
(2007) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23315 of 2006

Banne Gandhi and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 23-02-2007

Acts Referred:

Andhra Pradesh Board of Revenue Standing Order — Order 15
Andhra Pradesh Panchayat Raj Act, 1994 — Section 58, 58(1), 58(2)
Constitution of India, 1950 — Article 14, 21

Citation : (2007) 4 ALD 374 : (2007) 4 ALT 550

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Janardhana Reddy, for the Appellant; Government Pleader for Assignment, Respondent Nos. 1 to 3 and V. Raghunath, for Respondent Nos. 5 to 26, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioners are Villagers of Medipalli Village, Nakkarta Gram Panchayat of Yacharam Mandal in Ranga Reddy District. They filed the instant writ petition challenging the action of the third respondent in assigning Plot Nos. 1 to 22 of Medipalli Village by proceedings dated 13.9.2005 to respondents 5 to 26 as illegal and arbitrary, and for a direction to set aside the same.

2. The case of the petitioners in brief is that the land admeasuring Ac.0.18 guntas is classified as Grama Kantam land. The same vests in the Gram Panchayat, which allotted an extent of Ac.0.18 guntas to the petitioners during the period from 1979-2000 as per the decision of the Sarpanch at the relevant time. However, the third respondent without cancelling the allotment made in favour of the petitioners issued assignment orders in favour of respondents 5 to 26 without issuing any notice to the petitioners. The petitioners filed O.S. No. 129 of 2005 on the file of the Court of the Junior Civil Judge, Ibrahimpatnam, against respondents 3 and 4 for perpetual injunction. However, they withdrew

the suit and filed the present writ petition assailing the assignment made in favour of respondents 5 to 26 as violative of Articles 14 and 21 of the Constitution of India. They seek invalidation of the orders passed by the third respondent in favour of the contesting respondents.

3. At the stage of admission itself a counter-affidavit is filed on behalf of respondents 1 to 3, and a separate counter-affidavit is filed by respondents 5 to 26. Though adequate time was granted to the fourth respondent, no counter-affidavit is filed. However, learned Standing Counsel made submissions on behalf of the fourth respondent.

4. The Mandal Revenue Officer in the counter-affidavit states that as per the pahani for the year 1972-1973 the total extent of Grama Kantam land was Acs.24.6 guntas. This is occupied by pucca houses of the Villagers. Subsequently, the Sarpanch of Nakkarta Gram Panchayat passed a resolution for allotment of remaining vacant Grama Kantam land for providing house sites to poor Scheduled Caste beneficiaries. Therefore, possession certificates were issued to respondents 5 to 26 in File No. B/ 4539/2005, dated 13.9.2005, assigning Ac.0.18 guntas in their favour. The writ petitioners were never allotted the Grama Kantam land, and the petitioners created bogus documents, and filed this writ petition. All the petitioners own agricultural land and also have their own houses, and therefore, they are not entitled for assignment of any house site patta. It is also asserted that the petitioners have nothing to do with the Grama Kantam land, and that they are not in possession of any land forming part of Grama Kantam. The counter-affidavit also gives the land holding particulars of the writ petitioners showing that the petitioners own land ranging from Acs.4.00 to Acs. 13.10 guntas. It is also stated that the petitioners filed the writ petition after I.A. No. 530 of 2005 in O.S. No. 129 of 2005 was dismissed by the Court of the Junior Civil Judge, Ibrahimpatnam. In the counter-affidavit filed on behalf of respondents 5 to 26 it is stated that all the respondents are landless poor persons belonging to Scheduled Caste Community, that they made representations to respondents 1 to 3 for allotment of house sites, that respondent No. 1 came to the Village and prepared the list of beneficiaries, and that after conducting enquiry, these respondents were granted house site patas in 2005 to an extent of 60 square yards each. The petitioners filed O.S. No. 129 of 2005 and also filed LA. No. 530 of 2005, which was dismissed on 9.10.2006, and thereafter, the petitioners filed the present writ petition. The other allegations made by the petitioners are denied.

5. Learned Counsel for the petitioners submits that when once the land is assigned to the petitioners, without cancelling the assignment and without issuing notice to the petitioners, the third respondent cannot reassign/reallot the same land to respondents 5 to 26. He secondly submits that the Grama Kantam land vests in the Gram Panchayat, and therefore, u/s 58 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act"), unless the Gram Panchayat is divested by proper notification, it is not competent for the third respondent to

assign the land in favour of the contesting respondents. He placed reliance on the decision of this Court in Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v. District Collector, Chittoor 1997 (2) ALT 486 .

6. Learned Assistant Government Pleader for Revenue (Assignment) submits that the petitioners have no locus to assail the assignment/allotment of house sites made in favour of respondents 5 to 26. He would urge that the petitioners own lands and houses in the Village and they are not eligible for assignment. Therefore, they cannot challenge the assignment made in favour of poor beneficiaries. Secondly, he submits that the petitioners initially approached the civil Court, and having failed to get ad interim injunction, they again filed the present writ petition, which is abuse of process of law. He also contends that the land classified as Grama Kantam (village site) in the revenue records is not one of the classes of poramboke lands mentioned in Section 58(1) of the Act, and therefore, Grama Kantam does not vest in the Gram Panchayat, and it is only the Mandal Revenue Officer who is competent to assign the land for house sites.

7. In the counter-affidavit filed by the Mandal Revenue Officer it is brought out that the petitioners created bogus record claiming allotment in their favour, and that they are not in possession of the land, which is assigned to respondents 5 to 26. The counter-affidavit is filed on 11.12.2006, but so far no reply affidavit denying the counter averments is filed. In view of the unrebutted counter averments, this Court holds that the writ petition filed is not bona fide, and the petitioners have no locus standi to assail the assignment made in favour of the contesting respondents. Secondly, there is no denial that the petitioners initially filed O.S. No. 129 of 2005 for perpetual injunction against the third respondent and the Sarpanch of the Village. They also filed LA. No. 530 of 2005 for interim injunction. The said application was dismissed on 9.10.2006, and this writ petition is filed before this Court on 7.11.2006, which would lend support to the submission of the learned Assistant Government Pleader that having failed to get ad interim injunction, the petitioners withdrew the suit and filed the present writ petition. Therefore, the writ petition is misconceived, and is frivolous.

8. The submission of the learned Counsel based on Section 58 of the Act does not merit any consideration. Section 58(1) and (2) of the Act reads as under.

58. Certain Government porambokes to vest in Gram Panchayat etc. :-(1) The following porambokes namely grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts tanks and topes, which are at the disposal of the Government and are a not required by them for any specific purpose shall vest in the Gram Panchayat subject to such restrictions and control as may be prescribed.

(2) The Government may, at any time by notification in the Andhra Pradesh Gazette, direct that any porambokes referred to in Sub-section (1) shall cease to vest in the Gram Panchayat if it is required by them for any specific purpose and thereupon such porambokes shall vest in the Government.

(3) and (4) omitted.

9. A perusal of Sub-section (1) of Section 58 of the Act would show that only certain classes of lands described therein which are not required by the Government for any specific purpose shall vest in the Gram Panchayat. The village site poramboke/Grama Kantam land is conspicuous by its absence in the category of lands enumerated in Sub-section (1) of Section 58 of the Act. Therefore, Section 58(1) of the Act is not attracted. In an unreported judgment, being W.P. No. 18865 of 2006, dated 25.9.2006, this Court has considered this aspect having regard to the Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v. District Collector, Chittoor (supra), and also Board Standing Order 15 of the Andhra Pradesh Board of Revenue Standing Orders. This Court rejected a similar contention observing as under:

A bare perusal of Section 58 of the Act would show that grazing grounds, threshing floors, burning and burial grounds, cattle stands, carts tanks and topes at the disposal of the Government vests in the Gram Panchayat. If the Government requires these lands for any specific purpose, Sub-section (2) of Section 58 of the Act requires the Government to direct that the poramboke land referred to hereinabove is mentioned in Section 58(1) of the Act and shall cease to vest in the Gram Panchayat. When only specific items of land find place in Sub-section (1) of Section 58 of the Act, it is not possible to enlarge these items by including the Government land classified as grama kantam land. Learned Counsel for petitioner placed reliance on judgment of this Court in Sarpanch, Polakala Gram Panchayat, Irala Mandal, Chittoor District v. District Collector, Chittoor and Ors. (supra). The judgment appears to have been rendered per incuriam without noticing Sub-section (1) of Section 58 of the Act and there is no discussion or reference to any precedent. Therefore, the judgment being subsilentio is not binding precedent. Secondly under Paras 2 and 3 to BSO 15 of the Andhra Pradesh Board of Revenue Standing Orders, village site poramboke land (grama natham area/grama kantam land) always vests in the Government and is intended for being allotted as house sites in future.

10. Therefore, the submission of the learned Counsel for the petitioners cannot be countenanced. Lastly, in the counter-affidavit of the Mandal Revenue Officer, the total extent of land owned by the petitioners has been given, which would show that the petitioners are certainly not entitled for assignment of house sites, much less, agricultural land. The writ petition is misconceived, and is not bona fide.

11. The writ petition is therefore, dismissed with costs.