

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.26990 of 2018

ORDER:

Heard Mr.Prabhunath for petitioners and Mr.Delhi Babu learned Assistant Government Pleader for Revenue.

The petitioners were assignees of House Plots by 4th respondent. Through the orders impugned in the writ petition, the 4th respondent cancels the assignment and further orders resumption of the house plots.

The petitioners raise several grounds against the orders impugned in the writ petition including the allegation that the 4th respondent for all purposes conceded his authority and jurisdiction to the command and control of local MLA and the same are unsustainable. Therefore, Mr.Prabhunath contends that the petitioners if avail the remedy of appeal, they may not get justice and the appellate authority like the primary authority if follows the same procedure and dismisses the appeal, then the petitioners are put to prejudice. Hence, he submits that the remedy of appeal in the fact situation of the case is not efficacious or effective. He alternatively contends, without prejudice to the first contention that there is imminent threat of dispossession or change of physical features of the subject matter upon orders of cancellation of pattas and in such an event, the remedy of appeal is also rendered ineffective.

Mr. Delhi Babu submits that the allegations made against the 4th respondent may not be correct. Because from the orders impugned in the writ petition, it is evident that the 4th respondent afforded fair and reasonable opportunity, considered the ground reality and passed the orders impugned in the writ petition. According to him, the petitioners can raise legal and factual grounds against the orders of cancellation by filing appeal. The appellate authority-Revenue Divisional Officer is under legal and procedural obligation to consider each one of the objections, record independent findings and communicate the decision to petitioners. On preservation of subject matter of appeal, he submits that *status-quo* as regards possession and physical features can be directed to be maintained to ensure fair consideration of appeal by the appellate authority.

I have considered the rival submissions and perused the record.

For the view this Court is proposing to take, this Court is not expressing a finding on the apprehensions expressed by petitioners. At the same time, this Court has no reason to doubt that the Revenue Divisional Officer, if an appeal is filed, will consider the circumstances under which the house site pattas were granted and what are the grounds on which the assignments are sought to be cancelled and what is the reply of petitioners independently and dispose of the appeal. Therefore, the remedy of appeal is

appropriate against the orders impugned in the writ petition. Once the appeal is held as a substantive remedy, to meet the ends of justice, the Court considers it appropriate to direct preservation of the subject matter of appeal.

Hence, the petitioners are given liberty to file appeal before the Revenue Divisional Officer by raising available factual and legal grounds against the order impugned in the writ petition within two weeks from today.

The appellate authority calls for the record from the office of 4th respondent, examines the record and also the objections raised by petitioners and disposes of the appeal within four months from the date of filing of appeal.

The parties are directed to maintain *status-quo* as regards possession and physical features of the subject matter of appeal for a period of five months from today.

With the above directions, the writ petition is disposed of. No order as to costs.

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

S. V. BHATT, J

Dt: 01-08-2018

Note:

Issue C.C. in three days

(B/o)

Prv

