

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.37155 of 2017

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondent Nos.1 to 3.

2. Petitioners have filed this Writ Petition challenging the action of the 3rd respondent in not issuing fresh patta in favour of themselves as well as 4th respondent who are all legal heirs of one Geratayya to whom the land was initially allotted on 28-08-1970 by the then 3rd respondent.

3. The 1st petitioner is the wife of the said Geratayya and is aged 83 years and 2nd petitioner and 4th respondents are his daughter and son respectively. The said Geratayya admittedly died intestate on 09-07-1987.

4. After his death, without issuing any notice to the petitioners, 4th respondent's name was mutated by 3rd respondent and fresh patta was issued to him in the year 2006 vide proceedings Ref.No.B808/2006 dt.19-10-2006.

5. Petitioners contend that the assignment was of a site which is still vacant and that the legal heirs are presumed to be in joint and constructive possession. Petitioners contend that on coming to know of the patta issued in favour of 4th respondent, they made a

representation on 23-08-2017 to respondent Nos.2 and 3, but they did not take any action.

6. Though notice was issued to 4th respondent, the said notice has been refused by 4th respondent. Therefore, it is deemed to be served.

7. The 3rd respondent has filed counter affidavit admitting that the subject land was allotted to 1st petitioner's husband Geratayya on 25-06-1970 on payment of market value; that the said allotment was cancelled and a fresh house site was allotted to 4th respondent on 19-10-2006 and that the 4th respondent has sold the property to a third party under an unregistered sale deed dt.19-10-2006. In the counter affidavit, 3rd respondent does not state that he had issued any notice to the petitioners, who are also legal heirs of the deceased Geratayya, before canceling the house site allotted to him and allotting another house site to 4th respondent. On the contrary, blame is placed on the petitioners for keeping quiet for 11 years.

8. This is indeed shocking. It was the obligation of 3rd respondent, when the 4th respondent approached him to issue a fresh patta for the house site assigned to his father, to enquire as to who are all the legal heirs of Geratayya, give notices to them or at least insist 4th respondent to get 'No Objection Certificate' from the petitioners before canceling the patta issued to Geratayya and giving a fresh patta for different house site to 4th respondent. Instead, it is stated that the

petitioners should have filed objections at appropriate time and they should approach the Civil Court. This is utterly perverse stand of 3rd respondent and cannot be countenanced. How petitioners are expected to do so without knowing about the action of 4th respondent is not explained. It is clear that 3rd respondent colluded with 4th respondent.

9. Thus the action of 3rd respondent is clearly illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India apart from being *mala fide* and in violation of principles of natural justice.

10. Accordingly, the Writ Petition is allowed; the cancellation of the patta granted to Geratayya by 3rd respondent under the proceedings Ref.No.B/808/2006 dt.19-10-2006 of 3rd respondent, is set aside as being made in gross violation of principles of natural justice as it was done without notice to the petitioners and the allotment made of alternative site to 4th respondent under the said proceeding is also set aside.

11. The 3rd respondent is also directed to pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the petitioners and 1st respondent is directed to initiate disciplinary action against 3rd respondent for colluding with 4th respondent in depriving that the petitioners what share in the land assigned to the petitioners and 4th

respondent, after issuing notice to 4th respondent within two weeks from the date of receipt of a copy of this order.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 12-12-2017

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