

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.19378 of 2006

ORDER:

Heard Mr.R.Ranganathan for petitioners and the Assistant Government Pleader for respondents.

One Moti Bai (1st petitioner) prayed for Writ of Certiorari to call for the records leading up to and inclusive of orders in File No.E2/5756/2004, dated 25.04.2006 and quash the same as illegal and violative of principles of natural justice.

The 1st petitioner died during pendency of the writ petition and her son B.J.Ramulu has been brought on record as 2nd petitioner.

The following dates are referred to for disposing of the writ petition.

The Tahsildar, Vikarabad Taluk in File No.A2/2358/1970 dated 19.03.1970 assigned an extent of Ac.5.00 cents in Sy.No.405/3 of Laxminagar Thanda, H/o.Dharur Village and Mandal, Vikarabad (for short 'the subject matter of writ petition') to one Lambadi Gongya. The 1st petitioner claims to be the sister of Lambadi Gongya S/o.Budya. The assignee died. The 1st petitioner claiming to be in possession of land requested for transfer of assignment in her favour as she claimed to be in possession and enjoyment of the subject matter of writ petition. The 4th respondent submitted report vide Lr.No.B/1783/86, dated 15.12.1987. The 1st respondent through proceedings dated

22.02.1989 cancelled the assignment granted in favour of Lambadi Gongya vide Certificate No.A2/2358/70 dated 19.03.1970 and directed the Mandal Revenue Officer to issue fresh patta certificate in the name of 1st petitioner. Thereafter, the 1st petitioner was issued assignment certificate. The 1st petitioner claims to be in continuous possession and enjoyment of the subject matter of writ petition. While the matter stood thus, the 3rd respondent through the proceedings impugned in the writ petition cancelled the assignment granted in favour of 1st petitioner.

The operative portion of the impugned order reads as follows :-

“A show cause notice was issued calling for explanation of assignee. Smt.Moti Bai W/o.Sakriya. But no reply is filed for the Show Cause Notice served on the assignee. On the above circumstances, as the assignee is not landless poor and she does not come under the definition of landless poor and the assignee had never cultivated the land. Hence, the assignee has violated the conditions of assignment rules the assignment made in favour of Smt.Moti Bai W/o.Sakriya Naik is hereby cancelled U/s.166 (B) of Land Revenue Act 1371 and the MRO Dharur is directed to resume the land immediately into Government custody.”

Hence, the writ petition.

The first and foremost objection of 1st petitioner is that her possession and enjoyment of the subject matter of writ petition ought not to be treated as an assignment in her individual capacity, but as a person in possession as legal heir of the

original assignee Gongya and the 1st respondent did not issue notice before ordering resumption of the subject matter of writ petition.

The counsel for petitioners vehemently contends that the reasons stated in the proceedings dated 25.04.2006 are completely unconvincing and therefore, the cancellation of assignment is arbitrary and unconstitutional.

The Assistant Government Pleader (Revenue) tries to justify the resumption order by contending that once the 1st petitioner does not satisfy the eligibility criteria for assignment, the same amounts to fraud or suppression of material circumstances and therefore, the resumption order is tenable.

On the pointed query whether the resumption order now passed by the 1st respondent is preceded by a notice or opportunity afforded in this behalf to 1st petitioner, the Assistant Government Pleader requests time to produce record.

Admittedly, the respondents have not filed counter affidavit till date. The request for time to produce record or filing counter after nearly 11 years from the date of filing of the writ petition is not a reasonable request. Hence, the request for adjournment is refused.

The Assistant Government Pleader alternatively submits that once the objection against the proceedings impugned in the writ petition is that the proceedings are issued in violation of

principles of natural justice, this Court ought not to examine the merits or otherwise of the issue and submits that the proceedings impugned in the writ petition can be treated as show-cause notice, the 2nd petitioner, now who is continuing the litigation, can be given an opportunity to file his reply and thereafter, the 1st respondent will pass orders in accordance with law.

The statement is placed on record.

Without getting into the merits of the matter, the proceedings impugned in the writ petition to the extent of resumption and cancellation of assignment in favour of 1st petitioner are set aside and treated as a show-cause notice and the 2nd petitioner is given six weeks time from today to submit reply to the 1st respondent by registered post with acknowledgment due by enclosing a copy of this order. On receiving such reply, the 1st respondent enquires into the matter and disposes of the case in File No.E2/5756/2004 as expeditiously as possible, preferably within three months thereafter.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 14.02.2018
Prv

