

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition Nos.21089 of 2009 & 10765 of 2011

COMMON ORDER:

Heard Mr. V.V. Prabhakara Rao, Mr. Venkateshwar Varanasi, appearing for petitioners, learned Government Pleader (Assignment) for respondents 1 to 4 and P. Madhusudhan Reddy for R.6.

2. The petitioners in these two writ petitions are different and the subject matter is an extent of Ac.1.40 cents in Sy.No.142-1P or 142/ 1-3 at Narsareddypalem village, H/o Chinna Annaluru, Kaligiri Mandal, SPSR Nellore District.

3. The petitioners pray for *mandamus* declaring the action of respondents in interfering with petitioners' possession and enjoyment of subject matter of the writ petition, without recourse to law, as illegal, arbitrary and unconstitutional.

4. The circumstances relevant for disposing of the writ petitions are stated thus:

i) Tinnemalli Ramanaiah (1st petitioner in WP No.21089 of 2009) since deceased is represented by his wife and children. Tinnemalli Ramanaiah alleges that 4th respondent through Assignment No.121/ 97, dated 20.01.1988 assigned an extent of Ac.1.40 cents in Sy.No.142-1P of Chinna Annaluru H/o Agraharam, Kaligiri Mandal, Nellore District, in his favour. According to him, he continues to be in possession and enjoyment of Ac.1.40 cents and the cause of action for filing the writ petition is that when the assignment is subsisting, the 4th respondent is interfering with petitioner's possession and enjoyment, and such

threatened act of dispossession has been at the instance of 5th respondent. Hence, the writ petition.

ii) Pallapu Neelavathi (petitioner in WP No.10765 of 2011) alleges that 4th respondent through D.Form No.137/ 1415 dated 17.08.2005 assigned in her favour an extent of Ac.1.40 cents in Sy.No.142/ 1-3 at Narsareddypalem village H/o Chinna Annaluru, Kaligiri Mandal. The petitioner claims to be in possession and enjoyment of petition land and Tinnemalli Seethamma (2nd petitioner in WP No.21089 of 2009) threatened to interfere with Neelavathi, she filed OS No.196 of 2009 and also IA No.546 of 2009 for perpetual and temporary injunction against Seethamma (2nd petitioner). According to her, *ad-interim* injunction was granted in her favour on 22.07.2009. The 5th respondent cannot and could not interfere with her possession in view of the resumption orders said to have been passed by 4th respondent in respect of Sy.No.142/ 1P. The writ petition, it appears, is filed as an additional relief, restraining respondents 1 to 4 from interfering with petitioner's possession and enjoyment of petition land.

5. From the narration of writ prayers and also the case pleaded by petitioners in these writ petitions, it is evident that with minor change in the description, the same subject matter is claimed by these two petitioners. The Tahsildar could have properly assisted the court by filing a simple counter-affidavit, adverting to the issue on hand. B. Prasad/ the then Tahsildar of Kaligiri Mandal, filed counter-affidavit and has set out in great detail the stand of Government in this writ petition against a simple prayer of dispossession without recourse to law. The confusion is avoided with the consensus arrived at by learned

counsel appearing for all parties that the stand taken by Mr. B. Prasad, suffers from contradictions.

6. For the limited purpose of appreciating the contradictions, I find it useful to excerpt a few of the averments in the counter-affidavit of 4th respondent in both the writ petitions, which reads thus:

“Counter-affidavit of 4th respondent in WP No.21089 of 2009:-

“....I submit that as the land in Sy.No.142-1 is under dispute as stated above, I have verified the records available in this office and also inspected the field. As verified from the field measurement book the total extent of S.No.142-1 is Acs.3.75. And at present three sub-divisions are there viz., S.No.142-1-1 Acs.0.95, S.No.142-1-2 Acs.1.40 and S.No.142-1-3 Acs.1.40. The Sy.No.142-1-1 Acs.0.95 is road and the remaining extent of Ac.2.80 is disputed land. At present the entire Acs.2.80 in Sy.No.142-1-2 and S.No.142-1-3 is under occupation of Smt. Tinnemalli Seethamma W/o of the deceased writ petitioner who impleaded in this writ petition as legal representative by cultivating paddy crop. Smt. Pallapu Sampurna and Pallapu Neelavathi who are stated to be assignees for Ac.1.40 cents in Sy.No.142-1-3 and 142-1-2 are not having possession at present.

I submit that as verified from the office records of the Tahsildar Kaligiri no such file containing resumption order pertaining to Sy.No.142-1p assigned to the writ petitioner is found. The subsequent assignees Smt. Pallapu Sampurna and Pallapu Neelavathi are not residing in China Annaluru or any other village of Kaligiri Mandal for the past several years, and are not in possession of the subject land. Therefore it is submitted that the legal representatives of the writ petitioner i.e. Tinnemalli Seethamma and others are entitled for Ac.1.40 only in Sy.No.142-1, though they are in occupation and enjoyment of Ac.2.80 in Sy.No.142-1-2 and 142-1-3. The remaining extent of Ac.1.40 is Govt. land to be settled by the Revenue Authorities after thorough enquiry about the eligibility of the subsequent two assignees.

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The then Tahsildar Kaligiri has given a letter to the respondent 5 about this dispute that the land in Sy.No.142-1-3

Ac.1.40 was assigned to the petitioner Tinnemalli Ramanaiah and it was resumed to Government by the then Mandal Revenue Officer, Kaligiri Mandal vide Rc.B.275/ 2000 dt. 2.04.2000 and it was assigned to Smt Pallapu Sampurna W/ o Venkateswarlu and Smt Pallapu Neelavathi W/ o Venkata ratham was also assigned Ac.1.40 in Sy.No.142-1-2 of China Annaluru Village. Aggrieved by this the petitioner has filed writ petition.

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I submit that in view of the pendency of writ petitions in this Hon'ble court we have not taken steps so far and after noticing the above anomaly, we will take appropriate steps to settle the issue and while settling the issue we will follow the due process of law. I submit that without following due process of law we will not take any steps against the petitioner."

"Counter-affidavit of 4th respondent in WP No.10765 of 2011:

"....The total extent of Sy No.142-1 is Ac.3.75 and out of which ac.2.80 cents is available on physically after leaving road. Out of it an extent of Ac.1.40 assigned to Sri Tennemalli Ramanaiah without creating sub-division. Later during the year 2005 Smt Pallapu Neelavathi W/ o Venkata Rathnam was assigned Ac.1.40 in Sy.No.142-1-2 vide F.Dis. No.137/ 1415 dated 17.08.2005 and without noticing the earlier assignment and without resuming the same and Smt. Pallapu Sampurna W/ o Venkateswarlu was assigned Ac.1.40 in Sy.No.142-1-3 vide F.Dis No.136/ 1415 dated 17.08.2005, by doing the same thing. Hence dispute arised between the petitioner and the subsequent assignees and complaints were filed by them before the Station House officer, Kaligiri. The then Tahsildar Kaligiri has given a letter to the Station House officer, Kaligiri about this dispute that the land in Sy.No.142-1-3 Ac.1.40 was assigned to Sri Tinnemalli Ramanaiah and again it was assigned to Smt. Pallapu Sampurna W/ o Venkateswarlu and Smt. Pallapu Neelavathi W/ o venkatarathnam was also assigned Ac.1.40 in Sy.No.142-1-2 of China Annaluru village.

I submit that as verified from the office records of the Tahsildar Kaligiri no such file containing resumption order pertaining to Sy.No.142-1p assigned to the writ petitioner is found. The subsequent assignees Smt. Pallapu Sampurna and Pallapu Neelavathi are not residing in China Annaluru or any

other village of Kaligiri Mandal for the past several years, and are not in possession of the subject land. Therefore it is submitted that the 5th respondent i.e. Tinnemalli Seethamma and others are entitled for Ac.1.40 only in Sy.No.142-1, though they are in occupation and enjoyment of Ac.2.80 in Sy.No.142-1-2 and 142-1-3. The remaining extent of Ac.1.40 is Govt. land to be settled by the Revenue Authorities after thorough enquiry about the eligibility of the subsequent two assignees including the writ petitioner herein.

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The then Tahsildar Kaligiri has given a letter to the respondent 5 about this dispute that the land in Sy.No.142-1-3 Ac.1.40 was assigned to the petitioner Tinnemalli Ramanaiah and it was resumed to Government by the then Mandal Revenue Officer, Kaligiri Mandal vide Rc.B.275/ 2000 dt. 2.04.2000 and it was assigned to Smt Pallapu Sampurna W/o Venkateswarlu and Smt Pallapu Neelavathi W/o Venkata ratham was also assigned Ac.1.40 in Sy.No.142-1-2 of China Annaluru Village.

.....

I submit that in view of the pendency of writ petitions in this Hon'ble court we have not taken steps so far and after noticing the above anomaly, we will take appropriate steps to settle the issue and while settling the issue we will follow the due process of law. I submit that without following due process of law we will not take any steps against the petitioner."

7. From the above, it is evident that 4th respondent, on one hand, accepts the assignment, possession, issuance of resumption order against the petitioner in WP No.21089 of 2009 and further states that the record is not available in the office. Further alleges that assignment in favour of petitioner in WP No.10765 of 2011 was made and the matter requires examination by the office of 4th respondent.

8. After perusing the averments and the documents relied upon by petitioners, this court is compelled to observe that when the orders or proceedings are issued in the manner referred to above, then the presumption available to official acts can be claimed by 4th respondent,

firstly by producing the record and secondly satisfy the court that the order is passed as prescribed by law. This court, however, does not want to proceed to consider this aspect of the matter any further.

9. For the purpose of disposing of these two writ petitions, it is sufficient to hold that the assignment in favour of T.Ramanaiah (petitioner in WP No.21089 of 2009) is admitted and having regard to stand taken in the land acquisition, the resumption proceedings said to have been passed cannot be put against T. Ramanaiah or his successors-in-interest for disturbing their right or possession. At the same time, assignment in favour of Pallapu Neelavathi (Petitioner in WP No.10765 of 2011) is also accepted, but the deponent/Tahsildar alleges that the petitioner is not residing in the village and not entitled for assignment.

10. This objection of 4th respondent cannot be subject matter of WP No.10765 of 2011 or a decision by this court. The 4th respondent, if is of the view that Neelavathi is required to be heard for any reason either for recalling the assignment dated 17.08.2005, she should be put on notice on alleged irregularities in assignment, 4th respondent is given liberty to act accordingly and passes appropriate orders in this behalf.

11. With the above findings, the writ petitions are disposed of as follows:

- (a) The respondents in WP No.21089 of 2009 are directed not to interfere with petitioners' possession in an extent of Ac.1.40 cents in Sy.No.140-1P of Chinna Annalauru H/ o Agraharam, except in accordance with law.
- (b) The 4th respondent is given liberty to issue notices to petitioners in both writ petitions on any of the aspect warranting

enquiry, afford liberty to both of them, receive explanation and pass orders in accordance with law.

(c) The 4th respondent is also directed to consider the eligibility and entitlement of Pallapu Neelavathi (Petitioner in WP No.10765 of 2011) if she cannot be accommodated by assigning the land in Sy.No.142, 4th respondent can consider assigning Government of land, if available, in the same village, to her.

No order as to costs. Pending miscellaneous petitions if any in these writ petitions shall stand dismissed in consequence.

Date: 28.08.2017
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