(1991) 02 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14464 of 1990

G. Munilakshmamma APPELLANT

Vs

The District Collector and Others RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1991) 1 ALT 617

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : E. Kalyana Ram, for the Appellant; Govt. Pleader for Industries for Respondents 1 and 2 and R. Radhakrishna Reddy, for Respondents 4 to 11, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner was cultivating an extent of ac. 2.67 cents in survey No. 50/2 and Ac. 2-30 cents in Survey No. 50/3 of Kagathi village which are Government waste lands. He was cultivating the lands as Sivaijamdar from 1978 but "D" Form Patta was granted in his favour on December 11, 1989. By proceedings Roc. No. 2114 of 1990 dated September 30, 1990, the Mandal Revenue Officer, Chowde-palli Mandal, Chittoor district, the second respondent herein, called upon the petitioner to show cause as to why the patta granted in his favour should not be cancelled. It is the correctness of this show cause notice that is assailed in this writ petition on the ground that the second respondent has no power under Board Standing Orders to cancel the patta.

2. Respondents 4 to 11 were impleaded as the parties to the writ petition on February 4, 1991.

3. No counter affidavit is filed by the respondents 1 to 3.

4. Respondents 4 to 11 filed a common counter affidavit raising various

contentions with regard to the reasons which justify the cancellation of the patta granted in favour of the petitioner. Having regard to the question involved in the writ petition, 1 do not consider it necessary to narrate all those contentions here. It is stated inter alia that the impugned notice dated September 30, 1990 was issued to show cause as to why the ''D'' Form Patta grated in favour of the petitioner, should not be cancelled and that it was not issued for revising the order granting patta as understood by the petitioner. It is stated that the Mandal Revenue Officer has power to issue the show cause notice and cancel the patta granted in favour of the petitioner.

5. Sri A.K.N. Rao, the learned counsel for the petitioner, submits that the patta can be cancelled only under the conditions mentioned in paragraphs (a) to (d) of Clause (3) of paragraph (12) of Board Standing Order 15 and if for any other reason the patta is to be cancelled, it is only under paragraph 18 of the Board Standing Order 15, the Collector or the Board of Revenne, as the case may be, can do so, and therefore, the impugned notice is wholly without jurisdiction.

6. The learned Government Pleader as well as the learned counsel for respondents 4 to 11, on the other hand, contends that for violation of condition 20, the Mandal Revenue Officer, the second respondent herein, who is the granting authority, has power to cancel the patta as such, the impugned notice is well within the jurisdiction of the second respondent.

7. On the contentions raised before me, the short question that arises for consideration is whether the Mandal Revenue Officer has power to cancel the patta granted under paragraph 12 of the Board Standing Order 15 on the ground that the husband of the assignee was already given a ''D'' Form patta by the Tahsildar.

8. It would be appropriate to refer to sub-para (3) of para (12) of the Board Standing Order 15, which enumerates the conditions of assignment, breach of which results in cancellation of patta.

"(3) Terms and conditions of assignment :-

The assignment of lands shall be subject to the following conditions:

(a) Lands assigned shall be heritable but not alienable.

(b) Lands assigned shall be brought under cultivation within three years.

(c) No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however, be charged if the lands are irrigated with Government water; and

(d) Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family."

The note appended to this paragraph says that for breach of any of the conditions (a), (b), (c) above, the Government will be at liberty to resume the land and assign it to whomsoever they like. Note (iii) which is material-for our purpose reads as follows:

"(iii) Tahsildars and Deputy Tahsildars in independent charge who are the assigning authorities shall be the authorities competent to order resumption in case of a breach of the conditions of grant. In regard to appeals and revisions against such orders, the provisions in B.S.O. 15 relating to the orders of the assignment shall apply also to the orders relating to resumption."

9. A perusal of the above note makes it clear that the Tahsildar and the Deputy Tahsildar in independent charge who are the assigning authorities are competent to order resumption in case of a breach of the conditions of grant. Condition No. 20 of ''D'' Form Patta on which reliance is placed by the learned counsel for the respondents 4 to 11, is in the following words:

"20. The assignment is also liable for cancellation, if it is found that it is grossly inequitable or was passed under a mistake of fact or owing to misrepresentation or fraud or in excess of the limits of the authority delegated to the assigning officer under B.S.O. 15 read with G.O. Ms. No. 1142 Revenue, dated 18-6-1954 or that there was an irregularity in the procedure."

10. A perusal of the above condition makes it clear that the assignment is liable to be cancelled, if it is grossly inequitable or if the order of assignment was passed under a mistake of factor owing to misrepresentation or fraud or in excess of the limits of the authority delegated to the assigning officer under B.S.O. 15 read with G.O. Ms. No. 1142, Revenue, dated June 18, 1954 or if there was an irregularity in the procedure. This condition does not say as to which authority is competent to cancel the assignment. Relying on note (iii) extracted above, it is contended by the learned counsel for the respondents that the Mandal Revenue Officer, second respondent herein, is competent to cancel the patta granted in favour of the petitioner. I am unable to agree. It is true that note (iii) aforementioned provides that Tahsildar and Deputy Tahsildar who are the assigning authorities shall be the authorities competent to order resumption in case of a breach of the conditions of grant which, in my view, are those enumerated in sub-para (3) of para (12) to which the said note is appended but not condition No. 20 of D-Form Patta extracted above. It specifies the grounds on which the assignment can be cancelled. It would be apposite here to note paragraph 18 of the Board Standing Order 15, which deals with the revisional power and in so far as it is relevant for our purpose, reads as follows :

"18. Revision :-(1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is presented is final and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Board of Revenue may set aside, cancel or in any way modify the decision of an officer subordinate to it within three years if it is satisfied that the decision was grossly inequitable ; it may also exercise similar powers without any limit of time where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. All revision petitions in darkhast cases should be stamped with a court fee label to the value of two rupees."

11. From a perusal of the above provision, it is evident that if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. A similar power is also conferred on the Board of Revenue, but there is no time limit prescribed for this purpose.

12. In the instant case, the patta is sought to be cancelled on the ground of suppression of material facts and misrepresentation of facts. On these grounds, in my view, the Collector has the power to cancel the patta under paragraph 18 of the Board Standing Order 15. The Mandal Revenue Officer has no power to do so. For these reasons, the impugned notice dated September 30, 1990 is quashed as being without jurisdiction. However, this order will not preclude respondents 4 to 11 from applying to the Collector or respondents 1 and 2 from taking action under paragraph 18 of the Board Standing Order 15 and pass appropriate orders, after giving notice to the petitioner, in accordance with law.

13. The writ petition is accordingly allowed. No order as to costs. Government Pleader''s fee Rs. 150/-