

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.12155 of 2008

ORDER :

This Writ Petition has been filed by petitioner assailing the order dt.07.05.2008 in Proceedings No.B/619/2007 (for short, 'the impugned order') of the 3rd respondent canceling the assignment of Acs.3.00 of land in Survey No.25/1, situate at Yenugonda Village, Mahabubnagar Mandal and District, made in favour of petitioner on 13.09.1993.

2. The petitioner herein is an ex-serviceman who retired from the Indian Air Force. Invoking G.O.Ms.No.1406 dt.26.07.1958, on 13.09.1993 the above land was assigned to petitioner. The terms of assignment stated that the land would be heritable but not alienable, and he should cultivate it within three years from the date of this order and he shall not lease it out to any other person. It further stated that in clause (10) that if any of the conditions of assignment are violated, the Government would have the right to resume the land without paying compensation.

3. The petitioner contends that at the time of assignment the land was just a hillock, but he spent huge amounts to level the land and remove the bushes and he had brought it under cultivation. He contends that he was raising dry crops and had, therefore, not violated

any condition of assignment. He also stated that he dug a bore well, and pattadar pass book and title deed had also been issued to him.

4. On 05.06.2003, an order was passed by the 3rd respondent canceling the assignment made to him on the ground that he did not cultivate it and contravened the terms of assignment. The said order was not even communicated to petitioner.

5. Therefore, on 02.04.2007, WP.No.5993 of 2007 filed by petitioner challenging the same was allowed in terms of the order passed in WP.No.850 of 2007 in the case of similarly placed assignee on the ground that the order of cancellation was not served on the assignee and that the contentions raised by the assignee were not adverted to. However, liberty was granted to the 3rd respondent to initiate proceedings afresh.

6. Thereafter, on 04.02.2008, the 3rd respondent again issued a show-cause notice asking the petitioner to show-cause why the land assigned to him shall not be resumed on the ground that he had violated the terms of assignment by not bringing it under cultivation.

7. The petitioner submitted an explanation on 26.02.2008 denying the said allegation and stating that the assignment of 1993 made in his favour could not have been cancelled 14 years later, particularly when the petitioner had not violated the terms of the assignment and had brought the land under cultivation by digging a borewell and by raising dry crops. He specifically stated that he was raising castor

crop, and that at the time of issuing *Sethwar*, the Assistant Director Survey and Land Records, Mahabubnagar inspected the land noting the existence of a castor crop. He also stated that he was issued pattadar pass book and title deed by the 3rd respondent and the Adangals filed by him, including the Pahani for the year 2004-05, recorded that he raised castor crop.

8. However, the following cryptic order was passed on 07.05.2008 without referring to the contentions of petitioner :

“The contents of the reply has been examined. Upon enquiry and spot inspection the assigned land is kept fallow and not being used for agriculture purpose and also not developed for past several years. Therefore, the reply found not convincing. Moreover, the land in question is required for public necessity.”

9. Assailing the same, the Writ Petition is filed.

10. Heard the counsel for petitioner, and the learned Government Pleader for Revenue, for respondents.

11. The counsel for petitioner contends that the 3rd respondent has ignored the fact that pattadar passbook and title deed were issued to him mentioning that he had brought the land under cultivation and also the Pahani for the year 2004-05, and without noting the fact that in the said Pahani it is noted that petitioner was cultivating castor crop. Copies of the Pahani for the year 2004-05 as well as pattadar pass book have been filed along with the Writ Petition to substantiate petitioner's contention.

12. No counter-affidavit has been filed by respondents even though eight years have elapsed since the filing of the Writ Petition, and the request of the learned Government Pleader to file a counter at this stage is rejected. Also, the contents of the impugned order cannot be improved in any way by counter-affidavit since its validity has to be judged on its contents and not on the basis of any counter sought to be filed now.

13. The learned Government Pleader for Revenue is unable to explain how the 3rd respondent could have held that the land is fallow in the light of the above evidence filed by petitioner before the 3rd respondent. Therefore, it has to be held that the order passed by 3rd respondent is arbitrary, and passed without application of mind and *mala fide*.

14. Though the learned Government Pleader for Revenue sought to contend that possession was already taken on 05.06.2008, the fact remains that on 13.06.2008, this Court granted *status quo* to be maintained.

15. Though the learned Government Pleader for Revenue sought to contend that there is a remedy of appeal against the impugned order, since the very action of the 3rd respondent appears to be *mala fide* and proceedings to cancel the assignment made to the petitioner were initiated long after the assignment was made to the petitioner, and since the petitioner is an ex-serviceman, I am not inclined to relegate

the petitioner to remedy of appeal at this point of time after the Writ Petition has been pending for the last eight years.

16. Since the impugned order dt.07.05.2008 passed by the 3rd respondent is not sustainable for the aforesaid reasons it is accordingly set aside; and the respondents are directed to restore possession of the said land to petitioner. The respondents shall also pay costs of Rs.2,000/-.

17. Accordingly, the Writ Petition is allowed with the above directions.

18. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 19-01-2017

Ndr/*