HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.887 of 2006

ORDER:

Heard the counsel for the petitioner as well as the respondents.

The prayer in the present writ petition is as follows:

> "For the reasons stated it is prayed that this Hon'ble Court may be pleased to issue an appropriate order or direction mostly one which is in the nature of writ of mandamus declaring the proceedings D.Dis.No.(I)701/2004, dated 12.12.2005 of the 2nd respondent and the order in proceedings L.Dis.No.(E2)3899/2005, dated 28.12.2005 of the 3rd respondent as illegal, irregular, unjustified and unsustainable and set aside those orders holding that the assignment of land granted in favour of the petitioner for an extent of Acres 1.63 in survey No.813 of Bukkapuram Village, Mahanandi Mandal, Kurnool District is valid and pass such other order or orders as it may deem fit."

The facts of the case are that originally the total extent of land in Sy.No.813 situated at Bukkapuram Village is Ac.9.12 cents. Out of the said extent, Ac.4.56 cents is in possession of the petitioner and his ancestors since time immemorial. The possession of the petitioner and his family members is recognized by the revenue officials. 15 years prior to the filing of the writ petition, the petitioner dug a bore well by investing huge amount and is raising banana crop in the said land. In fact, 10-1 adangal pertaining to the year 2003 also discloses possession of the petitioner and that he raised a banana crop. He is paying the revenue cist to the concerned officials. While the matter stood thus, the 4th respondent managed to secure an assessment of Ac.1.00 cents in Sy.No.813 from the 2nd respondent on 28.03.2004. A perusal of the same would disclose that no boundaries have been mentioned in the said D-Form patta. Even though the petitioner is in possession and enjoyment of the subject land, the 1st respondent has granted patta in favour of the 4th respondent. As the 1st respondent could not deliver the physical possession and simply granted D-form patta on paper and allowed the 4th respondent to enter into the land, she filed a suit in O.S.No.441 of 2004 against the petitioner for permanent injunction on the file of the Court of the learned Principal Junior Civil Judge, Nandyal on 21.06.2004. For the first time, the boundaries are mentioned in the plaint. The advocate commissioner appointed in the said suit submitted report stating that three or four years old banana crop is existing along with the bore well in the said land. In these circumstances, the petitioner was constrained to file an application before the 2nd respondent, who, in turn, called for a report from the 1st respondent. The 1st respondent through his report dated 20.07.2004 reported to the 2nd respondent that the then Mandal Revenue Officer committed grave procedural irregularities in assignment of the land and while assigning the land in favour of the 4th respondent notices were not published in the village. Looking into the said facts, the 1st respondent through his proceedings Rc.No.I.588/2004 dated 29.07.2004 cancelled the assignment granted in favour of respondent No.4. Questioning the said proceedings, respondent No.4 filed W.P.No.14154 of 2004 before this

Court. After hearing, this Court on 29.09.2004 allowed the writ petition and remanded back the matter to the 1st respondent for appropriate action with an observation that he shall issue notice to both the parties and pass appropriate orders within four weeks from the date of receipt of a copy of this order. Meanwhile, both the parties are directed to maintain status quo obtaining as on 29.09.2004 in view of the dispute with regard to the possession.

Pursuant to the above said orders, the 1st respondent issued notice to the petitioner as well as the 4th respondent. However, as the 4th respondent was evading service of notice, it was fixed on the door of her house. The 1st respondent through proceedings Rc.No.A.93/2004 dated 28.10.2005 passed orders holding that the petitioner is entitled for assignment of the land. Basing upon the said proceedings of the 1st respondent, the 2nd respondent, after conducting an enquiry, issued pattadar passbooks and title deeds in favour of the petitioner and accorded the said assignment and possession. Ten months after granting of patta in favour of the petitioner, the 4th respondent submitted petitions before the 2nd respondent on 01.10.2005, 04.10.2005 and 14.10.2005 questioning the assignment of land in favour of the petitioner. Even though the applications were not in the nature of appeal and the appeal is time barred, the 2nd respondent treated one of such petitions as an appeal and issued notice to the petitioner in Rc.No.701 of 2004 dated

06.10.2005. After conducting an enquiry, the 2nd respondent through his proceedings D.Dis.No.(I)/701/04, dated 12.12.2005 cancelled the patta granted in favour of the petitioner. Questioning the said orders, the petitioner filed revision before the 3rd respondent, who, in turn, rejected the said revision by his orders dated 28.12.2005. Aggrieved by the said orders, the present writ petition is filed.

Per contra, respondent Nos.1 to 3 filed a counter affidavit through the Revenue Divisional Officer, Nandyal, Kurnool District denying the averments made in the affidavit filed in support of the writ petition and contended *inter alia* that the Mandal Revenue Officer has not followed the mode of service of notices to the concerned as directed by this Court in W.P.No.14154 of 2004 and the same is clearly discussed in Revenue Divisional Officer's proceedings in D.Dis.No.701/2004 dated 12.12.2005. Therefore, the assignment of patta granted in favour of the petitioner was cancelled by the Revenue Divisional Officer for irregularities committed by the Mandal Revenue Officer. That apart, it is also stated in the counter affidavit that as dispute arose between the petitioner and respondent No.4, the 4th respondent approached the civil Court vide O.S.No.441 of 2004. The advocate commissioner appointed by the civil Court could not have been identified the land as there were no boundaries fixed. Further, as there were procedural irregularities in assignment of land to the petitioner, the same was cancelled.

Learned counsel appearing for the petitioner would contend that the impugned orders are liable to be set aside on the sole ground that no reasoning was given by the 3rd respondent while rejecting the revision filed by the petitioner.

Learned Government Pleader appearing for respondent Nos.1 to 3 would submit that while granting patta to the petitioner there were procedural irregularities and therefore the patta granted in favour of the petitioner was cancelled by the concerned authorities. It is also contended that the advocate commissioner appointed by the civil Court in O.S.No.441 of 2004 could not identify the land as there were no boundaries fixed.

Counsel for the 4th respondent would submit that in pursuance of the orders passed by this Court in W.P.No.14154 of 2004, no notice was issued to the 4th respondent and therefore there is no irregularity or illegality in the orders passed by the 3rd respondent confirming the orders of the 2nd respondent.

From a perusal of the material on record, it reveals that the total extent of land in Sy.No.813 is Ac.9.64 cents situated at Bukkapuram village, which is classified as assessed waste. Out of the said extent, an extent of Ac.1.00 was assigned to Smt. Shaik Chandbee i.e., the 4th respondent herein by the then Mandal Revenue Officer vide R.Dis.No.110/2004 dated

28.03.2004. Against the said proceedings, an appeal was filed by the petitioner before the Revenue Divisional Officer, Nandyal. After due enquiry, the Revenue Divisional Officer, Nandyal has cancelled the assignment patta for the procedural irregularities vide orders dated 29.07.2004. Aggrieved by the said proceedings, the 4th respondent filed W.P.No.14154 of 2004 before this Court. This Court, after hearing, was pleased to allow the writ petition and remanded the case to the Mandal Revenue Officer, Mahanandi, to take appropriate action by giving notices to both the parties vide orders dated 29.09.2004. Pursuant to the said orders, the Mandal Revenue Officer, Mahanandi, passed orders in proceedings Rc.A.93/2004 dated 12.01.2005 assigning the land to the extent of Ac.1.63 cents in Sy.No.813 of Bokkapuram village in favour of the petitioner. Aggrieved by the said proceedings, the 4th respondent filed an appeal before the Revenue Divisional Officer, Nandyal, who, after hearing both the parties and perusing the connected records, cancelled the assignment made in favour of the petitioner on the ground that there are procedural irregularities committed by the then Mandal Revenue Officer, Mahanandi, while assigning Ac.1.63 cents in favour of the petitioner vide proceedings D.Dis.No.701/2004 dated 12.12.2005. Aggrieved by the said proceedings, the petitioner filed the present writ petition.

In the suit filed by the 4th respondent, advocate commissioner's report was invited and it discloses as stated in the counter filed by respondent Nos.1 to 3 that the land could not be identified as no boundaries were fixed and there was also procedural irregularities in assignment of land to the petitioner. Be that as it may, when the petitioner and the 4th respondent are disputing over the land assigned to them in Sy.No.813 of Bukkapuram village, the 4th respondent filed a suit for permanent injunction vide O.S.No.441 of 2004 on the file of the Court of the Principal Junior Civil Judge, Nandyal.

The bone of contention between the parties is that the petitioner has raised a banana crop by digging a bore well. Per contra, the 4th respondent asserts that the patta granted in favour of the petitioner was irregular and on enquiry the Revenue Divisional Officer, Nandyal, cancelled the same. On revision, the 3rd respondent has rejected the same as the matter is pending consideration before the learned Principal Junior Civil Judge, Nandyal, in O.S.No.441 of 2004. During the course of hearing, on 02.02.2018 and on 09.02.2018, counsel for the petitioner was directed to get information regarding the status of the above said suit. However, none of the parties to the writ petition are able to inform the Court about the result of the said suit. In the light of the disputed questions of fact with regard to possession as well as the irregularities committed by the then Mandal Revenue Officer while granting assignment of patta, this Court by exercising its jurisdiction under Article 226 of the Constitution of India cannot appreciate the genuineness or otherwise of the procedure followed while granting the patta and also with regard to the possession as to whether the petitioner or the 4th respondent is in possession of the subject property. Be that as it may, while admitting the present writ petition on 23.01.2006, this Court in WPMP.No.1040 of 2006 has granted *staus quo* obtaining as on that day. The said order is still continuing. Therefore, this Court feels that since the present dispute is squarely covered and depending upon the result in O.S.No.441 of 2004, it is not appropriate to decide the issue in the present writ petition.

Therefore, the writ petition is disposed of directing the petitioner as well as the 4th respondent to avail appropriate remedy after disposal of the suit in O.S.No.441 of 2004.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE P. KESHAVA RAO

Date: 23.02.2018.
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