

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.15671 of 2013

BETWEEN

Smt. D. Jagat Sarvam and another.

... PETITIONERS

AND

The Govt. of A.P, rep. by its Principal Secretary, Revenue Department,
Secretariat, Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 29.02.2016

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

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ORDER:

Petitioners challenge the impugned order of the Chief Commissioner of Land Administration in proceedings No.P1/1315/1999 dated 02.03.2013 and consequently, seeks a declaration that the ryotwari patta granted to the husband of the sixth respondent in Sy.No.91/4 admeasuring Ac.3.32 cents in Damineedu village, Tirupati Rural Mandal, Chittoor District as illegal and invalid.

2. The present case has a chequered history, which maybe noticed as under:

(a) Damineedu village was notified under Section 1(4) of the Estates Abolition Act, 1948 (for short 'the Act'). According to the petitioner, the land, in question, is a communal land, locally known as Gujjareddy Gunta and that the communal lands vests in the State under Section 3(b) of the Act whereas contesting respondents 6 to 9 claim that the said lands are ryoti lands and settlement patta was granted to their predecessor-in-interest, one Krishna Murthy, after due scrutiny. It would, thus, be noticed that the petitioners are not rival claimants, who seek patta of the said land, but they are only objectors to the patta granted in favour of Krishna Murthy by the Settlement Officer.

(b) While petitioners claim to be the owner of Sy.No.91/3 and not anyway concerned with the said land bearing Sy.No.91/4, but questions the settlement patta granted in favour of Krishna Murthy, predecessor of respondents (husband of sixth respondent) as early as on 13.04.1982.

(c) It appears that there were serious allegation and complaints against the then Settlement Officer and on the allegation that he granted large scale irregular and illegal pattas, the Government issue a memo No.395/J2/84-2 dated 28.05.1984, relevant portion whereof is as follows:

“... The Government have, therefore, issued instructions to TUDA and Municipal Authorities of Tirupati not to take cognizance of the pattas issued by the above Settlement Officer, unless confirmed by the District Collector.”

(d) In pursuance of the said memo, the Director of Settlements has taken *suo motu* enquiry on 19.06.1984 against 95 pattas granted by the said Settlement Officer wherein the patta, in question, was also under enquiry at SI.No.32. The said Krishna Murthy filed an implead petition, which was allowed by the Director of Settlements on 30.04.1990 and also allowed the *suo motu* revision No.294/84-H1 dated 30.04.1990 setting aside the ryotwari patta granted to Krishna Murthy. Krishna Murthy questioned the said order before the Commissioner of Appeals in Revision No.P3/1315/1999, which was allowed by the Commissioner on 22.03.1999 remanding the matter to the Director of Settlements. After the remand, the Director of Settlements once again examined the matter afresh and by order dated 09.06.1999 in RP.No.19/1994 dropped the *suo motu* proceedings and confirmed the ryotwari patta granted to Krishna Murthy. Questioning that, revision petition No.P1/1315/1999 was filed by the Mandal Revenue Officer, which was dismissed by the Commissioner on 15.07.2000.

(e) Petitioners questioned the said order of the Commissioner in WP.No.19810 of 2000 before this Court. The said writ petition was allowed on 09.09.2009 by setting aside the order of the Commissioner dated 15.07.2000 and remanding the matter to the Commissioner to conduct fresh enquiry. The operative portion of the order is as follows:

“Accordingly, the writ petition is allowed, and the impugned order in CCLA’S Ref.No.P3/1315/99, dated 15.07.2000, is set aside, and the matter is remitted to the second respondent, namely, the Commissioner (Appeals), Office of the Commissioner of Land Administration, Andhra Pradesh, Hyderabad, with a direction to conduct fresh enquiry and pass necessary orders. Pending such consideration of appeal, the Tahasildar shall take necessary steps to prevent any change of land use and respondent Nos.6, 7, 9 and 10 shall not create any third party interest. There shall be no order as to costs.”

(f) Thereafter, the Commissioner of Appeals heard the parties afresh, examined the record and passed the impugned order dated 02.03.2013 dismissing the revision petition upholding the patta granted in favour of Krishna Murthy. The said impugned order is questioned not by the Government but by the petitioners in this writ petition.

3. In this writ petition, Mr. V. Jagapathi, learned counsel for the petitioners, vehemently contended that the land, in question, bearing Sy.No.91/4 is communal land, as the name itself suggests i.e. Gujjareddy Gunta. Learned counsel submits that it is a water body and petitioner is utilizing the same as irrigation source for their land in Sy.No.91/3. Learned counsel submits that the said lands, being communal lands, could not have been treated as ryoti lands and no settlement patta, as such, could have been granted to Krishna Murthy.

4. During the course of hearing, learned counsel placed strong reliance upon an order passed by this Court in WP.No.19810 of 2000 as well as on the counter affidavit filed by the State in the said writ petition. Learned counsel contended that there is abundant material to show from the counter affidavit of the State itself that the lands, in question, are communal lands and the grant of patta to Krishna Murthy is, in any case, not justified. Learned counsel submits that, unfortunately, the Commissioner under the impugned order has not kept in mind the observations of this Court in the said writ petition wherein strong reliance is placed upon the counter affidavit filed by the Government that the land, in question, is kunta poramboke.

Learned counsel laid great emphasis on the observations of this Court in the penultimate para of the judgment, quoted below:

“... Therefore, this matter has to be re-enquired into by the Commissioner, if necessary, by getting the lands inspected with reference to the old village accounts/village records. To enable such a thorough enquiry, this Court is of the considered opinion that the matter should be remanded to the second respondent.”

5. Learned counsel submits that a look at the impugned order, passed by the Commissioner, would show that the Commissioner has neither inspected the lands nor has inspected the old village accounts/village records and merely confirmed the patta in favour of Krishna Murthy based on the orders of the Settlement Officer. Learned counsel, therefore, submits that the directions of this Court are not followed by the Commissioner. Hence, the impugned order is vitiated.

6. Mr. Sri Raghu Ram, learned senior counsel appearing for respondents 6 to 9, contended that the petitioners are merely objectors and has also further shown vide para 3 of the counter affidavit that one Gujjareddy was the pattadar of the subject lands and he had mortgaged the same under registered mortgage deed dated 12.01.1914. Further, his son V. Govind Reddy had further mortgaged the land in favour of one Subbaiah Shetty under registered document dated 09.05.1940. He had further mortgaged it for the second time on 21.01.1941 under another registered document in favour of one K.C.N. Kuppuswamy. Later, all the three mortgages were discharged. Subsequently, Govind Reddy and his wife gifted the lands in favour of his brother's son Venkateswara Reddy on 05.03.1966 and the said Venkateswara Reddy sold the said lands in favour of Krishna Murthy, husband of the sixth respondent, under an agreement of sale dated 14.10.1981 by delivering possession. The husband of the sixth respondent sold Ac.0.25 cents to Balachandraiah and Ac.0.05 cents to Smt. Subadramma and all the three continued in possession, enjoyment and cultivated the respective subject land thereby establishing possession for about 100 years. Subsequently, Krishna Murthy, made an application under Section 11(a) of the Act along with an application for condonation of delay and the same was duly considered, delay was condoned and patta was granted in his favour. It is also stated that grant of patta was subject matter of *suo motu* enquiry by the Director of Settlements and the same was set aside under order dated 30.04.1990. The said order was set aside on revision by

the said Krishna Murthy before the Commissioner and by order of the Commissioner dated 22.03.1994, the proceedings were remanded for fresh consideration before the Director of Settlements. Learned senior counsel points out the crucial event, which was not mentioned by the petitioner in the affidavit, that, thereafter, the Director of Settlements dropped the *suo motu* enquiry and confirmed the ryotwari patta by order dated 09.06.1999.

7. Learned senior counsel submits that, thereafter, the petitioner never questioned the order of the Settlement Officer but it is the Mandal Revenue Officer, who filed a revision before the Commissioner. That revision came to be dismissed by the Commissioner on 15.07.2000, which was questioned by the petitioner in WP.No.19810 of 2000. After the said writ petition was allowed on 09.09.2009 and remand was ordered before the Commissioner, under the impugned order, the Commissioner examined the matter afresh and dismissed the revision. Learned senior counsel submits that, therefore, the settlement patta granted in favour of Krishna Murthy was thrice confirmed viz. once by the Director of Settlement and on two occasions by the Commissioner. Learned senior counsel also points out that the Settlement Officer had examined the counter of the Tahsildar, Chandragiri before granting settlement patta to Krishna Murthy.

It is also asserted in the counter affidavit that there is absolutely no record and not even a clue that the subject lands are classified as minor or major irrigation source and having any registered ayacut under it. On the contrary, it is stated that for over 100 years, the predecessors of respondents 6 to 9 have been cultivating and have been in enjoyment of the lands and even mortgaged the lands under the registered documents at least on three occasions and the entire record from 1914 onwards was duly examined by the Director of Settlements while dismissing the *suo motu* revision. Learned senior counsel, therefore, submits that petitioners are unnecessarily prolonging a vexatious litigation against respondents 6 to 9 for no reason, particularly, as the lands of the petitioner are entirely different.

8. Respondents 1 to 5 filed counter affidavit reiterating that the said lands are kunta poramboke. The respondents also contended that the last date for filing claim petition under Section 11(a) of the Act was 08.03.1974 and no claim petition, thereafter, could have been considered. It is contended that the said Krishna Murthy, predecessor of respondents 6 to 9, filed claim petition after 8 years thereafter, which could not have been condoned. It is also contended that the said land is classified as water course poramboke and there are no traces of cultivation of the land and hence, it is not a ryotwari land.

To the extent of various documents evidencing mortgage, it is contended that though there are transactions, as claimed, there is no specific mention of the present land and no mention of pymaish number in the said documents. It is stated that even if there are registered documents, they do not confer any right or title.

9. Learned Government Pleader submits that the orders in favour of Krishna Murthy were passed by the then Settlement Officer, A.D.V. Reddy, against whom the Government has already issued a memo. Learned Government Pleader, further, submits that the land, in question, is a water body and as such, is not a ryoti land and that the impugned order is passed without taking into consideration the revenue record.

10. It is crucial to notice two glaring facts viz. (1) petitioner is an objector and not a claimant for the ryotwari patta for the land in question and (2) that the impugned order of the Commissioner had dismissed the revision by the State and the State has never questioned the said order.

11. The contentions of the petitioner have to be examined in the light of the aforesaid facts. It is also essential to notice the order of the Director of Settlements dated 09.06.1999 whereunder he re-examined the *suo motu* proceedings and found on scrutiny that the

Settlement Officer granted ryotwari patta to Krishna Murthy after observing that the schedule land has been in continuous possession of the predecessors of respondents 6 to 9 long prior to 1914 onwards and that the land claimed is a ryotwari land. The earlier *suo motu* revision was allowed by the Director of Settlements on 30.04.1990 on the basis that the Settlement Officer had granted patta without examining the pre-abolition record and without verifying whether the schedule land is ryoti or non-ryoti land and whether the claimant was in possession prior to 01.07.1945. On a revision against the order,

the Commissioner of Survey and Settlements under his order dated 22.03.1994 remanded the matter for fresh consideration.

The Director also noticed Exs.P1 to P6, produced before the Settlement Officer, viz. mortgage deed dated 12.01.1914 (Ex.P2);

further discharge mortgage deed No.670/1940 dated 09.05.1940 (Ex.P1);

further mortgage deed No.138/1944 dated 24.01.1944 (Ex.P3); Govind

Reddy S/o. Gujjareddy further mortgaged to Kuppuswamy Pillai on 05.03.1966 (Ex.P4) and had gifted an extent of Ac.0.96 cents in favour of his brother's son Venkateswara Reddy further under possessory agreement dated 14.10.1981 (Ex.P5).

The said Venkateswara Reddy sold his share to Krishna Murthy, thereby establishing possession from 1914 onwards till the notified date of estate i.e. 25.09.1945.

12. The Director of Settlements has also examined the counter filed by the then Tahsildar, Chandragiri before the Settlement Officer wherein it is stated that it is locally known as Gujjareddy Gunta but there was no ayacut and it is under occupation of the claimant.

The Tahsildar also stated that the schedule land is surrounded by patta lands on all sides and the lands do not have any communal purpose of the village and the land is ryoti in nature and no Government interest is involved in the matter. The Director of Settlements, further, found that the Gujjareddy was

the original pattadar and mere mention of kunta poramboke in the subsequent survey operations appears to be erroneous. The Director of Settlements has, further, quoted the mortgage deed dated 12.01.1994 wherein the pattadar claims that the land, in question, is his ancestral land, as patta land and therefore, the Director of Settlements found that the petitioners herein are no way concerned with lands and confirmed the patta in favour of Krishna Murthy. The said order was confirmed by the Commissioner earlier on 15.07.2000.

13. Since the revisional jurisdiction of the Commissioner, which was subject matter of the aforesaid order dated 15.07.2000, was invoked by the Mandal Revenue Officer, it is surprising that the MRO never questioned the said order. However, at the instance of the petitioners, WP.No.19810 of 2000 was allowed, apparently, without noticing that the Government had never questioned the order. Further, under the impugned order, the Commission has, in para 10 of the order, referred to the findings of the Director of Settlements, as noted above and has noticed from the record before the Settlement Officer that the patta was granted, after duly condoning the delay, after taking into consideration the counter filed by the Tahsildar, Chandragiri. Hence, as the Director of Settlements has already examined the pre-abolition records, the grant of patta in favour of Krishna Murthy was found to be rightly confirmed by the Director of Settlements.

14. One of the contentions of the learned counsel for the petitioner that the claim petition could not have been considered after 8 years of delay is also liable to be rejected, as the order of the Settlement Officer itself records in the opening para that the delay in filing the claim petition was condoned. Further, as rightly pointed out by the learned senior counsel for respondents 6 to 9 that the Act itself, being legislation for abolishing estates and regulating the grant of ryotwari patta, the mechanism under the Act for grant of ryotwari patta cannot be construed, in such a manner, as to deny ryotwari patta to eligible pattadars.

Learned senior counsel, therefore, submits that the present proceedings are persisted by the petitioner to deny rightful claim of respondents 6 to 9 and petitioner himself have nothing to gain out of the subject lands.

Considering all the above aspects, I do not find any merits in the writ petition and the same is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

February 29, 2016
DSK