

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.2350 of 2006

ORDER:

Petitioners are Ex-servicemen. They were assigned Ac.5.00 of land each in Sy.No.358/1 and 358/2 of Desapatrunipalem Village of Parawada Mandal, Visakhapatnam District on 01-01-1993 and 05-01-1993 respectively.

2. They made representations on 20-09-2005 to the 1st respondent for grant of No Objection Certificate to sell away the said land on account of certain financial problems.

3. By separate proceedings in Rc.No.4739/2005 E.1 and Rc.No.4768/2005 E.1 dt.01-02-2006, the 1st respondent refused permission on the ground that the land assigned to petitioners was kept vacant, was covered by bushes and the petitioners had not taken up any cultivation. Therefore, invoking Clause (V)(c) of sub-para (2) of Para 11 under B.S.O.-15, since petitioners did not bring the land assigned to them into cultivation and had violated the conditions of the assignment grant, the 1st respondent refused permission to sell away the assigned land.

4. Assailing the same, the petitioners filed the Writ Petition contending that from 1993 till the impugned orders were passed, not even once show cause was notice issued to them stating that they had violated the terms of assignment and they had not brought the land under cultivation within 3 years. It is stated that they had been paying

land revenue and even pattadar pass books were issued to them under the A.P. Rights in Land and Pattadar Pass Books Act, 1971, and therefore the impugned orders cannot be sustained.

5. Counter-affidavit has been filed by the District Revenue Officer, Visakhapatnam on behalf of respondents reiterating the stand taken in the impugned orders. It is stated that G.O.Ms.No.1117 Rev.(Asn.I) Department dt.11-11-1993 was issued to facilitate the Ex-servicemen, who have been assigned the land, to alienate it after 10 years from the date of assignment. It was implied therein that the assignees therein should bring the land under cultivation within 3 years. No where it is not stated that at any point of time between 1993 and passing of the impugned orders, any notice to cancel the assignment on the ground that the land was not brought under cultivation within 3 years, was issued to petitioners.

6. In the reply affidavit filed by petitioners, they alleged that their lands were adjacent to hill and covered by rocks and they had spent huge amounts to bring them under cultivation. They stated that they were raising crops depending on rains and some times after rainy seasons because of inundation, grass and bushes grow in the land. They stated that once pattadar pass books were issued to petitioners in 1999 and 1998, 6 years after assignment, it is not open to respondents to contend that the land was not brought under cultivation within 3 years from the date of assignment. They also stated that since they had been holding the assigned land for more than 10 years, they are

entitled to grant of No Objection Certificate for sale of land as per G.O.Ms.No.1117 dt.11-11-1993. They also contended that subsequently, G.O.Ms.No.279 dt.04-07-2016 has been issued by the State Government deleting the condition of non-alienability of land assigned to the Ex-servicemen for a period of 10 years, and in view of this development, the Writ Petition is liable to be allowed.

7. Sri K.G.Krishna Murthy, learned Senior Counsel appearing for Sri T.Balaji, learned counsel for petitioners reiterated the said submissions.

8. Learned Government Pleader for Assignment appearing for respondents did not dispute the fact that between 1993 to 2006 when the impugned orders were passed, no proceedings under B.S.O.15 to cancel the assignment of the petitioners on the ground that they had not cultivated the land within 3 years, had been initiated. He also did not dispute that pattadar pass books and title deeds had been issued to petitioners and that itself is indicative of the land being brought under cultivation. He also did not dispute that as per G.O.Ms.No.1117 dt.11-11-1993 Ex-servicemen, who had been assigned land by Government, were entitled to No Objection Certificate for sale of the said property, if they had cultivated the land for 10 years and that even the said condition of non-alienability for 10 years had been deleted vide G.O.Ms.No.279 dt.04-07-2016.

9. In view of the above, the Writ Petition is allowed and the impugned orders passed by the 1st respondent are set aside.

It is declared that the petitioners are entitled to alienate the land assigned to them in view of the fact that they had cultivated the land for more than 10 years as per G.O.Ms.No.1117 dt.11-11-1993 and even according to G.O.Ms.No.279 dt.04-07-2016. No costs.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 13-02-2017

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