

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.20837 OF 2012

ORDER:

Heard learned counsel for the petitioners and the learned Government Pleader for respondents.

This writ petition was filed challenging the action of the third respondent in taking up construction of school pursuant to the proceedings of the second respondent, dated 27.06.2012 in the land of the petitioners situated at Udumulapadu Village, Dhone Mandal, Kurnool District, instead of constructing the school in the land allotted to the third respondent in survey No.284/1B.

It is the case of the petitioners that pursuant to the application made by the petitioners, who are landless poor persons, they were assigned land of an extent of Acs.5.00 cents and Acs.4.75 cents respectively in survey No.284/1 situated at Udumulapadu Village, Dhone Mandal, Kurnool District. The second petitioner is the wife of first petitioner's brother, who died after assignment. Pattadar pass books and title deeds were also issued in favour of the petitioners. When the third respondent came to the land on 04.07.2012, the petitioners enquired with the second respondent and came to know that the second respondent handed over the land of an extent of Acs.2.00 cents in survey No.284/1B in the same village for construction of KGBV School under proceedings dated 27.06.2012. In those circumstance, the petitioners filed the present writ petition.

A counter affidavit is filed admitting the assignment in favour of the petitioners on 27.12.1991 for agricultural purpose subject to the conditions mentioned therein, more particularly, the condition of bringing the land under cultivation within three years from the date of assignment. Since the assignees have not brought the land into cultivation and thereby violated

the patta conditions, a notice was issued on 03.10.2007. The notice was affixed in the survey number by erecting a stick in the field. No explanation was received within the time allowed in the notice and therefore, an order was passed on 27.10.2007 resuming the land to the Government for violation of the conditions of 'D' form patta. As the assignees opposed to receive the resumption order, the order was served by erecting a stick in survey number and affixed the order with a thread to the stick. No appeal was filed against the said orders and as such, lands vested with the Government. An extent of Acs.2.00 cents of land was handed over to the Mandal Education Officer for construction of the school. An extent of Acs.28.06 cents of land in survey No.284 was classified as 'assessed waste'. Subsequently, the land was sub-divided and assigned to various people including the petitioners. The construction of the school building was completed and was opened on 06.08.2014. The school is running with 200 girl students. An extent of Acs.3.00 cents was also handed over to the Registration Department on 19.06.2009 for construction of scientific building for driving testing track.

A reply affidavit is filed stating that the allegation that the petitioners have not brought the land under cultivation was not correct. The pattadar passbooks and title deeds were issued to the petitioners and the land was mortgaged to the Syndicate Bank.

In view of the above averments, it is clear that the petitioners were assigned the Government land of an extent of Acs.5.00 cents and Acs.4.75 cents in survey No.284/1 and pattadar pass books and title deeds were issued to them. In the counter affidavit, it is stated that the land was resumed after issuing notice to the petitioners. But, the petitioners were neither served with the notice nor the order of resumption, as can be seen from the averments in the counter affidavit. The procedure of tying the notice to the stick and passing final orders and tying that final

order also to the stick cannot be appreciated when the petitioners are available.

In the circumstances, this Court holds that the order of resumption, dated 27.10.2007 is bad in law and as such, the same is set aside. The petitioners shall be given a fresh show cause notice, if there was any violation of conditions of assignment and they should be given an opportunity to submit their explanation. The second respondent shall consider the explanation and pass appropriate orders in accordance with law. Till such time, any vacant land, which was originally allotted to the petitioners, shall not be interfered with by the respondents. In respect of the land already allotted and a building was constructed, the petitioners can work out their remedies subject to the orders that may be passed by the second respondent.

The writ petition is accordingly allowed. Miscellaneous petitions, if any pending, in this writ petition, shall stand closed.

09.06.2017
pln

A.RAMALINGESWARA RAO, J

