

(2013) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24089 of 2013

T. Madan Mohan Reddy

APPELLANT

Vs

The State of A.P. and Four Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2014) 2 ALD 252 : (2014) 3 ALT 115 : (2014) ALT(Rev) 231

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : N.V. Rahava Reddy, for the Appellant;

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is yet another round of litigation the family of the petitioners is subjected to. 'Unenviable' is indeed the apt word to describe the position of the petitioners. The brief facts, of the long drawn litigation, leading to the filing of this Writ Petition, are as follows:-

The petitioners are the children of late T. Chandra Sekhar Reddy, a freedom fighter, (for short 'the assignee') who later served the Andhra Pradesh higher judiciary as a District Judge. In recognition of his role as a freedom fighter, he was assigned an extent of Acs.8.02 cents of land in Survey No. 33/5 of Kakkalapally Village, Anantapur District, on 08.02.1949. Noble as he was, he has donated the land so assigned to him to Andhra Pradesh Bhoodan Yagna Board (for short 'the Board') on 09.04.1956. However, the Land Reforms Tribunal, Kurnool, set aside the assignment made in favour of the assignee, vide its order in L.D. No. 95 of 1957, dated 08.11.1956. The assignee was, however, assigned another parcel of land admeasuring Acs.4.72 cents comprising Ac.1.95 cents in Survey No. 33/9 and Acs.2.77 cents in Survey No. 33/11 of Kakkalapally Village on 18.06.1954. Two persons, namely; Smt Sarojamma and Narasamma (for short 'the rival claimants'), who were allotted the land by the Board, commenced litigation by pleading that the land which was assigned to the

assignee was allotted to them by the Board. They have filed Writ Petition No. 2041 of 1985 in this Court, which was disposed of on 17.06.1985 with a direction to the respondents therein conduct a fresh enquiry after giving notice and opportunity to all concerned. The rival claimants again filed Writ Petition Nos. 14697 and 14707 of 1986 questioning the fresh notices for enquiry. The said Writ Petitions were dismissed by order, dated 17.10.1986. Undeterred by the dismissal of the said Writ Petitions, the rival claimants filed O.S. No. 150 of 1989 in the Court of the learned Additional Sub-Ordinate Judge, Anantapur for declaration of title against the assignee and the Board. During the pendency of the said suit, the assignee died and the petitioners and their mother were brought on record as his legal representatives. By judgment and decree, dated 03.02.1997, the suit was dismissed. A.S. No. 19 of 1997 filed by the rival claimants was also dismissed by the judgment and decree, dated 19.08.2002, of the learned IV Additional District and Sessions Judge (Fast Track Court), Anantapur.

From the time of dismissal of the said A.S., the petitioners started making representations to respondent No. 5 for issue of pattadar passbooks and title deeds in their names. Instead of issuing pattadar passbooks and title deeds to the petitioners, respondent No. 5 issued the same to the rival claimants. Questioning the said action, the petitioners filed an appeal in the year 2001. The said appeal was allowed by respondent No. 4, vide his order in D. Dis. No. D2/1561/2001, dated 19.09.2007, whereby he has ordered cancellation of pattadar passbooks and title deeds issued in favour of the rival claimants.

2. As the pattadar pass books and title deeds were not issued to the petitioners even after the above-mentioned order of respondent No. 4 made in the appeal and the land was put to use unauthorisedly as house sites to people belonging to weaker sections, the petitioners filed Writ Petition No. 33217 of 2011. By order, dated 15.12.2011, in the said Writ Petition, this Court deprecated the attitude of the respondents and allowed the Writ Petition with a direction to them to pay compensation to the petitioners by initiating proceedings under the Land Acquisition Act, 1894 and with a further direction that such proceedings shall be completed within a period of six months. Feeling aggrieved by the said order, the respondents filed Writ Appeal (SR). No. 86859 of 2013 with a delay of 222 days. A Division Bench of this Court by order, dated 24.06.2013, dismissed WAMP No. 1711 of 2011 filed for condonation of delay and consequently, dismissed the Writ Appeal.

3. It is represented by the learned Assistant Government Pleader for Revenue (Assignments) that against the said order, the respondents carried the matter to the Supreme Court by way of a SLP and that the same is numbered as SLP. No. 26057 of 2013 and is pending.

4. The petitioners averred, with respect to which there is no dispute, that for the first time in the grounds of the above-mentioned Writ Appeal, the respondents have pleaded that on 26.09.2007 the land was resumed as the same was

required for a public purpose. On coming to know about the said fact, the petitioners filed this Writ Petition immediately thereafter by challenging the said resumption proceedings.

5. The main grounds of challenge to the resumption proceedings in this Writ Petition are two fold, namely, (1) that no notice was issued to the petitioners before the land was resumed, and (2) that the two conditions, namely, Condition Nos. 10 and 17, on which the land was resumed are neither relevant nor existent, as the case may be.

6. On behalf of the respondents, respondent No. 5 filed a counter-affidavit, wherein he has not disputed the above narrated facts. As regards the notice to the petitioners, it is averred that as the addresses of the original assignee as well as his legal heirs are not known, substitute service was served and resumption orders were passed on 26.09.2007; that neither the original assignee nor his legal heirs were in possession of the land for several years; and that the enquiries revealed that they have settled down in Hyderabad long back. It is further averred that as the land was required for providing house sites to the weaker sections of the society, the same was resumed; that the Collector, Anantapur District, has issued orders for payment of ex gratia to the petitioners as per G.O.Ms. No. 1037, dated 23.12.1993 sanctioning a sum of Rs. 24,54,400/- along with 30% solatium vide his proceedings, dated 18.03.2013; and that the petitioners refused to receive the same.

7. At the hearing, Sri N.V. Raghava Reddy, the learned counsel for the petitioners, has strenuously contended that the plea put forth by respondent No. 5 that he was not aware of the addresses of the petitioners is absolutely false. He has taken the attention of this Court to the proceedings, dated 19.09.2007, of respondent No. 4 in support of the petitioners' plea that respondent No. 5 was aware of the addresses of the petitioners. The said proceedings relate to the order passed by respondent No. 4 in the appeal filed by the petitioners in the year 2001. The cause title mentioned in the said appeal would show that petitioner No. 1 was described as the Additional District Judge, Warangal and petitioner No. 2 was described as Advocate residing at 373-A, Road No. 22, Jubilee Hills, Hyderabad.

8. At the hearing, it has come out that when the said order was passed by respondent No. 4 on 19.09.2007, petitioner No. 1 was working as a Law Secretary of the Government of Andhra Pradesh, while petitioner No. 2 continued to practice as an Advocate of this Court and was residing at the same address which was given in the appeal.

9. It is not the pleaded case of respondent No. 5 that he had no knowledge of the appeal filed by the petitioners or the order passed by respondent No. 4 a few days before he has passed the impugned order resuming the land. Indeed, the said appeal was filed against his own order. Even the slightest degree of diligence shown by respondent No. 5 would have certainly made him aware of the

addresses of the petitioners.

10. In the light of the above material, it is difficult, nay, impossible to believe that respondent No. 5 was not aware of the addresses of the petitioners. Assuming that petitioner No. 1 being in judicial service, his address may have changed from time to time, petitioner No. 2 being a practising advocate of this Court and permanent resident of the house, the address of which was given by him in the appeal, there was absolutely no reason for respondent No. 5 not to send the notice atleast to petitioner No. 2. The plea that the petitioners' addresses were not known is, therefore, incredulous and a mere subterfuge. The alleged procedure followed by respondent No. 5 in publication of notice through the purported substituted service, namely, by affixture of the notice constitutes patent procedural illegality which resulted in denial of a valuable opportunity of being heard to the petitioners.

11. With regard to the second submission of the learned counsel for the petitioners, a perusal of the impugned order shows that the only ground on which the order of resumption was made was that the land is required for grant of house sites to poor people under the Indiramma Housing Scheme and for this purpose, respondent No. 5 has invoked Condition Nos. 10 and 17 of the patta conditions.

12. A perusal of a copy of the patta granted to the assignee would show that condition No. 10 pertains to the right of the Government to change the annual cist. Therefore, this condition has no relevance whatsoever to the exercise of power of resumption of land. As regards Condition No. 17, which purports to reserve the right of the State to resume the land for project construction or other public purposes, the same is shown to have been struck off with the initials of the officer made at the beginning and end of the condition. The petitioners specifically pleaded this fact in the affidavit, which is not controverted by the respondents. The obvious reason for striking off Condition No. 17 is that the land assigned to a freedom fighter can be sold after ten years of assignment. Hence, obviously, to enable the freedom fighters to enjoy the property without restrictions, Condition No. 17 has been struck off. In the absence of any condition in the patta reserving the power of the State to resume the land, resumption of the land by respondent No. 5 under the impugned proceedings is without jurisdiction. Therefore, the impugned order is wholly unsustainable and the same is, accordingly, quashed.

13. The Writ Petition is, accordingly, allowed. As a sequel to disposal of the Writ Petition, W.P.M.P. No. 29626 of 2013 filed by the petitioners for interim relief is disposed of as infructuous.