

(1996) 07 AP CK 0012

Andhra Pradesh High Court

Case No: Writ Appeal No's. 761 and 762 of 1996

K. Narayanaswami Naidu and
Another

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision: July 17, 1996

Citation: (1997) 5 ALT 276

Hon'ble Judges: P.S. Mishra, C.J; B.V. Ranga Raju, J

Bench: Division Bench

Advocate: A. Panduranga Rao, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision: Dismissed

Judgement

P.S. Mishra, C.J.
Heard.

2. Joint Collector, Chittoor has found error in the assignment of land in favour of the appellants. Learned Single Judge, however, has recorded as follows:-

"As per the A.P. Board Standing Order 15(5), the maximum extent of land which may be assigned to the single individual, shall be limited to 5 Acres of dry land, taking into account, both the assigned and the lands owned by him together. Thus, the Petitioner No. 1 was entitled for assignment of land, vide assignment, dated 5-12-1969 only to the extent not exceeding an extent of 5 acres of Dry land (his owned and assigned land taken together). After such assignment his total holding comes to Acs.6-26 cents and as such he had excess of Acs.1-26 of land. Therefore, the land to this extent of Ac.1-26 cents only was liable to be cancelled, but not Ac.1-50 cents as has been done by the authorities below. To this extent, the order of both the authorities below, I modify by directing the cancellation of 1-26 cents of land instead of Ac.1-50 cents regarding assignment of 5-12-1969.

So far as the assignment made on 15-1-1972 to the extent of Acs.2-82 cents in S.No. 403/2 of Dasarapally village in favour of the petitioner in W.P.No. 20473/94 and also, the assignment made in favour of the petitioner-wife in W.P.No. 20476 of 1994 on 27-1-1972 in S.No. 403/IB of Dasarapally village to the extent of Acs.2-15 cents, they were clearly obtained by suppressing the assignments made in the year 1969. Moreover, in the year, 1969 itself the petitioners possessed the land more than 5 Acres of dry land, they were not entitled to be assigned of land more than 5 Acres of Dry land in terms of Order 15(5) of the A.P. Board Standing Orders. Therefore, the assignment, dated 15-1-1972 made in favour of the petitioner K. Narayanaswami Naidu and the assignment dated 27-1-1972 made in favour of the Petitioner K. Lakshmmamma are liable to be cancelled. Therefore, the impugned orders cancelling them, do not call for any interference."

3. An attempt is made before us to contend that learned Single Judge has not appreciated the fact that the original assignment had become final and created in favour of the appellants vested right for the reason of the limitation upon the revisional power of the Collector (this power is exercised by the Joint Collector) as contemplated under the Andhra Pradesh Board Standing Orders, Order 15(18) which provides, inter alia, as follows:-

"Order 15 (18): Revision:- (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is presented is final and no second appeal shall be admitted. But if at any time within three years of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision. The Board of Revenue may set aside, cancel or in any way modify the decision of an officer subordinate to it within three years if it is satisfied that the decision was grossly inequitable; it may also exercise similar powers without any limit of time where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer who passed it or where it was passed under a mistake of fact or owing to fraud or misrepresentation. All revision petitions in darkhast cases should be stamped with a Court fee label to the value of two rupees."

The same, however, has undergone an amendment vide G.O.Ms. No. 912, Revenue (B) Department, dated 2-8-1985 and presently reads as follows:-

"18. Revision (1):- The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of, is final and no second appeal shall be admitted. But if, at any time after the passing of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it

exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or mis-representation he may set aside, cancel or in any way modify the decision passed by an officer subordinate to him. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him."

It is contended that in the case of the appellants herein, the amended provision could not be applied and by this method the vested right could not have been destroyed. We are, however, not impressed by this contention at all. What was sought to be claimed under a provision in the Board Standing Orders is no more available because the very Standing Order had become non-existent and under the new Standing Order, there is no reason to think that something done under the repealed order will just remain untouched. In any case, the concept of vested right in respect of assignment of land cannot be acknowledged. Assignee at the best has the possessory right which is good against the whole world but not against the real owner.

4. For the reasons aforementioned, we do not find any merit in the appeals. The Appeals are dismissed.