

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.5806 OF 2014

ORDER:

Heard Mr.K.Sinivas for petitioner, learned Assistant Government Pleader (Revenue) for respondents 1 to 4 and Ms.T.C.Anuradha for respondent No.5.

The petitioner prays for Mandamus declaring the action of respondents 1 and 2 in rejecting the revision and appeal filed by petitioner vide Memo No.07973/Assn.V(2)/2014-1 dated 21.02.2014 and D.Dis.No.5259/2013/E4 dated 12.04.2013, as illegal, arbitrary, unconstitutional and violate principles of natural justice.

The 1st and 2nd respondents through the orders impugned in the writ petition firstly recalled the assignment of agricultural land in Sy.No.30 of an extent of Acs.03-37 Cts of Rayachanapalli Village and the same was confirmed by the 1st respondent.

The circumstances relevant for disposing of the writ petition are briefly stated hereunder:

The petitioner worked in CRPF and the 4th respondent by considering his entitlement and eligibility assigned Acs.03-37 Cts in Sy.No.30 vide assignment DAR Dis.No.14/1414 dated 17.01.2005. The petitioner alleges to be in possession and enjoyment of the assigned land. On 14.10.2011, the 5th respondent filed representation petition against the assignment of subject land in favour of petitioner. The same was enquired into by 3rd respondent and in proceedings D.Dis.D2/5221/2011 dated 23.02.2013 cancelled

the assignment of subject land in favour of petitioner. The findings recorded by 3rd respondent read thus:

“Accordingly the case was taken on file and posted the case for hearing. Subsequently the case has taken adjournments on 28.07.2012, 22.09.2012, 20.10.2012 and finally on 19.01.2013. Notices were issued to both the parties through the Tahsildar, Anantapur. The appellant and respondent both have not attended to hearing nor represented the case through their advocates. The report of the Tahsildar along with his recommendation is perused. I am satisfied that there are copious contents which warrant cancellation of second assignment, besides the following as noticed.

1. Misrepresentation of facts by the second assignee.
2. Concealment of facts by second assignee in regard to possession of landed property while submitting his application.
3. Resumption in a mandatory procedure was not done as per the POT Rules, 1977 before grant of second assignment.
4. Nowhere, the CRPF Constable is treated or identified as Military personnel working in any one of the three forces Army, Navy and Air force.
5. The second assignment was made without resumption or without the knowledge of the first assignee who is an ex-serviceman.
6. The legality and propriety are disburdened while doing the second assignment to Sri Y.Anandareddy.
7. Material irregularity took place as observed while doing the second assignment in hectic manner.
8. Doing the second assignment to the ineligible person, depriving of the rights of the first assignee who served the nation as lance naik and remained as ex-serviceman, is totally inequitable.
9. The balance of convenience tilts in this case in favour of the first assignee Sri KMD Basheer.
10. The first assignment was made as long as in the year 1986 and possession was given immediately to the first assignee. In 2004 i.e., after lapse of 18 years, the second assignment was made in hectic

manner without the knowledge of first assignee, without resumption as per the Act 9/77 though the candidate's income is exceeded more than the income fixed by the Govt. to hold assignment land in terms of GO Ms.No.940, Revenue (ASN-1) Dept., Dt.24.11.1998. As such the second assignment is bad in law and procedure. Though rejected his application for assignment of the same land initially, though the endorsement was issued refusing his claim, the same file was re-opened afresh again for considering the application of Sri Y.Anandareddy and granted second assignment without cancellation of first assignment. An opportunity was given to him without informing the same to the person interested and that too without calling any objections through A-1 notice. Hence there was violation of principles of natural justice.

In view of the above circumstances and as recommended by the Tahsildar, Anantapur it is hereby ordered for cancellation of the second assignment made in favour of Sri Y.Ananda Redy, s/o Narayanareddy of Rachanapalli village of Anantapur Mandal in respect of the land in SNo.30, extent 3.37 acres of Rachanapalli village of Anantapur mandal in DA RDis.No.14/1414 as it an irregular assignment as reported by the Tahsildar, Anantapur.

The Tahsildar, Anantapur is directed to take necessary action accordingly and carryout changes forthwith in the village accounts of Rachanapalli village.

An appeal lie before the Joint Collector, Anantapur within 30 days from the date of receipt of this order."

The 2nd and 3rd respondents have independently enquired into the grounds raised by petitioner and confirmed the order of 3rd respondent. Hence, the writ petition.

The orders impugned in the writ petition are confirmed orders. The petitioner substantially prays for setting aside the orders which are based upon consideration of record and noticing irregularity in

granting assignment to petitioner. The petitioner could not make out a ground under Article 226 of the Constitution of India to interfere with the orders impugned in the writ petition.

Further, I have carefully considered the orders impugned in the writ petition and *prima facie*, it appears the assignment of subject matter was at the first instance in favour of one K.Mohammad Basheer/5th respondent herein. The 4th respondent, without taking note of assignment in favour of 5th respondent, much less cancelling the assignment of 5th respondent, assigned the very same land to petitioner. Now, in respect of same subject matter two assignment orders are operating. After noticing the mistake, the respondents have recalled the assignment in favour of petitioner and at the same time, confirmed the assignment in favour of 5th respondent.

Mr.K.Sinivas though tried to assail the orders impugned in the writ petition, on a few legal, factual objections and the fact of the matter, he admits that even assuming that the subject land was at the first instance assigned in favour of 5th respondent, still while regularising the assignment in favour of 5th respondent, respondent No.2 ought to have passed a comprehensive order granting assignment to petitioner who is also entitled for assignment as per the policy of the Government. He further submits that the findings recorded on the eligibility or otherwise of petitioner are prejudicially rendered for the substantive issues, in the enquiry, were on the illegality of assignment in favour of petitioner. According to him, the entitlement of petitioner for assignment is also supported by orders of Government and the entitlement is independently considered

and orders passed. In the case on hand, admittedly, according to him, such consideration did not take place while passing the impugned order. Therefore, he requests the Court to direct the 2nd respondent to consider the case of the petitioner for assignment because the assignment in favour of petitioner is cancelled on account of irregular procedure followed by respondent No.4.

Having regard to the statement made by Si K.Srinivas, the writ petition is disposed of with the following directions:

- a) the petitioner is given liberty to represent to District/ Joint Collector, Anantapur District by enclosing applicable orders for assignment of Government land to petitioner under ex-serviceman quota;
- b) The 2nd respondent after considering the merits of petitioner's application, issues appropriate directions for assignment of Government land in any of the mandals where agricultural land is available and if the petitioner is entitled to consideration as per extant policy; and
- c) The said exercise shall be undertaken and completed within three months from the date of receipt of copy of representation.

The writ petition is disposed of. There shall no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

19th July, 2017

Lrkm

S.V.BHATT, J