
(2002) 04 AP CK 0115

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31945 of 1997

Sekhari Aruna Kumari

APPELLANT

Vs

Dist. Collector and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALT 571 : (2002) 1 APLJ 425

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : D.V. Seetharama Murthy, for the Appellant; G.P. for Assignments, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri D.V. Seetharama Murthy, learned Counsel for the writ petitioner and the learned Government Pleader for Assignments.

2. The writ petition is filed questioning the proceedings of the 3rd respondent in R.C.A.No. 334/97 dated 5-11-1997 as arbitrary, illegal and violative of the principles of natural justice and also praying for appropriate relief.

3. The facts in brief are as follows:

The husband of the writ petitioner applied for assignment of land as landless poor person and the Tahsildar, Visakhapatnam assigned the land measuring Ac. 3.54 cents in S.No. 55/1 of Rishikonda village on 25-12-1978 and consequent upon the said assignment the husband of the petitioner, the petitioner and her other family members brought the land under cultivation spending huge amount raising cashew and mango plants and thus the lands assigned were brought under cultivation within three years under condition No. 2 of the orders of assignment and the revenue authorities also issued pass books in the name of the husband of the petitioner in the year 1981. It is further stated that respondent No. 3 herein initiated action in the year 1987 proposing to cancel the

said, assignment and questioning the same W.P.11759/87 was filed and stay of dispossession was obtained. However, the writ petition was disposed of by orders dated 12-12-1989 directing the respondents to provide an opportunity to the assignees in case any action is proposed against the land in question. It is further stated that the husband of the writ petitioner fell sick due to failure of kidney and he was hospitalised for about 45 days and subsequently on 29-8-1989 he underwent operation of kidney transplantation at Appollo hospital at Madras and he was hospitalised for 170 days and he was again operated in the year 1990 and thus the family incurred debt to a tune of about Rs. 4 lakhs. It is further stated that the late husband of the petitioner submitted representation to Government of Andhra Pradesh requesting for grant of permission to alienate the said assigned land so as to enable him to clear the debts and the District Collector, Visakhapatnam called for reports of 3rd and 2nd respondents on personal inspection of the lands and accordingly respondents 2 and 3 had submitted reports on 1-11-1991 and 28-10-1991 recommending for grant of permission to the husband of the writ petitioner for alienating the land. It is stated that R-2 also caused enquiry into the illness of husband of the writ petitioner and the debt incurred and submitted a report confirming the same. It is also stated that the District Collector - 1st respondent herein by his proceedings in R.C.CA.No. 10610/91/ A10 dated 16-11-1991 recommended to the Government to grant permission for alienating the land. However, while the said representation of the husband of the writ petitioner is pending in the Government, he died on 5-7-1994 leaving behind the writ petitioner and three children.

4. While the matters stood thus, the petitioner received notice from respondent No. 3 dated 16-6-1997 signed on 27-6-1997 directing her to show cause why the assignment should not be cancelled. But, however, the said notice is purported to have been issued in view of the orders of this Court in W.P.11759/87. It is further stated that the 3rd respondent had issued the said notice after a lapse of 7 years 6 months. The petitioner had submitted explanation on 16-6-1997 informing all the facts and also taking a stand that they had never violated any of the conditions of the D-Form patta. Several other factual details relating to the family also had been narrated and explained in the said explanation. The 3rd respondent passed final orders in R.C.CA.No. 334/97 H.D.T. dated 5-11-1997 cancelling the said assignment and aggrieved by the said order the present writ petition is filed.

5. Respondent No. 3 had filed counter-affidavit narrating the brief history of the case and had taken a stand that the M.R.O., Visakhapatnam (Rural) inspected all the assigned Government "D" form lands" in Rushikonda village on 1-10-1987 and found that the lands were not brought under cultivation and hence the M.R.O. initiated action as the assignees violated the conditions of grant i.e., the assignees had not brought the land under cultivation within the period of 3 years of the assignment of land. The issuance of show-cause notice and also the filing of the prior writ petition and the dismissal of the writ petition with a direction

also had been referred to in the counter-affidavit. It is further stated that the subsequent show-cause notice dated 16-6-1997 was issued to the writ petitioner as her husband died and the notice was duly served on 1-7-1997 and explanation was filed by the writ petitioner which was duly considered and not satisfied with the explanation, the impugned order was passed. It is further stated that the assignment was cancelled under B.S.D. 15(12) (13) in Rc.No. 334/97/ HDT/dt. 5-11-1997 as the assignee had violated the condition by not cultivating the land within the stipulated time. It is further stated that the M.R.O who was directed to take possession of the land had taken possession of land on 18-11-1997 under Panchanama and the contents were published by beat of tom tom in the village and aggrieved by the said orders, the petitioner had approached this court and obtained order of status quo. In the counter-affidavit several other details had been narrated.

6. Heard both the Counsel at length and perused the material available on record.

7. Several of the facts are not in dispute. The fact that an assignment had been made in favour of the husband of the writ petitioner also is not in dispute. Sri S. Narasing Rao, husband of the petitioner was assigned the land in an extent of Ac. 3.54 cents in S.No. 55/1 of Rishikonda village on the ground that he was a landless poor person on 25-12-1978 and the specific plea of the petitioner is that their family members had brought the land under cultivation by raising cashew and mango plants within 3 years as per the condition No. 2 of the said assignment. In fact, the husband of the petitioner was issued even pattedar pass book and land revenue was being paid regularly. It is pertinent to note that the 3rd respondent issued 1st show-cause notice on 6-10-1987 proposing to cancel the assignment on the ground that the land in question was not brought under cultivation as per condition No. 2 of the said assignment. At that stage, a Writ Petition No. 11759/87 was filed and initially interim stay of dispossession was granted, but ultimately on 12-12-1989 the following order was passed;

"Apprehending that he may be dispossessed, the writ petition is filed. The writ petition is therefore dismissed. However, in the event of taking action, notice be issued to the party concerned according to law. The writ petition is dismissed. No costs"

8. No doubt several events had been narrated relating to the husband of the writ petitioner being hospitalized and the representation made by him seeking permission to alienate the land. However, the fact remains that ultimately the husband of the writ petitioner died on 5-7-1994. The writ petitioner received notice issued by the 3rd respondent dated 16-6-1997 on 27-6-1997 directing him to show cause as to why the assignment should not be cancelled. As can be seen from the show-cause notice, the reasons or the grounds on which the proposed cancellation had been initiated were not specific at all except stating that the notice was being issued pursuant to the orders made by this court in W.P.11759/87 dated 12-12-1989. The writ petitioner even at that stage could have questioned the said show-cause notice which had not specified any grounds

on the ground of vagueness. However the writ petitioner had not chosen to do so, but had submitted explanation dated 7-7-1997 stating that none of the conditions of the D-Form patta had been violated and a specific ground was raised that the family of the writ petitioner had raised cashew and mango plants and no doubt had explained several family circumstances. The 3rd respondent on 5-11-1997 passed the impugned order of cancellation of assignment granted on 25-12-1978.

9. In fact I had carefully gone through the impugned order passed and except narrating history and several factual aspects, the real alleged ground of cancellation had not been discussed at all. The learned Counsel for the petitioner had strenuously urged stating that virtually it will amount to a non-speaking order or non-application of mind and the authority passed the impugned order making certain irrelevant observations and even exercise of such power in such a manner will amount to violation of principles of natural justice and hence the appellate remedy need not be invoked. It was also further contended that the power should have been exercised within a reasonable time and exercise of power after such inordinate delay by itself is arbitrary exercise of power and hence the mere existence of alternate remedy will not bar this court from exercising its power under Article 226 of the Constitution of India.

10. Strong reliance was placed on B. Adinarayana Murthy Vs. Collector Ananthapur Dist. and another, . and P. Anasuyamma and Another Vs. The Commissioner of Land Revenue, Govt. of A.P. and Another, in this regard.

11. The learned G.P. for assignments, however, had contended that it is a Government grant and the concerned M.R.O. had thought it fit to exercise the power in pursuance of the directions issued by this court while disposing of the writ petition. The mere fact that there was delay in issuing the show-cause notice by itself will not invalidate the proceedings as such. Strong reliance was placed on State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo, where in it was observed:

"mere possession of the property for however long a period may be, will not clothe the possessor with any legal right if it is shown that the possession is under a grant from the State which is resumable. Such long possession may give him a legal right to protect his possession against third parties, but as between the State and the grantee, possession of the grantee under a resumable grant cannot be said to confer any right on the grantee which would justify a claim for a writ under Article 226 where the grant has been resumed"

12. In W.P.M.P.No. 37480 of 1997 in the present writ petition an order of status quo with regard to the land to an extent of Ac. 3.54 cents of Sy.No. 55.1 of Rishikonda village, Visakhapatnam Rural Mandal had been granted. It is no doubt true that it was brought to my notice that in the counter affidavit specific stand was taken that the M.R.O who was directed to take possession, had taken possession of the land on 18-11-1997 under Panchanama and the contents were

published by beat of tom tom in the village.

13. In the present case, in the light of the peculiar facts and circumstances, the main question that has to be decided is whether the impugned order is sustainable in law. As already discussed supra, the 2nd show-cause notice itself is as vague as vagueness can be and even violation of any of the conditions of the Assignment had not been specified as a ground. In my opinion when a party is called upon to explain, it is the duty of the competent authority issuing the show-cause notice to specify the grounds on which the explanation is called for and in the absence of the same, the very issuance of show-cause notice should be held to be bad in law and in this view of the matter the 2nd show-cause notice itself is bad. Apart from this aspect of the matter, absolutely there is no explanation forthcoming on the part of the respondent why after a long lapse of time the 2nd show-cause notice was issued. Even as per the material available on record, it is clear that the cashew and mango plants had been planted but the mere fact that the land might have been fallow at a particular point of time, by itself, from such facts, it cannot be inferred that condition No. 2 of the assignment had been violated at a particular point of time. But, at any rate, this question cannot be decided after such a long lapse of time after the issuance of grant in favour of the deceased husband of the petitioner. Here this court is concerned with, not existence of power, the mode and exercise of the power. The exercise of the power after such inordinate delay will be definitely arbitrary and hence, in the peculiar facts and circumstances, I need not drive the party to invoke the appellate remedy.

14. Viewed from any angle, the impugned order is not sustainable in law and the same is liable to be quashed. Accordingly, the writ petition is allowed, but, however, in the peculiar facts and circumstances, no order as to costs.