

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

WRIT APPEAL No. 1980 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in W.P.M.P. No. 52418 of 2017 in W.P. No. 42274 of 2017 dated 19.12.2017.

The appellants herein are the respondents in the Writ Petition. Respondents 1 to 3 herein filed the Writ Petition seeking a mandamus to declare the action of the appellants herein in trying to construct the Christian Bhavan, in the land in Survey No. 124/B admeasuring 3.00 acres in Yaprak Village, Alwal Mandal, Medchal, belonging to the respondents-writ petitioners, as illegal, arbitrary, unfair and violative of Articles 14, 19, 21 and 300-A of the Constitution of India, and against the policy decision of the Government to provide lands to poor Scheduled Caste and Scheduled Tribe persons.

The respondents-writ petitioners, all of whom belong to the Scheduled Castes, were admittedly assigned land in the year 1962. It is the case of the appellants herein that a notice was issued to the respondents-writ petitioners on 13.11.2015 stating that they had violated the conditions of assignment; an order had also been passed on 15.3.2016 cancelling the assignment made to the respondents-writ petitioners' father; the land was resumed on 23.11.2016; and the respondents-writ petitioners were not in possession of the land.

Even before the appellants herein could file a counter affidavit, and on the basis of the instructions received by the

learned Government Pleader, the learned Single Judge came to the conclusion that the subject land was being cultivated as is reflected in the pahanies from 1971-72 till 2002-03; and the plea of the appellants, that these lands were not being cultivated, were false. After taking notice of the submission, urged on behalf of the respondents-writ petitioners, that they had not received the notice dated 13.11.2015, the learned Single Judge observed that any order passed behind the petitioners' back, for resumption of the subject land, was, prima-facie, non-est in the eye of law; the appellants should restore the land to the respondents-writ petitioners forthwith; and they should not interfere with the possession and enjoyment of the respondents-writ petitioners over the subject land.

Learned Advocate General for the State of Telangana would submit that the copies of the pahanies, filed by the respondents-writ petitioners, contain nineteen (19) columns only, and do not reflect the pahanies in its entirety; a copy of the pahanies, containing 35 columns, has now been filed along with the appeal; column No.23, which is the relevant column, shows that the subject land is fallow and has not been cultivated; the contention that the respondents-writ petitioners were cultivating the land is evidently false, as it is not reflected in the pahanies for the relevant years; despite it being brought to his notice that the order of resumption was passed more than a year and half ago on 15.3.2016, the learned Single Judge had directed restoration of the land to the respondents-writ petitioners; even in case the Writ Petition were to be allowed later, the order of resumption, for violation of the conditions of assignment, can at best be set aside;

that does not disable the Government from resuming the land and pay either compensation or provide alternate land to the respondents-writ petitioners; the appellants undertake that, in case the Writ Petition is allowed later, they would either pay compensation to the respondents-writ petitioners or allot alternate land to them; and since the land is now being sought to be allotted, for the common good of a section of the society, such assignment is permissible under the Telangana Assigned Lands (Prohibition of Transfers) Act, 1977; and the order of the learned Single Judge should, therefore, be set aside.

On the other hand, Sri P. Srinivas, learned counsel for the respondents-writ petitioners, would submit that assignment of Government lands can be cancelled, for violation of the conditions of assignment, only if the land is not brought into cultivation within three years of allotment; any action which the appellants were entitled to take was only upto 1965-66, and not thereafter; in any event they could not have resumed the subject land, for violation of the conditions of assignment, without putting the respondents-writ petitioners on notice, and without giving them an opportunity of being heard; it is the specific case of the respondents-writ petitioners that no such notice was issued to them; the relief which the respondents-writ petitioners, in effect, seek is to direct the appellants not to make any construction; and the direction, to restore possession, was not sought by them.

It is not in dispute that that all the respondents-writ petitioners belong to the Scheduled Castes, and were assigned land as they were landless poor. It is also not in dispute that the assignment was made in the year 1962. The contention of the

appellants, even if true, would show that the land was sought to be resumed for violation of the conditions of assignment, more than five and half decades thereafter in the year 2016. The question whether the respondents-writ petitioners were put on notice, and were given an opportunity of being heard, before the subject lands were resumed necessitates examination in the Writ Petition after the appellants file their counter-affidavit.

While the submission of the learned Advocate General is no doubt attractive, the fact remains that in case the order of resumption, for violation of the conditions of assignment, were to be set aside for violation of principles of natural justice, the appellants would then be entitled to resume the subject land, for a public purpose, on payment of the market value of the land in terms of the larger Bench judgment of this Court in **LAO-cum-Revenue Divisional Officer, Chevella Division v. Mekala Pandu¹**.

The question which would then necessitate examination is whether allotment of land, for construction of the Christian Bhavan, would constitute “public purpose” or for the common good of a section of the society, in which event alone, can assigned lands be resumed on payment of market value. As it does appear that the appellants are in possession of the subject land, it would suffice if the order of the learned Single Judge, to the limited extent he directed restoration of possession to the respondents-writ petitioners, set aside.

While the appellants are entitled to retain possession of the subject land, they shall neither raise any construction, nor permit

¹ 2004(2) ALD 451

any construction to be raised, thereupon until further orders in the Writ Petition. It is made clear that the order now passed by us shall be treated as the interim order in the Writ Petition, and it is open to the appellants herein to file a petition seeking vacation of the said interim order. Suffice it also to make it clear that, in case a petition is filed seeking vacation of the said interim order, the learned Single Judge shall consider the same on its merits uninfluenced by any observations made by us in the present order.

The Writ Appeal is disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

27th December, 2017
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