

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WP MP No.16655 of 2015
in/ and
WRIT PETITION No.8954 of 2005

ORDER:

This writ petition is filed to declare the action of the 1st respondent in trying to dispossess the petitioner from the land in his possession in RS No.158/ 5 and 159/ 4 situated in Gunadala Village, Vijayawada Urban Mandal, Krishna District without following due process of law, as illegal and arbitrary and consequently to direct the respondents not to evict him from the said land without due process of law.

The brief facts of the case, according to the petitioner, are that he is in occupation of land in an extent of Ac.1.00 in RS No.158/ 5 and 159/ 4 situated in Gunadala Village; in the year 1974, the revenue authorities gave patta vide No.132/ 4476/ 74 in favour of the petitioner; in the year 1977 the patta was misplaced; the petitioner sought for assignment of the land which is in his occupation; the Mandal Revenue Officer by his proceedings dated 23.05.1996 in Rc.No.559/ 90 allotted the land to the petitioner pending finalization of the assignment proposals and pending receipt of the orders; in spite of that, the Mandal Revenue Officer, without assigning the land, is taking steps to evict the petitioner. Hence, the writ petition.

This writ petition came up for admission on 21.04.2005 and this Court granted interim stay directing the respondents not to dispossess the petitioner from the land in question without following due process of law.

A counter-affidavit has been filed by the Tahsildar, Vijayawada Urban stating *inter-alia* that the land in R.S.No.158/ 5 admeasuring Ac.1.05 and the land in R.S.No.159/ 4 admeasuring Ac.1.61 is classified as 'Government poramboke – puntha'; the said lands were leased out to the petitioner and two others on 'ek-sal lease' (for cultivation) initially in the year 1986 by the Mandal Revenue Officer, Vijayawada Urban; as the lease was 'ek-sal lease, which means 'lease for one year' was expired by the year 1987, again the lease was granted for the year 1987 and finally the ek-sal lease was granted to them in the year 1988 and after the expiry of ek-sal period, the lease was not extended further in favour of the petitioner or anybody; after a gap of four years, the petitioner and others requested for assignment of the said land to them in the year 1992; when the consent of the Commissioner, Municipal Corporation, Vijayawada, was sought by the Mandal Revenue Officer, he rejected the said proposal by order dated 30.06.1993 on the ground that the said lands were useful to the Municipal Corporation; the Krishna District Ex-Servicemen Welfare Association, Vijayawada also requested to allot the said lands to their society for house sites to the Ex-servicemen and their request was also rejected on 23.06.1994 by the Commissioner, Municipal Corporation, Vijayawada; the then Mandal Revenue Officer, Vijayawada also submitted a report to the Collector, Krishna rejecting their request for assignment of land vide order dated 01.10.1994 and requested the Collector to issue an endorsement to that effect; accordingly, the Collector, Krishna District vide order dated 02.09.1996 issued endorsement rejecting the request of the Krishna District Ex-Servicemen Welfare Association, for assignment of the said lands; meanwhile, the then Mandal Revenue Officer, Vijayawada Urban, without obtaining permission from the higher authorities and without following the procedure, had issued allotment orders dated 23.05.1996

in respect of the subject lands; it was mentioned in the said allotment orders that the allotment orders were issued pending finalization of assignment proposals and pending receipt of orders; though the allotment orders were issued to them, D-form pattas were not issued and the proposals were also not submitted to the Collector; even in the allotment order, the survey numbers were also not mentioned, hence the allotment orders do not have any sanctity; the procedure was also not followed by the Mandal Revenue Officer while issuing allotment orders; the Vice Chairman, VGTM Urban Development Authority (VGTM UDA), stated that the lands in question were already included in the Town Expansion Scheme and it was not desirable to assign the lands, as the said lands were situated in the midst of lands acquired by VGTM UDA for the purpose of development of mini town ship; the said lands are under the control of the Government; as the then Mandal Revenue Officer, issued allotment orders to the petitioner and others, without obtaining the approval of the higher authorities, the 2nd respondent-Collector cancelled the said allotment orders vide orders dated 24.02.2008; pursuant to that the Tahsildar cancelled the allotments orders issued to the petitioner and others vide orders dated 07.09.2010 and hence, the writ petition is liable to be dismissed.

The Mandal Revenue Officer also filed additional counter-affidavit along with Xerox copies of the proceedings dated 27.07.1988 granting Ek-sal lease to the petitioner for an extent of Ac.0.89 cents in RS No.158/ 5 and 1259/ 4 to the petitioner, wherein it was specifically stated that the Ek-sal lease will expire by 30.07.1989.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleader for Revenue. Perused the record.

The petitioner filed WP MP No.16655 of 2015 to receive patta copy of the D-form patta in L.D.No.132/ 1976 dated 28.02.1976, as additional material paper. In the affidavit filed along with the said petition, the 2nd petitioner, who was brought on record after the death of the sole petitioner, being the legal representative, stated that during the search for the original D-form patta, he came to know that for the purpose of revenue record, a photo copy was handed over to the Village Officer for making entries and that he approached the concerned Officer and the photo copy of the D-form patta was traced from the house of the Village Officer, who gave it to the petitioner and prays to receive the same as additional material paper.

The Tahsildar, Vijayawada Urban Mandal, filed additional counter-affidavit stating that the subject lands were already included in the Town Expansion Scheme and they are situated in the midst of lands acquired by VGTM UDA for the purpose of development of mini town ship; although irregular allotment orders were issued, no D-form pattas were issued to anybody; as the 'punta poramboke' is a reserved Government land for passage, which prohibited from assignment; lands situated at District and Mandal Head quarters, Municipal towns and major panchayats are also prohibited from assignment, except for the purpose of house sites; as seen from the patta, the language in the said patta is in English, whereas the stamp of Tahsildar is in Telugu; no Telugu stamp would be laid on a patta prepared in English and hence, the D-form patta produced by the petitioner is a fake one.

In view of the categorical averments made in the additional counter-affidavit by the Mandal Revenue Officer that the alleged D-form patta in LD No.132/ 1976 dated 28.02.1976 relied on by the petitioner is a fake one and the petitioner did not file any reply-affidavit to rebut the

same and hence, the said document cannot be looked into. Accordingly, WP MP No.16655 of 2015 is dismissed.

As seen from the record, the subject land was leased to the petitioner and two others on Ek-sal lease i.e., one year lease, initially in the year 1986, which expired in 1987, again the same was granted to them in the year 1987, which expired in 1988 and after the said period, the lease was not extended further in favour of the petitioner or anybody. After a gap of four years, in the year 1992, the petitioner and others made a representation to the Mandal Revenue Officer, for assignment of the land. When the consent of the Commissioner, Municipal Corporation was sought by the Mandal Revenue Officer, he rejected the same on 30.06.1993 on the ground that the said lands are useful to the Municipal Corporation. The Mandal Revenue Officer also submitted a report to the Collector, rejecting their request for assignment vide proceedings dated 01.10.1992. Mean while, the then Mandal Revenue Officer, Vijayawada Urban, without obtaining any permission from the higher authorities and without following any procedure, has issued allotment orders to the petitioner and others on 23.05.1996. In the said allotment orders, it is also mentioned that the same were issued pending finalization of the assignment proposals and pending receipt of the orders. As the said orders were issued by the Mandal Revenue Officer, without permission from the higher authorities, D-form pattas were not issued to the petitioners and others and no proposal whatsoever have been submitted to the Collector, Krishna District. As the said provisional allotment orders pending finalization of the assignment proposals were not in accordance with the procedure and as the same were issued without any permission whatsoever from the higher authorities, the Collector has ordered cancellation of those

irregular allotment orders by orders dated 24.02.2008. Accordingly, the Tahsildar, Vijayawada Urban cancelled the said allotment orders issued by the previous Mandal Revenue Officer in the year 1996, vide his proceedings dated 07.10.2010.

Apart from that, it is also stated specifically in the counter-affidavit that the Vice Chairman of VGTM UDA also stated that the lands in question were already included in the town expansion scheme and that it is not desirable to assign the lands as they are situated in the midst of the lands acquired by the VGTM UDA, for the purpose of development of a new town ship.

Learned counsel for the petitioner filed a petition in WP MP No.16655 of 2015 to receive the photo copy of D-form patta bearing No.LD No.132/ 1976 dated 28.02.1976, as additional material papers and the said petition is dismissed for the reasons as stated supra. If at all the petitioner was granted D-form patta in the year 1976, there would not have any occasion for the petitioner to accept the Ek-sal lease for cultivation of the subject land in the years 1986, 1987 and 1988. Apart from taking the subject land under Ek-sale lease for three years, the petitioner himself sought for assignment of the said land in the year 1992, which belies the contention of the petitioner that he was granted D-Form patta in the year 1976. It is specifically mentioned in the counter-affidavit that the petitioner was never in possession of the said land after 1988 i.e., after expiry of the Ek-sale lease and hence, the question of eviction of the petitioner from the subject land does not arise. Further, it is also mentioned in the counter-affidavit that the subject land was already acquired by the VGTM UDA for the purpose of development of a New Town Ship. The petitioner has not filed any reply affidavit whatsoever denying the averments made in the counter-

affidavit and also in the additional counter-affidavit. He has also not filed any document whatsoever to show that the subject land is in his possession. Having regard to the facts and circumstances of the case and for the reasons stated above, the relief sought for by the petitioner cannot be granted. The writ petition is devoid of merit, hence, is liable to be dismissed.

Accordingly, the writ petition is, dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand closed.

Date: 17.08.2018
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KONGARA VIJAYA LAKSHMI, J



HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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