

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

WRIT PETITION No.23188 of 2008

ORDER :

Heard the learned counsel for petitioner and the learned Government Pleader for Assignment appearing for respondents.

2. Petitioner has filed this Writ Petition assailing the order dt.15-06-2001 in Rc.No.142/2001/A and consequently to direct the 4th respondent to register the pending document bearing No.P142/07 after registering the same.

3. Petitioner's father, who was an Ex-serviceman, was assigned dt.15-03-1969 under D-Form patta No.229/1376 fasli an extent of Ac.2.90 cents in Sy.Nos.74/1 and 74/2 of Gudilova village, Anandapuram Mandal Visakhapatnam District. He died on 31-10-2002. Petitioner, who succeeded to the property, executed a document dt.15-03-2007 in the nature of irrevocable possessory sale agreement-cum-General Power of Attorney in favour of certain third parties along with some other lands and presented the same for registration.

4. This document was kept pending registration by giving P.No.142/07.

5. Petitioner then filed W.P.No.9071 of 2008 seeking a direction to the 4th respondent to register the said document.

6. Counter-affidavit was filed by 1st respondent therein mentioning for the first time that the assignment in favour of petitioner's father was cancelled on 15-06-2001 in R.C.No.142 of 2001-A.

7. Petitioner contends that neither he nor his father were aware of the cancellation of the assignment or the order resuming the land, that he then withdrew W.P.No.9071 of 2008 and then filed the present Writ Petition after obtaining the copy of the impugned order from the 1st respondent. It is also alleged that the said copy was obtained under the Right to Information Act, 2005 and it was furnished along with show cause notice in proceeding in file No.RIA 134/A/13-10-2008.

8. Petitioner contends that the impugned order cancelling the assignment made to petitioner's father was passed without serving any show cause notice about the said cancellation and without communicating the order of cancellation to petitioner's father or to petitioner.

9. Learned counsel for petitioner further contends that since assignment was in the year 1969 and since petitioner's father was cultivating the land, the action of 1st respondent in seeking to resume the land initiated in the year 2001, after a lapse of more than 30 years, is unsustainable since it is settled law that such power ought to be exercised within a reasonable time. It is further contended that 1st respondent did not verify and record a finding as to the service of

the show cause notice on petitioner's father and proceeded as if sending of the notice amounts to service of notice. It is also stated that 1st respondent has no power to pass the impugned order since he is not the competent authority under the provisions of the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977 and only the Revenue Divisional Officer or the District Collector is the competent authority. She also contended that the impugned order is not based on any legal evidence since no material such as Revenue records/adangals were examined by 1st respondent before passing the impugned order holding that there was no cultivation of the assigned land by petitioner's father since 1969.

10. Learned counsel for petitioner contends that in view of G.O.Ms.No.1117 dt.11-11-993, the land assigned to Ex-servicemen can be alienated after 10 years from the date of assignment and therefore petitioner was entitled to execute the document P.No.142/07 and submit it for registration to the 4th respondent and the 4th respondent cannot refuse to register it on the ground that it is Government land.

11. Counter-affidavit was filed by respondent Nos.1 and 2 admitting that petitioner's father was an Ex-serviceman. It is denied that the petitioner and his father were in possession of the land after it was assigned and reference is made to certain adangals (Faslis 1410 onwards). It is admitted that show cause notice, which was issued to petitioner's father to his last known address, was returned undelivered

by the Postal authorities with endorsement “no such door number in old R.S.Palem”. It is stated that certain encroachers who were also issued show notices gave explanation that petitioner’s father was never seen in the village and never cultivated the land. It is stated that on this basis, a conclusion was drawn that petitioner’s father did not bring the assigned land into cultivation, left it fallow and when it was encroached upon by encroachers, that was why the patta was cancelled and possession was taken by respondent Nos.1 to 3.

12. Learned Government Pleader for Assignment appearing for respondent Nos.1 to 3 reiterated the said contentions.

13. From the facts narrated above, it is clear that petitioner’s father was an Ex-serviceman and he was assigned the subject land in the year 1969. While petitioner asserts that the land has been cultivated by his father, respondent Nos.1 to 3 asserts that there is no such cultivation.

14. Admittedly show cause notice allegedly issued by 1st respondent on 31-05-2001 was not served on petitioner’s father though he was alive at that point of time.

15. It has been held in **Jinka Chendrayudu Vs. Joint Collector, Kadapa District and others**¹ that assigned land if not brought under cultivation within three years of patta, as per its conditions, notice ought to have been issued after expiry of 3 years period and

¹ 2012(1) ALD (NOC7)

proceedings for cancellation of patta cannot be initiated after more than 30 years. Similar view has been taken in **B.Adinarayana Murthy Vs. Collector, Ananthapr District and others²**.

16. The impugned order does not refer to any Revenue records such as adangals for the period from 1969 to 2001 at all. It is common knowledge that the adangal would contain entries dealing with cultivation of crops in the lands of any particular village and it is shocking that without any reference to adangal of any period, the impugned order has been passed.

17. This clearly shows that 1st respondent has acted in *mala fide* manner and has come to conclusion that petitioner's father has not cultivated the land on the basis of no evidence. In fact, the impugned order itself refers to the fact that there is a cashew tope in the assigned land, which shows that the land was being cultivated. Therefore, the finding of the 1st respondent that the land is not under cultivation is also perverse. Therefore the impugned order cannot be sustained. It is accordingly set aside.

18. Once the impugned order passed by the 1st respondent is set aside, it has to be held that the land continued to be the land of petitioner's father and after his death, devolved on petitioner.

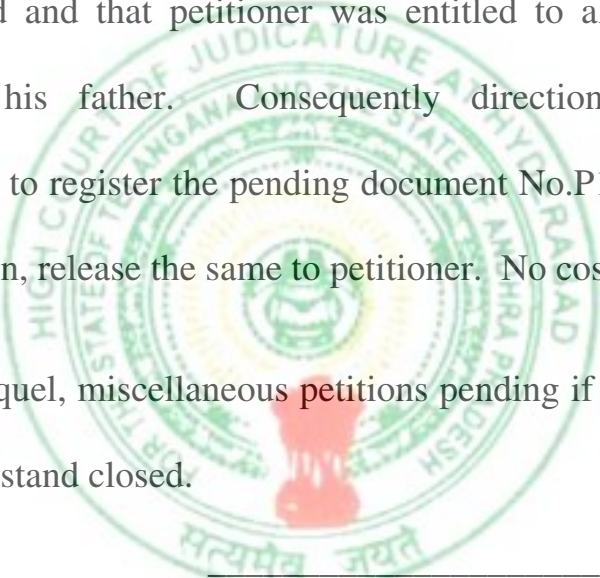
19. It is not in dispute that G.O.Ms.No.1117 Revenue (Assignments I) Department dt.11-11-1993 permits the Ex-servicemen to sell away

² 1999(6) ALT 322

their assigned lands after a period of ten years. Therefore 4th respondent cannot take a stand that he would not register the land which the petitioner has alienated under an irrevocable possessory sale agreement-cum-General Power of Attorney dt.15-03-2007 and keep it pending as Document No.P142/07.

20. Accordingly, the Writ Petition is allowed, the order dt.15-06-2001 in Rc.No.142/001/A passed by 1st respondent is set aside and it is declared that the assignment made to the petitioner's father is valid and that petitioner was entitled to alienate the land assigned to his father. Consequently direction is issued to 4th respondent to register the pending document No.P142/07 and after due registration, release the same to petitioner. No costs.

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



JUSTICE M.S.RAMACHANDRA RAO

Date : 23-01-2017

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