

HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.9647 OF 1997

ORDER: (Per Hon'ble Sri Justice S.V.Bhatt)

The question arises under A. P. (Scheduled Areas) Ryotwari *Settlement* Regulation II of 1970.

On 20th March, 1980, the 3rd respondent in the *suo motu* enquiry taken up under Section 9 of A.P. (Scheduled Areas) *Ryotwari Settlements Regulation II* of 1970, accepted the claim of 1st petitioner and issued ryotwari patta in his favour. Respondent No.4 carried the matter in appeal before 2nd respondent and the same is taken on File as D.Dis. 933/90 (G.I) and on 27.03.1993 the appeal was dismissed as time barred. The 4th respondent filed further appeal before the 1st respondent and through order dated 23.11.1996, the appeal filed by 4th respondent was allowed and the matter remanded to 3rd respondent for fresh disposal. The remand order is based on the following findings.

“ The point for consideration is whether the appellant has made out a case for interference with the impugned orders. The merits of the main case had to be looked into the extent they have a direct bearing on the limitation aspect. Admittedly, the name of Gajjala Lakshmaiah the fore-father of the appellant figures as pattadar in the Amararam account against the suit land. Thus when an enquiry is held U/s.9, the S.O. ought to have issued notice to him/his successors/L.Rs especially since the sale deeds are subsequent to 1/59 and Gajjala Arjuna and his four brothers had raised claims for the suit land. But it is seen from S.O/s file that no notice was issued to them. The alleged agreement of sale dt.5.11.1953 is being denied by the appellant and was not properly proved before the S.O. nor referred to in the sale deeds under which the respondent 2 is claiming the land. Thus an elaborate enquiry with adducing of evidence by both claimants and perusal of all relevant records is essential to arrive at a proper conclusion.

In these circumstances, this is a fit case for cancelling the patta granted to the Second Respondent by S.O. Bhadrachalam vide his orders dated 20.3.80 in S.R.No.18/34/77 and remanding the matter to him for fresh disposal after due notice to both sides. This is being done in the interest of natural justice because (1) no opportunity was given to the appellant by S.O. and (2) his claim for the land specifically referred to in the S.O. noting dt.20.3.80 appears not to have been disposed of as per the regulation by the S.O.”

Hence, the writ petition.

Learned counsel for the petitioner raised several questions on fact and law and contended that the very premise on which the remand is ordered is unsustainable and the order of 2nd respondent dated 27.03.1993 ought to be maintained by this Court by allowing the writ petition.

Learned Government Pleader contends that the 1st respondent after examining the record, *prima facie* found that while granting ryotwari patta to petitioner proper procedure was

not followed and the principals of natural justice were violated. Petitioner challenges an order of remand and all issues including the scope and jurisdiction of enquiry on all the contested issues between the parties can be gone into by the 3rd respondent.

We have perused the order under challenge and also the material relied upon by the petitioner in support of his contentions. As the writ petition is filed against the order of remand by 1st respondent to the primary authority, we see a few tentative findings recorded by the 1st respondent would likely to affect free and fair adjudication by the 3rd respondent. Therefore, to the limited extent of setting aside the adverse findings recorded against the writ petitioner in the order dated 23.11.1996, we allow the writ petition to that limited extent, and direct the 3rd respondent to consider the case afresh in accordance with law after affording fair and reasonable opportunity to the parties. The questions of law and fact are left open for consideration by the primary authority uninfluenced by the findings recorded in this order or by the 1st respondent.

Writ Petition is allowed in part and remanded to 3rd respondent for disposal as indicated above.

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

_____ **DILIP B.BHOSALE, ACJ**

_____ **S.V.BHATT,J**
Date:19.01.2016
Stp