

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT**

WRIT APPEAL Nos.1582 AND 1644 OF 2003

PC:

The writ appeals are directed against the common order dated 13.05.2003 in W.P.Nos.22970 of 2001 and 10566 of 2002.

The appellants in the writ appeals are respondents in W.P.No.22970 of 2001 and petitioner/District Collector, Chittoor in W.P.No.10566 of 2002.

The subject matter of the writ appeals is an extent of Ac.5-00 in Survey No.78/2(P), Mangalam Village, Erstwhile Chandragiri Taluk, Chittoor District.

The controversy arises under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act'). It would be convenient if the prayers in these two writ petitions are set out in the beginning.

-

W.P.No.22970 of 2001:

T.C.Rajaratnam/1st respondent in the appeals prayed for a writ of Mandamus declaring inaction of respondents in implementing the order of Commissioner of Appeals, O/o. Chief Commissioner of Land Administration, A.P. Hyderabad in Case No.P3/1003/2000 dated 30.05.2001 by incorporating the name of the petitioner as pattadar, as illegal and arbitrary.

-

-

W.P.No.10566 of 2002:

The District Collector/appellant in W.A.No.1644 of 2003 prayed for writ of Certiorari calling for the records leading up and inclusive of the order in case No.P3/1003/2000 dated 30.05.2001 of Commissioner of

Appeals, O/o. Chief Commissioner of Land Administration, A.P. Hyderabad whereunder the order of Settlement Officer, Nellore in S.R.No.13/11(a)81/CGR dated 19.09.1981 was confirmed, and quash the orders as being arbitrary and illegal.

The parties are referred as arrayed in the appeals.

The subject matter of writ appeals is Ac.5-00 in Sy.No.78/2 (P), Mangalam Village, Chandragiri Taluk. The 1st respondent, claiming to be a ryot of subject matter, claimed grant of ryotwari patta under Section 11(a) of the Act before the Settlement Officer, Nellore. The 1st respondent admittedly filed the claim for grant of ryotwari patta beyond the period stipulated by the Act. From the material available on record, it is evident that the claim for grant of ryotwari patta was made with an application to condone the delay and the delay condonation has been taken on file in Rc.D.79/81. The Tahsildar, Chandragiri filed counter and opposed the application. The Settlement Officer, however, having been satisfied with the reasons stated by the 1st respondent, condoned the delay and taken on record the claim of petitioner in S.R.No.13/11(a)81/CGR. The Tahsildar did not file counter after the claim for grant of ryotwari patta is taken up for enquiry and consideration by the Settlement Officer. The 1st respondent in the enquiry conducted by the Settlement Officer examined himself as PW.1 and M.Vemulaiah as PW.2 and one C.Munuswamy Pillai as CW1. Exs.C.1 and P.1 to P.5 have been marked in support of the claim of 1st respondent. The claim of 1st respondent for grant of ryotwari patta was accepted vide order dated 19.09.1981 and has been the subject matter of appeals and revisions more than once. Before adverting to the order of Commissioner of Appeals, CCLA in confirming grant of ryotwari patta in favour of 1st respondent, the findings of the Settlement Officer in order dated 19.09.1981 are excerpted hereunder:

“The right and title of Pitchi Reddy flow from Ex.P.3 and P.4. These photo copies show the seal of the Inamdar.

The assignment being on 20.3.45 the admission into possession is prior to 1-7-1945. The rate of cist was Rs.2-00. The extent of land viz.Ac.10-00 is shown within the specified boundaries and not by paimash numbers or survey numbers as there was no survey at all by the date of Ex.P.3. The sale deed Ex.P.2 shows the S.No. as 132. The vendor therein is the pattadar under Ex.P.3. The sale agreement in favour of the petitioner is Ex.P.1. No doubt it is true that he has not taken regular sale deed from the vendor. Nevertheless the sale took place 13 years ago and the petitioner was put in possession of the land on 27.9.1968 he should be deemed to have acquired adverse possession also against the real owner, Padmanabhaiah. Therefore all the rights in the land purchased have passed on the petitioner unfettered. The petitioner would be entitled to a ryotwari patta if he could be able to convince that his vendor had valid title and the right to get a ryotwari patta. Here there is the permanent patta and cist receipts for the pre 1-7-45 period. There are cist receipts Ex.P.5(series) to show the later occupation even after the noticed date. Ex.p.3 and P.4 prove the occupancy rights. The oral evidence of the Karnam in office for over 25 years and the other adjoining ryot go to confirm the enjoyment of the petitioner and his grand mother. The payment of cist through Ex.P.5 (series) establish possession even by 1388 Fasli. If the evidence of the Karnam examined is taken into account the land in question was a patta land and the same continued to be so but for the taking over of the Estate and introduction ryotwari Settlement accounts. The counter of Tahsildar, in my view simply supports the case of the petitioner when he states that the land is ryoti, that according to adangal extracts the petitioner has been raising dry crops in the field, that there are traces of permanent ridges to show that the land is under regular cultivation, that the land is classified as A.W. Dry and it is not required for any communal purpose. I have therefore no hesitation in holding that the evidence on record is sufficient to conclude that the petitioner has established his right to the grant of ryotwari patta for the schedule mentioned land. I accordingly allow his claim u/s.11(a) of the Act.”

The Director of Settlements, against the order of Settlement Officer dated 19.09.1981, has taken up *suo motu* revision under Section 5(2) of the Act in R.P.No.187/1983 and through order dated 20.08.1985 set

aside the order dated 19.09.1981 of the Settlement Officer. The 1st respondent, against the order dated 20.08.1985, carried the matter in revision before the Commissioner, Survey Settlements and Land Records and the same was taken on file in case No.P3/2439/85. On 01.08.1988, the revision filed by the 1st respondent was allowed and the matter was remanded to Director of Settlements with the following findings:

“The case was heard on several dates and finally on 13-7-1988. Sri Y.Narasimha Reddy appeared for the revision petitioner while T.Muralidhara Rao, Spl. Govt. Pleader appeared on behalf of the Collector, Chittoor. In this case, the revision petitioner has stated that due opportunity has not been given to him to state his case before the Director of Settlements. In addition, an affidavit has been filed in this Court by one Sri K.K.B.Venkatacharyulu, aged 72 years old, who is the original landholder, who gave the original takid. In view of these facts, the case is remanded back to the Director of Settlements for a detailed enquiry. The Director of Settlements may record the evidence of Sri KKB Venkatacharyulu, hear the revision petitioner as well as the Tahsildar, check-up the records and take a decision on merits. The order of the Director of Settlements, is therefore, set aside with a direction that the remanded case be heard by him within eight weeks from the date of receipt of this order and orders issued.”

The Director of Settlements, on remand, confirmed his earlier finding and the 1st respondent again filed revision before the Commissioner, Survey Settlements and Land Records and the same is taken on file in case No.P3/2104/92. On 25.07.1994, the Commissioner, Survey, Settlements and Land Records allowed the appeal by recording the following findings.

“After hearing the arguments of both the Counsels, the relevant records were perused, particularly the sale deeds and the boundaries. Broadly the boundaries seem to tally if allowance is given to the fact that 25 to 30 years have lapsed during which period these sale

deeds were effected and that except the East and the South boundaries which are natural with regard to the other two sides there could have been changes in ownership. So there does not seem to be any doubt on the question whether the land now in issue is the same land which was given to Sri Pitchi Reddy in 1945 by the Inamdar.

The order of remand by the then Commissioner, SS & LR in 1987 shows that the only question that needed clarification was whether the Land holder Sri K.K.B.B.Venkatacharyulu gave the takeed. In the enquiry Sri K.K.B.B. Venkatacharyulu was examined and he gave a statement that he had given the Takid and Receipts as his father was ill and bed-ridden. As per the provisions in other acts like Tenancy Act, the land holder means, the owner of the holding and included his heirs, assignees, legal representatives of such owners or person deriving rights through him. It is brought to the notice that in

a number of other cases such Takeeds were relied upon and pattas granted. As the limited scope for remand was enquiry whether

Sri K.K.B.B.Venkatacharyulu has given the Takeed, the statement given Sri K.K.B.B.Venkatacharyulu can be taken as a proof of his having given the Takeed.

In the above circumstances the order of the D.O.S. is set aside and the Patta granted by the Settlement Officer in his S.R.No.13/11(a)/81 CGR dt.19-9-1981 is confirmed.”

The District Collector, Chittoor, questioning the order of Commissioner, Survey Settlements and Land Records, filed W.P.No.5718 of 1997. This Court through order dated 18.07.2000, allowed the W.P, setting aside the order of Commissioner, Survey Settlements and Land Records dated 25.07.1994 and directed the Commissioner, Survey Settlements and Land Records for disposal on merits in accordance with law.

On remand by this Court, the Commissioner, Survey Settlements and Land Records examined the entire material available on record and being satisfied with sufficiency of material for accepting a claim, confirmed the grant of ryotwari patta in favour of 1st respondent. The

findings recorded by the Commissioner, Survey Settlements and Land

Records read as follows:

“A perusal of the orders passed by the S.O., Nellore in SR No.15/11(a)/81 dt.19-9-1981 reveals that the Settlement Officer, Nellore had granted ryotwari patta to the revision petitioner herein in his order passed in above S.R. and that the D.O.S., in suo moto revision which was taken up against the orders passed by the then S.O. in general had cancelled the order passed by the S.O., and allowed the suo moto revision. Subsequently, after the case was in trial in the courts of the D.O.S. and the then CSS & I.R. the then CSS & I.R. confirmed the orders passed by the Settlement Officer, Nellore vide orders passed in file No.P3/2104/92 dt.25-7-1994 observing that the only question that needed clarification was whether the land holder Sri K.K.B.B. Venkatacharyulu gave the Takeed. In the enquiry Sri K.K.B.B.Venkatacharyulu was examined and he gave a statement that he had given the Takid and receipts as his father was ill and bed ridden. Therefore, as per the provision in other acts like Tenancy Act, the land holder means, the owner of the holding and includes his heirs, assignees, legal representatives of such owners or person deriving rights through him. It is brought to the notice that in a number of other cases such Takeeds were relied upon and pattas granted. As the limited scope for remand was enquiry whether Sri K.K.B.B. Venkatachayulu has given the Takeed, the statement given by Sri K.K.B.B. Venkatacharyulu can be taken as a proof of his having given the Takeed.

Further, a perusal of the orders passed by the then CSS & IR on 25-7-1994 also shows that the CSS & I.R. had examined the issue of boundaries of the schedule land also with reference to the documents filed by the Revision Petitioner herein and observed that the sale deeds and the boundaries of the schedule land seems to tally if allowance is given to the fact that 25 to 30 years have lapsed during which period these sale deeds were affected and that except the East and South boundaries which are natural with regard to the other two sides, there could have been changes in ownership and that so there does not seem to be any doubt on the question whether the land now in issue is the same land which was given to Sri Pitchi Reddy in 1945 by the Inamdar and that the Inamdar also had accepted he had given patta takid to the Revision Petitioner predecessor in title long prior to 1.7.1945. Therefore, it is evident that the schedule land is ryoti in nature and that the boundaries are tallying the schedule land when examined with reference to the documents filed by the Revision petitioner. Therefore, I set

aside the order passed by the D.O.S. in RP No.187/83, dt.30-11-1991 and confirm the orders passed by the Settlement Officer, Nellore in SR No.13/11(a)/81 dt.19-9-1981.”

The District Collector filed W.P.No.10566 of 2002 challenging the order dated 30.05.2001 of Commissioner of Appeals, CCLA.

The main issue for consideration arises in W.P. No.10566 of 2002 as the substantive order confirming grant of ryotwari patta is under challenge. The learned Single Judge through common order 13.05.2003 accepted the findings of the Commissioner of Appeals as based on material available on record and no exception could be taken. The gist of findings is that the reason for not examining the land holder is sufficiently explained and the Director of Settlements having taken on record further evidence did not properly appreciate the controversy between the parties. The finding of fact confirmed by the learned Single Judge is that there is evidence to show that the schedule land is ryoti in nature, and subject matter is identified or located within the boundaries claimed by 1st respondent. The learned Single Judge did not find any reason to disbelieve the “Takid” which is in the hand writing of land holder and the allegation of fraud asserted by the department did not find favour with the learned Single Judge.

The learned Government Pleader challenges the order of learned Single Judge in W.P. No.22970 of 2001 and also the order of Commissioner of Appeals dated 30.05.2001 primarily on the ground that various pattas granted by the Settlement Officer (ADV Reddy) were vitiated by fraud, misrepresentation and ryotwari pattas have been granted in respect of non-ryoti lands and the material relied upon by the 1st respondent does not satisfy the requirements of Section 11 (a) of the Act and writ appeals are either allowed in toto or alternatively prays for remanding the case to CCLA.

Sri Y.Narasimha Reddy, learned counsel contends that as against

the grant of ryotwari patta on 19.09.1981, the Director of Settlements enquired the matter on two occasions and the Commissioner, Survey Settlements and Land Records on three occasions. The 1st respondent successfully established his claim before the competent statutory authorities and after several decades of enjoyment by the 1st respondent and his predecessor-in-interest, the claim of Government that the subject matter is 'assessed waste' is without record and could not be considered by this Court. He further contends that the 1st respondent claims for implementation in revenue records on the settlement patta alone, without supporting material, fraud suppression etc., pleaded by the Government. On the other hand, he contends that the Settlement Officer ordered notice in delay condonation to the Tahsildar who participated in the enquiry and the Tahasildar clearly said that the subject matter of the land is ryoti in nature. The Settlement Officer condoned the delay in filing a claim for grant of ryotwari patta and held enquiry into the claim by recording oral and documentary evidence. The District Collector, having not placed any material before Settlement Officer, cannot generalize the issue. He finally contends that the possession of 1st respondent is actual and through the predecessor-in-interest, the possession spans more than five decades and having regard to the conduct of Government and findings of fault recorded by CCLA, the appeals are liable to be dismissed.

Now, the short point for consideration is whether the order impugned in the writ appeals or for that matter the order dated 30.05.2001 in case No.P3/1003/2000 suffers from illegality and any ground is made out for setting aside these orders.

Before embarking upon the legality or otherwise of the findings under challenge, we make it clear that the present issue is not considered from the mere fact that the Settlement Officer (ADV Reddy) granted the patta and the patta, as contended by the Government, is liable to be set aside and at the same time this Court is not expressing any general view on the spurious pattas allegedly

granted by the said Settlement Officer. Even assuming that patta was granted by Settlement Officer, who has been found to be issuing pattas contrary to the Act on fabricated document, but when notice was issued in this enquiry, the Tahsildar filed a counter in the case. It is well settled that fraud vitiates everything and authorities can pass appropriate orders reversing such fraudulent orders. The alleged fraud is for consideration and examination on case to case basis. In our view, the case on hand is distinguishable from the other cases, generally stated by the learned Government Pleader. The following are the circumstances:

The 1st respondent claimed grant of ryotwari patta for the subject matter with an application to condone the delay in filing the claim petition. The Tahsildar, Chandragiri received notice and opposed the prayer for condonation of delay. The Settlement Officer on being satisfied with the material on record and the obligation cast under the Act viz., to regularize the tenures felt obliged to condone the delay. The order condoning delay remained unchallenged. Thereafter, the Tahsildar did not file additional counter or produce any document in support of the claim of Government that the subject land is 'assessed waste' and no ryotwari patta can be granted. The Settlement Officer, as already noted, examined the oral and documentary evidence on record and on being satisfied that the entry into subject matter by the predecessor-in-interest of 1st respondent is pursuant to a "Takid" and that the subject matter is a ryoti land, granted ryoti wari patta to 1st respondent. The Director of Settlements on 20.08.1985 reversed the grant in favour of 1st respondent. As already noted, the reversal order was set aside by the Commissioner, CCLA and the matter was remanded to Director of Settlements for recording the evidence and deciding the matter. If at all the Government/Department wanted to avail opportunity of proving its case viz., that the land is Assessed Waste but not ryoti, it ought not to have missed this opportunity of placing evidence on record. The 1st respondent adduced oral evidence and he discharged the onus of proving grant of Takid by marking Ex.P.3 which is

a photo copy of the Takid dated 20.03.1945. If at all the Government wanted to *prima facie* show that the original of Takid was not marked in the connected case as contended by the 1st respondent, it ought to have taken appropriate steps in this behalf. Having not taken such steps, in our considered view, the appellants cannot challenge the findings of fact recorded by the Commissioner, Survey Settlements and Land Records on three different occasions while accepting the case of 1st respondent that the subject matter is a ryoti land and settlement patta can be granted. It is required to be noted that this Court in exercise of its judicial review under writ of certiorari has examined the findings recorded by the statutory authorities and merely confirmed the same. No tenable ground is urged to take a different view. For the above reasons, the dismissal of W.P.No.10566 of 2002 is correct and no exception can be taken and W.P.No.22970 of 2001 is one in the nature of implementation of ryotwari patta in revenue records and once the grant of settlement patta is accepted by this Court, the appellants are under legal obligation to effect necessary changes in revenue records concerning the subject matter. Therefore, the order of learned Single Judge allowing W.P.No.22970 of 2001 is correct and justified. Consequently, the Writ Appeals are without any merit and are accordingly dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT, J

Date:18.09.2015

Stp