

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

W.P.M.P. No.4079 OF 2011

IN/AND

WRIT PETITION No.4711 of 2006

ORDER:

This writ petition is filed questioning the orders of the Chief Commissioner of Land Administration, dated 18.12.2002 confirming the proceedings in D.Dis.E2/2341/99, dated 30.9.2002 of the Joint Collector, as illegal and arbitrary.

Brief facts of the case, so far as they are relevant for disposal of the writ petition, are as follows:

The writ petitioners on account of family necessities sold away their lands and started tilling the land and made an application for assignment of the same; while the things stood thus, the Revenue Divisional Officer based on the report of the Mandal Revenue Officer passed an order dated 25.2.1999 in the matter and the said order of the Revenue Divisional Officer was challenged before the Joint Collector, Prakasam District at Ongole, who in turn confirmed the orders of the RDO; the fifth respondent claims that he is the assignee; further an appeal has been filed before the Commissioner of Land Administration by the petitioners challenging the order of the Joint Collector, Prakasam and the Commissioner of Land Administration *vide* order dated

25.10.2002 confirmed the order of the Joint Commissioner; the petitioners sold their lands prior to 25.9.1990 and remained as landless poor for more than 8 years and thereafter, only in the month of August, 1998, the first petitioner was assigned an extent of Acres 4.89 Cents and the second petitioner was assigned an extent of Acres 3.75 cents, as they claimed to be living separately; the respondents 1 to 4 failed to appreciate the fact that the petitioners are landless poor persons as they sold their land in the year 1990.

Counter affidavit has been filed by the fourth respondent-Mandal Revenue Officer *inter alia* stating that the lands in Sy.Nos. 1066/B, 1069/1A, 1071/B and 1067/B of Kakarla village, Ardhavedu Mandal admeasuring an extent of Acs. 16.34 cents are being used by the villagers as Rastha to go to their fields; out of the said lands, the then Mandal Revenue Officer granted an extent of Acs. 4.89 cents in favour of the 1st petitioner and extent of Acs. 3.75 cents in favour of the second petitioner; subsequently it was reported that the first petitioner sold away his patta land during the year 1998 by misrepresenting the fact that he is landless poor person and obtained D.K. Patta; by that time, the first petitioner was having total extent of Acs. 16.34 cents in different survey numbers and a show cause notice was issued to the

petitioners on 23.4.1999; the fifth respondent filed a representation stating that he is cultivating the land in Sy.No.1066/1A and 1066/BA2 admeasuring to an extent of Ac. 3.75 cents; later on the orders were passed cancelling the assignment made in favour of the petitioners on the ground that they obtained the assignment by suppressing the fact that they are having patta lands; the petitioners sold away the land in Kakarla village after granting assignment; the assigned lands in Kakarla are used by the villagers as rastha lands; the petitioners are having the land to an extent of Acs. 17.00 in the village as on the date of their assignment and they misrepresented the fact to the revenue authorities and obtained assignment in their favour.

W.P.M.P.No. 4079 of 2011 is filed seeking to implead the petitioners 3 to 6 herein as petitioners 3 to 6 in writ petition as Legal Representatives of the deceased-1st petitioner.

In the accompanying affidavit filed along with the petition, it is stated that the first petitioner died on 18.12.2007 leaving behind him two sons and two daughters and death certificate of the first petitioner was also enclosed to the said petition. No counter affidavit is filed in the said implead petition.

For the reasons stated in the petition, the implead petition is ordered, impleading the petitioners 3 to 6 as petitioners in the writ petition as Legal Representatives of the deceased-first petitioner.

Heard the learned counsel for the petitioners and the learned Government Pleader. Even though notice was ordered to the 5th respondent on 10.3.2006 and served on him, none appeared for the 5th respondent.

The main contention of the learned counsel for the petitioners is that due to financial necessities, the petitioners have sold away their lands in the year 1990 and the petitioners were granted patta in the year 1999. It is contended that as on the date of granting of patta, the petitioners are landless poor persons and even though a specific ground has been raised to that effect, the same was not considered by the authorities. As seen from the order of the Joint Collector, Prakasam, dated 30.9.2002, the 5th respondent filed a representation stating that he is cultivating the land in Sy.Nos. 1066/1A and 1066/BA2 admeasuring to an extent of Acs. 3.75 cents and requesting to grant patta in his favour; and the Joint Collector cancelled the DK patta granted to the petitioners and he directed the Mandal Revenue Officer to set apart the rasta required in the above lands and the remaining land in the said survey number was assigned to the 5th respondent

and one Kasula Rangamma. Challenging the said order, the petitioners filed an appeal before the Commissioner of Appeals.

A specific ground has been taken by the petitioners stating that the petitioners are landless poor persons as they sold away their lands much prior to 25.9.1990 and remained as such, for a period of more than eight years before the land came to be assigned to them in August, 1998, but the said issue is not answered by the Commissioner of Appeals in his order dated 27.10.2005. It is observed in the said order dated 27.10.2005 that though the petitioners are having landed property, they have sold their lands and are claiming the assignment as landless poor persons and by observing the same, the Commissioner of Appeals confirmed the order of the Joint Collector and directed the Mandal Revenue Officer to set apart the ratha and if any land is available, to assign the same to the 5th respondent and to one Kasula Rangamma duly following the procedure. As seen from the orders of the Joint Collector, the fifth respondent was in possession of the land admeasuring an extent of Acres 3.75 cents in Sy.No.1066/1A and 1066/BA2 and it appears that the said extent of land is granted to the fifth respondent. It is made clear that the said extent of land shall not be disturbed from the possession of the fifth respondent and a *de novo*

enquiry should be confined only to the extent of Acs. 4.89 cents in Sy.Nos. 1071/A1, 1071/A4, 1069/A and 1066/B1A.

As a specific plea has been taken by the petitioners that they sold the land in the year 1990 and remained as landless poor persons till 1998 and as the said plea is not taken into account and considered by the authorities concerned, the matter is remanded back to the Joint Collector, Prakasham, Ongole, setting aside the order of the Commissioner of Appeals, dated 27.10.2005, to consider afresh (1) whether the petitioners 1 and 2 were eligible for D.K. patta as on the date of assignment, (2) If and when the petitioner Nos. 1 and 2 sold their land and obtained D.K. Patta and (3) whether the petitioner Nos. 1 and 2 are landless poor persons or not, and pass appropriate orders, in accordance with the law, insofar as the land to the extent of Acres. 4.89 cents in Sy.Nos. 1071/A1, 1071/A4, 1069/A and 1066/B1A is concerned.

The writ petition is disposed of accordingly. No costs.

Miscellaneous petitions, pending if any, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 10/07/2018

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HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



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