

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.747 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to, declare the order passed by the respondent no.4 in Rc. B/865/2010 dt.18-12-2015 as illegal, arbitrary, without authority and violative of principles of natural justice.

Facts of the present case are that, the petitioner is in peaceful possession and enjoyment of subject property consisting of 2 small shops total admeasuring 37 sq. yards in plot no. 52-A Gollapalem Gattu, Vijayawada town, Krishna District. It is submitted that, originally said property was allotted in favour of grandmother of Respondent no.6 i.e. Smt. Laxmamma, thereafter same was let out to her husband in the year 1991. After the death of said Smt.Laxmamma her husband Sri Yakob and his two sons i.e. Joseph and Samuel have alienated the said property by agreement of sales to the petitioner on 26-3-1992 and 14-7-1992. At the time of taking advance by his father even the mother of respondent No.6 were present, had attested the document as one of the witnesses. Thereafter, to create problems to the petitioner, the mother of the respondent No.6 filed RCC. No.176/96 on the file of Rent Controller, Vijayawada and same was dismissed. Thereafter, she has filed OS.No.119/95 and same was also dismissed on 28-4-1998 by the II Additional Junior Civil Judge, Vijayawada. She also filed OS.No. 626/1999 for declaration of title against the husband of the petitioner stating that said property

was gifted by her mother but the said suit was also dismissed on 21-1-2002 by the 1st Addl. Senior Civil Judge, Vijayawada, Krishna District, and appeal being AS. No. 79/06 was dismissed by the V Additional District Judge, Vijayawada. Accordingly, the mother of the respondent No.6 had lost her claim before all the civil courts. On verification, it was found that the land is hill poramboke and as per the policy of the Government the then Tahasildar had executed a registered Conveyance Deed No. 662/2003 dt.28-1-2003 in favour of the petitioner and since then the petitioner has been in continuous possession and enjoyment of the property.

Further, having lost the claim by mother of 6th respondent before the competent civil courts, mother of the respondent no.6 had approached the revenue authorities and the same was referred to respondent No.4 and the respondent no.4 has issued impugned order dt.18-12-2015 and same was received by the petitioner on 30-12-2015, annulling the registered conveyance deed dt.30-1-2003 and requested the respondent No.5 to cancel the registration.

The contention of the learned counsel for the petitioner is that the respondent did not issue any notice before conducting any enquiry and that the order was passed in utter violation of principles of natural justice and that the conclusions in the report of the Tahsildar dated 18.12.2015 are not based on any material and consequently, the sixth respondent is not entitled to seek any relief before the authorities who passed the impugned order annulling the conveyance deed erroneously, without serving any notice before conducting such an enquiry and prayed to set-aside

the order issued by the respondent No.4 in Rc. B/865/2010 dt.18-12-2015.

The fourth respondent/Tahsildar, Vijayawada Urban Mandal, Krishna District, filed detailed counter contending that, based on the report, the Tahsildar concluded that the property assigned to the sixth respondent was part of Plot No.52, but, by mistake, the same property was conveyed in favour of this petitioner by assigning with Plot No.52/A in LP. No.63/88 of Vijayawada Town, erroneously. Further, in terms of the conveyance deed, the conveyance can be annulled, if it came to the notice that that execution of conveyance is a mistake of fact, due to misrepresentation or fraud or that there was an irregularity in the procedure followed by the Tahsildar. Hence, basing on condition No.1 of the conveyance deed, conveyance deed was cancelled. Finally, the fourth respondent contended that the impugned proceedings are illegal and that there is no iota of evidence that the land in dispute is not the land covered by patta granted in favour of the sixth respondent and prayed for dismissal of the writ petition.

In view of the limited controversy regarding identity of the property, it is relevant to refer the patta granted in favour of the sixth respondent and the conveyance deed.

The respondent No.4 assigned an extent of 30 sq.yds in Sy.No.9/1, Layout No.63/88, Block No.1, Plot No.1 to one Buddala Elisamma and the boundaries are as follows:

North : Road
South: Plot No.1
East : Samadanam
West : M.C. Road

Whereas, the land conveyed as per conveyance deed, executed in favour of this petitioner is classified as Hill Poramboke in Plot No.52-A, L.P.No.63/88, in an extent of 37sq.yds & 31 sq.mts and the boundaries of the plot as shown below:

North : Road
South: V. Lakshmamma
East : Samadanam
West : Road

The description of the dwelling house was shown as AC sheets shed in an extent of 37 sq.yds equivalent to 333 sq.yds as on the date of execution of conveyance deed. The boundaries referred in the proceedings of the Tahsildar in various paragraphs are different.

When Plot No.1 is assigned to sixth respondent, question of mentioning southern boundary as Plot No.1 in the patta granted in favour of sixth respondent is an apparent error. Similarly, the boundaries of Plot No.52-A and Plot No.1 are tallying except the southern boundary. But, the conclusion of the Tahsildar was that the land already assigned to sixth respondent is part of Plot No.52, but, it was wrongly mentioned as Plot No.1 in the patta granted in her favour and the extent assigned to sixth respondent is only 30 sq.yds. Whereas, the extent of Plot No.52-A is 37 sq.yds as mentioned in the report of the Tahsildar/fourth respondent. Even assuming for a moment that 30 sq.yds was assigned to the sixth respondent, the balance available on ground is 83 sq.yds in Plot No.52. Out of it, 33 sq.yds was allegedly conveyed admittedly in favour of the petitioner herein. Still there is an extent of 46 sq.yds in Plot No.52, as per the report of Tahsildar. But, the Tahsildar

concluded that the land assigned to the sixth respondent was conveyed in favour of the petitioner and it is not based on any material. Even otherwise, before conducting an enquiry and passing such an order of cancellation or annulment of the conveyance deed, no notice was issued and no opportunity was afforded to this petitioner to submit her explanation or to prove that it was not the land assigned to sixth respondent. Therefore, the order passed by the District Collector in pursuance of the report submitted by the Tahsildar on 18.12.2015 is without any basis. On the other hand, the order was passed in utter violation of principles of natural justice i.e. without issuing notice and without affording an opportunity to this petitioner to substantiate her contention. Therefore, the order passed by the District Collector in pursuance of the report of the Tahsildar dated 18.12.2015 is hereby set-aside, while directing the District Collector to pass appropriate order in accordance with law, after affording reasonable opportunity to this petitioner before passing any order.

With the above direction, this writ petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:24.04.2018

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