

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.20675 of 2005

ORDER:

This writ petition is filed seeking to declare the proceedings of the 2nd respondent-R.D.O dated 14.07.2005 as illegal and violative of the provisions of the A.P. Land Encroachment Act, 1905 (for short, "the Act").

The brief facts of the case, so far as they are relevant, for the purpose of disposal of the writ petition, according to the writ affidavit, are that one Aitharaj Pentaiah was Mohisi Pattedar of an extent of agricultural land admeasuring Acs.2.10 guntas in Sy.No.300/1, Kannaigudem, Garla Mandal, Khammam District. The father of the petitioners had purchased the said extent of land from Aitharaj Pentaiah in the year 1954 for a valid consideration. In 1961, the father of the petitioners had also purchased the extent of land admeasuring Ac.1.15 guntas in Kannaigudem Village from one K. Dasaratharamaiah for a valid sale consideration. Since the date of purchase of these lands, the petitioners are in peaceful possession and enjoyment of the subject land for the last 50 years and the petitioners are paying the land revenue to the Government. The name of the petitioners' father was also reflected in the pahanies until his death in the year 1984 and after his death the names of the petitioners were reflecting in the pahanies. While so, the 3rd respondent vide his proceedings dated 5.6.2003 issued a show cause

notice under Section 7 of the Act, to the petitioners to show cause as to why the petitioners should not be evicted from the subject lands as they are alleged to be in occupation of the Government land. Thereafter, the petitioners submitted their explanation to the said show cause notice. The 3rd respondent-M.R.O vide his order dated 18.10.2003 without giving any opportunity of hearing held that the petitioners encroached the subject lands un-authorisedly and directed the Mandal Revenue Inspector-II, Garla Mandal to take possession of the lands by evicting the petitioners. Against the said order dated 18.10.2003 of the Mandal Revenue Officer, the petitioners preferred an appeal before the Joint Collector, Khammam. The Joint Collector, Khammam vide his order dated 09.10.2004 held that the appellate authority against the order dated 18.10.2003 of the 3rd respondent-M.R.O, is the 2nd respondent-R.D.O and remanded the matter back to the 2nd respondent-R.D.O. After the remand, the 2nd respondent-R.D.O while confirming the order of the 3rd respondent-M.R.O held that the petitioners are not the landless poor persons and they are having the land of an extent of Ac.1.00. The 2nd respondent-R.D.O pursuant to the remand order passed the impugned order on 14.7.2005 holding that there is no necessity to interfere with the orders passed by the 3rd respondent-M.R.O and it is observed by the 2nd respondent-R.D.O that the petitioners do not come under the category of landless poor persons and that basing on the report of the 3rd respondent-M.R.O, the subject land was assigned to a surrendered extremist by name one Ponam Lakshmaiah @ Naveen under the cover

of panchanama and pattedar pass book were also issued. Challenging the order dated 14.07.2005, the present writ petition has been filed.

A counter affidavit has been filed by the 2nd respondent-R.D.O stating *inter alia* that neither Aitharaj Pentiah nor K. Dasaratha Ramaiah were pattedars for the lands in Sy.No.300 of Kannaigudem Village, Garla Mandal right from 1950-51 or before; as per sethwar Sy.No.300 of Kannaigudem Village, Garla Mandal, is a Government land and it is not patta land and the extent is only Ac.10.09 guntas; no assignment pattas were granted to anybody in this particular survey number; even though the petitioners stated that their father purchased the lands in question in the year 1954 for a valid consideration, they did not produce any sale deed; nobody has any right to sell or purchase it; the Mandal Revenue Officer, Garla Mandal has issued notices under Section 7 and 6 of the Act to the petitioners and were served on the petitioners; the petitioners were evicted from the said land and the said land was taken possession as per the procedure laid down and proposals for assignment of the land to the surrendered extremists were submitted; petitioners are financially sound and having the landed property in Mulkanur and Kannaigudem Village of Garla Mandal to the extent of Acs.10.20 gts and the petitioners are not eligible for assignment as Kannaigudem is a Schedule Caste village and non tribals are not entitled to occupy the Government land.

Heard Sri J.V. Prasad, learned counsel for the petitioners and the learned Government Pleader for Revenue and perused the record.

The writ petition was admitted on 26.9.2005 and interim suspension of the order dated 14.7.2005 passed by the 2nd respondent-R.D.O was granted on that day. No vacate stay petition has been filed seeking the vacation of the said interim suspension order.

The learned counsel for the petitioners submits that the petitioners are in peaceful possession and enjoyment of the subject land for the last 50 years prior to filing of the writ petition and their possession is being continued pursuant to the interim order dated 26.09.2005, passed by this Court. The petitioners also filed additional material papers i.e, copies of the pahanies for the year 1940, 1950, 1951, 1954, 1955, 1968 and 1969 showing the names of the predecessors of the petitioners.

The learned Government Pleader for Revenue submits that against the order dated 14.7.2005 of the 2nd respondent-R.D.O, a revision lies to the District Collector under Section 10 of the Act. And thus, the petitioners have got the alternative remedy of filing a revision before the District Collector.

Section 10(1) of the Act deals with appeals. According to the said section, the District Collector may revise any decision or order passed by Tahsildar or Deputy Tahsildar under the provisions of this Act. According to Section 10(2) of the Act pending disposal of any appeal or petition for revision, the District Collector or the Board of

Revenue as the case may be, may suspended the execution of the order appealed against or sought to be revised. As the petitioners have got alternative remedy of filing a revision before the District Collector under Section 10(1) of the Act, the petitioners are granted the liberty to file a revision before the District Collector under the said provision within a period of two weeks from the date of receipt of copy of this order. Till the District Collector exercises the powers under Section 10(2) of the Act and passes an order, petitioners' possession shall not be disturbed and it would be subject to the orders that may be passed by the District Collector under Section 10(2) of the Act. The petitioners are given the liberty to raise all the pleas which are available to them in law in the revision that may be filed by them before the District Collector.

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

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date:22.06.2018.
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HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



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