
(2001) 07 AP CK 0100
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5731 of 1991

Chavvakula Savitramma

APPELLANT

Vs

District Collector, Visakhapatnam and Others

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 5 ALD 156

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : V.L.N.G.K. Murthy, for the Appellant; D.V. Sitarama Murthy and Mrs. Sumalini Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The writ petition is filed seeking writ of mandamus declaring the action of the 1st respondent in resuming the land of the petitioner and assigning it to the 3rd respondent pursuant to the show- cause notice dated 9-12-1987 as illegal and for consequential direction.

2. According to the petitioner, she is a widow of Ex-service man. She was assigned D-Form patta on 19-11-1978 over an extent of Ac. 4-67 cents in S.No. 335/1 of Madhuravada village of Visakhapatnam District and according to the petitioner she has developed the lands and has been cultivating the same by taking loans from various financial agencies. While so, on 9-12-1987, the Mandal Revenue Officer-2nd respondent issued a show-cause notice as to why the patta granted in favour of the petitioner should not be cancelled on the ground that she failed to cultivate the land within three years and that the land is for public purpose namely for development of a Satellite township. She was called upon to submit explanation and she submitted explanation on 21-12-1987, but not final orders were passed according to the petitioner.

3. While so, in 1991, respondent Nos.3 to 5 tried to resume the land without any

authority of law. The present writ petition has been filed seeking appropriate directions.

4. It is the case of the petitioner that she has followed the conditions of assignment of D-Form patta and that no final orders have been passed and therefore, the question of resumption or subsequent assignment in favour of the 3rd respondent who is understood to have sold again the land to the 4th and 5th respondent is illegal and contrary to law.

5. Mr. V.L.N.G.K. Murthy, the learned Counsel for the petitioner submits that so long as no final orders have been passed in pursuance of final notice dated 9-12-1987, the land cannot be resumed and assigned to any third parties. He further submits that the land was assigned in favour of the 3rd respondent on 20-4-1990 and he was permitted to sell the land to the third parties and accordingly the land was sold to respondent Nos.4 and 5 under registered sale deeds on 5-11-1990 and 4-2-1991. He submits that the subsequent proceedings pursuant to show-cause notice are illegal and without jurisdiction.

6. He also submits that the counters of the respondents are quite conflicting. The respondents filed different counters with conflicting averments.

7. It is the counter filed by the District Revenue Officer it was stated that there was no record to show that the petitioner had submitted any explanation to the show-cause notice. They could not trace the copy of explanation in spite of repeated searches. The Collector in his counter had stated that the petitioner was issued with the show-cause notice dated 9-12-1987 as she had sold various extents of lands to outsiders violating the conditions of assignment. To that notice she submitted explanation dated 29-12-1987. In the counter of Mandal Revenue Officer it is stated that show-cause notice was issued on 9-12-1987 alleging that the petitioner had sold away the land to others. The petitioner submitted explanation dated 29-12-1987. Again for the second time, the Collector filed another affidavit stating that the petitioner was issued with a show-cause notice on 5-4-1990 proposing to resume the land for violation of the conditions of assignment. Since whereabouts of the petitioner are not known, notice was not served. Therefore, the lands were resumed by means of a Panchanama and Orders were passed on 20-4-1990 and the lands were resumed on 24-4-1990. The resumption Orders are in pursuance of the show-cause notice dated 5-4-1990, but not in pursuance of the show-cause notice dated 9-12-1987.

Thus, the learned Counsel submits that the conflicting averments were made in the respective counters and therefore, it is a case where this Court has to set aside any Orders passed by the authorities.

8. The learned Counsel appearing for the respondent Nos.3, 4 and 5 Mr. Sita Rama Murthy submits that the petitioner has no manner of right to challenge the action of the respondents and the 3rd respondent was assigned this land being a Freedom Fighter and he was allowed to sell the assigned land in favour of the third parties. Accordingly, the respondent Nos.4 and 5 purchased the same under

registered sale deeds. It is also stated that the petitioner has no interest in the lands as she had already sold away the lands. Therefore, she did not respond when the show-cause notice was issued.

9. The issue that arises for consideration is whether the order passed by the authorities on 20-4-1990 cancelling the assignment is valid?

10. It is the case of the petitioner that a show-cause notice was issued on 9-12-1987 and no final Orders have been passed even though she submitted the explanation. But, now in the latest counter filed by the respondents, it is stated that the show-cause notice dated 9-12-1987 was not acted upon. But, subsequently another show-cause notice was issued and it could not be served as whereabouts of the petitioner are not known and therefore, the orders were passed cancelling the assignment of the patta on 20-4-1990 and thus it was sought to be sustained by the learned Government Pleader. But, it has to be seen that when the earlier show-cause notice was issued on 9-12-1987 she had already submitted explanation on 21-12-1987. This was accepted by the Mandal Revenue Officer in his counter. But curiously the District Revenue Officer had stated in the counter that no such explanation has been submitted. Even in the latest counter filed by the Collector, it is stated that the petitioner has violated the conditions of allotment inasmuch as she had alienated the property to the third parties, which is prohibited under the conditions of assignment.

11. The respondents have been changing the stands in their counters from time to time for the reasons best know to it. The reasons assigned in the show-cause notice dated 9-12-1987 were that the petitioner failed to cultivate the land within the stipulated time and that the land was required for public purpose to set up satellite township. When once a show-cause notice was issued on 9-12-1987 and an explanation was submitted, there is no reason why final orders have not been passed. Giving a go bye to the previous events, the Collector files a fresh counter taking altogether a new plea. It is stated in the said counter that a show-cause notice was issued on 5-4-1990 and final orders were passed on 20-4-1990. Thus, it is submitted that the final orders were not passed in pursuance of the earlier show-cause notice dated 9-12-1987.

12. I have perused the records.

13. The show-cause notice dated 5-4-1990 did not refer to the earlier show-cause notice dated 9-12-1987 and more over it is not known why the show-cause notice was not sent by registered post and under what circumstances it was sought to be sent by hand is not forthcoming. Even in the final orders, it is stated that the land was required for public purpose namely to set up satellite Township by the Government. It stilt remained an unexplained position as to when a second show-cause notice was issued on 5-4-1990, none of the three respondents viz., Collector, District Revenue Officer and Mandal Revenue Officer in their counters filed earlier did not refer to this important aspect. Even in the file relating to show-cause notice dated 5-4-1990 no reference was made to

earlier proceedings. Obviously, transparency is very much lacking. All through till the additional counter was filed by the Collector in August, 2000 it was the case of the Government that the land was resumed on the ground that the petitioner did not submit explanation to the show-cause notice dated 9-12-1987. But, the stand was completely disfigured and a new element has been introduced to sustain the action one way or the other. The Collector tried to explain that Visakhapatnam Mandal was bifurcated and the land of the petitioner falls under the jurisdiction of Mandal Revenue Officer, Visakhapatnam Rural Mandal and that the files were misplaced while transferring the respective files. This explanation is most unsatisfactory. This itself indicate how the highest officers at the district level deal with the matters. Though the situation calls for severe action, yet this Court is still confident that the respondents will realise their duty towards the Courts and conduct themselves in a more responsible way. Thus, I find any number of inconsistencies in the stand taken by the Government. It is now brought to the notice of this Court that this land was assigned to a political suffer respondent No.3 and who in turn has already sold to the respondent Nos.4 and 5. This Court is not concerned with the subsequent events. Once, this Court finds that the cancellation is illegal, subsequent events would fall. As already noted in this case, even assuming that the second show-cause notice was issued there is no reason to why it was not sent under registered post. It is only after the notice is returned by postal authorities for lack of proper address, others steps ought to have been taken to serve by person or notify in the press. But, in the instant case a strange procedure has been adopted as if the notice was sent by hand and report was made to the effect that she was not staying at the place and that the notice was displayed at the land. Further the post haste manner in which the final orders appears to have been issued, subsequent allotment to respondent No.3 and grant of permission to respondent No.4 to sell the land to respondent Nos.4 and 5 clearly indicate male fide attitude on the part of the respondents.

14. Under these circumstances, I am satisfied that the action of the respondents in cancelling the patta granted in favour of the petitioner is illegal and in gross violation of the principles of natural justice.

15. The learned Counsel appearing for the unofficial respondents, however, submits that they purchased the land on a proper permission granted to the assignee, and they should not be put to sufferance. I am not persuaded to accept this. When once the action is found to be illegal, the entire transactions subsequent to the cancellation also fall to ground.

16. It is stated by the learned Counsel appearing for Visakhapatnam Urban Development Authority Smt. Sumalini Reddy that the possession of the land in question was not handed over to the VUDA though it was mentioned in the show-cause notice that the land was required for public purpose viz., to develop satellite town. The learned Counsel however submits that a public road of 50 feet and 80 feet width has been proposed through this land. But, the laying of the road is not the question involved and it is only the validity of the cancellation

order.

17. Accordingly, the writ petition is allowed and the respondents are directed to restore the possession back to the petitioner within a period of three months from the date of receipt of a copy of this order.