

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

WRIT PETITION No.18172 of 2015

ORDER:

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This Writ Petition is filed challenging the action of respondents in making and raising plantations in the property belonging to petitioners of extent Ac.26.00 cents in Sy.Nos.112/8, 112/9, 112/10 to 112/14 in Biradawada village of Naidupeta Tahsil of Nellore District, of which petitioners claim to be holding ryotwari patta as per Government records and for possession thereof.

2. The petitioners 1 and 3 are the sons of one Velagapudi Venkata Krishna Rao (for short 'Krishna Rao'). Petitioner 2 is wife of 1st petitioner and petitioners 6 and 7 are 1st petitioner's sons. Petitioners 4 and 5 are the son and daughter of 3rd petitioner.

THE CONTENTIONS OF PETITIONERS

3. Petitioners contend that Beeramanu Khandriga, an Agraharam village, was under the erstwhile abolished Venkatagiri Estate and the ancestors of the petitioners and one Velagapudi Subba Rao purchased Ac.160.00 of land of that village under 2 registered sale deeds in 1944

and 1950. They contend that their vendors and themselves were in possession of the land long prior to the abolition of Venkatagiri Estate under A.P. (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948 (for short "the Act"); that Settlement Authorities conducted survey and settlement operations under the said Act; and on an application filed under Section 15 of the said Act, directed issuance of ryotwari pattas for the extent of Ac.160.00 to Velagapudi family members for a part of the said land only and refused to grant them for the balance. They contend that Krishna Rao and Venkata Subba Rao and others challenged this decision of the authorities in appeal A.S.No.178 of 1956 before the Estates Abolition Tribunal-cum-District Judge, Nellore; the said appeal was allowed by order dt.24-08-1957 setting aside the order of the Additional Settlement Officer, Nellore and it was directed that all the appellants (including Krishna Rao) be issued ryotwari pattas in respect of the entire extent of Beeramanu Khandriga village, Sullurpeta Taluk, Nellore District.

4. They contend that subsequent to the abolition of the estate, in the settlement and survey operations, the petitioners' ryotwari patta land of Ac.160.00 was merged in Sy.No.112 of Biradawada Village since Beeramanu

Khandriga was merged in Biradawada Revenue village; that when some of their family members insisted for implementation of the judgment of the Estates Abolition Tribunal in A.S.No.178 of 1957 by issuing ryotwari pattas and for making necessary entries in the village and District Revenue records, the Revenue authorities issued patta No.96 only for Ac.105.77 cents and also made corresponding entries in 10(1) village accounts which are reflected in the proceedings Rc.E-14/5464/2006 dt.22-12-2010 of the District Collector, Nellore addressed to the Tahsildar; and that in the said proceedings, the Collector directed the Tahsildar to implement the order of the Estates Abolition Tribunal with regard to the balance extent of Ac.54.23 cents and report by 30-12-2010.

5. It appears that a notification under Section 4 of the A.P. (Andhra Area) Forests Act, 1882 was issued by the Government of Andhra Pradesh proposing to constitute a Reserved Forest in the lands specified within the boundaries stated in the schedule of the notification G.O.Ms.No.1745 F.A. dt.31-08-1963 and appointing the Sub-Collector, Gudur as the Ex-Officio Forest Settlement Officer. This notification was published in the Gazette of Nellore District on 15-08-1963 and 02-09-1963 proposing to reserve Ac.2,878.00 of land in Rosanur Forest Block

including Sy.No.112 of Biradawada village.

6. Petitioners contend that subsequently Forest Settlement Officer issued a proclamation under Section 6 of the said Act inviting objections from the public and it was published in the District Gazette dt.02-09-1963; while these proceedings were pending, petitioners contend that G.O.Ms.No.2021 Food and Agriculture (For.I) Department dt.07-10-1970 was issued by the Government directing de-reservation (deletion from the proposal to reserve as forest land) of an extent of Ac.613.00 in Sy.No.112 of Biradawada block and another extent of land of Nelaballi village in Sy.No.3; and for placing the deleted land at the disposal of the Collector for rehabilitation of displaced persons displaced for the Sriharikota Rocket range. According to petitioners, this is reflected in Memo No.4422/For.I/70-19 dt.01-05-1972 of the Government of Andhra Pradesh, Food and Agriculture Department addressed to the Chief Conservator of Forests.

7. They contend that in view of the Government orders to delete the said extents, the Forest Settlement Officer submitted a draft notification to the District Collector through the District Forest Officer for publication under Section 15 of the A.P .Forests Act, 1967 only for an extent

of Ac.1713.70 cents instead of Ac.2878.00 excluding the above extent in Sy.No.112 of Biradawada village in Rosanur Forest Block.

8. Petitioners placed reliance on proceedings R.C.No.25/64-C dt.31-01-1974 addressed by the Forest Settlement Officer, Nellore to the Chief Conservator of Forests, Andhra Pradesh, Hyderabad corroborating the fact that Ac.613.00 in Sy.No.112 of Biradawada village was de-reserved. These proceedings record that the State Government in G.O.Ms.No.2521 F & A (For.I) Dept dt.7.1.1970 and Memo No.4422/For-I/70-19 dt.1.5.1972 ordered for de-reservation of 636 acres in S.No.3 of Nelabilli Village and 613 acres in S.No.112 of Biradawada Village and while doing so, placed this land at the disposal of the District Collector for rehabilitating displaced persons in Sriharikota in connection with the installation of East Coast Rocket range.

9. Therefore petitioners contend that the land in Sy.No.112 ceased to be forest land or part of reserved forest. Petitioners contend that final notification was issued under the A.P.Forest Act, 1967 by the Governor vide G.O.Ms.No.978 Forests and Village Development (Forest III Dept) dt.03-11-1976 and was published in Nellore District Gazette dt.02-03-1977 notifying only

Ac.1713.00 in Rosanur Reserve Forest excluding the area in Sy.No.112 of Biradavada village. They further contend that the area notified as reserve forest was also shown in a plan kept with the Chief Conservator of Forests and a copy of the said plan was filed as annexure P-6 to the Writ Petition. This plan indicates that the land in Sy.No.112 of extent Ac.493.50 cents forms eastern boundary of the Rosanur Reserved Forest block and does not fall within the said reserved forest block.

10. Petitioners allege that even otherwise the Estates Abolition Tribunal had treated the land as ryotwari and it had declared that petitioners are entitled for ryotwari pattas also.

11. Petitioners contend that in proceedings Rc.E14/5464/2006

dt.22-12-2010 of the District Collector, Nellore District addressed to the Tahsildar, Naidupeta, he instructed the latter that the order dt.24.8.1957 of the Estates Abolition Tribunal in A.S.No.178/1956 had been implemented only in respect of Ac.105.77 cents in 10(1) Account with patta No.96; for the balance of Ac.54.23 cents, it is still to be implemented in the fair adangal and other revenue records; that the petitioners have been in possession of the same; and the order of the Estates Abolition Tribunal

having become final, for the remaining extent of Ac.54.23 cents in Sy.No.112 of Biradawada village also the order of the Estates Abolition Tribunal be implemented in favour of petitioners in the Mandal and Village records after getting the sub-division record prepared by 30-12-2010.

12. They further rely upon the proceedings Rc.B.10/2009 dt.08-04-2011 of the Tahsildar FAC, Naidupeta Mandal addressed to the District Collector, Nellore District to implement the instructions of the District Collector in his letter dt.22-12-2010 for implementing the order of the Estates Abolition Tribunal in respect of Ac.54.23 cents in Sy.No.112 by issuing pattadar pass book and title deeds.

13. Petitioners contend that taking this into account, the Joint Collector-cum-Settlement Officer, Nellore in proceedings Rc.E.14/5464 dt.12-09-2011 passed orders to include the name of petitioners and other claimants as pattadars in respect of Ac.54.23 cents in Sy.No.112 in the following manner:

“21. ...

112/1	0.49
112/3	0.83
112/4	5.00
112/5	4.20
112/6	4.23
112/7	5.00
112/8	5.00
112/9	4.48

112/10	5.00
112/11	5.00
112/12	5.00
112/13	5.00
112/14	5.00

	<u>54.23</u> ”

According to the petitioners, this extent of Ac.54.23 cents covers the land of Ac.26.00 forming part of Sy.Nos.112/8, 112/9, 112/10 to 112/14 of Biradawada village (which is subject matter of this writ petition) and directs the Tahsildar to include the names of present pattadars, who obtained rights over the land through registered deeds, to be mutated and incorporated in the Adangal and 1-B register.

14. Petitioners contend that, notwithstanding the deletion of the entire extent of Sy.No.112 from the proposed reservation of Rosanur forest block and placing it at the disposal of the Revenue authorities even by 1972, long before the notification issued under Section 15 of the A.P. Forest Act, 1967, the Officials of the Forest Department either intentionally or mistakenly raised plantations in the extent of Ac.26.00 referred to above, which are not part of the Rosanur forest block and which are ryotwari patta lands of petitioners.

15. Petitioners contend that they got issued legal notice

dt.26-09-2011 to the District (Social Division) Forest Officer, Nellore and the Social Forest Range Officer, Naidupeta requesting them to remove the plantations unauthorizedly raised in their patta lands. According to petitioners, 3rd respondent sent a detailed report Rc.No.417/2012.D.M. dt.08-10-2012 to the Principal Chief Conservator of Forests, Hyderabad (2nd respondent) stating that the Forest Department had spent Rs.3,59,736/- for raising plantations in the above extent of Ac.26.00 of petitioners and assessing the value of standing forest produce at Rs.7,36,609/- and sought instructions. They also contend that 4th respondent had recommended to 3rd respondent to recover the costs of the plantations or the value of forest produce from petitioners and they assert that petitioners are willing to pay the same.

16. They contended that 3rd respondent forwarded it to the 2nd respondent by proceedings dt.03-11-2012 agreeing with the remarks of the 4th respondent and recommending that the value of the standing crop raised in the subject land, for which pattas had already been given, be accepted.

17. Thereafter according to petitioners, 2nd respondent directed a joint inspection to be made by Revenue and Forest Officials, and on 29-12-2012, a joint inspection report signed by the Revenue and Forest Officials, was submitted stating that the plantation is covered in Ac.26.00 in Sy.Nos.112/8 to 112/4, that the land is fit for cultivation and that there are no encroachments in the land. According to petitioners, there was further survey on 28-01-2013 and after the said survey, again 4th respondent informed 3rd respondent that the above extent of Ac.26.00 in Sy.No.112 is not part of reserve forest.

18. Petitioners contend that in spite of all this evidence that the above extent of Ac.26.00 in Sy.No.112 is not part of reserve forest of Rosanur forest block, the 2nd respondent addressed a letter dt.26-04-2014 to the District Collector alleging that the land had been recorded as 'Adavi Poramboke' in fair Adangal at some point of time, that the Supreme Court had ordered that any land recorded as 'Adavi poramboke' in Revenue records attracts the provisions of Forest (Conservation) Act, 1980, that ryotwari pattas could not have been issued in favour of petitioners' predecessors after the said Act came into force, and requesting a clarification as to how the classification from 'Adavi poramboke' to 'metta' was made

and how pattas were allotted.

19. According to petitioners, the District Collector again reviewed the entire record and replied vide proceedings Rc.No.E14/5464/2006 dt.03-09-2014 informing the 2nd respondent that there is no fresh patta given by the Joint Collector-cum-Settlement Officer, Nellore; he had merely implemented the order of the Estates Abolition Tribunal dt.24-08-1957 for the remaining extent of Ac.54.23 cents; that if the Forest Department had any objection regarding grant of settlement of patta in favour of petitioners' predecessors by the Estates Abolition Tribunal, they ought to have filed objections before it during the course of enquiry in appeal A.S.No.178 of 1956; and since they did not do so, the issue cannot be reopened again, particularly when the said Tribunal ordered that ryotwari pattas be issued in respect of the entire extent of Beeramanu Khandriga village. The District Collector also informed the 2nd respondent that the Forest (Conservation) Act was enacted in 1980, but the Estate Abolition Tribunal's decision was on 24-08-1957, at which time there was no Forest (Conservation) Act, 1980 and therefore the implementation of the Tribunal's order has no connection with the Forest (Conservation) Act, 1980. The District Collector further reiterated that the land in

Sy.No.112 of Biradawada village was excluded and the Eastern boundary of Rosanuru Reserve Forest from station Nos.43 to 47 runs along with the Western boundary of Sy.No.112 of Biradawada village.

20. Petitioners therefore contend that the land of Ac.26.00 in Sy.No.112 is not part of Rosanuru Reserve Forest block but lies outside it, and the several joint inspections conducted by the Forest Department and Revenue Department corroborate this fact. Also the other documentary evidence mentioned above proves beyond doubt that the Forest Department Officials are not entitled to continue to raise plantation in the petitioners' lands in spite of the fact that ryotwari pattas had been issued to them by the Revenue Department implementing the order of the Estates Abolition Tribunal in A.S.No.178 of 1956, that petitioners cannot be deprived of the use of the said land and therefore the respondents be directed to deliver possession of the said extent of land to petitioners.

Counter-affidavits of respondents :

21. The 4th respondent filed a Counter affidavit refuting the contentions of petitioners. He contended that while the petitioners stated that 160 acres of land of Beeramanu kandriga was purchased through registered sale deeds in

1944, 1950, the Joint Collector in his proceedings vide R.C.E.14/5464/06 dt.12.09.2011 had mentioned that the registered sale deeds pertained to the years 1945 and 1956 and that the survey numbers of the lands purchased are not mentioned in the sale deeds. He contends that petitioners should be put to strict proof of the same. He also contends that the Act came into force in 1948 and so the petitioners or their predecessors could not have purchased the land pertaining to the Estate in 1950/1956.

22. Although the respondents state that petitioners' application for patta under Section 15(1) of the 1956 Act was rejected by the Assistant Settlement Officer in MPSR.No.313/51 dt.17.09.1951, they admit that AS.No.178 of 1956 filed against the said order by Krishna Rao and others before the Estate Abolition Act Tribunal/District Judge, Nellore was allowed and the orders of the Assistant Settlement Officer were set aside. He however contends that this order is not based on merit or the records of the case but it was disposed of on the ground that the Government Pleader had not opposed the appeal and that this order were not implemented till 2011.

23. He contends that subsequent to the abolition of the Estates, lands in Venkatagiri Estate were excluded to form the Rosanur block of Forests which were notified under

Sections 4 and 14 of the Andhra Pradesh (Andhra Area) Forest Act, 1882 vide G.O.Ms.No.1745, F & A Department, dt.31.08.1963 and the notification was published in the Andhra Pradesh Gazette on 15.08.1963 and in the Nellore District Gazette dt.02.09.1963. He submitted that the land in Survey No.112 of Biradawada Village was included in the Rosanur Reserve Forest Block notified under Section 4 of the 1882 Act and that it was incumbent on the petitioners' predecessors' to make claims over the proposed land to be included in the Rosanur Block before the Forest Settlement Officer. He states that since there was no such claims, the Forest Settlement Officer did not exclude the land of Biradawada Village in favour any of the claimants under the Andhra Pradesh Forest Act. He also placed reliance on Section 7 of the Andhra Pradesh Forest Act, 1967 and contended that during the interval between the publication of a notification in the Andhra Pradesh Gazette and the Gazette under Section 4 and the date fixed by the notification under Section 15, no right can be acquired by any person over the land included in the notification under Section 4 except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or any person in whom such right was vested before the publication of notification under Section

4. He also contended that under Section 7 no patta can be granted by or on behalf of the Government.

24. While the respondents admit that in Government Memo No.4422/For.I/70-79 dt.01.05.1972 and Government Memo No.2021/F&A (For.I) dt.07.10.1970, the land in Sy.No.112 of Biradawada Village and other lands was ordered to be de-reserved for rehabilitation of displaced persons in Sriharikota, East Coast Rocket Range, they contend that the exclusion of Sy.No.112 under these memos was not in favour of petitioners, but it was done for a wholly different purpose and on totally different grounds. They alleged that petitioners are misleading the issue for their benefit, and therefore, the petitioners cannot be treated as rightful owners.

25. The 4th respondent alleges that the Social Forestry Division, Nellore had raised plantations since 1994-95 till 2008-09 in the extent of 26 acres in Sy.No.112 which is claimed by petitioners, and the petitioners had kept quiet for more than six decades. He referred to Section 13 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion to Ryotwari) Act, 1948 and contended that petitioners cannot seek any relief for grant of Ryotwari Pattas since the above lands were not in continuous possession and enjoyment of the petitioners or their

relatives and they were in possession and enjoyment of the Social Forestry Division, Nellore from 1994-95 till date.

26. He also contends that Sy.No.112 of extent Acs.613.52 cents was classified as Adavi Poramboke as per report of the Tahsildar, Naidupeta Mandal vide Rc.No.B10/2009 dt.08.04.2011 and Rc.No.B/480/2012, dt.28.08.2012; and that the Supreme Court India in its order dt.12.12.1996 in WP.No.202 of 1995 had held that the provisions of the Forest (Conservation) Act, 1980 for conservation of forests would apply to all forests area understood irrespective of the ownership or classification thereof; and therefore, any land regarded as Adavi Poramboke in the revenue records attracts the provisions of the Forest (Conservation) Act, 1980.

27. He contends that petitioners cannot be delivered possession of the land basing on the order of the Joint Collector and Additional District Magistrate, Nellore in Rc.No.E/14/5464/06 dt.12.09.2011 since these orders were passed after the enactment of the Forest (Conservation) Act, 1980. He contends that forests are national assets, that the department is responsible for creation of plantation in the subject land and increase the green cover, and the petitioners cannot claim any right over the land on the basis of orders passed under the

Act. He contends that since the lands are classified as Forest Poramboke in Government records they cannot be treated as non-forest lands, that Adavi Poramboke lands are community lands and so the Social Forestry Division had rightly raised plantations therein. Therefore, he contends that in public interest the claim of petitioners be rejected. He contends that once it is revealed that Section 112 is Adavi Poramboke, even the report of the Chief Conservator of Forests, Planning and Extension Circle, Guntur would have no relevance.

28. In para no.30, however, the respondents admit that Rosanur Reserve Forest was notified under Section 15 of the Andhra Pradesh Forest Act, 1967 vide G.O.Ms.No.978 Forest and Rural Development (For.III) dt.03.11.1976 and verification of the gazette notifications and the block map of Rosanuru Reserve Forest available in the office of the Divisional Forest Officer, Social Forestry Division, Nellore District as well as in the Forest Settlement records, reveals that land in Sy.No.112 of Biradawada Village was excluded from the said Forest Block and the eastern boundary of Rosanuru Reserve Forest from Station No.43 to 47 runs along the Western boundary of Sy.No.112 of Biradawada Village.

29. He thus contends that there is no question of

unauthorized raising or maintenance of plantations in the subject land and prays that the Writ Petition be dismissed.

THE POINT FOR CONSIDERATION

30. From the above contentions the point for consideration is:

“whether, having regard to the decision of the Estate Abolition Tribunal-cum-District Judge, Nellore dt.24-08-1957 in A.S.No.178 of 1956 declaring that the petitioner’s predecessor-in-title Krishna Rao and other appellants therein are entitled to ryotwari patta in respect of the entire extent of Biramanu Khandriga, to which the Government of Andhra Pradesh is a party, it is open to the respondents to contend that this land is a forest land and the petitioners are not entitled to possession thereof?”

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THE CONSIDERATION BY THE COURT

31. The A.P. (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948 was enacted for the repeal of the Permanent Settlement of 1802, the Acquisition of rights of landholders in permanently settled and certain Estates in the erstwhile State of Madras (which was succeeded by the State of Andhra Pradesh) in

relation to areas now covered by the present State of Andhra Pradesh and the introduction of the Ryotwari Settlement in such Estates. This statute is one of the statutes included in the IXth schedule to the Constitution of India and is protected by Article 31-B of the Constitution of India.

32. It provides for abolition of Estates as defined in Section 2(3) of the said Act including minor Inams (Post Settlement or Pre-Settlement) included in the assets of the Zamindari Estate at the Permanent Settlement of that Estate, all communal lands and porambores, other non-ryoti lands, waste lands, pasture lands, lanka lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries by issuing a notification under Section 3 thereof and their transfer and vesting in the Government, free from all encumbrances (Sub-Section (b) of Section 3). Sub-Section (c) of Section 3 states that all rights and interests created in or over the Estate before the notified date by the Principal or any other land holder, shall as against to the Government cease and determine. Sub-Section (d) provides that the Governments may, after removing any obstruction that may be offered, forthwith take possession of the Estate, and all accounts, registers, pattas,

muchilkas, maps, plans and other documents relating to that Estate which the Government may require for the administration thereof. But proviso to Section 3 (d) directs the Government not to dispossess any person of any land in the Estate in respect of which they consider that he is *prima facie* entitled to a ryotwari patta:

- (i) *If such person is a ryot, pending the decision of the Settlement Officer as to whether he is actually entitled to such patta;*
- (ii) *If such person is a landholder pending the decision of the Settlement Officer and the Tribunal on appeal, if any, to it as to whether he is actually entitled to such patta.*

33. While Section 11 states that ryots are entitled to ryotwari patta in respect of all ryoti lands, Sections 12 to 14 entitles landholders holding lands in Zamindari Estate, Inam Estate and under-tenure Estate to obtain ryotwari pattas. Section 15 provides for determination of lands in which a landholder is entitled to ryotwari patta under Sections 12 to 14 by the Settlement Officer and also provides for an appeal to an Estate Abolition Tribunal constituted under the Act. Importantly under clause (a) of sub-Section (2) of Section 15, the decision of the Estate Abolition Tribunal in an appeal against a decision of the Settlement Officer is given finality and the said decision of

the Tribunal is not liable to be questioned in any Court of law. The said provision is extracted for better understanding:

“15. Determination of lands in which the landholder is entitled to ryotwari patta under foregoing provisions:-

(1) The Settlement Officer shall examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta under Sections 12, 13 or 14, as the case may be, and decide in respect of which lands the claim should be allowed.

*(2) (a) Against a decision of the Settlement Officer under sub-section (1), the Government may, within one year from the date of the decision or if such decision was given before the commencement of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) (Andhra Pradesh Amendment) Act, 1957, within one year from such commencement, and any person aggrieved by such decision may, within two months from the date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal; **and its decision shall be final and not be liable to be questioned in any Court of law....”***

(emphasis supplied)

34. In the present case, petitioners contend that Krishna Rao has purchased land in Beeramanu Khandriga under registered document dt.17-04-1945 and 12-07-1956, that subsequently the petitioners purchased the remaining lands from their relatives and were paying land revenue to the Government and enjoying the lands with full rights. The said Beeramanu Khandriga was an under-tenure

village in the erstwhile abolished Venkatagiri Estate. According to the Divisional Forest Officer, Social Forestry Division, Nellore (in his letter Rc.No.539/2011/S1 dt.03-11-2012 addressed to the Chief Conservator of Forests, Planning and Extension Circle, Guntur) (Ex.P-13), the petitioner's predecessors had applied under Section 15 (1) of the Act for patta and it was rejected by the Assistant Settlement Officer in MRSR.313/51 dt.17-09-1951 initially.

35. But when Krishna Rao and others filed appeal A.S.No.178 of 1956 before the Estate Abolition Tribunal and District Judge, Nellore, the decision of the Additional Assistant Settlement Officer, Nellore under Section 15(1) of the Act was set aside on 24-08-1957 by the Tribunal in the above appeal and a direction was issued to the Government of Andhra Pradesh (which was the respondent therein) to issue ryotwari patta in respect of the entire extent of Beermanu Khandriga in Sullurpet Taluq, Nellore District. No doubt the said order came to be passed since the Government Pleader did not oppose the appeal. Notwithstanding the same, in view of clause (a) of sub-Section (2) of Section 15, the said decision has attained finality and is immune from challenge in any Court of law.

36. Therefore it is not open for respondents (including

the State of Andhra Pradesh which was a respondent in A.S.No.178 of 1956) to question the correctness of the same either on the ground that the sale deeds of the parties therein pertain to 1945 and 1956, or on the ground that Survey Numbers are not mentioned in the sale deeds or on the ground that the said order was not on merits and was only passed on the basis of concession of the Government Pleader. It is not open to the respondents to question the same by way of counter-affidavit in this Writ Petition collaterally without having questioned it by way of judicial review at the time when the said order was passed.

37. Out of the total extent of Ac.160.00 claimed by the petitioners through Krishna Rao and others, it is undisputed that for an extent of Ac.105.74 cents was implemented under patta No.96 of Biradawada village by the Revenue authorities and that the balance of Ac.54.26 cents belonging to Beeramanu Khandriga Agraharam was merged with Sy.No.112 of Biradawada village. These facts are stated in the proceedings Rc.B-10/2009 dt.08-04-2011 of the Tahsildar, Naidupet Mandal addressed to the District Collector, Nellore District and also in the proceedings Rc.E-14/5464/06 dt.12-09-2011 of the Joint Collector-cum-Settlement Officer, Nellore District.

38. In this Writ Petition we are concerned with an extent of Ac.26.00 forming part of Ac.54.26 cents in which plantations were raised by the Social Forestry Division and in respect of which petitioners seek recovery of possession from the respondents.

39. It may be that there was a proposal to constitute the Rossanur Forest Block as a Reserved Forest under the provisions of the A.P. (Andhra Area) Forest Act, 1882 vide G.O.Ms.No.1745 Food and Agriculture dt.31-08-1963 *including* the Sy.No.112 of Biradawada village, but the same Department issued Memo No.4422/For.I/70-19 dt.01-05-1972 *excluding* Ac.613.00 in Sy.No.112 of Biradawada along with other land from the proposed Reservation of Rossanur Reserve Forest. The Forest Settlement Officer, Nellore in this letter Rc.No.25/64-C dt.31-01-1974 addressed to the Chief Conservator of Forests, Andhra Pradesh specifically records that the *Government had ordered de-reservation of Ac.613.00 in Sy.No.112 of Biradawada village* along with other land for rehabilitation of displaced persons in Sriharikota in connection with installation of East Coast Rocket Range and that only an extent of Ac.1713.70 cents be notified under Section 15 of the A.P. Forests Act in the Rosanur Forest Block. Thus when the final notification was issued

under Section 15 of the A.P. Forests Act vide G.O.Ms.No.978 Forests and Village Development (Forest-III) dt.03-11-1976 (published in the Nellore District Gazette on 02-03-1977), this land in Sy.No.112 was clearly excluded from the Rosanur Forest Block. This can be seen from the sketch filed by the petitioners as Ex.P-6 (page 43 of the material papers filed along with the Writ Petition). In that sketch the land in Sy.No.112 is shown as the eastern boundary of the Rosanur Forest Block but not inside it. This fact is clearly admitted in para-30 of the counter-affidavit filed by the respondents by stating *“as verified from the gazette notification and block map of Rosanuru Reserve Forest as available in this office as well as in Forest Settlement Records, it is noticed that, Sy.No.112 of Biradawada (V) was excluded and the Eastern boundary to Rosanuru Reserve Forest from Station No.43 to 47 runs along the Western boundary of Sy.No.112 of Biradawada village.”* The location map filed along with the counter-affidavit by respondents also show that the land in Sy.No.112 of Biradawada village and in particular the subject land of Ac.26.00 falls outside the Rosanur Reserve Forest Block and not inside it.

40. The respondents have nowhere disputed the Memo No.4422/For.I/70-19 dt.01-05-1972 nor the proceedings

Rc.E.14/5464/06 dt.12-09-2011 of the Joint Collector-cum-Settlement Officer, Nellore District which clearly prove that the subject land in Sy.No.112 of Biradawada village was *never included* in the Rosanur Reserve Forest Block. Therefore their plea in para-6 of the counter that the petitioners did not make any claims over the land in Sy.No.112 to be included in the Rosanur Block before the Forest Settlement Officer or that such claims were not allowed by him or that he had not excluded lands of Biradawada village in favour of any of the petitioners is totally meaningless and un-understandable. Their plea that the exclusion of Sy.No.112 was not in favour of the petitioners but for a totally different purpose and on totally different grounds (for rehabilitation of displaced persons in Sriharikota in connection with installation of East Coast Rocket Range) also cannot be countenanced, because whatever be the reason for exclusion of land in Sy.No.112 of Biradawada village from the Rosanur Reserve Forest Block, the fact remains that it was excluded and never notified in the final notification under Section 15 of the A.P. Forest Act. Therefore it cannot be termed to be forest land.

41. Their further plea that the petitioners are not entitled to seek any relief for grant of ryotwari pattas since

petitioners were not in continuous possession and enjoyment of the subject land from 1994-95 is without any merit because the Estate Abolition Tribunal had already directed the 1st respondent in its order dt.24-08-1957 in A.S.No.178 of 1956 to grant ryotwari pattas to the petitioners' predecessors. This order has attained finality under Sec.15(2) (a) of the Act and therefore mere reliance on Section 13 of the Act cannot over-turn the said decision and come to the aid of the respondents. The Revenue authorities have accepted and implemented partly the decision of the estates Abolition Tribunal, but the Forest Department Officials, who are also part of the Government of Andhra Pradesh, which was a party to the said decision, are now trying to defeat by raising untenable pleas.

42. Although it is contended that the subject land is recorded as 'Adavi poramboke' in the Revenue Records at one point of time and therefore it attracts the provisions of Forest (Conservation) Act, 1980, the said plea cannot assist the respondents for the reason that long prior to the coming into force of the said Act, the Estate Abolition Tribunal has held that the subject land is a ryoti land and that Krishnarao and others are entitled to ryotwari patta and the said decision was given finality by sub-Section

2(a) of Section 15 of the A.P. (Andhra Area) Estate (Abolition and Conversion into Ryotwari) Act, 1948.

43. The District Collector, Nellore in his letter Rc.E14/5464/2006 dt.03-09-2014 addressed to the Principal Chief Conservator of Forests has correctly held that the petitioners are seeking implementation of the decision of the Estate Abolition Tribunal granted on 24-08-1957 in the above appeal, that the Forest (Conservation) Act, 1980 does not come in the way of the implementation of the said decision since it came into operation long after the said decision was rendered. Since it is not disputed that land in Sy. No.112 of Biradawada village was not included in the final notification issued under Section 15 of the AP Forest Act, 1967 also, it is not open to the respondents to contend that it is forest land merely because they raised some plantation therein.

44. In fact the Joint Collector –cum- Settlement Officer, Nellore in his proceedings Rc.E.14/5464/06 dt.12-09-2011 has stated that although the decision of the Estate Abolition Tribunal in A.S.No.178 of 1956 was not implemented in the village records as patta land, it is under cultivation by the petitioners and their family members who are growing plantations of mango, casurina and Eucalyptus and that the entire extent was under their

cultivation, possession and also enjoyment. He also recorded that the Tahsildar, Naidupeta as well as elders in the village of Biradawada have corroborated the fact that the land is in possession of the petitioner and his family members and that he himself personally inspected the lands on 12-11-2010. In his letter dt.08-10-2012 addressed to the Principal Chief Conservator of Forests, the Chief Conservator of Forests himself recorded that a joint inspection of Ac.54.23 cts including the subject land of Ac.26.00 cts was done by the officials of Revenue and Forest Departments, that boundaries were fixed and that the M.R.O, Naidupet vide proceedings Rc.No.480/2012 dt.28-08-2012 addressed to the FRO (SF), Naidupet had informed that the land is classified as "gayalu" in village records (fair adangal), although he noted that there were plantations raised in this Ac.26.00 cts in the past and he suggested that compensation be collected from the petitioners for the value of forest produce estimated by the department since the petitioners are owners of the said land.

45. No doubt in **T.N. Godavarman Thirumalpad Vs. Union of India**^[1] **T.N. Godavarman Thirumalpad** (1 supra), the Supreme Court had observed that the term '*forest land*' occurring in Section 2 of the Forest

(Conservation) Act, 1980, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as 'forest' in the government record irrespective of the ownership. But this cannot be stretched to a situation where the State Government itself had *excluded* from the Rosanooru Forest Block, the land in Sy. No.112 of Biradawada village in the Final Notification issued under Section 15 of the AP Forest Act, 1967 vide G.O.Ms.No.978 Forest and Village Development (Forest.III) dt.03-11-1976 published in the Nellore District Gazette on 02-03-1977 and there was a decision under Section 15 of the AP (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 declaring the land as ryoti land implying that it is not a forest land which decision is given finality by Section 15 (2) (a) of the said Act.

46. In **N.Rajagopala Reddy Vs. District Collector**^[2], a learned Single Judge of this Court had occasion to consider a similar situation where after a Forest Settlement Officer excluded the petitioner's land from the forest block of Mittur on the ground that they were patta lands, the State Government did not implement the said order. The petitioner had questioned the non-implementation of the same in W.P.No.7791 of 1984 and this Court had directed the Government to delete the

lands in question from the notification constituting a reserved forest of Mittur. This decision was also not implemented. So petitioner was forced to file another Writ Petition. The State relied upon the Forest Conservation Act, 1980 and contended that without prior approval of the Central Government, the State Government cannot exclude the land and that was why the order of this Court in the Writ Petition No.7791 of 1984 was not implemented. This Court rejected the said submission stating that the State Government was expected to follow a procedure to constitute a reserve forest, that the Forest Settlement Officer himself had held in favour of the petitioner and directed deletion of his land after entertaining the objections of the petitioner to the notification issued under the AP Forest Act, 1967 and the State cannot contend that the Forest (Conservation) Act applies to all forest lands and not necessarily only to reserve forest lands, and the settlement officer's decision that the petitioner's lands are agricultural lands cannot be re-agitated by the State. This judgment applies to the present case also in view of the similarity of the facts.

47. Therefore in my opinion, once the Estates Abolition Tribunal had declared the extent of Ac160 in Sy.No.112 to be ryoti land, and the State of A.P is a party to it, it is

bound by it and cannot seek to reopen it. More so when the State itself had deleted Ac.613 in Sy.NO.112 of Biradawada Village from the Rossanur Forest Block final notification way back in 1970 and 1973.

48. Accordingly, the Writ Petition is allowed and the respondents are directed to deliver possession of the extent of Ac.26.00 cts in Sy. Nos.112/8, 112/9 and 112/10 to 112/14 to the petitioners subject to the petitioners' paying to the respondents compensation for the plantations raised by the respondents therein as assessed by the 3rd respondent within four weeks from the date of receipt of a copy of this order. The respondents shall also pay costs of Rs.5,000/- (Rupees Five Thousand only) to the petitioners within four weeks from the date of receipt of a copy of this order. No costs.

49. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 31-12-2015

Vsv/Ndr/*

[\[1\]](#) 1997(2) SCC 267

[\[2\]](#) 1999 (5) ALD 586