
(1990) 04 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10895 of 1989

Kadari Nageswara Rao

APPELLANT

Vs

The Joint Collector and Others

RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 ALT 540 : (1990) 2 AnWR 84

Hon'ble Judges : Syed Shah Mahommed Quadri, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; Government Pleader for Revenue for Respondents 1 and 2 and M.S.K. Sastry, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mahommed Quadri, J.—The petitioner states that himself and his family members occupied an extent of Ac. 1.92 cents in survey No. 225/1 of Nellipudi village, Sankavaram Mandal of East Godavari about twenty years ago which is just adjacent to their patta land of an extent of Ac.0-93 cents on the north of the said land. He states that after occupying the said land of Ac. 1-92 cents, they had reclaimed the same and they had raised cashewnut trees, mango trees, soapnut trees etc., and were enjoying the said land being in continuous and uninterrupted possession of the same. It is stated that the third respondent is in the habit of getting pattas for certain poramboke lands and selling the said land unlawfully, making unlawful gain for himself. On the basis of such fictitious documents, the third respondent filed O.S.No. 30/1983 on the file of the District Munsif Court, Prathipadu against the father of the petitioner and two others claiming perpetual injunction on the ground that he was in possession and enjoyment of the said land in survey No. 225/1. That suit was dismissed, holding that the 3rd respondent was never in possession and the petitioner is in possession of the land in question. It is stated that the second respondent granted a D-form patta in respect of the land in an extent of Ac.1-92 cents in

favour of the petitioner in the month of March 1988. Thereafter, the petitioner filed O.S.No. 58/1988 on the file of the District Munsif Court, Prathipadu against the third respondent and certain other persons, seeking permanent injunction when as attempt was made to forcibly disturb the possession of the petitioner. In that suit I.A.No. 294/1988 was filed for interim injunction and the Court granted interim injunction. That injunction is still in force. It appears that the 3rd respondent filed a complaint before the first respondent. Pursuant to that complaint, the 1st respondent issued a show cause notice dt.14-5-1989 to the petitioner to show cause as to why the D-form patta granted in his favour should not be cancelled. The petitioner submitted his explanation to the show cause notice of the 1st respondent and ultimately on 20th June 1989 the 1st respondent cancelled the D-form patta granted in favour of the petitioner. Challenging the validity of the said order, the petitioner filed this writ petition.

2. The first respondent filed counter-affidavit stating inter alia that, the contention of the petitioner that he was in possession of the land in question for the last 20 years is not correct as enquiries revealed that one person by name Seekolu Nagaraju was permitted to cultivate the land in question by the Tahsildar, Prathipadu on 26-6-1980 and that due to mistake of fact, patta was granted by the Mandal Revenue Officer, Prathipadu in 1988 to the petitioner. As the petitioner failed to produce any documentary evidence before the 1st respondent at the time of enquiry in support of his occupation of the land prior to 1988 and as the 3rd respondent filed evidence showing the temporary permission granted to him by the then Tahsildar, Prathipadu to cultivate the land, the patta granted in favour of the petitioner was cancelled. It is stated that there are cashew nut trees of 12 years age. In view of the fact that in 1980 the 3rd respondent was possession of the land the petitioner could not have raised the cashewnut trees which are 12 years old. It is further stated that the civil suits between the parties cannot be taken into consideration as the Government is not a party to those suits. The impugned order was rightly passed as the petitioner's D-form patta was issued in 1988 whereas the 3rd respondent was having the lease granted in his favour in the year 1980.

3. In his counter-affidavit, the 3rd respondent states that he applied for permission to cultivate the land in an extent of Ac 1-00 in S.No. 225/1 of Prathipadu village to the then Tahsildar, Prathipadu. The then Tahsildar, Prathipadu granted temporary permission to him to cultivate the said land as per his proceedings dated 26-6-80 and from that date he was in possession and enjoyment of the said land by paying the cist to the Government. He states that the petitioner somehow managed to obtain a D-form patta for an extent of Ac 1-92 cents in Sy.No. 225/1 of Prathipadu from the Mandal Revenue Officer on 5-4-1988. The petitioner, it is stated, is fully aware that the 3rd respondent has been in possession of the said land and that he developed the same. Therefore, the 3rd respondent made a representation to the Joint Collector. After issuing show cause notice to the petitioner, the Joint Collector held that the petitioner has not been in possession of the land and patta was not properly granted to

him, and therefore, cancelled the patta granted to the petitioner, by the impugned order.

4. Sri P.S. Narayana, the learned counsel for the petitioner, submits that the 1st respondent did not consider the objections raised by the petitioner nor did he consider the documents filed by the petitioner. Therefore, he contends that the impugned order suffers from non-application of mind by the 1st respondent.

5. The learned Government Pleader for Revenue, appearing for respondents 1 and 2 on the other hand contends that after complying with the principles of natural justice, the patta granted in favour of the petitioner was rightly cancelled by the 1st respondent.

6. The learned counsel for the 3rd respondent adopts the arguments advanced by the learned Government Pleader for Revenue, and submits that the 3rd respondent was granted permission to cultivate the land in the year 1980 and that in respect of the very same land D-form patta could not have been granted to the petitioner and that, therefore, the 1st respondent was justified in cancelling the D-form patta granted in favour of the petitioner.

7. The short question that falls for determination in this writ petition is-Whether the impugned order is sustainable in law.

8. A perusal of the impugned order passed by the 1st respondent shows that the D-form patta granted in favour of the petitioner was cancelled for the reason that the petitioner failed to satisfy the 1st respondent that the petitioner was in possession of the land in question prior to 1988 whereas the 3rd respondent produced documents to show that the then Tahsildar, Prathipadu granted permission in his favour on 26-6-1980 to cultivate the said land. The first respondent was of the view that since there are cashewnut trees of 12 years age and in the absence of any evidence let in by the petitioner to show his possession of the land prior to 1988, the inference that can be drawn is that the 3rd respondent was in occupation of the land in question.

9. In so far as the first ground is concerned, the petitioner filed certified copy of the judgment dated 17-4-1985 in O.S.No. 301-83 to which father of the petitioner as well as the third respondent were parties. He also filed a copy of the order dt.5-7-1988 passed in I.A.No. 294/1988 in O.S.No. 58/1988 on the file of the District Munsif's Court, Prathipadu. These documents are the material documents, evidencing possession of the petitioner in respect of the land in question. According to the counter-affidavit filed on behalf of the 1st respondent, these documents were not considered as the Government was not a party to those proceedings.

10. In my view, this approach of the 1st respondent is wholly erroneous. Even if the Government is not a party to those proceedings, those documents record the decision of the civil court as to who, between the petitioner and the 3rd respondent, was in possession of the land in question at the material point of

time. The 1st respondent ought to have taken these documents into consideration while considering the explanation offered by the petitioner pursuant to the show cause notice issued by him.

11. Moreover, the petitioner alleges that those documents were referred to in his explanation submitted to the show cause notice issued by the 1st respondent. It was also stated in the explanation submitted by the petitioner that the letter dated 30-7-1988 of the District Collector's Office, East Godavari, Kakinada addressed to Seekolu Nagaraju shows that the said Nagaraju (3rd respondent) was never in possession of the land in question and that this letter was also not considered.

12. As the material documents filed by the petitioner before the 1st respondent were not considered while passing the impugned order by the 1st respondent, the impugned order dt.20-6-1989, passed by the Joint Collector, East Godavari, at Kakinada cannot be sustained in law. It is liable to be quashed and accordingly do so, by allowing the writ petition. However, it is open to the first respondent to consider the documents filed before him by both the parties, after issuing notices to both the parties, giving them a hearing and pass appropriate orders in accordance with law.

13. The writ petition is accordingly allowed. No costs. Advocate's fee Rs. 200/-.