

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.12117 of 2008

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

2. This Writ Petition has been filed challenging the order dt.07-05-2008 in proceedings No.B/619/2007 of 3rd respondent canceling assignment made in favour of the petitioner of the extent of Ac.5.00 cts in Sy. No.25/1 situated at Yenugonda village of Mahaboobnagar Mandal and district.

3. The petitioner is an ex-serviceman. He was assigned the subject land on 11-09-1985 invoking G.O.Ms.No.1406 dt.26-07-1958. According to the conditions stipulated in the assignment, it is heritable but not alienable and the land was required to be brought under direct cultivation within three years from the date of order and shall not be leased out in any manner. Condition No.10 thereof stated that breach of conditions by the assignee would entitle the Government to resume the land without compensation.

4. The petitioner contends that after taking delivery of possession of the land in 1985, Supplementary Sethwar was issued, boundaries of the land were fixed and a sub division No.25/21 was assigned to the land assigned to the petitioner. Subsequently pattedar passbook and title deeds were also issued to him.

5. Petitioner alleges that after taking possession of the land, he spent huge amounts to bring the land to cultivation by removing hill rocks and thorny bushes by engaging labour and machinery and he leveled the land. He contends that he constructed a small house for living therein, dug two bore wells in 1988 and 1990 and also obtained electricity service connection and installed submersible motor and pipe to irrigate the crops raised. He contended that he raised coconut trees about 50 number apart from cultivating paddy during rainy season and dug crops during rabi season and he was cultivating a portion of the land by raising jasmine flower plants. He contended that he had not violated any of the conditions of the assignment and that he had brought the land under cultivation within three years from the date of assignment.

6. Alleging that the petitioner had failed to develop the land assigned to him and kept it vacant and passed several years contravention of conditions of assignment, the then Mandal Revenue Officer by proceedings dt.05-06-2003 in C/17244/2002 cancelled the assignment made to the petitioner and resumed the land. This order was not communicated to the petitioner.

7. Petitioner then filed W.P.No.850 of 2007 before this Court contending that explanation given by the petitioner was not considered at all by 3rd respondent and he merely stated that the explanation is not convincing. This Court allowed it on 02-02-2007 and held that though the order was passed on 05-06-2003 by the

MRO, it was not communicated and such uncommunicated order cannot be the basis to set aside the assignment. It therefore directed that appropriate action should be initiated against the then MRO for not communicating the order. The order dt.05-06-2003 cancelling the assignment of the petitioner was set aside. However liberty was granted to the MRO to initiate action against the petitioner if there is any violation of condition of assignment in accordance with law.

8. Thereafter, the 3rd respondent issued notice dt.04-02-2008 to the petitioner alleging that he had left the land fallow and did not use it for agriculture purpose or develop it for the past years, that this amounts the violation of condition Nos.2 and 3 of the AP Assigned Rules, that this fact was noticed in an inspection made and the petitioner should show cause why the assignment should not be cancelled and the land resumed to the Government.

9. Explanation was given by the petitioner refuting the said allegations and contending that the assignment having given made in 1985, after 23 years, it cannot be cancelled particularly when the petitioner had not violated the terms of assignment and had brought it under cultivation. Petitioner contended that he dug an open Well in 1986, sank two irrigation bore-wells, and raised dry crops which are reflected in the pahanies. He also stated that he developed horticulture and 50 coconut trees and they are also existing as on that date and was in fact admitted by the Tahsildar in the counter affidavit filed in W.P.No.850 of 2007 at para-5. Photographs of the developed

land were also enclosed. It was also pointed out that pattadar passbooks and title deeds had been issued to him and the copies of the revenue records such as pahanies of 1995-96 were enclosed which showed the cultivation of the land.

10. On 07-05-2008, the impugned order has been passed with the following cryptic observations:

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

11. None of the contentions raised by the petitioner in the explanation to the show cause notice are adverted to. The pahanies for the year 1996 are not referred to therein.

12. Learned counsel for the petitioner contends that the said pahani would clearly indicate that there is cultivation of paddy and coconut trees in the subject land in an extent of Ac.2.00 cts apart from jasmine cultivation in Ac.0.20 cts, that once pattadar passbooks and title deeds have also been issued, mentioning that the petitioner is cultivating the land, the 3rd respondent could not have taken a stand that the land is kept fallow and has not been used for agriculture purpose.

13. Learned Government Pleader for Revenue appearing for respondents does not dispute the recital in Column 21 of the pahani

for 1995-96 filed by the petitioner in respect of the subject land. He has also not disputed the fact in the pattadar passbook issued to the petitioner, it is clearly stated that the petitioner is cultivating the land.

14. Therefore, it has to be held that the order dt.07-05-2008 passed by the 3rd respondent is passed without application of mind and without considering the material evidence produced by the petitioner and appears to be perverse and *mala fide*.

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 right years.

16. Accordingly, the impugned order is set aside and the Writ Petition is allowed with costs of Rs.2,000/- (Rupees Two Thousand only).

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-01-2017

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