

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION No.12954 of 2009

ORDER:

This writ petition is filed for the following relief:

“...to issue a writ, order or direction more particularly one in the nature of writ of mandamus under article 226 of the Constitution of India declaring the order passed by the Tahsildar, Sangareddy Mandal, Medak District, the 5th respondent herein in his proceeding D/3860/2008 dated 12.06.2008 in so far as resuming an extent of Ac.5.02 guntas of dry land comprised in Sy.No.560 situated in Mamidipally Village, Sangareddy Mandal in Medak District and the further action of the respondent in seeking to dispossess the petitioners herein from the above extent of land as illegal, arbitrary, unjust and violative of Articles 14, 21 and 300 A of the Constitution of India and also violative of the principles of natural justice and consequently to set aside the order of the 5th respondent in his Prods.D/3860/2008 dated 12.06.2008 in so far as resuming an extent of Ac.5.02 Guntas of dry land comprised in Sy.No.560 situated in Mamidipally Village, Sangareddy Mandal in Medak District and further direct the respondents herein not to interfere with the peaceful possession and enjoyment of the above extent of land ...”

2. Heard Sri P. Sridhar Reddy, learned counsel for the petitioners, and learned Assistant Government Pleader for Revenue appearing on behalf of respondent Nos.1 to 5 and Sri P. Ravi Prasad, learned counsel appearing on behalf of respondent No.6. During the pendency of the writ petition, sole petitioner died and petitioner Nos.2 and 3 were brought on record as her legal heirs.

3. Learned counsel for the petitioners submits that the husband of petitioner No.1 was an ex-serviceman. The then Tahasildar, Sanga Reddy Mandal, granted assignment patta in respect of agricultural dry land to an extent of Ac.5.02 guntas in Survey No.560 situated at

Mamidipally Village of Sangareddy Mandal, Medak District, in the year 1969, after following the due procedure and thereafter, he had issued Final Patta Certificate No.A5/10820/74 to him. Since then he has been in peaceful possession and enjoyment of the said property and he dug a bore-well and obtained electricity service connection and doing agriculture by raising paddy and other crops by drawing the water through the said bore well and his name was mutated in the revenue records and he died in the year 2000. After his death, petitioner No.1 succeeded the above said property and her name was mutated in revenue records and pattadar pass book and title deed were issued in her favour.

3.1. He further submits that on 25.05.2009, respondent No.4 came to the land of petitioner No.1 and directed her not to do agriculture and trying to dispossess her from the subject property, even without issuing any notice. At that stage, petitioner No.1 had approached this Court and filed the present writ petition and this Court granted *status quo* on 12.10.2009 and the same is continuing. Respondent No.5 filed counter alleging that he passed resumption order on 12.06.2008 and allotted the subject land in favour of respondent No.6.

3.2. He vehemently contended that respondent No.5, without issuing notice and opportunity to petitioner No.1, passed the impugned resumption order behind her back. The allegation made by the respondent No.5 in the counter affidavit that he had issued show-cause

notice dated 20.05.2008 and petitioner No.1 was not residing in the village and due to the same, notice was affixed to a pole erected in the subject land is absolutely not correct, especially when petitioner No.1 is resided in the village in house bearing No.1-28, till her death i.e. 04.10.2013. The endorsement made in the show- cause notice that the addressee was not residing in the village and due to that the same, it was affixed to a pole in the subject land is factually incorrect and the impugned order dated 12.06.2008 passed by the respondent No.5 is gross violation of principles of natural justice and contrary to law.

3.3. He further submits that the petitioners are in physical possession of the subject property as on today and they are cultivating the land by raising paddy crop by drawing the water from bore well and they are also paying electricity charges and names of the petitioners are reflecting and continued in the revenue records. He further contended that if the subject property is required for public purpose, respondent authorities ought to have paid compensation to the petitioners/assignees equivalent to the full market value of the land and other benefits on par with full owners.

3.4. In support of his contention, he relied upon the following judgments:

1. **Land Acquisition Officer-cum-Revenue Divisional Officer, Chevella Division and others v. Mekala Pandu and others¹**
2. **Akkana Sivudu Naidu v. Tahsildar, Bobbili, Srikakulam District²**
3. **Management of M/s M.S.Nally Bharat Engineering Co.Ltd. v. State of Bihar and others³**
4. **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others⁴**

4. *Per contra*, learned counsel for respondent No.6 submits that the subject land is a government assigned land. As per the terms and conditions of assignment patta, the Government is entitled to resume the land, if required for public purpose. Respondent No.5 after following the due procedure as contemplated under law passed the resumption order dated 12.06.2008 resuming total land to an extent of Ac.47.30 gts in Sy.No.560 including the petitioners' land for public purpose i.e., for establishment of Indian Institute of Technology, Hyderabad 'in short' IITH at Kandi and thereafter handed over the same to respondent No.6 by the revenue authorities after conducting panchanama dated 06.10.2008. Since, then respondent No.6 has been in possession of the subject property.

¹ AIR 2004 AP 250

² 1997 (1) ALT 539

³ (1990) 2 SCC 48

⁴ (1978) 1 SCC 405

4.1. He further contended that respondents have paid ex-gratia amount to all the assignees, but the petitioners have refused to receive the same and the said amount has been kept in the revenue deposit. Hence, the petitioners are not entitled to seek any relief much less the relief sought in the writ petition.

5. Learned Assistant Government Pleader also reiterated the very same submissions and contended that respondent No.5, after following the due procedure, passed resumption order dated 12.06.2008. He further contended that the petitioners, without availing the remedy of appeal as provided under the provisions of the Act, straight away approached this Court and filed the present writ petition and the same is not maintainable under law.

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that originally petitioner No.1 filed the present writ petition on 30.06.2009 questioning the action of respondent No.4 in unauthorizedly interfering with the peaceful possession and enjoyment of the subject property, without issuing any notice and without following any due procedure. On 12.10.2009, this Court in W.P.M.P.No.16761 of 2009 granted *status quo* order with regard to the possession of the petitioner in respect of the subject property for a period of one week. Thereafter, on 13.11.2009, while admitting the writ petition, the interim order granted earlier is extended until further orders and the same is continuing.

7. That the petitioners averred that they came to know about passing of resumption order dated 12.06.2008 through the counter-affidavit filed by the respondent Nos.5 and 6 and the petitioners have questioned the above said order by way of amendment vide application I.A.No.1 of 2023 and the same was allowed on 19.02.2024.

8. The records reveal that the then Tahsildar, Sanga Reddy Mandal, after following the due procedure as contemplated under law, granted assignment patta to an extent of Ac.5.02 guntas covered by Survey No.560 situated at Mamidipally Village, Sanga Reddy, Medak District, presently Sanga Reddy District, in favour of husband of petitioner No.1, namely K.Pandit, under ex-serviceman quota, in the year 1969, and issued final patta certificate, *vide* No.A5/10820/74, and since then he has been in possession and enjoyment of the said property and his name was mutated in the revenue records. After his death, petitioner No.1 succeeded the said property and her name was mutated in the revenue records and pattadar pass book and title deed were issued. During pendency of the writ petition, sole petitioner died and petitioner Nos.2 and 3 were brought on record as her legal heirs, by its order, dated 12.04.2023 in I.A.No.1 of 2022.

9. The specific claim of the petitioners is that respondent No.5 without issuing notice and opportunity to petitioner No.1, passed impugned resumption order dated 12.06.2008. Whereas, in the counter-affidavit of respondent No.5, it is stated that at the time of serving of

notice, petitioner No.1 was not residing in that village and due to the same notice dated 20.05.2008 was affixed to a pole erected in the subject land. On the other hand, petitioner No.2 had filed reply affidavit denying the above said averment contending that her mother, i.e., writ petitioner, living in Mamidipalli Village in dwelling house bearing No.1-28 till her death and he is also living in the said house till today, and to establish the said factum, he filed Aadhar Cards, Aarogyasri health Card, Voter Identity Cards. The petitioners have also denied the allegations made by the respondents that possession of the subject property was handed over to respondent No.6. In support of their claim, they filed Electricity Bills pertaining to bore well, which is situated in the subject land, and Google Map, Location Sketch and photographs stating that they are in physical possession and doing agriculture operations by raising paddy crop.

10. Admittedly, respondent No.5 had not sent the notice (show-cause notice) bearing No.D/3860/2007, dated 20.05.2008, to petitioner No.1 to the last known address either through registered post, certificate of post, or ordinary post and passed the impugned resumption order dated 12.06.2008. In the counter-affidavit, respondent No.5 averred that show-cause notice was affixed to a pole erected in the subject land, especially when the petitioners are having residential house bearing No.1-28 in the village. It is also relevant to mention here that respondent No.5 has not pleaded in the counter affidavit that the impugned

resumption order was communicated to the petitioners nor filed any documents to that effect.

11. In **Akkana Sivudu Naidu** (2 supra), the High Court of Andhra Pradesh at Hyderabad, held that even if there is no specific procedure prescribed for communicating the order in particular mode and affixing of order on the dwelling house is not an effective service.

12. In **Management of M/s M.S.Nally Bharat Engineering Co.Ltd** (3 supra) and **Mohinder Singh Gill and another** (4 Supra), the Hon'ble Supreme Court held that without giving notice and opportunity to parties and without conducting proper enquiry and passing order against the employee is a gross violation of principles of natural justice and itself causes a prejudice.

13. It is relevant to place on record that in **Allwyn Housing Colony Welfare Association vs. Government of Andhra Pradesh and others**⁵, the Hon'ble Apex Court specifically held that no adverse order should be passed against the party without hearing him.

14. It is also very much relevant to place on record that in **ITC Limited, rep. by Pinnamraju Ashok varma, Visakhapatnam, A.P v. State of A.P.**⁶, High Court of Andhra Pradesh, held that where property rights are involved, any adverse order by the authority results in

⁵ 2009 (9) SCC 489

⁶ 2024 (2) ALT 753

infringement of right to property guaranteed under Article 300-A of the Constitution of India.

15. In the case on hand, the petitioners are claiming the rights over the subject property basing upon assigned patta granted in favour of husband of petitioner No.1 in the year 1969 followed by final patta certificate No.A5/10820/74 under ex-serviceman quota. By virtue of the impugned resumption order dated 12.06.2008, the rights of the petitioners in respect of the subject property were affected. Admittedly, before passing resumption order dated 12.06.2008, respondent No.5 has not given opportunity, much less reasonable opportunity to petitioner No.1. Hence, the impugned order passed by respondent No.5 is gross violation of principles of natural justice and contrary to law.

16. It is already stated '*supra*' that the petitioners have filed several documents denying the allegations made by the respondents in respect of taking possession of the subject property and handing over the same to respondent No.6 and further pleaded that they are in physical possession of the subject property as on today and doing cultivation by raising paddy crop. Whether respondent No.6 is in possession of the subject property or the petitioners are in physical possession of the subject property is disputed question of fact and this Court is not inclined to go into the said aspect at this juncture, on the sole ground that respondent No.5 had passed the impugned resumption order dated 12.06.2008 without giving notice and opportunity much less reasonable opportunity

to petitioner No.1 and the same is gross violation of principles of natural justice and the same is liable to be set aside to the extent of subject property and required to be passed orders afresh by respondent No.5.

17. In **Mekala Pandu** (1 *supra*) Full Bench of this Court specifically held that the assignees of the government lands are also entitled payment of compensation equivalent to the full market value of the land and other benefits on par with full owners. The above said judgment is squarely applicable to the petitioners on the ground that they are assignees of the subject land. Whereas, respondent No.5 in the counter affidavit simply stated that they have deposited ex-gratia amount in revenue deposit, when petitioner No.1 refused to receive the same. Taking into consideration the above said facts and to render substantial justice to the parties, this Court is of the view that resumption order dated 12.06.2008 passed by respondent No.5 to the extent of petitioners' land is liable to be set aside and the matter requires to be considered by respondent No.5, by giving opportunity to petitioners to put forth their grievances.

18. For the foregoing reasons as well as precedent decisions, the impugned resumption order dated 12.06.2008 passed by respondent No.5 to the extent of subject property i.e. land to an extent of Ac.5.02 guntas in Survey No.560 situated at Mamidipally Village of Sangareddy Mandal, Medak District, presently Sanga Reddy District, is set aside, and the petitioners are directed to submit the explanation to show-cause

notice vide bearing No.D/3860/2007, dated 20.05.2008, before respondent No.5, within a period of four (4) weeks from the date of receipt of a copy of this order, by raising all the grounds which are available under law, and on such explanation, respondent No.5 is directed to consider the same and pass appropriate orders, in accordance with law, within a period of eight (8) weeks from thereafter, after giving opportunity to the petitioners as well as respondent No.6, including personal hearing. Till such time, the parties are directed to maintain status-quo with regard to possession of the subject property.

19. Accordingly the writ petition is disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

J. SREENIVAS RAO, J

Date: 04.06.2024

L.R. Copy to be marked – Yes.

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Note:

Issue C.C. in three (3) days.