

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.3576 of 2005

Dated : 26.02.2015

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Between:

Karna Veera Reddy
S/o Sri Karna Koti Reddy
Aged about 65 years
R/o Darsi, Village & Mandal
Prakasam District and two others

.. Petitioners

And

The Special Commissioner & Director of Settlements
Government of Andhra Pradesh
Hyderabad and three others

.. Respondents

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This Court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.3576 OF 2005

ORDER:

This Writ Petition is instituted aggrieved by the orders passed by the Special Commissioner & Director of Settlements, Government of Andhra Pradesh/first respondent in R.P.No.398/ 85/(A2) dated 10.12.2004 revoking the Ryotwari patta granted in favour of late Sri Karna Koti Reddy, who is the father of the first petitioner herein, vide proceedings dated 29.11.1979.

2. The case of the petitioners is that Nallareddipalem Village forming part of Venkatagiri Estate was notified under the provisions of the Estate Abolition Act, 1948 and had been taken over by the Government on 07.09.1949. The petitioners and their ancestors have been in possession and enjoyment of the lands to an extent of Ac.13.94 cents in S.No.416/P situated in Nallareddipalem village much prior to 1930 and even before the Estate Abolition Act, 1948 came into force. In the year 1976, the father of the first petitioner applied for Patta in accordance with Section 11(a) of the Estate Abolition Act, 1948. On consideration of the said application, the Settlement Officer in his proceedings S.R. No.36/11(a)/76/DRS dated 29.11.1979 granted pattas for about 20 acres of land in Survey No.416. In exercise of the powers vested under Section 5(2) of the Act, the Director of Survey & Settlements *suo motu* initiated enquiry against the grant of pattas by the Settlement

Officer. Such power was exercised in the year 1985. The matter underwent several rounds of litigation. The first respondent passed orders on 10.12.2004 canceling the certificate issued by the Settlement Officer. The said order is passed without hearing the petitioner. Aggrieved thereby, the petitioners instituted the present Writ Petition.

3. Heard the learned counsel for petitioners and the learned Assistant Government Pleader for the respondents.

4. The learned counsel for petitioners contends that the order is liable to be set aside solely on the ground that the first petitioner was not given opportunity of hearing and without any justification, *ex parte* order was passed. The learned counsel further submits that the last date of hearing notified to the petitioner was 29.01.2004. On that day the counsel for petitioner was present in the office of the first respondent. No hearing took place and counsel for the petitioner was informed that the next date of hearing would be intimated. The petitioner was waiting for the next date of hearing. Without intimation of any further date of hearing to petitioner, the orders were passed on 10.12.2004.

5. The learned counsel for petitioners further submits that notice issued prior to this order and the order would reflect that the first respondent predetermined the issue and proceeded on the notion that patta was erroneously issued and the petitioner is not entitled to issuance of such certificate. The first respondent authority being quasi-judicial authority has to consider the matter on merits with an open mind. The learned counsel further submits that before order was passed by the Settlement Officer, there was detailed consideration of claim and counter claim and several documents were filed before the Settlement Officer. The concerned officers were examined. On thorough verification of the record, deposition and the documents filed in support of the claim for certificate, the Settlement Officer passed orders on 29.11.1979 granting ryotwari patta to the claimant under Section 11(a) of the Act. All these documents are part of record. None of these documents were considered. On the contrary, the reading of the order, under challenge, would show as if no such documents were filed. This would clearly show that there was total non-application of mind and was predetermined to annul the earlier orders passed in his favour by

the Settlement Officer.

6. He further submits that the order which was passed in favour of the petitioner in the year 1979 ought not to have been cancelled after such a long lapse of time. In the meantime, Ac.13.94 cents, major part of the land, was already sold and only Ac.5.00 remain in the possession of the petitioner. The third party interest accrued and these facts were within the knowledge of the first respondent. The third parties are also entitled to notice and opportunity of hearing. On 05.12.1996 pattadar passbooks were issued in the name of second petitioner. The third petitioner was also given an extent of Ac.2.00 cents and was also issued pattadar passbooks on 25.11.1996. All the petitioners were successors in interest. The father/petitioner No.1 was also granted pattadar passbooks. All these facts were ignored while passing the *ex parte* orders. If only an opportunity is provided to the petitioners, they would have substantiated their claim. The learned counsel for petitioners submits that even on merits the petitioners have excellent case. The order passed by the Settlement Officer was validly made.

7. The learned Assistant Government Pleader submits that the first respondent has no option, but to pass *ex parte* orders since the petitioner failed to appear on the date of hearing. It is not true to contend that the first petitioner/counsel for first petitioner appeared on 29.01.2004 as per the notice served on the petitioner. Since there was no appearance on that day and it was a long pending case, the first respondent reserved the matter for passing orders. Initially the date for passing of orders was shown as 20.02.2004, but on that day the orders could not be passed. The learned Assistant Government Pleader further submits that the first petitioner has been litigating and prolonging the issue only to avoid appearance before the first respondent and to prevent the first respondent from taking decision as originally proposed. The learned Assistant Government Pleader further contended that both certificates were issued without verifying the records and the first petitioner and his father were not entitled to possession of both certificates. The occupation of the petitioner was subsequent to 1945 and the status of the land was "Gayalu" as per the revenue records of pre and post abolition periods.

8. The learned Assistant Government Pleader further contends that there is no illegality in taking the decision and that the entire matter was concluded based on the record available. Since the petitioner or his counsel did not appear, the first respondent had no option but to pass orders as per the record available.

9. As seen from record, last date notified for hearing by the first respondent was 29.01.2004. Notice dated 06.01.2004 was issued fixing 29.01.2004 as date of enquiry. Earlier to 6.1.2004 notice, it was recorded that notice was not served and fresh notice was ordered. According to petitioner, advocate entered appearance on 21.11.2003. According to petitioner, his counsel attended to the office of 1st respondent, whereas office of 1st respondent denies such appearance. Apparently no record of proceedings is maintained properly and no set procedure of conducting hearing is placed before this Court. Admittedly, there is no material to controvert statements of petitioner. It appears from record produced, no hearing took place on 29.1.2004 i.e., hearing of Government representative and perusal of record on their behalf. When the Settlement Officer record was produced and when it was verified is not recorded. No further notice was issued to the counsel on record or to party after 29.01.2004. Without conducting hearing on the day listed for hearing, the matter was reserved and for no reason further notice of adjournment was not informed to the party or the counsel on record. Even according to the first respondent, 29.01.2004 was first date for hearing after the notice was served. He was not set *ex parte*. The entry of proceedings of 29.01.2004 and the proceedings of 20.02.2004 do not indicate that the hearing took place after setting the petitioner *ex parte* and there after reserved for orders. After long lapse of time, the orders were passed. The list of events would clearly point out that an opportunity of hearing was denied to the petitioner and no justification was shown in the docket proceedings as to why such opportunity was denied. As pointed out by the learned counsel for the petitioner in all earlier notices, notice was sent to the advocate or directly to the party whereas the order impugned in the writ petition was sent to the Mandal Revenue Officer directing him to serve the copy on the petitioner. Why such different course of action was taken when the orders are passed is also not clear.

10. In all fairness the first respondent ought to have given further opportunity to the

petitioner on a later date, more so when he has not passed final orders immediately.

11. As rightly pointed out by the learned counsel for petitioner, before the Settlement Officer, several documents were filed in support of the claim made. Sri Karna Koti Reddy was examined as PW1 and his deposition was recorded. Similarly, Karnam was examined as CW1 and his statement was recorded. It was deposed that kist was paid and payment of rent for the subject land was filed. Adangal extracts for 1350, 1351, 1371 to 1373, 1380 to 1382 and 1384 fasli were filed. It was categorically contended that Raja of Venkatagiri granted patta to the extent of Ac.20.94 on 08.06.1922 and the said document was marked as exhibit P.1. The Settlement Officer also recorded entries in the Adangals for 1382, 1383, 1384, 1385 and 1386 fasli. The schedules were classified as A.W. land and the claimant is cultivating an extent of Ac.30.00. According to the evidence of Karnam, Dittam, and 10(1) account, the land admeasuring Ac.20.94 was registered in the name of the claimant and Pitchireddy. While so, at para-6 in the order of first respondent reads as under:

“The pre-abolition period kist receipts said to have been issued by the Samsthanam of Venkatagiri do not contain any seal of the Estate. The respondent has not filed any corroborative documents like Dittam, 10(1) Account etc. in support of those pre-abolition kist receipts. In the absence of such corroborative evidence, these Kist receipts have no any legal significance to establish the title of the respondent over the schedule land.”

12. This is contrary to what is recorded by the Settlement Officer. Therefore, there is merit in the contention of the learned counsel for petitioners that there was non-application of mind in passing the orders and orders were passed with pre-determined notion to set aside the orders of Settlement Officer. The petitioner was denied opportunity to substantiate his claim in support of the certificate issued by Settlement Officer. It cannot be said that giving opportunity would have been an empty formality. If only an opportunity was afforded to petitioner, petitioner could have placed of various documents considered by Settlement Officer. Thus the order is liable to be set aside on the ground of denial of reasonable opportunity. In view of the above finding, the other issues are left open.

13. In the result, the Writ Petition is allowed and the order impugned is set aside and the matter is remitted to the Special Commissioner & Director of Settlements for consideration of the issue afresh after affording due opportunity to the petitioners. Having regard to the fact that the suo-moto revision was initiated on 25.05.1985 and is more than 30 years old, the issue should be decided expeditiously. Accordingly, the first respondent is directed to fix the date of hearing, intimate the date of hearing in advance to the petitioners and give an opportunity to the petitioners to present all the relevant documents in support of their claim and also permit the petitioners to engage advocate to represent them. If any documents are relied in support of the suo-moto revision, all those documents should be supplied to the petitioners and others in advance along with the notice for date of hearing. Learned counsel for petitioners specifically contended that a major portion of the land was alienated and the third-party interests have crept in. In view of the same and in the interest of justice, it is necessary to put all those persons also on notices and they also be given full opportunity, including opportunity to present documents and to engage lawyer/lawyers. While considering the revision afresh, the competent authority shall pass orders by affording due opportunity, with an open mind and without regard to the earlier findings. The petitioners shall cooperate for early disposal. If the petitioners/other parties and/or counsel for petitioners and other parties do not appear on the dates fixed for hearing, it is open for the respondent No.1 to set the party/parties *ex parte*, hear and pass appropriate orders. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in the Writ Petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 26.02.2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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