

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WRIT PETITION NO.20538 OF 20201**

**ORDER:**

This petition is filed under Article 226 of the Constitution of India seeking the following relief:-

“...to issue a Writ of Mandamus, declaring the proceedings in Ref.No.C/1083/2021, dated 07.09.2021 issued by the 3rd respondent cancelling DKT Patta of the petitioners for the land to an extent of Ac.2.19 cents in Sy.No.218-5/2 and Ac.2.00 cents in Sy.No.218-6/2 situated at Nandyalampeta Village, Mydukuru Mandal, Y.S.R Kadapa District, without giving any reasonable opportunity to the petitioners, as illegal, arbitrary, unconstitutional, violative of principles of natural justice and also violative of Articles 14, 16 and 300-A of the Constitution of India, set aside the same and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioners over the land in an extent of Ac.2.19 cents in Sy.No.218-5/2 and Ac.2.00 cents in Sy.No.218-6/2 situated at Nandyalampeta Village, Mydukuru Mandal, YSR Kadapa District and to pass such other order...”

2. The brief facts of the case are that the 3<sup>rd</sup> respondent has granted assignment patta in favour of the petitioners 1 and 2 for the land to an extent of Ac.2.19 cents in Sy.No.218-5/2 and Ac.2.00 cents in Sy.No.218-6/2 situated at Nandyalampeta Village, Mydukuru Mandal, Y.S.R Kadapa District vide DKT Patta Nos.136 and 137/1424, dated 21.02.2015 respectively as per their eligibility. The revenue authorities mutated the name of petitioners in all the revenue records and issued Pattadar pass books and title deeds in their favour for their respective land vide Khata Nos.2876 and 2872 respectively, after conducting necessary enquiry, as the petitioners in continuous possession and enjoyment of the subject property. The petitioners spent huge amount to reclaim the land and made it fit for cultivation. The subject land is dry land and the petitioners are cultivating the same by raising rain fed crop. While so, respondent No.3 issued a notice, dated 28.08.2021 on the complaint lodged by the 5<sup>th</sup> respondent on the allegation that the petitioners obtained the DKT patta for the subject land irregularly. Pursuant to the said notice, the petitioners appeared on 04.09.2021 before the

3<sup>rd</sup> respondent along with the relevant documents. The 3<sup>rd</sup> respondent has no jurisdiction to issue impugned notice, dated 28.08.2021 to the petitioners for cancellation of assignment patta granted in favour of the petitioners on the ground that the petitioners obtained the Patta irregularly, without considering the revenue records, such as Adangal, 1-B (ROR) and the Pattadar pass books submitted by the petitioners, which is illegal and arbitrary and requested to issue direction as claimed.

3. During hearing, Sri Delhi Babu, learned counsel for the petitioners reiterated the contentions urged in the writ petition. Whereas, learned Assistant Government Pleader for Revenue supported the action of the 3<sup>rd</sup> respondent.

4. The basis for passing the impugned order, dated 07.09.2021 is the notice issued by the 3<sup>rd</sup> respondent on 28.08.2021. The reason for issuing said notice is that one Gudiselapalle Santemma, the 5<sup>th</sup> respondent herein submitted a report to the Tahsildar making certain allegations that certain irregularities were committed in issuing patta in favour of the petitioners. However, the notice is silent as to the irregularity committed by the petitioners in obtaining DKT patta, but directed the petitioners to appear before the 3<sup>rd</sup> respondent on 04.09.2021 at 11.00 AM., to enquire into the report lodged by said Gudiselapalle Santemma, the 5<sup>th</sup> respondent herein as to the patta granted in favour of the petitioners. Accordingly, the petitioners appeared on the date fixed in the notice for appearance before the 3<sup>rd</sup> respondent to pass the impugned order cancelling the patta granted in favour of the petitioners. The notice is only calling upon the petitioners to appear before the 3<sup>rd</sup> respondent to enquire into the allegations made in the report made by the 5<sup>th</sup> respondent. If there is

any irregularity or misrepresentation or mistake in issuing patta or obtaining patta, the Joint Collector is only competent under BSO-15(18) of the Board's Standing Orders. But, the Tahsildar is vested with the power to resume the land/assignment land by exercising power under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (Act No. 9 of 1977) not otherwise. Therefore, issuing of notice calling upon the petitioners to appear before the 3<sup>rd</sup> respondent/Tahsildar on the ground that there was an irregularity in issuing pattas, the Tahsildar lacks jurisdiction to cancel the patta in any of the grounds enumerated under BSO-15(18) of the Board's Standing Orders.

5. In any view of the matter, the order passed by the 3<sup>rd</sup> respondent cancelling the patta granted in favour of the petitioners, reason is not intimated to the petitioners in the notice, dated 28.08.2021, but, it is an improvement after appearance of the petitioners to cancel the patta. The intention of the 3<sup>rd</sup> respondent was not communicated to the petitioners while calling for their explanation for the proposed cancellation of the patta, but suddenly, he passed an order cancelling the patta granted in favour of the petitioners and it is nothing but an improvement after issue of notice. Hence, it is against the principles of natural justice as laid down by the Apex Court in "**Mahendra Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors**"<sup>1</sup>, wherein it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned therein and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise; otherwise, an order bad in the beginning

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<sup>1</sup> 1978 AIR 851 = 1978 SCR (3) 272

may, by the time it comes to Court on account of a challenge, gets validated by additional reasons/grounds later brought in. In the said judgment, the Constitution Bench referred to earlier judgment in **Commissioner of Police, Bombay v. Gordhandas Bhanji**<sup>2</sup>, wherein the Apex Court observed as follows:

*“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed’ they must be construed objectively with reference to the language used in the order itself.”*

6. In view of the principle laid down in the above judgment, the order passed by the 3<sup>rd</sup> respondent/Tahsildar is nothing but an improvement subsequent to issue of notice and violative of principles of natural justice. Hence, the impugned order is liable to be set aside while declaring the same as illegal, arbitrary and without jurisdiction.

7. In the result, the writ petition is allowed, at the stage of admission, setting aside the proceedings in Ref.No.C/1083/2021, dated 07.09.2021 issued by the 3<sup>rd</sup> respondent/Tahsildar, while declaring the same as illegal, arbitrary and without jurisdiction. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending shall stand closed.

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**JUSTICE M. SATYANARAYANA MURTHY**

Date: 20.09.2021

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<sup>2</sup> AIR 1952 SC 16

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