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Court : Andhra Pradesh

Decided On : Jun-24-2008

Reported in : 2008(5)ALT518

Judge : Goda Raghuram, J.

Appeal No. : Writ Petition No. 13277 of 2004

Appellant : Shaik Ibrahim

Respondent : Secretary to the Government, Revenue (Assignment-i) Department and anr.

Advocate for Def. : G.P.

Advocate for Pet/Ap. : P. Roy Reddy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Goda Raghuram, J.

1. Petitioner assails the order of the 2nd respondent dated 8.1.2004 and also seeks regularization of his occupation of land and building bearing H. No. 10-5-2/1/3/5/A in Survey No. 128, T.S. No. 16/P, Block-K, Ward No. 36, Masab Tank, Mallepalli Village, Asifnagar Mandal, Hyderabad District.

2. By the impugned order, the 2nd respondent rejected the petitioner's request for regularization of his occupation of the land in question on the ground that the District Level Committee constituted for the purpose of considering regularization of occupation of Government lands at a meeting held on 6.12.2003 had rejected the petitioner's request on the ground that the land applied for regularization does not qualify under the provisions of G.O. Ms. No. 508, Revenue (Assn. I) Department, dated 20.10.1995 read with G.O Ms. Nos. 972 and 515, dated 4.12.1998 and 19.4.2003 respectively, since the land in question is 'G-Cantonment Non-ISF Land'.

Petitioner claims to have purchased the property under a registered sale deed bearing document No. 2783/94, dated 26.5.1994. According to the petitioner, his vendor was the owner of a larger extent of 1889 sq.yards of land in survey No. 128, Masab Tank under a registered sale deed of 1964. The petitioner pleads that the property was given to late Chunni Lai by the then jagirdar of Mallepalli and that the petitioner through his predecessors was in continuous occupation and possession of the land since 1936. Of the 100 sq. yards purchased by the petitioner, only 68 sq. yards remains with the petitioner, the rest having been assumed by the State for road widening. The land is classified as 'G-Cantonment Non-ISF Land' in the Town Survey Land Register (T.S.L.R.).

3. The Government had been issuing a series of orders for regularization of the occupation of this land. In a judgment of this Court in Writ Appeal No. 509 of 1977, dated 18.9.1984, this Court had observed that individuals covered by the Government orders in G.O. Ms. No. 1135, dated 23.8.1975 may pay the amount payable in terms of the said G.O. and the Government should regularize the occupation of the Government land in Survey No. 128 of Mallepalli Village, in terms of the orders in G.O. Ms. No. 1135, dated 23.8.1975, after collecting a reasonable rate. The Division Bench of this Court in the above judgment clearly

considered the factual situation that these lands were classified as Non-ISF lands.

4. The petitioner by an application dated 24.12.1998, sought regularization of his occupation in terms of the then current Government Order issued in G.O. Ms. No. 972, dated 4.12.1998 read with another order in G.O. Ms. No. 508, dated 20.10.1995. However, the second respondent rejected the petitioner's application on the sole ground that the land is recorded in the T.S.L.R. as 'G-Cantonment Non-ISF Land'.

5. Though the Secretary to the Government, Revenue Department and the District Collector, Hyderabad, the second of whom is the author of the impugned order had been impleaded as the respondents in the writ petition, curiously, the Mandal Revenue Officer, Asifnagar Mandal has chosen to file a counter affidavit. It is not clear by what process of law or practice, the District Collector out-sources the solemn obligation to file a counter affidavit before the High Court to the Mandal Revenue Officer. The deponent of the counter affidavit, one Md. Fateh Alam Khan who describes himself as the Mandal Revenue Officer, Asif Nagar, does not choose to plead that he is the in-charge District Collector nor that he is authorized to represent the District Collector. Such are the inscrutable ways of the Executive. Since counter affidavit is filed by an unauthorized person, this Court does not recognize the pleadings therein. The counter affidavit is eschewed.

6. The sole reason in the impugned order for rejecting petitioner's application for regularization is that the property in question is classified as 'G-Cantonment Non-ISF Land'. The learned Government Pleader for Revenue states that 'G-Cantonment Non-ISF Land' means that it is a Government land. Learned Government Pleader for Revenue is at a loss to explain to this Court the rationality of the ground for rejection. It is axiomatic that no application to the Government would be made by a citizen for regularization of occupation of land, which does not belong to the Government. Regularization of occupation is sought by a citizen from the Government only in respect of Government lands. By rejecting the application on the ground that the land is registered in the T.S.L.R. as Government land does not answer the requirement of either logic or rationality. The ground on which the petitioner's application was rejected by the second respondent by the impugned

order dated 8.1.2004 is therefore vitiated by total non-application of mind and is the product of a grossly negligent and casual approach to a public obligation.

7. On the analysis above, the order of the second respondent dated 8.1.2004 bearing Proceedings No. C2/2040/2002 is quashed. Since the order has been passed by the 2nd Respondent casually and with gross negligence, the writ petition is allowed with costs quantified at Rs. 5,000/- (Rupees Five Thousand Only), of which, Rs. 2,500/- shall be paid to the petitioner and Rs. 2,500/- to the Secretary, A.P. State Legal Services Authority. It is open to the State Government to identify appropriate administrative measures either for disciplining the negligent conduct of the 2nd respondent or for deputing such other or similarly circumstanced Government servants entrusted with the function of passing quasi judicial or administrative orders for training, before exposing the public to such irrelevant official conduct. The second respondent shall also reconsider the petitioner's application for regularization of his occupation of the extent of 68 sq. yards of property bearing House No. 10-5-2/1/3/5/A in Survey No. 128, T.S. No. 16/P, Block-K, Ward No. 36, Masab Tank, Mallepalli Village, Asifnagar Mandal, Hyderabad District, and shall take a rational decision with due application of mind, expeditiously and in any event, within a period of thirty (30) days from the date of receipt of a copy of this order. A copy of this order be marked to the Secretary, A.P. State Legal Services Authority for information.

8. The writ petition is accordingly allowed with costs.

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