APHC010922032017

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3558]**
(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT APPEAL NO: 77/2018

Writ Appeal under clause 15 of the Letters Patent against the order passed dated 21-08-2017 in W.P. No. 14209/ 2011.

Between:

1. THE STATE OF ANDHRA PRADESH, REP BY ITS PRL. SECRETARY, REVENUE DEPARTMENT, SECRETARIAT, HYDERABAD.
2. THE DISTRICT COLLECTOR, VISAKHAPATNAM DISTRICT, VISAKHAPATNAM.

...APPELLANT(S)

AND

1. BUDUMOORI SIMHACHALAM, OCC AGRICULTURAL COOLIE, MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.
2. KOLLI RAMA MURTHY, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.
3. DODDI GANGA RAJU, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.
4. KOLLI RAMULU, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.

5. KUDITI APPA RAO, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.

6. ALLADI LAXMAN RAO, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.

7. SMT ALLADI RATHALU, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.

8. PUKKARLA MASAIN, OCC AGRICULTURAL COOLIE MALLAIAHPALEM VILLAGE, MADHURAWADA, CHINGADILI MANDAL, VISAKHAPATNAM DISTRICT.

9. THE GOVERNMENT OF ANDHRA PRADESH, REP BY ITS PRL. SECRETARY, MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT DEPT., SECRETARIAT, HYDERABAD.

10. THE VISAKHAPTANAM URBAN DEVELOPMENT AUTHORITY, VISAKHAPATNAM, REP BY ITS VICE CHAIRMAN.

...RESPONDENT(S):

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated 21.8.2017 in W.P.No.14209/2011, pending disposal of the Writ Appeal

IA NO: 3 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to modify the order dt.23.01.2018 I.A.No.2/2018 W.A.No.77/2018 bi suspending the order of the learned single Judge dated 21.8.2017 in

W.P.No.14209/2011,7pending disposal of the Writ Appeal to protect the interests of the Government, pending disposal of the Writ Appeal and pass

IA NO: 4 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to receive the following additional Material papers for the effective determination of the list between the parties: 1) Judgment and decree made in 0.S.No.3/2002 on the file of the Prl. Senior Civil Judge, Visakhapatnam (in regard to Sy.No.353/4 . which is claimed by the lst Petitioner). 2) Judgment and decree made in O.S.No.4/2002 on the file of the Prl. Senior Civil Judge. Visakhapatnam (in regard to Sy.No.353/4 , which is claimed by the 2nd Petitioner). 3) Cancellation File with regard to Sy.No.35011 which is claimed by the 3rd 4) Affidavit filed by Boddapati Sriramacliandra Rao and others in W.P.No.30847/2014 in regard to Sy.No.127/6 for which the 46 Petitioner is claiming right. 5) Cancellation file with regard to Sy.No.127/ 17 claimed by 5th Petitioner. 6) E.C. issued by Joint Sub-Registrar, Visakhapatnam in regard to sale transactions in Sy.No.127/1 for which the 6`11 Petitioner is makino, claim. 7) Cancellation File in regard to Sy.No.129/2 for which the 7th Petitioner is making claim. 8) Copy of the order 10.8.1990 made in W.P.No.2/1989 filed by 8th Petitioner in regard to Sy.No.332/P. 9) Cancellation Files with regard to other Survey Number ie., Sy.Nos. 127/1. 10) Acknowledgment issued by the Government Pleaders' Office in regard to receipt of original files. 11) Proof of Service on the assignees. 12) Letter written by the Tahsildar under RTI Act on 03.08.2016. And pass

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may kindly consider the above facts which could not be mentioned comprehensively during the previous submissions. Hence, kindly consider the facts comprehensively submitted in the additional affidavit and vacate the interim order dated 23.01.2018 in I.A.No.2 of 2018 in W.A.NO.77 of 2018 and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

grant Leave to the Respondent No. 10 to file the Counter Affidavit in W.A.No.77 of 2018 and pass

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased May be pleased to receive the Additional Affidavit on record in WA No.77 of 2018 and pass

Counsel for the Appellant(S):

1. GP FOR ASSIGNMENT (AP)

Counsel for the Respondent(S):

1. N ASHWANI KUMAR
2. Chinkapalli Srinivas
3. SOMISETTY GANESH BABU SC For VUDA and MUDA

The Court made the following:
JUDGMENT: *(Per Hon'ble Sri Justice Cheekati Manavendranath Roy)*

This intra Court appeal under Clause 15 of Letters Patent Act, is filed by the State, challenging the order dated 21.08.2017 of the learned Single Judge passed in writ petition No.14209 of 2011, whereby, the learned Single Judge has allowed the writ petition and directed the respondents therein to pay the compensation for the lands acquired, which are assigned to the writ petitioners.

2. Heard Ms. S.Pranathi, learned Special Government Pleader appearing for the appellants-State and Mr. N.Ashwani Kumar, learned counsel appearing for the respondents.

3. The parties will be referred as they are arrayed in the writ petition, for the sake of convenience, in this writ appeal.

4. Facts of the appeal germane to adjudicate the *lis* involved in this writ appeal may briefly be stated as follows:

In total there are eight writ petitioners, who have filed the writ petition before the learned Single Judge. According to them, all of them were assignees and as they are landless poor, the State Government has assigned the lands in question to them long back in the year 1970 and delivered possession of the said lands to them and granted D-pattas to all of them in respect of the lands that were assigned to them. Therefore, they have been in possession of the said lands assigned to them respectively since the year 1970. While so, the State Government has abruptly made an effort to dispossess them from the lands that were assigned to them, in the year 2006 on the ground that the lands that were assigned to them were resumed to the State on the pretext that they have violated the terms of the grant in not bringing the land under cultivation. Therefore, they have invoked the writ

jurisdiction of this Court under Article 226 of Constitution of India and they sought the relief that is claimed in the writ petition.

5. The then District Collector of Visakhapatnam District, filed a detailed counter opposing the prayer of the writ petitioners. At the outset, it is significant to note that the material fact that lands were assigned to the writ petitioners was categorically and unequivocally admitted in the counter that was filed by the District Collector. However, it is pleaded that the ground verification report submitted by the Tahsildar revealed that the petitioners, who are the assignees of the lands, are not in possession of the lands as on the date of physical verification of the lands by the Tahsildar and that they did not bring the lands into cultivation and thereby violated the conditions of the assignment and as such, the lands were resumed to the Government, after giving show cause notice to the assignees. It is further pleaded by the District Collector that after the lands were resumed to the State Government that the ownership of the said lands was transferred to the Visakhapatnam Urban Development Authority (hereinafter referred to as 'VUDA').

6. The Special Grade Deputy Collector and Estate Officer of VUDA also filed counter stating that the subject lands were subsequently transferred by the State Government to the VUDA and that the lands are now in their possession.

7. The Joint Director of Municipal Administration and Urban Development Department also filed counter, asserting the same fact that the lands were subsequently transferred by the State Government to the VUDA.

8. It is also pleaded by the respondents in their counters that the proceedings issued to the other owners of the lands acquired by the State Government, allotting the land to them in an extent of 750 sq. yards as compensation for the lands acquired, are not applicable to the writ petitioners. Therefore, the respondents have denied that the writ petitioners are entitled to any compensation for the lands which are acquired after resumption of the

said lands to the State Government or alternatively any plots as claimed by them.

9. The learned Single Judge, after hearing both the parties and considering their submissions and after considering the pleadings in the writ petition and also the counters filed by the respondents, has recorded a categorical finding that the respondents have unequivocally admitted that the subject lands were assigned to the writ petitioner Nos.1 to 8 and the details of the assignment are also clearly furnished in a tabular form in the impugned order of the learned Single Judge, as admitted by the District Collector in the counter filed by him. Therefore, the learned Single Judge held that when the material placed on record and the pleadings in the counter prove that the subject lands were assigned to the writ petitioners in the year 1970, the resumption of the lands subsequently in the year 2001 on the ground that the lands are not brought under cultivation is not correct as the respondents did not produce any evidence to substantiate the fact that the lands are not brought into cultivation. Learned Single Judge also held that the respondents did not produce any document to prove or show that the D-pattas issued in favour of the writ petitioners in respect of the lands assigned are in fact cancelled before resuming the lands. Learned Single Judge also held that the record, showing that the lands were resumed by the State Government, is also not produced before the Court to prove that the lands are resumed on the ground that the assignees have violated the conditions of the grant. Therefore, the learned Single Judge, taking into consideration the law laid down by the erstwhile High Court of Andhra Pradesh in the case of ***Vajja Shantamma and others v. State of Andhra Pradesh and others***[1] and also the law laid down by the larger Bench of the then High Court of Andhra Pradesh in the case of ***Land Acquisition Officer-cum-R.D.O., Chevella Division, Hyderabad and others v. Mekala Pandu and others(LB)***[2], held that when the State has

[1]2012 (03) ALD 322
[2]2004 (2) ALD 451

acquired the lands assigned to the assignees that the assignees are also entitled to payment of compensation equivalent to the full market value of the land and other benefits on par with the full owners of the land even in cases where assigned lands are taken possession by the State in accordance with the terms of grant or patta, though resumption is for public purpose. Having held so, the learned Single Judge has allowed the writ petition and directed the respondents in the writ petition to pay compensation equivalent to full market value of the lands assigned to the petitioners on par with the full owners of the lands under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period four months from date of receipt of copy of the order.

10. After perusing the impugned order of the learned Single Judge, we absolutely do not find any legal flaw or infirmity in the impugned order.

11. Admittedly, the State did not produce the record showing the cancellation of the D-pattas that are issued to the writ petitioners in respect of the subject lands and they also did not produce the resumption proceedings before the learned Single Judge in the writ petition, to substantiate their pleas taken in the counters filed in the writ petition. However, the learned Special Government Pleader has now filed I.A.No.4 of 2018 seeking permission to produce additional documents in proof of resumption of the subject lands by the State Government. We have gone through the said documents produced now as additional documents in this writ appeal. They are only the show cause notice said to have been issued to the assignees to resume the lands on the ground that they did not bring the lands into cultivation. But, nothing is produced before this Court in this appeal to show that the D-pattas that were assigned to the writ petitioners in respect of the lands that are assigned are in fact cancelled as a first step on the ground that the writ petitioners did not bring the land into cultivation. In fact, when the State intends to resume the lands of the assignees on the ground of violation of the conditions of the grant,

first they have to conduct an enquiry by issuing a show cause notice to them as to why the D-pattas that were issued to them should not be cancelled on the ground of not bringing the lands into cultivation. After conducting an enquiry, then they have to first cancel the D-pattas and then they have to take steps to resume the lands to the State Government and then take steps to evict the assignees from the lands and take possession of the lands from the assignees. In this case either before the learned Single Judge or before this Court in this appeal, nothing is placed to prove that any enquiry was conducted on the ground that the lands were not brought under cultivation by the assignees and the terms of the grant are violated and that thereafter the D-pattas issued to them were cancelled. Therefore, when the D-pattas that were issued to the writ petitioners are not cancelled, even if any proceedings are initiated to resume the lands, they are not valid under law as the procedure prescribed under law is not followed for resuming the lands. As noticed *supra*, the learned Single Judge has already recorded a finding in his order that nothing is placed before the learned Single Judge to show that the D-pattas are cancelled by the State Government.

12. Though, now at the belated stage, the learned Special Government Pleader has produced additional documents to show that the D-pattas were cancelled and the lands were resumed, a perusal of the same show that there is no separate order passed, cancelling the D-pattas. It shows that under the same order both the D-pattas were cancelled and also the lands were resumed. In fact, there should be two orders. First, cancelling the D-pattas that were issued to the assignees and then passing an order of resumption. Therefore, the order that is now placed is also not valid according to law. Further, except producing a postal acknowledgement showing that the said order was served on petitioner No.3, no evidence is produced to show that the said order was communicated or personally served on the other petitioners. Though, it is contended by the learned Special Government Pleader that the order was communicated and served on all the writ petitioners, there is

absolutely no evidence on record even as per the additional material, which is now produced, to prove that the said order was personally communicated or served on the other writ petitioners. Therefore, when the order was not communicated and served on the other writ petitioners, the said order cannot be accepted as a valid order passed, cancelling the D-pattas and resuming the lands.

13. It is significant to note that the State Government has miserably failed to produce the said record pertaining to cancellation of D-pattas and resumption of the lands. To a pointed question, as to why the record and orders pertaining to grant of D-pattas, cancellation of D-pattas on the ground of violating the terms of grant and resuming the lands are not produced before the Court, learned Special Government Pleader, on instruction, would submit that the said record is now not available, as it is missing. The said explanation is absolutely not acceptable. When, it is specifically contended and that too vehemently in this appeal by the learned Special Government Pleader that the D-pattas are cancelled and lands were resumed, they are expected to produce the said record showing the cancellation of D-pattas and resumption of the lands before the Court. Particularly, when the said fact is emphatically denied by the writ petitioners, the said record is essential for the Court to examine the truth of the matter relating to the cancellation of the D-pattas and resumption of the lands to the State Government and also to examine whether they are legally valid or not. Non-production of the said record relating to the cancellation of D-pattas and the resumption of the lands is certainly fatal to the case of the respondents and in fact adverse inference is to be drawn for non-production of the same and deliberately withholding the said record which a vital piece of evidence required to adjudicate the *lis* in this appeal. By simply contending that the said record is now not available and the same is misplaced, the State Government cannot shun its responsibility to produce the vital piece of evidence showing the material fact of cancellation of D-pattas in fact and resumption of the lands to the State Government. The inference is

that if the said record is produced, real truth will be unfolded and it would establish that the D-pattas were not in fact cancelled on the ground of violation of terms and conditions of the grant and that the lands were not in fact resumed, as per the procedure, according to law, on the ground of violation of terms and conditions of grant.

14. Further, another important fact that is to be noticed here is that when it is specifically contended that the writ petitioners, who are the assignees, have violated the terms and conditions by not bringing the lands into cultivation and that the D-pattas are cancelled on that ground and that the lands were also resumed on that ground, the burden is on the State Government to establish the said material fact that the writ petitioners have not brought the lands under cultivation and thereby violated the terms and conditions of grant. They did not produce any evidence to show that the writ petitioners did not cultivate the lands and bring the lands into cultivation, except filing a report of the Tahsildar, relating to his ground verification that too which was made in the year 2001. When the lands were assigned long back in the year 1970 and when it is contended that they did not bring the lands under cultivation till the year 2001, after a period of 21 years from the date of assignment, definitely relevant evidence would be available with the State Government to show that the lands were left as barren lands without cultivating the same and it was not brought under cultivation. No evidence worth the name is produced to that effect. The Court has specifically questioned as to why the cultivation adangals relating to the assigned lands are not produced to show that the lands were not brought under cultivation. The learned Special Government Pleader again simply submits that the said cultivation accounts i.e., adangals are also not available with the State Government. It is really beyond our apprehension as to how the public record, maintained by the public servants in discharge of their official duties is found missing or not available in the office of the Revenue Department. Cultivation accounts which are the adangals will be maintained by the concerned public servants, wherein, they will record as

to whether the lands were cultivated during the relevant fasli year or not and what is the crop that was raised and if it is not cultivated whether it was left as barren lands or not. The said cultivation account and adangals would bear ample proof of the fact whether the lands were under cultivation or not. The State Government is the custodian of the said record as they would maintain the said record. It is a best piece of evidence to decide the said material fact whether the lands are brought under cultivation or not. The said best piece of evidence again is not produced before the Court and it was again suppressed simply saying that the same is not available at present in the office. It is not at all an acceptable explanation. We have no hesitation to hold that the said cultivation accounts, which are the public record, are deliberately suppressed. So, again adverse inference is to be drawn for non-production of the said material record. The inference that could be drawn in the facts and circumstances of the case is that if the said record is produced, the truth will be unfolded and the fact that the lands are under cultivation and that the writ petitioners, who are assignees, have brought the lands under cultivation would be established and as such, the said record is suppressed. Therefore, at any rate as the burden is on the State Government to prove the fact that the lands were not brought under cultivation and terms of the grant are violated and as they miserably failed to discharge their burden, it cannot be held with certainty that the writ petitioners have violated the terms and conditions of the assignment and thereby rendered themselves liable for cancellation of the D-pattas and for resumption of the lands.

15. Therefore, the fact that the records showing the cancellation of D-pattas is not produced, the fact that the records showing the lands were resumed to the Government is not produced and most importantly, the fact that the cultivation adangals showing that the lands were not brought under cultivation are not produced are all adverse factors that proves that the contention of the respondents that the writ petitioners have violated the terms of the assignment is not correct.

16. Therefore, in view of the above discussion as it is not proved that the D-pattas are validly cancelled and the lands were validly resumed and that the writ petitioners have violated the terms of the assignment, as the said lands were illegally resumed and taken possession and transferred to another department, as rightly held by the learned Single Judge relying on the law laid down in ***Mekala Pandu's*** case, the writ petitioners are undoubtedly entitled to compensation on par with the full owners as per the market value of the lands.

17. Learned Special Government Pleader would contend that even though D-pattas were granted to writ petitioner Nos.1 to 7, no D-patta was granted to petition No.8 and no land was assigned to him and as such, petitioner No.8 is not entitled to any compensation. The said contention has no merit at all. It is pertinent to note that in the counter that was filed by the District Collector, he has clearly admitted in para No.3 of his counter that the lands were assigned to all the writ petitioners and he has given the details of the assignments in the counter itself, wherein, the name of petitioner No.8 is also mentioned along with the extent of the land and details of the lands. However, in the last column it is shown as AWD i.e., Assessed Waste Dry lands. Therefore, when the said fact is clearly admitted in the counter of the District Collector, it cannot be said under any stretch of reasoning that no D-patta was granted to petitioner No.8 and no land was assigned to him. Therefore, the said contention is rejected.

18. It is also relevant to note that even as per the additional documents that are now produced, the show cause notice relating to resumption proceedings or cancellation of D-pattas is not produced relating to petitioner Nos.1, 2 and 4. Therefore, there is absolutely no evidence on record whatsoever to prove that the D-pattas of petitioner Nos.1, 2 and 4 are cancelled and their lands are resumed. Thus, the case of the respondents suffers from several legal infirmities. Therefore, the contention of the State, as pleaded, cannot be accepted in the said facts and circumstances of the case.

19. Therefore, the impugned order of the learned Single Judge is perfectly sustainable under law and it warrants no interference in this writ appeal. The writ appeal is devoid of any merit and it fails.

20. Resultantly, the Writ Appeal is dismissed. As per the interim order dated 23.01.2018, passed by this Court, the respondents are directed to pay the compensation as per the market value for the lands which are assigned to the writ petitioners or alternatively to allot 750 sq. yards of developed land, per acre, to them, within a period of four months from date of this order. There shall be no order as to costs.

As a sequel, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

JUSTICE TUHIN KUMAR GEDELA

Date: 24.04.2026
MDP