

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.23296 of 2018

ORDER:

The 1st petitioner is the daughter-in-law and 2nd petitioner is the grand son of one G.Yeganna. The 4th respondent assigned an extent of Ac.1.00 cents in Sy.No.341 of Bheemavaram Village, Nandyal Mandal, Kurnool District. On 24.03.2009, it is alleged that Yeganna died. The petitioners in support of the demise of Yeganna place on record, the death certificate dated 07.05.2009.

According to petitioners, the petitioners are entitled to succeed to the assignment and continue to enjoy the possession of assigned land. The 4th respondent purporting to resume the possession of assigned land in Sy.No.341 issued the notice impugned in the writ petition. The notice is principally challenged on two grounds namely, the 4th respondent cannot issue notice against a dead person, conduct enquiry and propose to take possession from the petitioners. Secondly, the ground for resumption of assigned land is that the land is not brought under cultivation within three years from the date of assignment cannot be pressed into service after 35 years of assignment.

Ms.I.K.Annapurna, counsel for petitioners contends that the notice issued against a dead person should be treated as *void-ab-initio* and that the ground of resumption

for not brining the land under cultivation within three years ought not to be pressed into service nearly after 35 years from the date of assignment. She further contends that the possession of petitioners shall not be disturbed except in accordance with law.

Learned Assistant Government Pleader submits that though time was granted by this Court, inspite of the office of Government Pleader informing the respondents, the respondents have not sent instructions. He made his submissions by referring to material on record. According to him, admittedly, the petitioners are not in possession of the land. Therefore, the proceedings now initiated allowed to be continued and orders are passed as are deemed fit and proper. On the ground that notice is issued against a dead person, he fairly states that 4th respondent ought to have taken sufficient care.

I have taken note of respective submissions and perused the record.

Prima facie, for the following reasons

- (a) The notice is issued against a dead person and the said notice is *void-ab-initio*;
- (b) The ground of not brining the land under cultivation within three years from the date of assignment ought not to be pressed into service after 35 years from the date of assignment;

(c) The respondents cannot take possession from the petitioners by passing orders through notice in Rc.B.1019/2017 dated 18.04.2018,

the notice impugned in the writ petition is set aside.

Writ petition is ordered accordingly. However, the 4th respondent is given liberty to proceed for valid and tenable reasons, in accordance with law before disturbing possession and enjoyment of petitioners. No order as to costs.

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

Dt: 09.07.2018
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S. V. BHATT, J

