

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.11500 of 2017

ORDER:

This Writ Petition is filed by the petitioner assailing the notice dated 27.1.2017 issued by the 3rd respondent proposing to cancel patta granted to the petitioner's predecessor in title by name M. Krishna Murthy Naidu, an ex-service man, who had been assigned the subject land vide proceedings DKT No. 912/4/1401 dated 28.6.1992.

2. This Court while admitting the Writ Petition on 3.4.2017 granted interim stay of all further proceedings pursuant to the impugned notice dated 27.1.2017. WVMP No. 4998 of 2017 is filed to vacate the stay order.

3. A reading of the said notice does not indicate on what grounds the third respondent is proposing to cancel the said assignment granted in favour of the petitioner's predecessor in title.

4. Some grounds are mentioned for the first time in the counter affidavit filed by the 4th respondent, which are as under:

“(a) The application for grant of assignment patta was not enrooted properly through proper channel i.e., Sainik Welfare Officer within one year from the date of retirement,

- (b) The individual retired from service in the year 1987 and he was issued assignment patta in the year 1992 after lapse of 5 years without following due procedure,
- (c) The assignee died on 6.5.2010 and PPB/Title Deed issued on 16.7.2010 in the name of a dead person with the signatures of a dead person.
- (d) The assignee never brought the land under cultivation with in a period of three (3) years from the date of assignment as stipulated in the G.O.Ms.No. 743, dt.30.4.1963.”

5. As regards grounds (a) & (b) referred to above, they relate to the procedure and the grant of assignment of patta to the ex-serviceman concerned, and they do not reflect any fraud played by the ex-serviceman at all. The Supreme Court in **Joint Collector, Ranga Reddy vs. D. Narsing Rao**¹ has held that though there is suo motu power conferred on revenue authorities in certain circumstances to take such action, it should be exercised within a reasonable time. Therefore, the very exercise of jurisdiction under BSO 15 purportedly to cancel the patta issued to the deceased person twenty five years after it's issue, is contrary to law and cannot be sustained.

6. As regards the ground 'c', it is the case of the petitioner that his predecessor had applied for pattadar passbook and title deed while he was alive and that he died on 6.5.2010 and thereafter, it was issued in the

¹ 2015 (3) SCC 695

name of predecessor in title the ex-serviceman. Therefore, the ex-serviceman cannot be blamed for dying before issuing the pattadar pass book and title deed by the Tahsildar.

7. As regards the last ground that the assignee did not bring the land under cultivation within three years from the date of assignment no material is relied on to come to this conclusion. Also having issued pattadar passbook and title deed to the assignee certifying that the assignee is cultivating the land, the 4th respondent is estopped from contending that the land was not cultivated within three years from the date of assignment. Shockingly, this ground is not even put to the petitioner in the notice given by the 4th respondent.

8. It is not known how the 4th respondent expected the petitioner to respond to the notice issued to him without mentioning these grounds in the notice. This clearly shows an arbitrary and malafide action of the 4th respondent.

9. Accordingly, the Writ Petition is allowed and the impugned notice dated 27.1.2017 issued by 4th respondent is quashed and the 4th respondent is directed to pay costs of Rs. 10,000/- (Rupees Ten Thousand Only) to the petitioner for issuing such notice.

10. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 11.12.2017
KA

