

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.5619 OF 2010

ORDER:

Heard Mr.P.Gangarami Reddy for petitioners and the learned Government Pleader for respondents.

The petitioners challenge Order Rc.G/933/2008 dated 21.11.2009 as illegal and arbitrary. In counter affidavit of respondent No.3, it is averred that an order was passed cancelling assignment vide proceedings Rc.B.180/08 dated 12.10.2009. Therefore, he contends that by reference to un-communicated order and order violative of principles of natural justice or contrary to procedure prescribed under Board Standing Order, the possession of petitioners cannot and could not be disturbed by the respondents.

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

The petitioners allege that in the year 1958, the Tahsildar Udayagiri SPSR Nellore District granted assignment in favour of one Veeraiah, predecessor-in- interest of petitioners. The petitioners rely upon pattadar pass book said to have been issued by 3rd respondent accepting right, possession and enjoyment of subject matter of the writ petition. While matters stood thus, the 2nd respondent issued order dated 21.11.2009, the copy of which was secured by the petitioners under the Right to Information Act, 2005. For appreciating the grievance of petitioners, this Court finds it useful to excerpt the translated copy of order dated 21.11.2009.

“ OFFICE OF THE REVENUE DIVISIONAL OFFICER

PRESENT: SRI M.VENKATESWARULU, M.A.LLB.,

Rc. G/933/2008

Dt.21.11.2009

Sub: Land- alienation- Marripadu Mandal-Allampadu of Village S.No.429/2 Ac.0.61 cents- S.No.430/1 Ac.4-39 total Ac.5-00 cents land –Construction of Smt.Kasturiba Gandhi Girls Residential School- alienation of in favour of Rajeev Vidya Mission, Nellore-Orders issued to take advance possession.

Ref:- Tahsildar, Maripadu orders Rc.B.118/08
dt.16.11.2009

ORDERS:

In the reference cited above requested to grant permission to take advance possession and regular alienation proposals in respect of the land in S.No.429/2 Ac.0.61 cents and S.No.430/1 Ac.5-08 assigned earlier in favour of Smt.Gangavarapu Subbamma and Sri Rajavarapu Veeraiah and the said Gangavarapu Subbamma and after the death of Rajavarapu Veeraiah's wife Sheshamma died not cultivate the land and kept follow till date and violated the condition No.2 of D-Form patta proposed to take possession and found suitable for construction of Smt.Kasturiba Gandhi Girls Residential School and hand over the land to the project Director Sri Rajeev Vidya Commission, Nellore.

Keeping in view of the above facts and as per the oral instructions of District Collector permission is accorded to the Tahsildar Marripadu to hand over possession of the land in S.No.429/2 Ac.0-61 and S.No.420/1 Ac.4-39 total Ac.5-00 of Allampadu village to the project Director, Rajeev Vidya Commission Nellore and send alienation proposals immediately.

Sd/-
M.Venkateswarulu,
RDO, Kavali.”

The petitioners firstly challenge this order as illegal, arbitrary and that the 2nd respondent does not have jurisdiction to directly

interfere with petitioners' possession and enjoyment of the subject matter of writ petition. Further the respondents have not followed the stipulated procedure even assuming that a ground exists for resumption of petition land. This Court on 11.03.2010 passed the following interim order:

“Status-quo obtaining as on today shall be maintained.”

The respondents filed petition to vacate the interim order and briefly stated, the respondents justify the order by referring to proceedings Rc.B.180/08 dated 12.10.2009 whereunder the assignment is cancelled and possession was taken from petitioners.

I have perused the order dated 21.11.2009, the copies of pattadar passbook and pahani and *prima facie*, this Court is of the view that the ground, namely, the land is not brought under cultivation within three years from the date of assignment is taken quickly for cancelling assignment and for accommodating the establishment of a school by the Government. In the case on hand, the assignment was made in the year 1958. As rightly contended by Mr.Gangarami Reddy, the ground that the assigned land is not brought under cultivation cannot be taken up after several decades from the date of assignment and further according to the procedure under the A.P. Rights in Land and Pattadar Pass Books Act, the respondents issue pass book on being satisfied that a person is in possession and enjoying land. Therefore, according to him, once the pattadar pass book is issued, the very ground that the land is not brought under cultivation does not survive. On the resumption proceedings, he contends that the

avermment in the counter affidavit unsupported by copy of resumption order cannot be treated as an order passed by respondents cancelling assignment and resuming land from the petitioners. According to him, there is nothing on record to show that the proceedings dated 12.10.2009 are communicated. The fact that the order impugned in the writ petition was secured by the petitioner under the Right to Information Act can be appreciated to accept that the proceedings dated 12.10.2009 could not be treated as valid and tenable.

The Government Pleader, on the other hand, contends that the orders impugned in the writ petition have to be treated or appreciated as in continuation of resumption proceedings dated 12.10.2009. To the pointed query of this Court whether the respondents are in a position to satisfy that the resumption or cancellation of assigned land conforms to the requirements of Board Standing Order and/or that the same is communicated to the petitioners, he states from the material made available to him that the respondents could not discharge the onus cast on them. For the reasons stated above, and also that the assertions in the counter affidavit cannot be treated as resulting in orders passed by the respondents, I am satisfied that the order impugned can be set aside and is accordingly set aside. Further the respondents shall not interfere with petitioners' possession or enjoyment by referring to proceedings dated 12.10.2009. It is needless to observe that the consideration of the issue in the present writ petition is confined to the grounds stated by the respondents and the resistance offered

by the petitioners while protecting their possession. Therefore, if the circumstances still subsist for any action against petitioners, it is open to respondents to follow the procedure and resume land strictly in accordance with law.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date: 29.08.2017
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