

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.6768 of 2011

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to call for the records and issue a writ in the nature of Certiorari setting aside the order, dated 20.12.2010, passed by the 1st respondent in case No.BC.W5/ 752/ 2008, confirming the order, dated 11.11.2008, passed by the 2nd respondent in D.Dis.No.(E5) 6522/ 2003, the same being illegal, arbitrary, unjust and violative of the principles of natural justice, of the Articles of the Constitution of India, of the provisions of the Hindu Succession Act, of the & BSO-15, and of the A.P. Assigned Lands (POT) Act, 1977 (Act 7 of 1977). A consequential direction to the respondents 1 to 3 to issue pattedar pass books to the petitioner in respect of the land in an extent of Ac.5.00 cents in Sy.no.32/ 2 situated at Thimmasamudram village, Jaladanki Mandal, SPSR Nellore District is also sought.

2. I have heard the submissions of *Sri M.Venkata Narayana*, learned counsel appearing for the petitioner; of the learned Government Pleader for Revenue (AP) appearing for the respondents 1 to 3; and, of *Sri S.V.Muni Reddy*, learned counsel appearing for the 4th respondent. I have perused the material record.

3. The relevant facts and events that are noticeable from the pleadings, submissions and the contents of material documents, in brief, are as under:

An extent of Ac.5.00 cents of land in Sy.no.32/ 2 of Thimmasamudram, H/o Kesavaram village, Jaladanki Mandal, was originally assigned to Gogula Rama Murthy, by the then Tahasildar,

Kavali, vide proceedings, dated 21.01.1964, in T.D.no.3144 of 1964. The patta was implemented in the revenue records by assigning patta no.388. The said Gogula Rama Murthy, who was a bachelor, died in the year 1966. Gogula Venkata Narasaiah, the father of Rama Murthy, died in the year 1977. Gogula Pardhasaradhi and Gogula Venkata Sessaiah are the brothers of the said Rama Murthy. Gogula Pardhasaradhi was said to have relinquished his rights in the property that was assigned to late Rama Murthy. Therefore, both the petitioners and the 4th respondent submit that Sessaiah, the brother of late Rama Murthy succeeded to the patta property under the provisions of the Hindu Succession Act. The present writ petitioner is the wife of the said Sessaiah (since died). The 4th respondent claimed that he purchased the patta property from said Sessaiah under an agreement of sale. The two brothers of Rama Murthy, namely, Pardhasaradhi and Sessaiah, who were employed, worked respectively as Professor in the Andhra University and as Director, Government Small Scale Industries Department. Late Venkata Narsaiah, the father of Rama Murthy worked as Dafedar (Attender) in the Revenue Department.

4. In this backdrop, the case of the writ petitioner is this:

She is wife of late G.V.Sessaiah, who is one of the brothers of late Rama Murthy. Her husband, having succeeded to the entire patta land, applied to the then Mandal Revenue Officer, Jaladanki Mandal, for issuance of pattedar passbook in respect of the said patta land, as per Act 7 of 1977. The said request was rejected by the Mandal Revenue Officer, by an order, dated 09.12.1997. Therefore, Sessaiah filed an appeal before Revenue Divisional Officer, Kavali, assailing the said orders of the Mandal Revenue Officer. The Revenue Divisional Officer, Kavali, by an order, dated 05.12.1998, dismissed the said appeal preferred by

Seshaiah. Thereafter, Seshaiah preferred a revision before the 2nd respondent/ Joint Collector. The 2nd respondent, after due consideration, by an order, dated 09.06.1999, remanded the matter to the Revenue Divisional officer, Kavali. The Revenue Divisional Officer, Kavali, in his turn, by order, dated 03.01.2000, remanded the matter to the then Mandal Revenue Officer, Jaladanki. Aggrieved thereof, Seshaiah filed a revision before the Joint Collector. The Joint Collector, by his order, dated 21.11.2000, directed the RDO, Kavali, to settle the issue immediately. Thereafter, the RDO, Kavali, passed orders, dated 12.12.2001, holding that G.V.Seshaiah, the husband of the writ petitioner, is the legal heir of the original assignee, Rama Murthy, and that the 4th respondent/ Mastanaiah had no right to claim, either by sale or otherwise, the property which was originally assigned to Rama Murthy. Therefore, the 4th respondent filed a revision before the 2nd respondent/ Joint Collector and assailed the order, dated 12.12.2001, of the RDO, Kavali. The Joint Collector held that as per BSO 15, assigned land is heritable and that the land was not resumed by the Government after the death of the original assignee, Rama Murthy, and that late Seshaiah is entitled to the land assigned on patta, as legal heir of late Rama Murthy; and, that the 4th respondent/ Mastanaiah cannot claim any right over the property as he was an encroacher. Thus, the Joint Collector, by his order, dated 05.07.2003, dismissed the revision filed by the 4th respondent/ Mastanaiah.

4.1 The further facts and events are as under: 'The 4th respondent filed W.P.No.6263 of 1999 before this Court for declaration that he is entitled to continue in possession of the above said land. Seshaiah got himself impleaded as a party respondent to the said writ petition and contested the same. The said writ petition was dismissed, by order

dated 13.10.2000. The operative portion of the said order reads as under:

“ The land in question was already assigned to one Gogula Ramana Murthy originally and the said Ramana Murthy is no more. But the 5th respondent claims to be his legal heir and claims for issue of pattedar pass book. Therefore, the land in question is admittedly not available for assignment either to the petitioner or to anybody unless the assignment made originally in favour of Gogula Ramana Murthy is cancelled. Further, when the petitioner has no legal right either to occupy the said land or to continue to be in possession of the said land, he is not entitled to the equitable relief from this Court under Article 226 of the Constitution of India. Even assuming that the petitioner is in possession of the land in question, he is only an encroacher and therefore he is not entitled to any relief.

Under the above circumstances, the Writ Petition is devoid of merits and the same is accordingly dismissed.”

The 4th respondent also filed a suit in O.S.no.233 of 2001 on the file of the Court of the learned Principal Junior Civil Judge, Kavali. In the said suit he also filed I.A.no.1453 of 2001 requesting to grant temporary injunction. Learned Principal Junior Civil Judge dismissed the said application, by an order dated 03.09.2001. Thus, 4th respondent's revision filed before the Joint Collector; his writ petition in W.P.No.6263 of 1999 filed before this Court; and his interlocutory application filed in the afore stated civil suit were all dismissed. Having been aggrieved of the order, dated 05.07.2003, of the Joint Collector, the 4th respondent filed a revision in Proceedings no.BCWS/ 645/ 2003, before the Chief Commissioner of Land Administration, the 1st respondent herein. The 1st respondent having considered the same, by his order, dated 13.02.2008, remanded the matter to the 2nd respondent/Joint Collector for conducting fresh enquiry to decide about the legality of the assignment made to Gogula Rama Murthy in the light of the BSO15. The operative

portion of the order, dated 13.02.2008, of the 1st respondent reads as under:

“In view of the above, I see no valid reasons to interfere with the orders of the Joint Collector, Nellore passed in D.Dis.No.E5/ 4501/ 02, dt.05.07.2003 insofar as the dismissing the petitioner’s appeal is concerned. However, it is open to the Joint Collector, Nellore to conduct a fresh enquiry into the assignment made to late Gogula Rama Murthy and take necessary action as per the Board Standing Orders. All the interested parties are directed to file their objections if any, along with documentary evidence before the Joint Collector.”

4.2 Significantly, in the aforesaid orders, the 1st respondent also made the following vital observations:

“The assignee Rama Murthy, who was a bachelor died in the year 1966. His father also died in the year 1977. The 4th respondent is an encroacher on the said assigned land though Masthanaiah/the 4th respondent claims that he purchased the patta land from Sessaiah. Masthanaiah/the 4th respondent who is an encroacher on the assigned land could not establish that Sessaiah received sale consideration of the land from him. It is interesting to observe that how a bachelor was given patta. Perusal of the record also reflects that the assignee’s father worked as Dafedar (Attender) in Revenue Department at the time of assignment; and, the other two brothers of late Rama Murthy are also employees. The land was not in their possession upto the year 2001 after the death of the original assignee. The Joint Collector ought to have gone into these aspects while confirming the order of the RDO. The RDO in his orders held that subsequent to the death of the original assignee, land was not resumed and not cultivated by the assignee or his legal heirs. But, the RDO and the Joint Collector in their orders referred to D Form patta rules only for the purpose of inheritance but not observed any violation of conditions/ mis-representation of facts by the original assignee.”

5. In view of the aforesaid observations in the orders of the 1st respondent, the Joint Collector took up the case in D.Dis.No.(E5)/ 6522/ 03, on file, and issued notices to both the parties. Ultimately, by his orders, dated 11.11.2008, the Joint Collector held to the following effect:

“According to assignment policy defined under BSO 15, the landless poor person is one who does not own or has no share in ancestral or acquired land in excess of Ac.2.50 wet land or Ac.5-00 of dry land and also a person engaged in agricultural operations having a total income of less than Rs.6,000/- per annum including income of all family members. In this case the assignment was made, on 21.01.1964 to one Gogula Ramamurthy, who is bachelor. He died in the year 1966. He has no legal heirs. It is strange to note how a bachelor was granted patta. The assignee's father also died long back. Gogula Venkata Sessaiah, brother of the original assignee who is having separate family has no right over the property and he cannot be called as legal heir. The then Tahasildar, Kavali, ought to have resumed the land for violation of condition. Or he ought to have taken action under the provisions of Act 9/77. The said authority kept quiet for several years without initiating action for resumption of the land in question. Further, G.V.Sessaiah, brother of original assignee, has no right to sell the Government property to others. Sadanala Masthanaiah is only an encroacher over the land; and, he cannot claim title over the land under the provisions of Act 9/77. Moreover, Sadanala Mastanaiah has got four sons. They have to look after him. Gogula Sudarsanamma W/o late G.V.Sessaiah has no legal right over the land. She is not successor of the original assignee. She is having children; and, she residing at Hyderabad. Accordingly the revision petition filed by Sadanala Masthanaiah is dismissed.”

Having so observed, the Joint Collector directed the Tahasildar, Jaladanki, to take possession of the land from the occupiers and implement changes in the village and Mandal accounts and report compliance. The Tahasildar was further directed to take assistance of the Horticulture Department and cut the trees and put them to sale by auction and remit the amount into the Government treasury.

6. Aggrieved of the said orders, the writ petitioner, wife of late Sessaiah, filed a revision before the 1st respondent. The 4th respondent, who is also aggrieved of the very same order, filed another revision. By orders, which are impugned in this writ petition, the 1st respondent confirmed the orders of the Joint Collector and dismissed both the revisions. Therefore, this writ petition is filed by the wife of late Sessaiah.

7. Be it noted that the 4th respondent also filed another writ petition in W.P.No.985 of 2011 assailing the very same common order passed by the 1st respondent in the aforesaid two revisions. This Court, by order dated, 25.01.2011, dismissed the said writ petition. In the said orders, this Court noted that the 4th respondent herein is an encroacher of the land in dispute and that he claimed to be a landless poor person and directed that his application for assigning the land be considered by the 3rd respondent herein, that is, Tahasildar, in accordance with law. Thus, it is perceptible that the common order passed in the two revisions, which is impugned in this writ petition, was already confirmed by this Court by the order dismissing the above said W.P.No.985 of 2011, filed by the 4th respondent.

8. Be that as it may. The subject land was originally assigned to G.Pama Murthy in the year 1964 though he was a bachelor. He died in the year 1966. His father died in the year 1997. Though he had two brothers, by name G.Pardhasaradhi and Sessaiah, Sessaiah alone made a claim in respect of the land assigned to late Pama Murthy by means of succession. Therefore, he requested the Mandal Revenue Officer to issue pattedar pass book in respect of the assigned land to him, as per the provisions of A.P. Rights in Land and Pattedar Pass Books Act, 1971. The said request was rejected. His appeal was also dismissed by the RDO. Be that as it may. Though the 4th respondent claimed to have purchased the property under an agreement of sale from Sessaiah for a valuable consideration, his said contention was not accepted, since not established; and, he was held to be an encroacher. After various orders passed by the Tahasildar, the RDO and the Joint Collector, the matter was finally dealt with by the 1st respondent. The 1st respondent-Chief Commissioner, Land Administration, in his orders, dated 13.02.2008,

which are adverted to supra, having noted that a patta was issued to a bachelor and that the 4th respondent is an encroacher and that Venkata Narasaiah, the father of the original assignee, Rama Murthy, worked as Dafedar/ Attender in the Revenue Department at the time of assignment and that Sessaiah, who is claiming the patta land as a successor of the Rama Murthy, is a retired Government employee and that the land was not in possession of Sessaiah or any other legal heirs of the original assignee upto the year 2001 from the date of death of the original assignee in the year 1966, observed in his orders that the RDO as well as the Joint Collector failed to examine the said aspects. Therefore, in his order, he further observed that it is open to the Joint Collector to conduct a fresh enquiry into the assignment made to G. Rama Murthy and take necessary action as per the BSO. Thereafter, the Joint Collector passed orders, dated 11.11.2008, holding that neither the 4th respondent, who is an encroacher nor Sessaiah, who admittedly retired as Director in the Government Small Scale Industries Department, have any right to make any claim in respect of the land originally assigned to Rama Murthy. He further directed the Tahasildar to take possession of the lands from the occupier and implement changes in the revenue records and report compliance. Though the said order was assailed by the writ petitioner (wife of Sessaiah) and the 4th respondent, by means of two separate revisions filed before the 1st respondent, the 1st respondent, by his order, dated 20.12.2010, dismissed both the revisions and confirmed the orders of the Joint Collector, dated 11.11.2008. The writ petition filed by the 4th respondent in W.P.No.985 of 2011 assailing the said orders, dated 20.12.2010, was dismissed by this Court, however, directing the Tahasildar to consider the application of the 4th respondent in which he claimed that he is a landless poor person and is entitled to

assignment. The writ petitioner is not disputing the facts, namely, that the original assignee is a bachelor and that he died in the year 1966 and that his father died in the year 1997 and that her husband Sessaiah retired as Director of Government Small Scale Industries Department. Further, the orders impugned indicate that though late Rama Murthy died in the year 1966, none of his legal heirs were in possession of the assigned land till the year 2001 and that the 4th respondent is an encroacher of the assigned land and that he has no right to continue to remain in the said land.

9. On the above analysis, this Court finds that the contentions of the writ petitioner that her husband being the brother of late Rama Murthy, the original assignee, is entitled to succeed to the assigned property and that on the death of her husband she, in her turn, is entitled to succeed need no countenance in this writ petition filed, under Article 226 of the Constitution of India, invoking equity jurisdiction of the Court.

10. For all the foregoing reasons, the Writ Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

27.07.2018

Note:- Issue CC by 01.08.2018
(B/ o) RAR