

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.33451 OF 2017

Dated:09.10.2017

Between:

Cholleti Prabhakar Reddy, S/o. Madhava
Reddy, aged about 70 years, R/o.H.No.3-8-56,
Reddy Street, Jangaon Town, Jangaon
District, Telangana and others

.. Petitioners

And

The State of Telangana, Revenue
Department, rep., by its Principal
Secretary, Secretariat, Hyderabad,
and others

.. Respondents



The Court made the following:

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ORDER:

Heard.

2. According to 1st petitioner, he has inherited agricultural lands in Survey Nos.95 to 101 of Jangaon Village and Mandal from his father and was cultivating them. The said lands are situated adjacent to the land of the Government in Survey No.53/1 and claimed that an extent of Ac.1.20 guntas of Government land was in possession of his father and thereafter by him and the said possession was for convenient use of their land and with the knowledge of the revenue authorities. According to 1st petitioner, the occupation of the Government land dates back to more than five decades. Earlier, when the Mandal Revenue Officer, Jangaon, tried to dispossess the 1st petitioner, he filed W.P.No.22674 of 1996, which was disposed of by order dated 18.06.1996 to follow due process while dispossessing him from the subject lands. Thereafter, notice under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 was issued. In response to the same, the 1st petitioner offered to take the land on payment of market value and filed W.P.No.23628 of 1996 alleging inaction by the authorities concerned. By order dated 20.01.2003, the said Writ Petition was disposed of granting liberty to the 1st petitioner to file fresh application seeking allotment of the land. Accordingly, he filed application dated 11.11.2004 by relying on G.O.Ms.No.1724, dated 26.08.1959 as amended by Government Memo No.4220/B1/65-1, dated 16.02.1996. According to the 1st petitioner, his representation was considered and favourable

decision was taken to assign the land on payment of market value of Rs.3,00,000/- per acre. Accordingly, the 1st petitioner has deposited an amount of Rs.4,50,000/-. The Revenue Divisional Officer directed the Tahsildar for preparation of sub-division records. The 1st petitioner was also permitted to erect fencing around the land. As no further proceedings were issued, the 1st petitioner filed W.P.No.2237 of 2008 seeking to issue patta in his favour and also in favour of his son and daughter, who got themselves impleaded as petitioners 2 and 3 in the Writ Petition. Petitioners 2 and 3 also filed W.P.No.9531 of 2009. During pendency of the said Writ Petitions, decision was taken rejecting the request of the petitioners. By order dated 12.06.2017, this Court took note of the decision taken on 24.02.2008 rejecting the request of the petitioners and that the said decision was not under challenge.

3. Stating that in the earlier round of litigation, the petitioners did not challenge the rejection order dated 24.02.2008 and on that ground earlier Writ Petitions were dismissed and seeking to challenge the said decision, the present Writ Petition is filed.

4. Heard Sri Vedula Srinivas, learned counsel for the petitioners. He submits that in the earlier round of litigation, petitioners did not challenge the rejection order and as the Writ Petitions were disposed of only on the ground that there was no challenge to the decision taken on 24.02.2008, this Writ Petition is maintainable. According to learned counsel, as impugned decision dated 24.02.2008 was taken during the pendency of those Writ Petitions, the petitioners were advised not to challenge the said

decision during the pendency of those Writ Petitions and therefore no challenge was made. He further submits that since the petitioners have now come to know that the Writ Petitions filed by them were dismissed on the ground that there was no challenge made to the order dated 24.02.2008, the present Writ Petition is filed and therefore the same is maintainable. In view of the reasons assigned in paragraph No.8 of the affidavit filed in support of the Writ Petition justifying the delay, he would submit, the Writ Petition cannot be dismissed on the ground of delay.

5. Before appreciating the said contentions, it is appropriate to note that learned counsel for the petitioners fairly stated that the order of the District Collector, Warangal, dated 24.02.2008, was received by the petitioners during the pendency of the earlier Writ Petitions.

6. The facts as briefly noted above would disclose that the 1st petitioner offered to take the land of the Government on payment of market value and the said request though at one point of time was positively considered, but later it was rejected on the ground that the adjacent land owned by the petitioners was converted into residential plots and thereafter the same was sold and that the land does not retain the character of an agricultural land any more and therefore no assignment can be made.

7. In the counter affidavit filed in W.P.No.2237 of 2008, it is specifically stated at paragraph No.7 as under:

“... Hence, show cause notice was issued to the writ petitioner and his son and daughter to prove their eligibility as per G.O.Ms.No.1724, dt.26.08.1959 as amended by Govt. Memo No.4220/B1/65-1, dt.16.02.1996, within (7)

days from the date of receipt of the notice. But, the petitioner has failed to produce any documents showing his eligibility for assignment under the above G.O.Ms.No.1724, dt.26.08.1959. Hence, the petition was disposed of on 24.02.2008.”

8. As noted above, petitioners 2 and 3 herein who are children of the 1st petitioner filed W.P.No.9531 of 2009 and a separate counter affidavit is filed in the said Writ Petition. It is specifically stated in the said counter affidavit that a decision was made on 24.02.2008 holding that the petitioners are not entitled to seek assignment of land even by paying market value and when the decision was sought to be communicated the 1st petitioner refused to receive. It was also specifically asserted that the Government land available in the districts should be earmarked only for INDIRAMMA Housing Programme and that no assignment can be made for some other purpose. The said assertions as noted above would disclose that in the year 2008, a decision was made and communicated to the petitioners. The counter affidavit in W.P.No.9531 of 2009 was filed in July, 2009 and in July, 2009, reply affidavit was filed by the 1st petitioner in W.P.No.2237 of 2008. In the said reply, there is no whisper about the decision made rejecting the request of the petitioners. Thus, the petitioners did not avail appropriate remedies on the further course of action immediately thereafter, if they were aggrieved by the decision made on 24.02.2008, and instituted this Writ Petition only by taking the plea that as the Writ Petitions filed in the years 2008 and 2009 were pending and disposed of only on 12.06.2017 the decision made by the District Collect on 24.02.2008 was not challenged in those Writ Petitions.

9. In order to appreciate this contention, it is also relevant to note the decision of this Court in the above two Writ Petitions. Learned single Judge of this Court elaborately considered the respective submissions and took note of the decision taken on 24.02.2008. It was also contended that in view of the earlier permission granted by the District Collector in depositing the amount pursuant to the order, the petitioners are entitled to assignment of land. This contention was considered and rejected.

10. Having regard to the assertions of learned counsel for the petitioners, it is appropriate to extract the relevant portion of the order of learned Single Judge. It reads as under:

“... I have carefully perused G.O.Ms.No.1724, dated 26.08.1959, as amended by Memo dated 16.02.1966. The said Government Orders provide for assignment of Government lands mainly to landless poor persons. Admittedly, the petitioners owned agricultural lands and they sold the same as house plots. The entire case of the petitioners is based on earlier orders of the District Collector, Warangal, which was also again based on the report of the Revenue Divisional Officer, Jangaon, submitted in 2005. Thereafter things have changed and it came to light that the petitioners owned agricultural lands and they converted them into house plots and sold to different individuals. Now in the counter affidavit filed by the District Collector, the District Collector agreed to refund the amount lying in the Government account. Even after passing an order way back on 24.02.2008 by the District Collector after issuing a show cause notice to the petitioners, the petitioners did not challenge the said order, but continued the present Writ Petitions.

In the circumstances, no relief can be granted in these two Writ Petitions and the Writ Petitions are, accordingly, dismissed. However, the District Collector is directed to refund the amount deposited by the petitioners to the petitioners along with interest @ 9% per annum, within a period of three months from the date of receipt of a copy of

this order. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.”

11. A bare reading of the judgment of the learned single Judge would disclose that the Court has considered the claim of the petitioners vis-à-vis the rejection order of the District Collector dated 24.02.2008 and having found that even on merits the petitioners are not entitled to declaration as sought for by them the Writ Petitions were dismissed.

12. Even otherwise, on 01.02.2008 a show cause notice was issued calling upon the petitioners to show their eligibility on the claim made by them. Petitioners do not dispute that notice was served on them, but no reply was filed by them to the said show cause notice. As there was no response, final orders were passed on 24.02.2008 rejecting the claim of the petitioners. As noted from the counter affidavit filed in the earlier Writ Petitions and as fairly stated by learned counsel for the petitioners, the 1st petitioner was aware of the proceedings of the District Collector and no steps were taken to prefer appeal or to amend the prayer in the earlier Writ Petitions or to challenge the proceedings independently.

13. In the peculiar facts of this case, it is necessary to take note of the subsequent developments. The issue concerns period between years 2005 and 2008 and this case is filed in the year 2017. The land which the petitioners claimed is now part of Jangaon Town which is now the headquarters of the District. Due to formation of new districts and making Jangaon as a District Head Quarter, the Government would require open land for various purposes. It appears, the land is in the vicinity of Jangaon town

and residential colonies have come up. It is seen from the record that the decision of the District Collector was made on 24.02.2008, whereas the present Writ Petition is filed in the year 2017 and no leave was sought to file fresh Writ Petition when earlier Writ Petitions were disposed of. The said Writ Petitions were considered based on record and orders were passed dismissing them without granting leave to petitioners. Thus, even assuming that there is merit in the contention of learned counsel for the petitioners, the Court cannot grant the relief as prayed for in a Writ Petition instituted after nine years in exercise of equitable jurisdiction of this Court and the same is liable to be dismissed.

14. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Writ Petition shall stand closed.

Date:09.10.2017

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P. NAVEEN RAO, J