

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.33500 of 2014

ORDER:

This Writ Petition is filed questioning the proceedings in Rc.No.2250/2013/TO dt.09-09-2014 issued by 2nd respondent (furnished under RTI Act) communicating to 5th respondent that the Forest Department is not inclined to issue 'No Objection Certificate' for quarry operations in favour of the petitioner in respect of land of extent of 1.000 Hectare in R.S.No.1/5 situated at Nunna village, Vijayawada Rural Mandal, Krishna District.

THE BACKGROUND FACTS

2. Land admeasuring Ac.40 in Old S.No.457 in Nunna Village was granted to Abdul Gani by the Zamindar of Kapileswaram vide patta no.816 dt.31.3.1945.

3. A suit O.S.No.293 of 1952 was filed before the District Munsif, Nuzvid by Abdul Gani for a declaration that the Zamindari patta No.816 dt.31.03.1945 in his favour for the Acs.40.00 was valid and binding on the Government and that penal assessment levied by the Government in respect of that land on the ground that he had encroached upon Government land was illegal. The Government resisted the suit contending that the land was

part of Forest Poramboke vested in it under Sec.3(b) of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 and he is not entitled to ryotwari patta. The trial court held that the patta relied upon by Abdul Gani was valid and binding and the Civil Court had jurisdiction to decide it.

4. The Government preferred an appeal A.S.No.81/54 before the Sub-Court Vijayawada. The Sub-Judge, Vijayawada granted a decree dt.15.11.1955 in A.S.No.51/54 stating that Abdul Gani should apply to the Settlement Officer for Ryotwari patta and only that authority can decide whether the plaintiff should get ryotwari patta after making necessary enquiry and the Civil court had jurisdiction because the matter related only to the validity of the assessment made by the Government.

5. The Collector, Krishna filed S.A.645 of 1956 in the High Court and the said appeal was allowed on 17.7.1959 holding that Abdul Gani should get a patta from the Settlement Officer under Sec.11 of the said Act and observing that in case he did not do so, it is open to the Government to take such steps as it thinks necessary for the enforcement of rights.

6. The widow of the said Abdul Gani, Habibunnissa and his sons then applied for patta under

Sec.11 (a) of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,1948 before the Settlement Officer, Eluru.

7. By order dt.30.09.1977 in S.R.No.11(a)/45/75-KTE, he rejected the said claim on the ground that the land is Forest Poramboke and that the landholder cannot grant patta for more than Acs.20.00 without permission of the Collector.

8. Abdul Gani's wife Habibunnisa and four others questioned the same by way of Revision before the Director of Settlements, Andhra Pradesh, Hyderabad.

9. By order dt.14.07.1978 in R.P.No.264 of 1977, the said Revision was allowed and Habibunnisa and others were granted patta under Section 11(a) of the Act. The Director of Settlements rejected the contention of the Tahsildar, Vijayawada that the land in the occupation of the Revision petitioners was surrounded by forest and hills in view of the admission by the Tahsildar that in the pre-abolition period the land was ryoti land. He held that once the land is ryoti it is always ryoti and the Tahsildar did not produce any notification showing that the land is included in a forest. He noticed that although the District Forest Officer, Eluru was asked by the Tahsildar vide letter R.C.A.5/1321/77, dt.26.05.1978 to send notification showing its inclusion in the forest, the latter did not send

it. He observed that even though as per Andhra Pradesh (Andhra Area) Estates Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1947 (Act 14 of 1947) in respect of certain lands declared by the Government as forest lands in the Fort St. George Gazette, the landholder cannot grant patta for more than Acs.20.00 without permission of the Collector, since there is no such notification produced by the Tahsildar in respect of the Ac.40.00 claimed by Smt. Habibunnisa and others, they are entitled to a ryotwari patta for Acs.40.00 in R.S.No.1/1 – Part (Old S.No.457) of Nunna Village.

10. After this order was passed, Smt. Habibunnisa filed in July, 1975 an application under Section 10(2)(ii) of the Andhra Pradesh Forest Act, 1967 for exclusion of the extent of Acs.40.00 in R.S.no.1/1 of Nunna Village from the Adivinekkalam Forest Block.

11. The said Forest Block comprised of 7,800 acres in the Taluqs of Vijayawada, Nuzvid and Gannavaram of Krishna District and had been notified vide G.O.Ms.No.1583 Food and Agriculture (FOR.III) Department dt.26.08.1969 under Section 4 of the Andhra Pradesh Forest Act, 1967 (which had been published in Part I of the Andhra Pradesh Gazette dt.18.09.1969 and in the Krishna District Gazette dt.29.11.1969). Proclamation under Section 6 of the Act was published in the Krishna

District Gazette dt.10.08.1970 and was also published in the Head Quarters of the Taluq Office, Vijayawada on 01.02.1971 inviting claims and objections within six months from the date of publication of notification at the Taluq Head Quarters.

12. By order dt.27.08.1980, the Forest Settlement Officer held that the land was under enjoyment of Abdul Gani prior to 1964 and he had paid land revenue also prior to 1964, that he inspected the land along with the Forest Range Officer, Vijayawada on 12.08.1980, that the extent of Acs.40.00 in Survey No.1/1 is in the south-west corner of the land in Sy.No.1/1, that the said land is plain without any jungle growth in it and it was under cultivation till some time back, that the reserve forest jungle growth is around this Acs.40.00 forming as hedges, that even the Karanam of Nunna Village had informed him that this land was granted on patta to Abdul Gani by the Zamindar of Kappileswaram, that there is a cart track passing on the southern side of the land of Acs.40.00 which serves as an approach road to reach this land, and so the petitioner has right of way to the land through the existing cart track. He also referred to the fact that the estate was notified on 15.08.1960 under the Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948; that the land of Acs.40.00 which was granted was in Old Survey No.457 of Nunna Village,

which after re-survey in 1958 was numbered as Sy.No.1/1; and that it had been classified as forest land initially since Abdul Gani did not pursue his right in the land, but after the decision in SA 645/56, his wife and sons approached the Settlement Officer, Eluru for patta under the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,1948. He also stated that Habibunnisa W/o Abdul Gani and her son Ameenuddin filed a claim petition before the Forest Settlement Officer on 15.09.1978 and informed that they had preferred an appeal before the Director of Settlements, Hyderabad against the order of the Settlement Officer, Eluru; that therefore orders were passed on 22.09.1978 by the Forest Settlement Officer asking them to file her claim at a future date in case her appeal is allowed by the Director of Settlements, Hyderabad and since the latter had passed orders on 14.07.1978 in R.P.No.264/77 setting aside the order of the Settlement Officer and granting patta to the petitioner, the claim of Habibunnisa is a bona fide one and therefore, the Acs.40.00 in Sy.No.1/1 deserves to be excluded from the Adivinekkalam Forest Block.

13. This order was questioned before the District Judge, Krishna District, at Machilipatnam by the Divisional Forest Officer, Eluru. The said appeal was also dismissed on 13.03.1981. The District Court held that the decision of the Director of Settlements had not been questioned by

the Forest Department in the High Court and that it had attained finality and so the Forest Settlement Officer rightly accepted it and allowed her claim petition.

14. Against the said appellate order, the Divisional Forest Officer preferred W.P.No.4802 of 1982 before this Court which was dismissed on 27-08-1987 confirming the right of Smt. Habibunnisa over the said property.

15. On 24.05.1983 Smt. Habibunnisa had alienated under a registered sale deed being Document No.3806/1983, the said 40.00 acres of land in favour of Smt. T.Annapurnamma and Smt. M.Rama Devi, who in turn alienated an extent of 18.00 acres in favour of Atluri Subba Rao under a registered sale deed dt.02.07.1988. The said Atluri Subba Rao is the grandfather of the petitioner and a Will dt.25.05.1989 had been executed by the said Atluri Subba Rao bequeathing the said land equally to the petitioner and his brother. Petitioner contends that the revenue authorities have issued pattedar pass book and title deeds in his favour and also entered his name in the adangal and issued cist receipts.

16. Petitioner filed an application before the 5th respondent for grant of quarry lease on 30-07-2010 in respect of part of the land to an extent of 1.000 hectares (Ac.2.47 cts).

17. Pursuant to his application, the 6th respondent addressed a letter on 31-07-2013 to the 5th respondent stating that they have no objection for grant of lease/ permission for gravel purpose as per Mining Rules and the Vijayawada-Guntur-Tenali Urban Development Authority also issued NOC on 21-10-2010 for grant of lease permission for quarry purpose.

18. The 5th respondent addressed a letter to the 2nd respondent on 30-11-2013 with a request to issue 'No Objection Certificate' for grant of lease since as per Government instructions, no mining permission shall be granted in favour of any person without obtaining 'No Objection Certificate' from the Forest authorities in respect of the land adjoining forest areas. There was no response from the forest authorities.

19. Petitioner got issued legal notice to the 2nd respondent on 25-02-2014 with a request to take immediate steps for grant of 'No Objection Certificate' in respect of the above land.

20. Since the Forest authorities did not take any steps, he filed W.P.No.21753 of 2014 before this Court seeking a direction to the 2nd respondent to take immediate steps for issue of 'No Objection Certificate' to

the 5th respondent.

21. In the meanwhile, 4th respondent addressed a letter to the petitioner on 11-08-2014 asking petitioner to show cause why his application for quarry lease should not be rejected giving 15 days time for furnishing explanation.

22. In view of the above letter, this Court admitted the said Writ petition on 26-08-2014 and directed the 2nd respondent to take a decision pursuant to the letter dt.31-07-2013 (instead of 30-11-2013) within a period of one week from the date of receipt of the order.

23. Thereafter the 2nd respondent addressed a letter dt.09-09-2014 to the 5th respondent stating that Forest Department is not inclined to issue 'No Objection Certificate' for quarry operation in respect of the above referred land, which is impugned in the present Writ Petition.

THE IMPUGNED ORDER

24. In the impugned proceeding issued on 9.9.2014, 3 reasons are mentioned for refusing NOC to grant of quarry lease in favor of petitioner by 2nd

respondent. They are:

- (i) in the applied area there is a discrepancy since Forest Settlement Officer passed award in respect of land in S.No.1/1 while petitioner has applied for quarry lease for land in S.No.1/5;
- (ii) in the award obtained from the Forest Settlement Officer, the land was considered as ryoti land and now the land is shown as hillock, and such hillock land could not be ryoti land; and
- (iii) the subject land falls under Kothuru Reserve forest.

THE PETITIONER'S CONTENTIONS

25. Petitioner contends that the reasons mentioned in the impugned order are not valid.

26. According to him, the first reason mentioned in the impugned order that in the applied area there is a discrepancy, is not correct. He contends that a joint survey was conducted in presence of all the forest officials on 13-12-2012 and awarded area of Acs.40.00 cts was eliminated and as such there was no discrepancy in this regard. Further, petitioner contends that after survey, the 6th respondent has sub-divided R.S.No.1/1 as 1/5 and issued pattadar pass book and title deeds to him.

27. Petitioner contends that the second reason is also not correct. He contends that against the award of Forest Settlement Officer, the forest authorities filed appeal before the learned District Judge, Krishna, which was dismissed and WP filed before this Court was also dismissed. He contends that while dismissing the W.P.No.4802 of 1982 by order dt.27-08-1987, this Court had observed that if the area is covered with thick forest, it is open for the forest department to acquire the land and that it is not open to respondents to now to contend that the subject land is a hillock area and not ryoti land.

28. He also contends that the third reason that part of the subject land falls under Kothuru Reserve forest is also not correct, since there was a demarcation of the subject land in the presence of all forest officials and land was in possession of petitioner after ascertaining that it is not part of forest land.

29. Petitioner contends that he had filed PLC No.116/2007 before the Lok Adalat Bench against the 2nd respondent herein seeking relief of right of way since the Revenue department was objecting to petitioner entering into the subject land, that subsequently the same was compromised on 29-04-2008 and the authorities have agreed to give six yards passage to petitioner as an approach road which was later demarcated and petitioner

is being allowed to use the same.

30. Petitioner lastly contends that he had have invested huge amount for getting no objection from the revenue authorities and VUDA and has been pursuing for the last 4 years before the mining authorities and as such at this juncture, action of respondents in rejecting 'No Objection Certificate' is not sustainable.

THE STAND OF THE RESPONDENTS

31. In the counter-affidavit filed by 2nd respondent, the contentions of petitioner were refuted.

32. The 2nd respondent contended that the Forest Department always disputed the title over the schedule property regarding location of claim and also survey number of the claim. He contended that prior to issuance of notification under Section 4 of the Andhra Pradesh Forest Act, 1967, the area which was recorded with forest growth as per estate records was taken over possession from the Revenue Department in view of implementation of the Andhra Pradesh (Andhra Area) Estate Abolition and Conversion into Ryotwari Act, 1956 on 15.10.1951, and the then Collector, Krishna notified the area under Section 26 of the Madras Forest Act, 1880. He contended that as per instructions of Government this area was included in Adavinekkalam main block and a

notification under Section 4 of the Andhra Pradesh Forest Act, 1967 was issued vide G.O.Ms.No.1583 Food & Agriculture (For.III) Department, dt.26.08.1969. He therefore contended that even prior to abolition of estate the subject area was recorded as forest land in the estate records and that prior to the notification issued under Section 4 of the Act, the Revenue Divisional Officer and Assistant Conservator of Forests (Estates) jointly inspected the area on 18.02.1964.

33. He alleged that after publication of the notification one Abdul Gani, husband of Smt. Habibunnisa, filed a claim before the settlement authorities stating that he was awarded with patta No.816 of Nunna Village for Acs.40.00 by the Estate Zamindar on 31.03.1945, that he contended that the said land is ryoti land and so his patta would not come under the provisions of Section 3 of the Andhra Pradesh (Andhra Area) Estates Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1947.

34. According to him, the Tahsildar, Vijayawada in his proceedings D.Dis.4908/77 dt.30.07.1977 held that the subject land is *now ryoti* in pre-abolition records and so the burden of proof lies on the applicant Abdul Gani to prove his claim with reference to the recorded evidence filed by them. He alleged that the claimants filed a claim

before the Director of Settlements stating that their land would come under the definition of 'ryoti', that the Director of Settlements also stated this fact that the land is ryoti land as per pre-abolition records and the statement of Tahsildar that the land is *now ryoti* is probably a typographical error and it should read as 'non-ryoti'. It was contended by 2nd respondent that the statement of Tahsildar was mis-interpreted and the land was presumed as ryoti land and ryotwari patta was awarded erroneously on 27.08.1980.

35. It is admitted that there was inaction on the part of forest and revenue officials in contesting the claim of petitioner. But it is contended that the award in favour of petitioner's predecessor cannot be implemented.

36. It is further admitted that Smt. Habibunnisa, wife of late Abdulgani, had put a claim in 1975 before the Forest Settlement Officer, Nellore that the Zamindar of Kapileswarapuram had granted an extent of 40.00 acres of land of Nunna Village of old survey no.457 in patta no.816, dt.31.03.1945 to her husband; that this land is in their enjoyment and requested for exclusion of this 40.00 acres from the Adivinekkalam main forest block which was included in the said forest block; that the Forest Settlement Officer, Nellore conducted enquiry and issued an award basing on a patta granted by Director of

Settlements, Hyderabad on 27.08.1980 in favour of Smt. Habibunnisa in respect of 40.00 acres in R.S.1/1 of Nunna Village, Old Survey No.457 and also requested the Divisional Forest Officer, Eluru to implement the award and send revised sketch of the proposed reserve forest under Section 5 of the Andhra Pradesh Forest Act, 1967.

37. It is also admitted that in view of various orders from courts and competent authorities, due to failure of timely action from various officials, the then Divisional Forest Officer implemented the award dt.27.08.1980 of the Forest Settlement Officer without verifying the award, claim or locality. The 2nd respondent has not disputed the fact that the award of Forest Settlement Officer, Nellore in favour of Smt. Habibunnisa was confirmed on 13.03.1981 by the District Judge, Machilipatnam and further the fact that W.P.No.4802 of 1982 filed against the order of District Judge was also dismissed on 27.08.1987.

38. It is also admitted that in PLC.No.116/2007 on the file of Lok Adalat Bench at Machilipatnam, Krishna District, the Forest authorities agreed to give six yards width of way to the awarded area, but it is contended that by that time, the map showing the awarded area given by the Forest Settlement Officer had not come to light.

39. A plea is also raised that petitioner's case is based on falsehood, and therefore no relief can be granted to petitioner and reliance is placed upon the decisions of Supreme Court in **S.P. Chengalvaraya v. Jagannath**^[1], **Papayya Sastry v. Government of Andhra Pradesh**^[2], and **Divisional Forest Officer, Eluru v. District Judge, West Godavari and others**^[3].

40. It is further stated that No Objection Certificate issued by authorities such as Tahsildar, Vijayawada or the Vijayawada-Gunturu-Tenali Urban Development Authority are not binding on 2nd respondent.

41. It is asserted that petitioner's land has not been eliminated from the reserve forest block and that the award of Forest Settlement Officer should be implemented as per process laid down under Section 2 of the Forest Conservation Act, 1980, and a revised notification for eliminating the area should have been published.

42. It is however reiterated that petitioner is making a claim for an area falling on a hill with forest growth for mining permission and the claim of petitioner is untenable.

43. It is further contended that the award was given in respect of land in survey no.1/1 while the

petitioner is claiming land in survey no.1/5.

44. It is also contended that 0.75 Ha of land falling within Kothuru Reserve Forest which was notified under Section 16 of the Madras Forest Act, 1882 and since the subject land is part and parcel of Adivinekkalam main forest block and Kothuru Reserve Forest, the Forest Department is not inclined to issue 'No Objection Certificate' for quarry purpose to petitioner.

45. The learned Government Pleader for respondent nos.1 to 3 reiterated the above submissions.

46. The other respondents have not filed any counter-affidavits.

THE POINT FOR CONSIDERATION

47. The point for consideration is whether it is open to 2nd respondent to refuse 'No Objection Certificate' to petitioner under the impugned order to enable petitioner to carry out the quarry operation in respect of the subject land.

THE CONSIDERATION BY THE COURT

48. There is no dispute about the fact that by order dt.30.09.1977 in S.R.No.11(a)/45/75-KTE, the Settlement Officer under the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,1948

rejected the claim for patta by Abdul Gani under Sec.11 of the said Act on the ground that the land is Forest Poramboke and that the landholder cannot grant patta for more than Acs.20.00 without permission of the Collector; that Abdul Gani's wife Habibunnisa and four others questioned the same by way of Revision before the Director of Settlements, Andhra Pradesh, Hyderabad; and by order dt.14.07.1978 in R.P.No.264 of 1977, the said Revision was allowed and Habibunnisa and others were granted patta under Section 11(a) of the Act.

49. The Director of Settlements rejected the contention of the Tahsildar, Vijayawada that the land in the occupation of the Revision petitioners was surrounded by forest and hills in view of the admission by the Tahsildar that in the pre-abolition period the land was ryoti land. He held that once the land is ryoti it is always ryoti and the Tahsildar did not produce any notification showing that the land is included in a forest. He noticed that although the District Forest Officer, Eluru was asked by the Tahsildar vide letter R.C.A.5/1321/77, dt.26.05.1978 to send notification showing its inclusion in the forest, the latter did not send it. He observed that even though as per Andhra Pradesh (Andhra Area) Estates Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1947 (Act 14 of 1947) in respect of certain lands declared by the Government as forest lands

in the Fort St. George Gazette, the landholder cannot grant patta for more than Acs.20.00 without permission of the Collector, since there is no such notification produced by the Tahsildar in respect of the Ac.40.00 claimed by Smt. Habibunnisa and others, they are entitled to a ryotwari patta for Acs.40.00 in R.S.No.1/1 – Part (Old S.No.457) of Nunna Village.

50. After this order was passed, Smt. Habibunnisa filed in July, 1975 an application under Section 10(2)(ii) of the Andhra Pradesh Forest Act, 1967 for exclusion of the extent of Acs.40.00 in R.S.no.1/1 of Nunna Village from the Adivinekkalam Forest Block.

51. The Forest Settlement Officer, Nellore passed an award on 27.08.1980 under Section 10 (2) of the Andhra Pradesh Forest Act, 1967. He held that the land was under enjoyment of Abdul Gani prior to 1964 and he had paid land revenue also prior to 1964, that he inspected the land along with the Forest Range Officer, Vijayawada on 12.08.1980, that the extent of Acs.40.00 in Survey No.1/1 is in the south-west corner of the land in Sy.No.1/1, that the said land is plain without any jungle growth in it and it was under cultivation till some time back, that the reserve forest jungle growth is around this Acs.40.00 forming as hedges, that even the Karanam of Nunna Village had informed him that this land was

granted on patta to Abdul Gani by the Zamindar of Kappileswaram, that there is a cart track passing on the southern side of the land of Acs.40.00 which serves as an approach road to reach this land, and so the petitioner has right of way to the land through the existing cart track. He also referred to the fact that the estate was notified on 15.08.1960 under the Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948; that the land of Acs.40.00 which was granted was in Old Survey No.457 of Nunna Village, which after re-survey in 1958 was numbered as Sy.No.1/1; and that it had been classified as forest land initially since Abdul Gani did not pursue his right in the land, but after the decision in SA 645/56, his wife and sons approached the Settlement Officer, Eluru for patta under the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,1948. He also stated that since the Director of Settlements, Hyderabad had passed orders on 14.07.1978 in R.P.No.264/77 setting aside the order of the Settlement Officer and granting patta to the petitioner, the claim of Habibunnisa is a bona fide one and therefore, the Acs.40.00 in Sy.No.1/1 deserves to be excluded from the Adivinekkalam Forest Block.

52. This order was questioned before the District Judge, Krishna District, at Machilipatnam by the Divisional Forest Officer, Eluru. The said appeal was also dismissed

on 13.03.1981. The District Court held that the decision of the Director of Settlements had not been questioned by the Forest Department in the High Court, that it had attained finality and so the Forest Settlement Officer rightly accepted it and allowed her claim petition.

53. Against the said appellate order, the Divisional Forest Officer preferred W.P.No.4802 of 1982 before this Court which was dismissed on 27-08-1987 confirming the right of Smt. Habibunnisa over the said property. This Court confirmed the said decision and held that it is not open to the Forest Department to question that the land is not patta land and is a forest land. It recorded the contention of the Forest Department that there was a thick forest in the disputed land and held that it is open to the Forest Department to take appropriate steps to acquire the land if it so chooses.

54. It is not the case of the respondents that they had taken steps to acquire the land of Abdul Gani at any point of time.

55. The question whether the subject land was forest land or part of Forest block was directly and specifically in issue in the above proceedings and in all forums i.e., Director of Settlements, Forest Settlement Officer, Eluru, the District Judge, Krishna, at Machilipatnam as well as this Court, the Forest

department suffered adverse orders.

56. Having regard to the above proceedings since the contention of the 2nd respondent that the land in question is a forest land and not ryoti land was specifically considered and rejected, it is not open to 2nd respondent to re-agitate the issue and continue to contend that the land in question is forest land, and therefore, it can decline to issue 'No Objection Certificate' for grant of quarry lease to petitioner.

57. On 24.05.1983 Smt. Habibunnisa had alienated under a registered sale deed being Document No.3806/1983, the said 40.00 acres of land in favour of Smt. T.Annapurnamma and Smt. M.Rama Devi, who in turn alienated an extent of 18.00 acres in favour of Atluri Subba Rao under a registered sale deed dt.02.07.1988. The said Atluri Subba Rao is the grandfather of the petitioner and a Will dt.25.05.1989 had been executed by the said Atluri Subba Rao bequeathing the said land equally to the petitioner and his brother. Copies of these documents have also been filed by petitioner.

58. The petitioner had filed proceedings dt.04.10.2007 of the Tahsildar addressed to the Forest Range Officer, Vijayawada stating that the latter had requested for furnishing of information regarding publication of notification of lands under Section 15 of the

Andhra Pradesh Forest Act, 1967 in respect of Addivinekkalam Forest Block on 27.08.2007; that in that connection the Survey No.1 of Nunna Village of Vijayawada Rural Mandal was verified with Village Revenue Records of Nunna Village; that the total extent of R.S.No.1 is Acs.3015.00 cents; out of this, an extent of Acs.412.24 cents was issued Settlement Pattas and sub-divided into sub-divisions of 1/2, 1/3, 1/4, 1/5 and 1/6; and that the balance extent of Acs.2602.76 alone is given R.S.No.1/1 of Nunna Village and designated as Reserve Forest Block. This document has not been disputed by respondent nos.1 to 3. Thus it is clear the land in S.No.1/1 was again sub-divided into S.No.1/2 to 1/5 and the non-forest land was given these Sub-division numbers. So land in S.No.1/5 is definitely not forest land.

59. The petitioner had also filed the survey report of the Deputy Inspector Survey, Vijayawada of the joint survey held on 13.12.2012 and 16.12.2012 in which the Deputy Range Officer, Vijayawada, the Forest Range Officer, Vijayawada as well as Assistant Director, District Survey and Land Records, Krishna, Machilipatnam participated. The said survey report indicates that the land of 40.00 acres in Survey No.1/5 of Nunna Village was specifically demarcated in the presence of the Forest Department Officials and the said survey was also accepted by the Forest Department Officials. Another

proceeding R.C.No.448/2005 dt.09.08.2013 of the Forest Range Officer, Vijayawada Range, Vijayawada addressed to the Divisional Forest Officer, Krishna Division, Vijayawada was also filed and it states that the survey conducted by the Revenue Department is correct and tallies with the Forest Department Survey. None of these documents had been disputed by respondent nos.1 to 3.

60. So the respondents cannot take advantage of the discrepancy in the S.No.1/1 and 1/5.

61. The Tahsildar, Vijayawada Rural Mandal in proceedings L.Dis.B.386/2013 dt.31.07.2013 addressed to the Assistant Director, Mines and Geology, Vijayawada specifically stated that the extent of Acs.2.47 cents in R.S.No.1/5 of Nunna Village of Vijayawada Rural Mandal was classified as patta land as per revenue record and that it is intended to be utilized for quarry purpose, and that the Revenue Department had no objection for grant of lease permission to the said land. Also once there is a decision by the High Court in W.P. No.4802 of 1982 that the land admeasuring 40.00 acres in Survey No.1/1 is not forest land and is ryoti land and the Award of the Forest Settlement Officer, Nellore has been confirmed, the respondents cannot contend that it is now not ryoti land and it is a hillock. The said decision binds the respondents and operates as res judicata.

62. The Government of Andhra Pradesh had also issued a notification vide Memo No.8631/I/2010, Municipal Administration & Urban Development, dt.06.09.2010 as a draft variation of the Zonal Development Plan for change of land use in respect of Acs.2.47 cents in R.S.No.1/5 part of Nunna Village, Vijayawada Rural Mandal under Section 12 (2) of the Andhra Pradesh Urban Areas (Development) Act, 1975 and subsequently confirmed the said variation vide G.O.Ms.No.452 Municipal Administration & Urban Development Department dt.14.10.2010.

63. In view of the foregoing reasons on the basis of the material on record, I am of the considered opinion that it is not open to respondent nos.1 to 3 to now raise issues that there is discrepancy in the applied area for lease, that the land in respect of which quarry lease is now sought to be applied for is a hillock which is not ryoti land or that the award of the Forest Settlement Officer was in respect of Survey No.1/1 of Nunna Village whereas the applicant is claiming land in Survey No.1/5 of Nunna Village or that portion of the land falls in Kothuru Reserve forest and Adivinekkalam main Forest Block.

64. It is also not open to respondents to contend that there was any fraud played by petitioner or petitioner's predecessor on the Government or the Forest

Department, in particular since the claim of petitioner's predecessor that the land was a ryoti land was upheld up to the High Court in WP.No.4802 of 1982 on 27.08.1987 and at every stage the contentions of the Forest department were considered and rejected.

65. It is also not open to respondents to contend that the order of the Director of Settlements which was the basis for the order passed by the Forest Settlement Officer, Eluru was incorrect or there was any mis-interpretation of the statement of the Tahsildar and the word '*now ryoti*' was infact '*non-ryoti*'.

66. The conduct of respondents in rejecting the 'No Objection Certificate' to petitioner vide the impugned order dt.09.09.2014 is therefore declared as arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India and, in fact, amounts to committing contempt of the order dt.27.08.1987 in WP.No.4802 of 1982.

67. Therefore, the Writ Petition is allowed and the order dt.09.09.2014 of the 2nd respondent is set aside and a *writ of mandamus* shall be issued to respondents to issue a 'No Objection Certificate' in favour of petitioner for quarry operations in respect of 1.000 Hect. of land in S.No.1/5 of Nunna Village, Vijayawada Rural Mandal, Krishna District. The 1st respondent shall also pay costs

of Rs.5,000/- to petitioner.

68. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-01-2016

Kvr/Ndr/

[\[1\]](#) (1994) 1 SCC 1

[\[2\]](#) (2007) 4 SCC 221

[\[3\]](#) 2011 (2) ALT 130 D.B.