

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 13136 OF 2004

ORDER:

This Writ Petition is filed to declare the order passed by the 1st respondent in L1/732/2000 dated 17-12-2003 as illegal and contrary to law, direct respondent Nos. 1 to 3 to grant ryotwari patta in favour of the petitioner for an extent of Ac. 5.00 cents in R.S.No. 32/2 situated at Chinabandirevu Village, Dummugudem Mandal, Khammam District, and not to dispossess the petitioner from the schedule land.

The petitioner's ancestors were allegedly in occupation of the land of an extent of Ac. 5.00 cents in R.S.No. 32/2 situated at Chinabandirevu Village, Dummugudem Mandal, Khammam District, since 1940. Thereafter, the petitioner continued in possession and enjoyment of the property. The village Chinabandirevu was part of Bhadrachalam Zamin Estate which was notified and taken over by Government of Andhra Pradesh on 10-11-1952 as per the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act of 1948').

In 1971, survey and settlement operations were commenced at Bhadrachalam Division. During the operations, the petitioner, claiming ryotwari patta for the said land, filed requisition before the 3rd respondent under the provisions of the Andhra Pradesh Scheduled Areas Ryotwari Settlement Regulation, 1970 (A.P. Regulation No. II of 1970). The 3rd respondent rejected to issue ryotwari patta on the ground that he was not granted patta by the estate holder, his occupation of the above land is not lawful and it is only an encroachment after the estate was taken over by Government of Andhra Pradesh by order dated 26-05-1976 in case No. 2326. Aggrieved by the order passed by the 3rd respondent, the petitioner preferred an appeal before the 2nd respondent on various grounds; one among is that he encroached the property after 10-11-1952 *i.e.* after the date

of notification under Regulation No. II of 1970 and that he is entitled to claim ryotwari patta under Section 7 (a) of the said regulation. Though the petitioner proved his lawful possession for a continuous period of 8 years before the notified date of Regulation No. 2 of 1970, the 2nd respondent negated his contention and dismissed the appeal. Aggrieved thereby, the petitioner preferred second appeal before the 1st respondent in E1/732/2000. The 1st respondent also dismissed the appeal on the same ground. The order passed by the 1st respondent is now challenged in this Writ Petition on the ground that his ancestors occupied the land in or about 1940 and, after death of the father of the petitioner, he has been in continuous possession and enjoyment of the property till date without any interruption by paying land revenue to Government but respondent Nos. 1 to 3 did not consider the material on record. As per the first proviso to Section 7 of Regulation No. II of 1970, the person, who is entitled to ryotwari patta under the Act of 1948, is entitled to ryotwari patta under the said Regulation. The proviso to Section 11 of the Act of 1948 contemplates limitation in respect of a person being inducted into possession prior to 01-07-1945 as being alone could be eligible for grant of ryotwari patta and the same condition was incorporated to the first proviso of Section 7 of Regulation No. II of 1970 which deals with grant of ryotwari patta in favour of the persons who were not lawfully inducted into possession by estate holder and continued in possession subsequent to notified date of estate. Consequent to the notification of taking over the estate, the entire estate vests on Government, free from all encumbrances and all rights and interests of the estate holder are ceased to exist and determined. Bhadrachalam estate was taken over in pursuance of the notification dated 10-11-1952. Thus, the estate holder ceased to have any right or interest in the property. The 3rd respondent held that the petitioner encroached the property after 10-11-1952 and the same was confirmed by respondent Nos. 2 and 1. Even if the finding of the 3rd respondent is accepted, the petitioner is entitled to claim ryotwari

patta for the land under Regulation No. II of 1970 being in possession and enjoyment of the property after taking over Bhadrachalam estate by Government and before commencement of Regulation No. II of 1970 *i.e.* 01-07-1971 but the authorities erroneously dismissed the petition and the appeals thereto without following the law laid down by this Court in ***N.Challaiah Vs. The Commissioner of Survey, Settlement & Land Records***^[1]; and ***Gone Venkaiah Vs. The Mandal Revenue Officer, Dummagudem Mandal, Khammam District***^[2]. As such, the authorities committed an error in declining to grant patta in favour of the petitioner and prayed to allow the Writ Petition issuing direction as stated above.

The 4th respondent filed counter affidavit denying the allegations made in the affidavit while supporting the order passed by the respondent Nos. 1 to 3. It is the specific case of the respondents that the petitioner occupied the land about 8 years prior to filing of the petition and in possession of the same. Therefore, respondent Nos. 1 to 3, having found that the petitioner encroached the property just 8 years prior to commencement of Regulation No. II of 1970, held that the petitioner is disentitled to claim ryotwari patta for the extent of Ac. 5.00 cents in R.S.No. 32/2 situated at Chinabandirevu Village, Dummugudem Mandal, Khammam District. Since the petitioner failed to establish his long continuous possession over schedule property, the respondents denied the alleged possession of the petitioner and his ancestors since 1940 and, therefore, the petitioner is not entitled to claim ryotwari patta. It is specifically contended that the petitioner is a non-tribal and, therefore, not eligible to claim or retain his possession under Board Standing Orders. Even according to Regulation No. II of 1970, the petitioner has to satisfy certain requirements to claim ryotwari patta but the petitioner miserably failed to establish his long continuous possession to claim ryotwari patta; consequently, not entitled to take shelter under any other law after rejecting the claim of the petitioner by

various authorities under the Act of 1948 and finally prayed to dismiss the petition.

It is the contention of learned counsel for the petitioner that since the petitioner is in possession and enjoyment of the property even prior to commencement of Regulation No. II of 1970, though he is a non-tribal, he is entitled to claim patta; heavily relied on **N.Challaiah** (1st *supra*) and **Gone Venkaiah** (2nd *supra*) and prayed to quash the order passed by the 1st respondent directing the respondents to grant patta in favour of the petitioner.

Per contra, learned Government Pleader for Revenue (T.S.) would contend that mere possession for a period of 8 years would not enable the petitioner to claim ryotwari patta after the advent of Regulation No. II of 1970 and the abolition of Bhadrachalam estate. Added to that, the petitioner is a non-tribal and, therefore, not entitled to claim patta for the land or re-open his possession of the property. Thereby, the petitioner is disentitled to claim any right over the property situated in tribal area. In those circumstances, the 1st respondent confirmed the order passed by the 2nd respondent. Therefore, this Court, while exercising jurisdiction of judicial review under Article 226 of the Constitution of India, need not interfere with the finding recorded by the respondents since there is no violation of rule or provision in any statute and prayed to dismiss the petition.

Undisputedly, the property is situated in scheduled area as defined under Regulation No. II of 1970 which was a part of erstwhile Bhadrachalam estate taken over by Government by notification dated 10-11-1952 as per the provisions of the Act of 1948. Since the petitioner established his possession from 1940, he is entitled to claim patta under Section 7 (1) of Regulation No. II of 1970 and placed reliance on the order passed by the 3rd respondent, wherein the 3rd respondent, in the penultimate part of his order dated 26-05-1976, concluded that record of entry shows that the petitioner

was not granted any patta by the estate holder, his occupation of schedule land is not lawful and it is by way of encroachment after the estate was taken over by Government. Basing on the above finding recorded by the 3rd respondent, confirmed by respondent Nos. 2 and 1, it is contended that when the petitioner was found in possession of the property prior to Regulation No. II of 1970 and his possession is only as an encroacher, the petitioner is not entitled to claim ryotwari patta. The 1st respondent, by his order, concluded that the petitioner failed to establish his title over schedule property as required under Section 7 (1) of Regulation No. II of 1970 and, at the same time, made an observation that F.L.R. and field inspection report of the 3rd respondent clearly show that the land is classified as 2 (A) land (encroachments) and that the petitioner is an encroacher subsequent to notified date of estate *i.e.* 10-11-1952. The 1st respondent also confirmed the finding of the 3rd respondent.

Even according to the respondents, the petitioner is an encroacher after the advent of the Act of 1948. According to the respondents, the petitioner is in possession of the property being a trespasser whose possession is unlawful since estate holder did not grant any patta and no proof in support of it is filed. Apart from that, it is never the case of the petitioner that any patta was granted by estate holder in his favour or in favour of his predecessor who was in lawful possession. In such case, an encroacher is not entitled to claim ryotwari patta for any extent of land in agency area being a non-tribal.

As seen from the order of the 2nd respondent, the petitioner produced land revenue receipts evidencing payment of land revenue for the faslis 1370 to 133384 *i.e.* corresponding to 1960 to 1974 but the estate was admittedly taken over on 10-11-1952. Even if the land revenue receipts are accepted, his possession is only after 1959 *i.e.* much later to taking over of Bhadrachalam estate. Strangely, the petitioner filed petition before the 3rd

respondent in the year 1976 *i.e.* subsequent to commencement of Regulation No. II of 1970. Undisputedly, the petitioner or his predecessors were not granted any patta by estate holder or land holder. Even if the petitioner or his predecessors were in possession, that would not confer any title on them. Accepting the contention that the petitioner is in possession from 1960 onwards in view of payment of land revenue to Government, such possession is not sufficient. Even otherwise, land revenue receipts did not disclose name of the village and survey number of the land. In those circumstances, it is difficult to connect those receipts to the property which the petitioner is claiming. The petitioner also failed to produce any record to trace his possession either actual or constructive prior to abolition of Bhadrachalam estate by virtue of notification dated 10-11-1952.

It is the contention of the petitioner that provisions of the Act of 1948 are applicable to Regulation No. II of 1970 and, on the strength of Section 7 (1) (a) of Regulation No. II of 1970, the petitioner claimed settlement patta. Section 7 (1) of Regulation No. II of 1970 is relevant, it is condign to extract the same and, accordingly, extracted hereunder:

"Every ryot in the Scheduled Areas to which this Regulation applied 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 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."

Section 7 (1) (a) deals with lands belonging to Government but not to a n ex estate village. The 2nd respondent, based on Section 7 (1) of Regulation No. II of 1970, concluded that Section 7 (1) alone is applicable but the petitioner failed to prove his long continuous possession and enjoyment and it is hit by T.T. Act, 1991, and Land Transfer Regulation No. 1 of 1959 as amended by Land Transfer Regulation No. 1 of 1970.

The main endeavour of learned counsel for the petitioner is that when the petitioner proved his possession over the property, it is the duty of the 3rd respondent to inquire into the matter in view of Section 11 (a) of the Act of

1948. The 3rd respondent is empowered to exercise powers within the meaning of Section 9 of Regulation No. II of 1970 and grant patta in favour of the person in possession. Applicability of localization will be examined at a later stage. Learned counsel for the petitioner relied on **Gone Venkaiah** (2nd *supra*) but the above judgment has no direct bearing on the issue since no law was declared holding that a non-tribal, who is in unlawful possession (encroacher), is entitled to claim settlement patta under Regulation No. II of 1970. Therefore, the above judgment is not applicable to the present facts of the case. Coming to **N.Challaiah** (1st *supra*), this Court observed as follows:

"Section 7 of the Regulation 1970 no doubt expressly states that for granting of Ryotwari patta as in the case of lands in the estates which have been taken over under the Estates Abolition Act, 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. But this has to be examined in the light of the provisions enacted in Section 9 of the Regulation read with the Proviso to Section 11 of the Estates Abolition Act. Section 9 is explicit, in that it says that the Settlement Officer shall inquire into the nature and history of the lands in respect of which ryotwari patta is claimed under Section 7 and decide in respect of which lands the claim should be allowed and also the persons who are entitled to ryotwari patta. No doubt the proviso to Section 11 contemplates the limitation in respect of a person being inducted into possession prior to 1945 as being alone would be eligible for the grant of ryotwari patta. But at the same time conferring a right on the Government by an exception to grant ryotwari patta even if a person has been inducted into possession subsequent to 1945 and that power cannot now be obstracised to the exercise of rights within the meaning of Sections 9 & 7 of the Regulation. If the power similar to that of the power under proviso to Section 11 is not equated and not allowed to be exercised by the Settlement Officer under Section 9, then the entire intent becomes not only frustrated but would result in deprivation of the persons who would have been entitled to had the situation been similar to the one obtaining under Proviso to Section 11 of the Estates Abolition Act."

In view of the decision relied upon by learned counsel for the petitioner, it is appropriate to advert to Section 11 of the Act of 1948 which deals with lands in which ryot is entitled to ryotwari patta. It is contemplated under this Section that every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of (a) all ryoti lands which, immediately before the notified date were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a landholder or some other person is

entitled to a ryotwari patta under any other provision of this Act and (b) all lanka lands in his occupation immediately before the notified date, such lands having been in his occupation or in that of his predecessors-in-title continuously from the 1st day of July, 1939, provided that no person who has been admitted into possession of any land by a landholder on or after the first day of July, 1945, shall, except where the Government, after an examination of all the circumstances otherwise direct, be entitled to a ryotwari patta in respect of such land. The explanation thereto further says that no lessee of any lanka and no person to whom a right to collect the rent of any land has been leased before the notified date, including an jaradar or a farmer of rent, shall be entitled to ryotwari patta in respect of such land under this Section. Thus, it is evident from Section 11 of the Act of 1948 that a person, who was inducted into possession prior to the notified date, alone is entitled to claim patta under Section 11 of the Act of 1948. If, for any reason, a person, who occupied land on or after the first day of July, 1945, is also entitled to claim patta from Government but here the petitioner proved his possession only for 8 years *i.e.* from 1960 onwards by producing land revenue demand and receipts referred above. In those circumstances, the petitioner claimed patta from Government subject to the provisions of Regulation No. II of 1970. Even according to the proviso to Section 7 (1) of Regulation No. II of 1970, in the case of lands in the estates which have been taken over under the Act of 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. It further provides 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 person had been in possession or in occupation of the land for a continuous period of not less than eight years immediately before the commencement of this Regulation; and (b) such possession or occupation shall not be void or illegal

under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 ('1959 Regulation' for short), or any other law for the time being in force. The expression "notified date" shall have the meaning assigned to it in clause (10) of Section 2 of the Act of 1948. Therefore, to claim patta under the first proviso, claimant must be in possession of the property prior to the notified date but here the petitioner miserably failed to establish that his predecessors were in possession prior to the notified date under the Act of 1948. Even to apply the second proviso, the petitioner is a non-tribal to prove his possession 8 years prior to commencement of Regulation No. II of 1970 and such occupation or possession shall not be void or illegal under 1959 Regulation or any other law for the time being in force. Therefore, it is incumbent upon the petitioner to prove that his occupation or possession is not in contravention to 1959 Regulation and, if it is found that his possession or occupation is illegal or void, he is disentitled to claim patta. In the facts of the present case, though the 3rd respondent found that the petitioner is in possession for a period of 8 years, but his occupation is illegal and void to attract clause (b) of second proviso. Therefore, the 3rd respondent declined to grant patta to the petitioner and the same was confirmed by all the authorities.

The only endeavour of learned counsel for the petitioner is that when the petitioner is found in possession for more than 8 years continuously prior to commencement of Regulation No. II of 1970, he is entitled to claim patta. Clauses (a) and (b) of second proviso to Section 7 (1) have to be read conjointly, otherwise it would not serve any purpose. If both the clauses are read together, it is incumbent upon the petitioner to prove that his possession or occupation is not void or illegal under 1959 Regulation but no such material is produced before any of the authorities. On that ground alone, the petitioner is disentitled to claim patta.

Section 9 of Regulation No. II of 1970 deals with procedure for grant of patta. According to it, the settlement officer shall inquire into the nature and

history of all lands in respect of which ryotwari patta is claimed under Section 7 and decide in respect of which lands the claim should be allowed and the persons who are entitled to ryotwari patta, provided that the claim for a ryotwari patta is not void under any other law applicable to Scheduled Areas, that means occupation shall not be void or illegal under 1959 Regulation or any other laws applicable to Scheduled Areas but here all the authorities found that the occupation of the petitioner is void and illegal under 1959 Regulation and failed to establish that he or his predecessors were in possession of the property as on the notified date under the Act of 1948 to attract the first proviso to Section 7 (1) of Regulation No. II of 1970. Therefore, the 3rd respondent, after making necessary enquiry as contemplated under Section 9 (1) of Regulation No. II of 1970, found that possession or occupation of the petitioner is void under 1959 Regulation and declined to grant patta. The said finding was confirmed by respondent Nos. 2 and 1.

The only contention of learned counsel for the petitioner before this Court is that when the petitioner proved his possession for a continuous period of 8 years prior to commencement of Regulation No. II of 1970, refusing to grant patta is arbitrary. No doubt the petitioner, being a non-tribal, if established that he is in possession for a continuous period of 8 years, he is entitled to claim patta subject to clause (b) of second proviso to Section 7 (1) of Regulation No. II of 1970 but the petitioner failed to establish the requirement under clause (b) of second proviso to Section 7 (1). If clause (a) of second proviso to Section 7 (1) of Regulation No. II of 1970 is read in isolation, the petitioner is entitled but such consideration is against the purport of law. Both clauses (a) and (b) of second proviso shall be read in conjunction, otherwise it would amount to misconstruction of purport of second proviso to Section 7 (1) of Regulation No. II of 1970. The authorities have considered the provisions of Regulation No. II of 1970 in right perspective and, therefore, declined to grant patta after due enquiry as

required under Section 9 (1) of Regulation No. II of 1970 only on the ground that his occupation or possession is void under 1959 Regulation. Thus, the order is free from any illegality or irregularity warranting interference of this Court while exercising power of judicial review under Article 226 of the Constitution of India. Since the order under challenge is not in violation of any statutory provision or rule, I find no ground warranting interference of this Court. Hence, the order of the 1st respondent is hereby confirmed.

In the result, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand dismissed in consequence. No order as to costs.

Date: 13th April, 2016.
MURTHY, J.

JSK

M.SATYANARAYANA

[\[1\]](#) 1987 (1) APLJ (SN) 35

[\[2\]](#) W.P.No. 5486 OF 1994