOR'S ORDER DT.28.4.2006

32. The first conclusion referred to above is based upon the report of the Mandal Revenue Officer, Shamirpet which I have already held to be one prepared without any fresh enquiry and in defiance of the order passed by this Court on 25.03.2004 in WP.No.3912 of 1992 and batch, directing him to conduct a fresh enquiry. The Joint Collector also could not have relied on the alleged prior Tahsildar enquiry and finding therein as to who is the eligible person for

allotment/assignment and hold that since petitioner's name was not found in the list of eligible 102 allottees, he is ineligible for assignment. Instead of asking the Mandal Revenue Officer, Shamirpet to do a proper enquiry, the Joint Collector approved the latter's report dt.20.1.2005 without application of mind.

33. Even the second reason i.e. that petitioner did not bring the land under cultivation within three years from the date of the allotment, is wrong because Mandal Revenue Officer had done a spot inspection on 05.06.2004 along with the Mandal Surveyor and other Executive staff and noted that the petitioner is in possession of the land, that he was doing agriculture for a very long time, that there were a number of mango trees existing on the land apart from a bore-well with electrical connection, two residential rooms, one shed and a tiled house and there was a barbed-wire fencing around the land. He also recorded that petitioner's name was recorded in the Pahani in the possession column in 1982.

34. When the petitioner's status as an ex-serviceman and his discharged from service on the ground of being medically unfit are on record and there is a policy of the Government to rehabilitate ex-servicemen, it is distressing to note that both the Mandal Revenue Officer, Shamirpet as well as the Joint Collector, Ranga Reddy District have acted in total derogation of the Government policy and in violation of the order dt.25.03.2004 in W.P.No.3912 of 1992 and batch.

35. I am also of the opinion that both the action of the Mandal Revenue Officer, Shamirpet as well as the Joint Collector, Ranga Reddy District in the impugned order dt.25.03.2004 is the result of non-application of mind, and is an attempt to overreach the order dt.25.03.2004 in WP.No.3912 of 1992 and batch.

**CONSIDERATION OF CONTENTIONS OF THE GOVERNMENT
PLEADER FOR ASSIGNMENT**

36. The learned Government Pleader sought to rely on the counter-affidavit filed by the 5th respondent raising new contentions that the eligibility of the petitioner which are not mentioned either in the report of the Mandal Revenue Officer, Shamirpet or in the order of the Joint Collector. It is not permissible for the respondents to sustain the action of the Joint Collector, Ranga Reddy District by referring to new points raised in the counter-affidavit or during the course of arguments. (See **Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others**¹).

37. A further plea was raised by the learned Government Pleader for Revenue that out of the Acs.5977.03 guntas earmarked for the purpose of rehabilitation, Acs.5020 have already been allotted to certain institutions. Even if this is true still the balance land of 957 acres is still available and it is not an impediment to consider the case of the petitioner for assignment of the 5 acres in Survey No.700 which

¹ AIR 1978 SC 851

he is found to be in possession by the Mandal Revenue Officer, Shamirpet in his report dt.20.01.2005.

38. Though the learned Government Pleader for Revenue (Telangana), sought to contend that the petitioner produced an allotment certificate issued by the Society after the Society was superseded by the District Collector on 27.10.1968 by appointing the Co-operative Sub-Registrar as Special Officer to manage the affairs of the Society, it cannot be disputed that under Section 34 of the Andhra Pradesh Co-operative Societies Act, 1964 supersession of a Society would only be for a limited period ranging from 2 to 3 years, and it cannot be said to be for an indefinite period. There is no material placed on record by the respondents to show that as on 25.11.1975, there was no Managing Committee of the Society. Therefore, this contention of the learned Government Pleader has no legs to stand.

39. The learned Government Pleader sought to contend that there was a resumption of land pursuant to the Government order vide G.O.Ms.No.17 dt.05.01.1976. But there is neither a panchanama resuming the land in occupation of the petitioner produced by the respondents nor any Revenue record produced by them in support of the said plea. Therefore, it has to be held that there was no actual resumption of land in the occupation of the petitioner by the respondents at any point of time, and that the petitioner continued to be in possession of the land notwithstanding the issuance of G.O.Ms.No.17 dt.05.01.1976.

40. The learned Government Pleader for Revenue, further contended that some other members of the Society had filed W.P.No.524 of 1980 before this Court seeking issuance of pattas as per the allotment letters issued to them, that the said Writ Petition was dismissed on 28.01.1986, and it was confirmed by a decision of a Division Bench on 23.06.1986 in W.A.No.485 of 1986; and therefore the petitioner is not entitled to any relief.

41. This contention is without any merit because the petitioner was not a party to the said Writ Petition.

That apart, in the said Writ Petition, the petitioners therein had contended that the land allotted to them by the Society was in excess of Acs.5.00, that the Revenue Department is proposing to dispossess them of the area in excess of the Acs.5.00 limit prescribed by the Government for the purpose of assignment and that they should be allowed to retain the entire extent allotted to them even if it is beyond the Acs.5.00 stipulated by the Government.

This contention of the Writ Petitions therein was rejected by the learned single Judge. But he held that possession to the extent of Acs.5.00 by the petitioners therein shall not be disturbed.

The Division Bench confirmed the said order and, in fact, enabled the petitioners therein to seek monetary compensation for any development made by them in the area beyond the five acre extent which they are entitled to retain as per the Government policy.

Therefore, the said decision has no application to the case of the petitioner.

In fact, the said decision in the Writ Petition as well as the Writ Appeal were not brought to the notice of the Court when it decided W.P.No.3912 of 1992 on 25.03.2004 by the respondents therein obviously because the said decision in WP.No.524 of 1980 did not apply to the petitioners therein.

42. There is a reference in the counter-affidavit of certain allotment orders issued by one T.K. Balram, non-official Secretary of the Society, who was allegedly removed in 1979, and it is contended that in spite of his removal he issued allotment orders to several persons. The allotment claimed by the petitioner is on 25.11.1975 and not after 1979. Therefore, this contention has no merit.

43. Nowhere in the counter-affidavit, the respondents doubted the correctness of the certificate dt.27.07.1982 issued by the Zilla Sainik Board certifying that the petitioner is an ex-serviceman or the land cess receipts filed by petitioner for the years 1964-65 to 1990-91, or proceedings dt.05.10.1979 in Reference No.B6/195/76 issued by the Tahsildar, Medchal Taluq, or the proceedings dt.30.08.1982 in letter No.B1/195/76 of the Tahsildar, Medchal Taluq, addressed to the Joint Collector, Ranga Reddy District, showing the petitioner in possession of the land admeasuring Acs.5.00 in Survey No.700 of Jawaharnagar Village and certifying his eligibility for assignment of the land. Though these documents were produced both before the Mandal

Revenue Officer as well as the Joint Collector at the time when the former submitted the report to the latter and when the latter passed the impugned order on 28.04.2006, they have not adverted to the same.

44. Therefore I hold that the action of the respondents in refusing to assign the subject land to the petitioner is arbitrary, illegal and violative of Art.14 of the Constitution of India and is *mala fide*.

45. The petitioner is a Senior Citizen and has been in possession of the subject land for more than 3 decades. He has been waiting from 1992 for the assignment of the land. Since there is no doubt about his credentials or his entitlement to assignment of the land as per subsisting policy of the State Government, I do not think that any useful purpose will be served at this point of time, 25 years later, by again asking the respondents to reconsider the issue.

46. In **Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another Vs. K.S.Jagannathan and another**², the Supreme court held that a High Court can itself issue a Writ of Mandamus or direction in nature of Mandamus , where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the

² (1986) 2 SCC 679

object of conferring such discretion or the policy for implementing which such discretion has been conferred. It observed :

“ 18. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

47. This principle has been reiterated in **Badrinath v. Government of Tamil Nadu and others**³ The instant case, in my opinion, falls in this category.

48. Accordingly, the Writ Petition is allowed with costs of Rs.5,000/- to be paid by 1st respondent to the petitioner; the proceeding No.E5/456/2002 dt.28.04.2006 of the Joint Collector, Ranga Reddy District are set aside; and a *Writ of Mandamus* is issued to respondents to assign the extent of Acs.5.00 in Survey No.700 of

³ (2000) 8 SCC 395

Jawaharnagar Village to the petitioner within a period of four (04) weeks from the date of receipt of a copy of the order and not to interfere with the possession and enjoyment of the petitioner of the subject land.

49. As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-04-2017

Ndr/*

