

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.23132 of 2018

ORDER:

The petitioner is the son of one Bala Swamy. The 4th respondent assigned an extent of Ac.0.92 cents in Sy.No.310-2A of Bheemavaram Village, Nandyal Mandal, Kurnool District. On 15.12.2016, it is alleged that Bala Swamy died. The petitioner in support of the demise of Bala Swamy places on record, the death certificate dated 05.01.2017.

According to petitioner, the petitioner is 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.310-2A 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 petitioner. 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 petitioner 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 petitioner 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 petitioner is 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 petitioner by passing orders through notice in Rc.B.1019/2017 dated 06.04.2018, 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 petitioner. 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

