

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 13868 of 2005

ORDER:

1) The action of respondent Nos.2 to 4 in resuming the land without giving notice to the petitioners and re-allotting the same to respondent Nos.5 and 6, is subject matter of challenge in the writ petition.

2) The averments in affidavit filed in support of the writ petition would show that the petitioners purchased Ac.2.49 cents of land in Sy.No.292/ 2 of Thammavaram Village, Kakinada Rural Mandal, East Godavari District, from K.S.Narayana (Ex-Servicemen) for a sale consideration of Rs.18,000/-, vide document No.5451/ 1984 and since then they are in possession and enjoyment of the said property. Originally the said land was a government land, but the same was assigned to K.S.Narayana under Ex-servicemen category. The name of the assignee was recorded in the revenue records and patta was also granted in his favour. As per the terms of assignment, the land which was assigned shall not to be sold or otherwise alienated for a period of ten years, thereby permitting the ex-servicemen to alienate the said land after ten years. After the expiry of ten years, the petitioners herein claims to have purchased the land, converted it into residential plots, but could not be disposed of the same due to disputes between the partners. When they were trying to do some activity in the said land, respondent No.4 is said to have

obstructed them. There was no response to the legal notice issued by the petitioners. While things stood thus, respondent No.6 started executing some work near the said land and slowly started encroaching into the land of the petitioners. When the petitioners contacted respondent No.6 and enquired about the interference with their property, it was informed that they got the land from respondent No.5 under a valid sanction. Challenging the same, the present writ petition came to be filed, contending that respondent Nos.2 to 4 have no authority or right to assign the land in favour of respondent No.5, without cancelling the assignment made to the vendor of the petitioners. It is further contended that any action done of the respondents without any notice is illegal, improper and incorrect.

3) By an order dated 29.06.2005, this Court while admitting the writ petition, granted interim stay.

4) A counter came to be filed by the respondents disputing the averments made in the affidavit filed in support of the writ petition, except to the extent admitted by them. While admitting that the land in question was assigned to K.S.Narayana, it is said that the contents of G.O.Ms.No.743, which permits alienation of the property after 10 years, was not incorporated in D-Form patta. Hence, any alienation made is in violation of the terms and conditions of the patta. It is further stated that as the assignee failed to bring the land under cultivation within three years from the date of assignment, the same amounts to violation of

conditions of patta. Since the assignee failed to abide by the conditions, there is nothing wrong in cancelling the assignment granted. It is further stated that the land in question was resumed basing on the requisitions received from the Navy Department and was transferred to Port Department by following the procedure prescribed under law after giving notice to the assignee.

5) In substance, it is urged that the land is heritable not alienable; the land should have been brought under cultivation within three years and when the land is needed for public purpose, the government is entitled for resumption of the land without payment of compensation. Hence, it is pleaded that there is nothing wrong in resuming the land.

6) Before proceeding further, it is to be noted that the assignment of land was in favour of K.S.Narayana, who is an ex-servicemen. It is not in dispute that said K.S.Narayana, who was assigned the said land in the year 1970, alienated the same in the year 1984 in favour of the petitioners. It is also not in dispute that as per G.O.Ms.No.743, dated 30.04.1963, the land assigned to ex-servicemen should not be sold or alienated for a period of ten years. The said G.O. further states that the land assigned should be brought under cultivation within a period of three years. Since the assignee violated the conditions of D-Form patta by not cultivating the land within three years and alienating the same

after ten years, the assignment was said to have been cancelled in the year 1995.

7) In order to appreciate the rival averments made, it would be useful to refer to the law laid down by this Court in cases of this nature.

8) In W.P.No.1773 of 2008, after referring to the judgments in *Sekhari Aaruna Kumari Vs. District Collecotor, Visakhapatnam*¹ and *Madamaneni Chinnaaswamy (died) per LRs. Vs. Joint Collector, Chittoor*², this Court held that power to cancel the D-Form patta or resume the land by the revenue authorities must be exercised within a reasonable time and that if D-Form patta was to be cancelled, the grounds on which it is sought to be cancelled have to be stated so as to enable the assignee to show cause. Further, the learned Single Judge observed that as per the conditions of D-Form patta, if the land is to be brought under cultivation within three years from the date of its issuance, and if the petitioner fails to bring the land under cultivation, within three years from the date of its issuance, then the respondent No.3 therein ought to have issued notice calling upon him to show cause as to why the D-Form patta should not be cancelled, immediately after expiry of three years from the date of issuance of the D-Form patta. In the said case respondents issued show cause notice after lapse of nearly 30 years, which makes it difficult to ascertain as to whether the land was brought

¹ 2002(3) ALT 571

² 2009 (1) ALT 424

under cultivation within three years from the date of issuance of D-Form patta or not. Having regard to the facts and circumstances of the case therein and in view of the abnormal delay in issuing show cause notice, the learned Single Judge set aside the order canceling the D-Form patta.

9) Similarly, in *B. Adinarayana Murthy Vs. Collector, Anantapur District and another*³, a learned Single Judge of this Court observed that even if the power of resumption is available to the authorities, such a power cannot be exercised after a lapse of 34 years.

10) From the judgments of this Court referred to above, it is highly improper for any authority to resume the land after 25 years of assignment on the ground that the assignee failed to bring the land under cultivation within three years from the date of assignment of the land. If really, the assignee failed to cultivate the land within three years, nothing prevented the authorities from taking steps immediately thereafter. There was no reason for them to wait for 25 years to cancel the assignment made on the ground that the assignee has failed to bring the land under cultivation within three years from the date of assignment.

11) Though the counter states that the conditions in the G.O. are general in nature and not directed against any particular enjoyer but the terms of the said G.O. which are being followed cannot be brushed aside so easily. A reading of the said G.O.

³ 2000 (1) ALD 168

clearly indicates that the ex-servicemen, whose assignment is not in dispute, can alienate the land after a period of ten years. In the instant case, the land assigned in the year 1970, alienation was made in the year 1984. Hence, the action on the part of the assignee in alienating the land in favour of the petitioners cannot be found fault with.

12) The next issue is whether the authorities are justified in interfering with the property, if the petitioners are in possession of the same.

13) The grievance of the petitioners is that the action of respondent Nos.2 to 4 in interfering with the land of the petitioners without giving any notice is illegal, improper and incorrect. Having regard to the findings given above, any action taken by the authorities in taking the land of the petitioners without following due process is illegal and improper.

14) At this stage, learned counsel for the respondents placed on record the order of the Mandal Revenue Officer passed in the year 1986, cancelling the assignment made. But the said order was not filed along with the counter nor there is any reference to it, except stating that the land was resumed in the year 1995 and a notice about the same was given to the assignee on 19.07.1995. The counter is silent as to whether the order of the M.R.O. was served on the assignee or on the subsequent purchasers.

15) To this learned counsel for the petitioners would submit that the Mandal Revenue Officer has no jurisdiction to issue the same since it is only the Collector, who is the competent authority to cancel the assignment. He further submits that though the order passed in the year 1986, the same was not communicated to his vendor-original assignee. It is also pleaded that the said order has been created for the purpose of this Court.

16) Having regard to the above, the writ petition is disposed of directing the respondents to furnish a copy of the order cancelling the assignment and the notice alleged to have been served on the assignee, if any, within 10 days from today, so as to enable the petitioners to challenge the same in accordance with law. *Status quo* as on today with regard to possession shall be maintained for a period of 12 weeks, enabling the petitioners to question the subsequent events.

17) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

12.09.2017
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