

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.1029 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Respondents in W.P.No.2350 of 2006 are the appellants.

The parties are referred as arrayed in the writ petition.

The circumstances relevant for disposing of the writ appeal are status thus:

The 1st petitioner made application for grant of Government land under the existing policy of Government to assign Assessed Waste land to Ex-Servicemen. A similar application was also made by Sruvuri Appala Raju/2nd petitioner for grant of Government land by way of assignment. The respondents considered the request of petitioners 1 and 2 and granted assignment vide Pattas D.R. No.72/1402 dated 01.01.1993 and D.R. No.66/1402 dated 05.01.1993 respectively. On 20.09.2005, petitioner Nos.1 and 2 requested for grant of NOC to alienate the assigned land in terms of G.O.Ms.No.1117 dated 11.11.1993, whereunder the assignee/ Ex-Serviceman, after completion of 10 years from the date of assignment, can sell the assigned land. The request of petitioners was rejected through endorsement Nos.4739/2005 E1 dated 01.02.2006 and 4768/2005 E1 dated 01.02.2006. Hence, the writ petition.

Juvvala Nagulu 1st petitioner, since deceased, is represented by his son/petitioner No.3.

The respondents filed counter affidavit and do not dispute the status of petitioners 1 and 2 as Ex-Army Personnel, but have raised the objection for writ prayers that the assigned agricultural land has not been brought under cultivation within three years from the date of assignment. Proceedings dated 20.02.2006 have been issued on the ground that the land has not been brought under cultivation within three years and resumed the assigned land. Under these circumstances, the learned Single Judge considered whether the refusal endorsements dated 01.02.2006 are tenable and valid and also examined whether the ground viz., that the land has not been brought under cultivation within three years from the date of assignment is available to respondents or not and held as follows:

“Learned Government Pleader for Assignment appearing for respondents did not dispute the fact that between 1993 to 2006 when the impugned orders were passed, no proceedings under B.S.O.15 to cancel the assignment of the petitioners on the ground that they had not cultivated the land within 3 years, had been initiated. He also did not dispute that pattadar pass books and title deeds had been issued to petitioners and that itself is indicative of the land being brought under cultivation. He also did not dispute that as per G.O.ms.No.1117 dt.11.11.1993 Ex-servicemen, who had been assigned land by Government, were entitled to No Objection Certificate for sale of the said property, if they had cultivated the land for 10 years and that even the said condition of non-alienability for 10 years had been deleted vide G.O.Ms.No.279 dt.04.07.2016.

In view of the above, the Writ Petition is allowed and the impugned orders passed by the 1st respondent are set aside. It is declared that the petitioners are entitled to alienate the land assigned to them in view of the fact that they had cultivated the land for more than 10 years as

per G.O.Ms.No.1117 dated 11.11.1993 and even according to G.O.Ms.No.279 dt.04.07.2016. No costs.”

Hence, the Writ Appeal.

The learned Government Pleader contends that the land since has not been brought under cultivation within three years from the date of assignment, endorsement dated 01.02.2006 is tenable. We have noted the contention and, after perusing the record and anxious concern to the totality of circumstances, are unable to agree with the stand taken by the respondents for the following reasons:

The respondents in the writ appeal cannot and could not improve the stand taken by them before the learned Single Judge in W.P.No.2350 of 2006. The finding of the learned Single Judge is that breach of one of the conditions of assignment namely, that the assigned land was not brought under cultivation within three months from the date of assignment is not contemporaneous i.e. during the period of 10 years, and was not pressed into service for cancelling the assignment and resuming the assigned land. Therefore, this plea of respondents is one of convenience but not with substance. Now, a few grounds are raised on the pattadar pass book/title deed granted in favour of petitioners. These are not the objections raised before the learned Single Judge. Hence, new grounds, not urged before the learned Single Judge, are not entertained by this Court. Further, the respondents do not dispute the assignment made in favour of petitioners 1 and 2 as having been made to Ex-servicemen. Once the assignment is admitted, the distinction now sought to be introduced namely, that the

assignment made in favour of petitioners 1 and 2 is not under the category of Ex-Servicemen, but DKT assignment, is unacceptable. The reason being, a person either drawing pension or salary does not satisfy the eligibility criteria for assignment of Government land. Therefore, once assignment is made such persons drawing pension means, their cases have been considered under Ex-servicemen quota. The explanation carved out in favour of Ex-Servicemen is that after they retired from service by considering their status of working in the armed forces assignment was made. The respondents ought not to have taken objections against Ex-servicemen having made assignment in their favour about 15 years back. We are in complete agreement with the findings recorded in the order under appeal. The appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:29.08.2018
Sp