

(2012) 11 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No: 7245 of 2011 and WVMP No. 1989 OF 2012

Jasti Puma Chandra Lakshmi Sujatha

APPELLANT

Vs

The District Collector, W.G. District at Eluru and Others

 Vellanki Vidya Swaroop Vs Jasti Puma Chandra
Lakshmi Sujatha and Others

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2013) 1 ALD 575 : (2013) 2 ALT 231

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; A. Ramalingeswara Rao
Counsel, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy

1. The petitioner purchased a plot of 164 square yards in R.S. No. 171 of Vatluru Village, Peddapadu Mandal, West Godavari District, through a sale deed, dated 07.03.2009. Her vendor in turn purchased that plot through sale deed, dated 09.07.2007. It is stated that when the 5th respondent sought to interfere with the possession of the petitioner over the said land, she filed O.S. No. 37 of 2010 in the Court of I Additional Junior Civil Judge, Eluru and in I.A. No. 40 of 2010 filed under Order 39 Rules 1 and 2 C.P.C., the trial Court passed an order of ad interim injunction on 25.01.2010. The Tahsildar, Peddapadu Mandal, 3rd respondent herein executed a deed of cancellation on 27.01.2011 vis-a-vis the said plot. Reference was made in that deed of cancellation to an order, dated 26.01.2011 passed by the District Collector, West Godavari District, 1st respondent herein. In that order, the 1st respondent took note of the fact that patta was granted in respect of an extent of Ac.0.21 cents of land in R.S. No. 171 in favour of Field Labour Cooperative Society, Vatluru by the Settlement Officer

and on finding that the Society violated the conditions of patta, the Revenue Divisional Officer, Eluru, 2nd respondent herein passed orders cancelling the patta, through proceedings, dated 19.08.2009. That was followed by the change of classification of the land and restoration of the same to the Government. The 1st respondent directed the 4th respondent to execute a deed of cancellation in respect of the said land as per Rule 26 of the A.P. Rules framed under the Registration Act. The petitioner feels aggrieved by the order, dated 26.01.2011 and other consequential proceedings.

2. The 5th respondent filed a counter affidavit, stating inter alia that he is in possession of the land referred to above and on a representation made by him, for regularization of the said land, the proceedings referred to above have been issued and the steps for regularization are pending.

3. No counter affidavit is filed by respondents 1 to 4.

4. Sri O. Manohar Reddy, learned counsel for the petitioner submits that the patta in favour of society was granted by the Settlement Officer, obviously meaning thereby that it was granted under the A.P. Estates (Abolition and Conversion into Ryotwari) Act (for short "the Act") and that the 2nd respondent has no jurisdiction to cancel it. He further submits that in case, the 1st respondent wanted to take any action in relation to the land, she ought to have issued notice to the effected parties, but instead, an order has been passed straight away, in violation of the principles of natural justice. He submits that though the order of the 1st respondent was general in terms in respect of Ac.0.21 cents, the 3rd respondent was selective in executing the deed of cancellation and that the whole exercise smacks of arbitrariness.

5. Learned Government Pleader for Revenue appearing for respondents 1 to 4 and Sri A. Ramalingeswara Rao, learned counsel for respondent No. 5, on the other hand, submit that neither the petitioner nor her vendor have any title over the land and the patta in favour of the society was not under the Act. They further submit that the petitioner could have been issued notice, if only she derived the title directly from the society and since the record did not disclose the same, the occasion to issue notice did not arise.

6. The plot in question was purchased by the vendor of the petitioner in the year 2007 and from her, the petitioner purchased the same in the year 2009. The origin of the title for the land is not immediately before this Court. The 3rd respondent executed a deed of cancellation in relation to the plot of the petitioner on 27.01.2011. Incidentally, that was two days after the petitioner obtained an order of temporary injunction from a Civil Court. The basis for the 3rd respondent to execute the deed of cancellation is the order, dated 26.01.2011 passed by the 1st respondent. A perusal of the order, dated 26.01.2011 discloses that an extent of Ac.0.21 cents of land in R.S. No. 171 was granted patta by the Settlement Officer and that the same was cancelled by the 2nd respondent.

7. Once it is evident that patta was granted under a particular enactment, it is only the authority, who granted the patta, that too in exercise of power under the relevant enactment, that can cancel the patta. The Revenue Divisional Officer does not figure in the hierarchy of the authorities under the Act. He did not indicate the provision, under which he passed the order of cancellation. Being the Head of the revenue administration, the 1st respondent ought to have satisfied herself before taking further steps on the basis of the orders passed by the 2nd respondent. At any rate, notice ought to have been issued to the society and other persons, who derived rights from it, before the patta was cancelled. That however was not done.

8. Whatever may be the circumstances, under which the 2nd respondent passed the order of cancellation of patta, the 1st respondent ought to have bestowed adequate attention to ensure that no illegality is committed. However, even while putting a premium upon the patent illegality committed by the 2nd respondent, the 1st respondent issued further directions to the 3rd respondent to execute deed of cancellation. Here again, the principles of natural justice were violated and no one possessing rights over the land was issued notice.

9. The direction issued by the 1st respondent for execution of deed of cancellation was general, in respect of Ac.0.21 cents.

10. The 3rd respondent was choosy and has executed a deed of cancellation only in respect of 164 square yards that too in relation to the sale deed executed in favour of the petitioner. It was fundamental that he ought to have issued notice to the petitioner, before he sought to annul the sale deed. It is therefore evident that at every level, patent violation of principles of natural justice has taken place and effort was made to ensure that the 5th respondent is conferred with the benefit over the land. Such a course cannot be permitted in law.

11. Therefore, the writ petition is allowed and the impugned orders are set aside. This order however shall not be construed as preventing the authorities under the relevant enactments to take necessary steps in accordance with law. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.