

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION Nos.21410 & 25558 of 1997

COMMON ORDER:

The petitioners herein seek a declaration that the order passed by the 1st respondent-Commissioner of Survey, Settlements and Land Records, dated 26.11.1996, dismissing the revision petition preferred by the petitioners and confirming the order dated 21.09.1979 of the 2nd respondent-Director of Survey, Settlements and Land Records and the orders dated 30.04.1976 passed by the Settlement Officer, Rajahmundry as illegal and unjust and to set aside the same, with a further declaration that the petitioners are entitled for grant of Ryotwari patta under the provisions of the Andhra Pradesh Scheduled Areas Ryotwari Settlement Regulation, 1970.

The case of the petitioners is that they are owning 1-16 ½ hectares of land in survey No.104/1 of A-Veeravaram Village, Rampachodavaram Mandal, East Godavari District. It is their case that they have inherited this land from their father, who in turn got right, title and interest in this particular land by virtue of a family partition affected between him and his elder brother. It is their case that the lands in question were purchased by their grand father through a registered sale deed bearing document No.882/1941 dated 13.09.1941 from the members of Karumuri Family of Seethanagaram Village of Rajahmundry Taluk. The petitioners are non-tribals and so are the members of the Karumuri family. Karumuri Family originally purchased these lands from one M. Venkat Reddy, who is a tribesman, through a registered sale deed dated 19.01.1909 bearing document No.219/1909, registered by the Sub-Registrar, Polavaram, West Godavari District. It is their case that since January 1909, the above lands were in possession and cultivation of non-tribals. The lands in question are situated in A. Veeravaram Zamin Estate, which was taken over by the Government on 10.09.1952 under the provisions of Estates Abolition Act, 1948. Thereafter, Survey and Settlement operations in the village have been undertaken and the Settlement Officer, Rajahmundry, has rejected the claim of the father of the petitioners herein for grant of a ryotwari patta under Sections 7 and 9 of A.P. Scheduled Areas Ryotwari Settlement Regulations 1970 (Regulation No.2 of 1970) on the ground that the land stands in the name of one M. Venkat Reddy, a Tribesman and while rejecting the claim of the father of the petitioners herein, the

Settlement Officer has ordered to register the land in question as waste land. It is the claim of the petitioners that in terms of Section 7 of Regulation No.2 of 1970, every ryot in the scheduled area shall be entitled to a ryotwari patta in respect of all cultivable lands which are properly included in the holding of the applicant and the first proviso to sub Section 1 of Section 7 of the said regulations stipulates that ryotwari patta shall be granted in favour of a person who is in continuous possession of the land in question from the notified date and if such lands were situated in the estates which have been taken over under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948. The second proviso under Sub Section 1 of Section 7 of this Act made it clear that lands other than those dealt with under the first proviso, are covered by it. Under Section 9, the Settlement Officer was required to enquire into the nature and history of the land in respect of which a ryotwari patta is claimed. Such an enquiry can also be initiated suo mutuo. In the instant case, the Settlement Officer, Rajahmundry, passed orders holding that the petitioners are not entitled to be granted a ryotwari patta as the land is standing in the name of M. Venkat Reddy, a tribal. Further, when the matter is carried in appeal before the Director of Settlements the said appeal has been rejected. The matter was further taken in Revision before the Commissioner of Survey and Settlements, who dismissed the Revision on the ground that no evidence is produced by the petitioners in proof of their title and possession with regard to land in question prior to Abolition of Estates Act coming into force. The second appeal preferred has thus also been dismissed. Hence, these writ petitions.

When various parts of British India have never been brought within, or have from time to time been removed from, the operation of the general Acts and Regulations and the jurisdiction of the ordinary Courts of judicature, it was considered expedient to declare by notification, the enactments which remain in force in certain scheduled districts. For achieving this objective, the Scheduled Districts Act, XIV of 1874 was enacted. Section 3 of this Act, XIV of 1874, enabled the local Government from time to time by notification in the local gazette, declare what enactments are actually in force in any of the scheduled districts, or in any part of any such district and also declare of any enactment that it is not actually in force in any of the said districts and also correct any mistake of fact in any notification issued under the said Section. The effect of any such notification under Section 3, declares Section 4, to have binding effect on all Courts of law. In the first schedule, the scheduled areas notified in Godavari Districts are (i) The Bhadrachalam Taluq, (ii)

The Rakapilli Taluq and (iii) The Rampa Country. Appendix A has brought out the notification by which the provisions of Act XIV of 1874, has been brought into force under Section 3. It appears the taluqs of Bhadrachalam, Rakapilli and Rampa Country have been notified on 20.06.1879 and 26.06.1879 by St. George Gazette of India 1879.

With a view to check and regulate the transfers of land in the agency tracts of Ganjam, Visakhapatnam and Godavari Districts, the Agency Tracts Interest and Land Transfer Act, 1917, Act 1 of 1917, was made. Section 2 of this Act defines the various expressions found mentioned therein. The expression agency tracts, has been defined in Clause (a) thereof as under:

“(a) “Agency tracts” means the scheduled districts as defined in Acts XIV and XV of 1874 and included within the districts of Ganjam, Visakhapatnam and Godavari.”

The expression transfer has been defined in Clause (f) in the following words:

“(f) “transfer” means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with property not being a testamentary disposition and includes a charge or any contract relating to immovable property.”

Thus, any sale of immovable property lying in the scheduled districts covered by Act XIV of 1874 has been covered by these provisions of the Act 1 of 1917.

Sub Section 1 of Section 4 of this Act 1 of 1917, sets out that any transfer of immovable property situated within the agency tracts by a member of hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer. Sub Section 2 sets out that if a transfer of property is made in contravention of Sub-Section 1, the Agent or any other prescribed officer may, on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs. Section 8 of this Act made it clear that the transfers made or liabilities incurred before coming into force of this Act shall not affect such transfers or liabilities. This Act appears to have been brought into force on 14.08.1917. Therefore, by virtue of the provision contained in Section 4, transfers of immovable properties situate within the agency tracts made by a member of hill tribe in favour to any other person who is not a hill

tribe were declared as null and void on and from 14.08.1917.

It is therefore important to notice the assertion of the petitioners, that the members of the Karumuri family, have purchased the lands in question from Sri M. Venkat Reddy, a tribes man, through a registered sale deed dated 19.01.1909, which undoubtedly was earlier to 14.08.1917, on which date Act 1 of 1917 has been brought into force. If this factual assertion of the petitioners is true and correct, by virtue of the provision contained under Section 8 of Act 1 of 1917, such transfer made prior to coming into force of the said Act i.e., on 14.08.1917 is not affected at all. This aspect of the matter does not appear to have been taken note of by the respondent authorities. Somehow, this has escaped their attention.

It is no doubt true that Andhra Pradesh Scheduled Areas Land Transfer Regulation 1959, Regulation No.1 of 1959, has been brought into force on 04.03.1959 and by the wider scope of the expression "transfer" contained in Clause (g) of Section 2, all other modes of dealing of immovable property but not being a testamentary disposition, are covered by the expression 'transfer'. By virtue of Sub Section 1 of Section 3 of Regulation No.1 of 1959, any transfer of immovable property situated in the agency tracts by a person whether or not such person was a member of a scheduled tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of scheduled tribe or a society registered or deemed to be registered under the Andhra Pradesh Cooperative Societies Act, 1964, which is composed solely of members of the scheduled tribes. One has to bear this provision in mind while considering the provisions contained in the A.P. Scheduled Areas Ryotwari Settlement Regulation 1970, Regulation No.2 of 1970. By virtue of Sub Section 2 of Section 1 of Regulation 2 of 1970, the provisions contained therein apply to all lands in the scheduled areas in respect of which no settlement has been effected other than those comprised within the Muttas and Mahals governed by the Regulations providing for the abolition of Muttas and Mahals in certain scheduled areas of the State, and to certain estates in the said areas. Therefore, the provisions of Regulation 2 of 1970 apply to the lands in question as they are situated in

A. Veeravaram Estate situated in the scheduled areas. Under Section 3 of Regulation 2 of 1970, the Government was required to appoint a Director of Settlements to carry out the survey and settlement operations in the scheduled areas to which Regulation 2 of 1970 applies and introduce ryotwari settlement therein.

Under Section 4 of this regulation, the Government was required to appoint one or more number of Settlement Officers to carry out functions and duties assigned to them under this regulation. Under Section 6 of this Regulation, all the lands in the scheduled areas to which this Regulation applies shall be surveyed and under Section 7, every ryot in the scheduled areas to which this Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands which were properly included or which ought to have been properly included in his holding and which are not land in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the State in relation to grant of ryotwari patta. The proviso incorporated under Section 7 of Regulation 2 of 1970 is of significance to our enquiry and hence, it is appropriate to notice the same.

“7. Lands in which ryot is entitled to ryotwari patta:- (1) Every ryot in the Secheduled Areas to which this Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands which ought to have been properly included in his holding and which are not lands in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the State relating to grant of ryotwari patta.

Provided that in the case of lands in the estates which have been taken over under the Andhra (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 a person who would be entitled to a ryotwari patta under that Act shall be granted a patta, if the lands have been continuously in the occupation of that person from the notified date;

Provided further that in respect of lands other than those to which a person is entitled to a ryotwari patta under the first proviso, no ryot who is not a member of the Scheduled Tribes shall be entitled to a ryotwari patta in respect of cultivable land unless-

(a) such a person had been in possession or in occupation of the land for a continuos period of not less than eight years immediately before the commencement of this Regulation;

(b) such possession or occupation shall not be void or illegal under the Anchra Pradesh Scheduled Areas Land Transfer Regulation, 1959, or any other law for the time being in force.

Explanation:- In this sub-section, the expression “notified date” shall have the meaning assigned to it in clause (10) of Section 2 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.

(2) No lessee of any land and no person to whom a right to collect the rent of any land has been leased before the coming into force of this Regulation including an ijaradar or a farmer of rent, shall be entitled to a ryotwari patta in respect of such land under this section.”

The case of the petitioners is that the lands in question are lying in A. Veeravaram Estate, which stood abolished and the petitioners or their ancestors, are in continuous possession of such lands from 1909 onwards.

Unfortunately, the orders passed by the Settlement Officers, the Director and the Commissioner of Settlements, which are impugned, in these writ petitions have not adverted to this aspect of the matter. It is, therefore, only appropriate that the impugned orders are liable to be set aside and the matters must be remitted for consideration afresh by the respondents, for grant of ryotwari patta.

Accordingly, both the writ petitions are disposed of.

Consequently, miscellaneous petitions, if any pending in these petitions shall stand closed. No order as to costs.

JUSTICE NOOTY RAMAMOHANA RAO

22.06.2015

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