

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

W.P. Nos.7594, 21589 of 2010 and 11623 of 2011

-
COMMON ORDER :
-

All these writ petitions are filed against the impugned order No.G1/2722/2006, dated 16.10.2006. As the issue involved in all these writ petitions is one and the same, they are being disposed of by way of this Common Order.

2. All these writ petitions are filed by the sons and their family members of one Sri Singireddy Swamy Reddy. It is the case of petitioners in all the writ petitions that an extent of Acs.19.11 guntas in Sy.Nos.191, 329, 337 and 336 of Kapra Village is their ancestral property and they have inherited the same from their great grand father late Singireddy Rami Reddy, i.e, father of Singireddy Swamy Reddy, who is original owner of the said land. After the death of late Singireddy Rami Reddy, the aforesaid land along with other properties are recorded in the name of the petitioners' father's brother Sri Singireddy Laxmaiah @ Singireddy Laxma Reddy, as he was the head of joint family and the name of the father of petitioners i.e., Singireddy Swamy Reddy is recorded as shareholder. Subsequently, the subject land fell to the share of the father of the petitioner late Singireddy Swamy Reddy, who died in the year 2007, at the age of 97 years. In the year 1970, petitioners' father late Singireddy Swamy Reddy in partition allotted the said lands in question to his five major sons namely 1) Panasa Reddy, Acs.4.32 gts dry lands in Sy.No.191; 2) Ram Reddy Acs.2.12 gts wet land in Sy.Nos.329, 336, 337; 3) Janardhan Reddy Acs.4.31 gts dry land in Sy.No.191; 4) Dharma Reddy, Acs.2.12 gts wet land in Sy.Nos.329, 336, 337 and 5) Kista Reddy, Acs. 4.32 gts dry land in Sy.No.191. The lands in question were mutated in the names of the declarant's five sons in the revenue records including the pahanies from 1979-80 onwards. All the legal heirs of Singireddy Swamy Reddy are in possession and enjoyment of their respective lands. Accordingly, the petitioners are the

absolute owners and possessors of the land to the extent indicated above against their names in the above survey numbers of Kapra village, which was allotted to them.

3. When some of the petitioners intended to sell part of the land, went to Sub-Registrar's office to know about the market value of the property for the purpose of registration of documents in the months of December, 2009 and November, 2010. At that time, they came to know that the land in Sy.Nos. 191, 329, 337 and 336 of Kapra village, which was allotted to them were declared as surplus lands under ULC proceedings. The petitioners came to know about the filing of declaration and consequential proceedings were outcome of forged and fabricated declaration by third parties. That late Singireddy Swamy Reddy was aged 95 years in the year 2006 and in view of advanced age, the declarant stopped signing as he was not able to write properly due to shake of his hand on account of advanced age. That the notices under Section 10(5) of the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') and other subsequent proceedings are received and acknowledged by third parties, who might have been instrumental in filing the declaration and computation of entire land in the name of Singireddy Swamy Reddy. Petitioners came to know that the Enquiry Officer submitted report on 29.08.2006 in pursuance to declaration filed by Singireddy Swamy Reddy in the year 2006, which reveals that the Enquiry Officer alleged to have recorded the statement of Singireddy Swamy Reddy and the signature made therein is also forged one. The report also reveals that the declarant Singireddy Swamy Reddy was aged about 95 years, he has five major sons, the land in question is ancestral property and was already partitioned amongst the sons and they are in effective possession. It also reveals the allotment of land to the petitioners, who are legal heirs of Singireddy Swamy Reddy. It also reveals that the said property is ancestral property of Singireddy Swamy Reddy and the Village Kapra falls under peripheral area and accordingly, each of the five major sons are eligible for Acs.5.00 each under

G.O.Ms.No.733, dated 31.10.1988 and each of the five sons hold land less than the ceiling limit, they may be declared as non-surplus holders.

4. The 2nd respondent, who is competent authority passed orders declaring Singireddy Swamy Reddy as surplus landholder on the ground that the major sons are not entitled for any share, as no evidence is produced to establish that the subject lands are ancestral properties.

The said finding of the 2nd respondent is contrary to the record of the Enquiry Officer and that the lands in question were ancestral properties.

The name of the father of the petitioners' i.e., Singireddy Swamy Reddy, is recorded as shareholder in 1955 Khasra Pahani. The competent authority has not issued any notice to the petitioners, though their names are recorded in pahanies, pattadar pass books issued from 1970 and also in the year 2002 even before the alleged declaration said to have been filed by late Singireddy Swamy Reddy in the year 2006. The land in question is not a vacant land at the time of commencement of the Act 33/1976 on 30.06.2006 when the alleged declaration was said to have been filed by late Singireddy Swamy Reddy, as such, there was no need for filing any declaration under Section 6 of the Act. The land in question is the subject matter of these writ petitions have become vacant by virtue of change of land use in Master Plan vide G.O.Ms.No.288, dated 03.04.2008 and that the land in question falls within the peripheral area and each person is entitled upto Acs.5.00 gts of vacant land as per G.O.Ms.No.733, dated 31.10.1988. That Section 8(1) statement and Section 8(3) notices are prepared on 29.09.2006 and the same were issued on 29.09.2006, but the same were not served on the concerned persons in the manner prescribed under the Rules. The signatures of Swamy Reddy were forged on Section 8(1) statement and Section 8(3) notice. Without giving any opportunity as required under Section 8(3) calling objections within 30 days from the service of Section 8(1) statement, the 2nd respondent hastily passed final statement on 16.10.2006 itself, within 15 days and the same is in utter violation of

statutory provisions. As such, the impugned order No.G1/2722/2006 dated 16.10.2006 and all consequential proceedings are null and void.

4. Common counter affidavit is filed by the respondents denying the averments in the affidavits filed in support of the writ petitions stating that Sri Singireddy Swami Reddy, S/o. late Rami Reddy filed declaration under Section 6(1) of the Act. On filing such declaration, the matter was got enquired into by the Enquiry Officer and he reported that the lands declared by the declarant are his ancestral properties and also informed that he had five major sons and shares were allotted to all his sons and they are enjoying their respective shares. The entries in pahanies for the year 1970-71 & 1980-81 shows the name of Sri Singireddy Swamy, S/o.Ramaiah as pattadar. The village Kapra falls under G.O.Ms.No.733 and that each of them is eligible for 5 acres and all are major sons, hence, they may be declared as non-surplus holders. But there is no evidence to show that the lands are ancestral properties. Hence, the entire lands were computed in the name of the declarant Sri Singireddy Swami Reddy only. The declarant is recorded as pattadar in pahanies for the year 1970-71 onwards and he is alive and that though his sons are majors, they are not entitled to any share as no evidence is produced to establish that the landed property is the ancestral property. Orders under Section 8(1) along with statement under Section 8(3) of the Act were issued and served on the declarant on 30.09.2006. As no objections were received, order under Section 8(4) was issued on 16.10.2006 and notice under Section 9 of the Act was served on the declarant on 28.10.2006. The notification under Sections 10(1) and 10(3) of the Act were issued on 19.12.2006 & 05.02.2007 respectively and published vide Gazette No.422, dated 22.12.2006 & 34 dated 07.02.2007. Orders under Section 10(5) was issued on 13.03.2007 and got served on the legal heirs of the declarant on 23.03.2007. As the declarant did not handed over the land as directed under Section 10(5) orders within 30 days, order under Section 10(6) of the Act was issued on 04.06.2007 directing the Executive Officer to take over the

possession of the land and handover the same to M.R.O concerned. Accordingly, the possession of the land was taken on 21.08.2007 under cover of panchanama by the E.O. On verification of CC file and Section 6(1) declaration filed by Sri Singireddy Swamy Reddy, it is revealed that all the requisite notices were served on the declarant except notice under Section 10(5) which was served on the legal heir of the declarant.

The Xerox copies of the title deed issued with No.393916 and No.425 in the name of Sri Singireddy Swamy Reddy by the Mandal Revenue Officer, Keesara, R.R.District available in the file in which the pattadar signatures appears to be similar with the signatures on Section 6(1) statement and other served copies. On the application dated 18.03.2010, steps have taken to send the signatures of Singireddy Swamy Reddy to Forensic Lab for expert opinion. Hence, sought for dismissal of the writ petitions.

5. Additional counter affidavit is filed stating that pursuant to the filing of the writ petition, the then SO, ULC has sent the disputed signature of Singireddy Swamy Reddy along with the signatures in the registered sale deeds to the Forensic Science Laboratory and the FSL authorities issued proceedings stating that there is discrepancy in both the signatures. The Forensic Science Department did not specifically state as to which signatures are genuine. Although the name of the declarant is Singireddy Swamy Reddy, he signs as Sattaiah. This fact could not be known to any one except to the LRs of the declarant. The declarant quietly participated in the ULC proceedings. That the Enquiry Officer, K.Madhusudhan Reddy, who enquired into the declaration of Singireddy Swamy Reddy was called for and statement was recorded with regard to the controversy pertaining to the declarant. He stated that the signatures of the declarant on the declaration and the signature on the sworn statement given by Singireddy Swamy Reddy recorded by him are one and the same. That each of the signatures in the Will Deed executed by Singireddy Swamy Reddy varies from page to page and they are also different from signatures on the Settlement Deed and that

these signatures are close to the signatures in the declaration form. If the signatures of the declarant do not belong to the declarant, he would not have participated in the proceedings. The declaration was filed on 30.06.2006 and final proceedings under Section 10(6) were issued on 04.06.2007 i.e., after 11 months and in the meanwhile an elaborate enquiry was conducted and the declarant was served order under Section 8(4) dated 16.10.2006 on 28.10.2006 under due acknowledgment from Sri Singireddy Swamy Reddy. The acknowledgment of order under Section 8(4) in which the declarant has appended, his signature was not sent to the Forensic Science Laboratory for verification. The declarant died in the month of August, 2007. The son of the declarant Sri S.Janardhan Reddy filed a petition on 08.10.2010 before the SO, ULC disputing the signatures in the declaration, which was filed after three years of his father's death. Pending this writ petition, the Government once again examined the matter and also recorded the statement of the then Enquiry Officer, who recorded the statement of Singireddy Swamy Reddy and issued memo No.584/UC.IV/2014-2, dated 17.01.2014 and sought for dismissal of the writ petitions.

6. Heard Sri A.Sudharshan Reddy, learned Senior Counsel for Sri Pottigari Sridhar Reddy, Sri O.Manohar Reddy, learned counsel, Sri K.Goverdhan Reddy, appearing for the petitioners in all the writ petitions and learned Government Pleader for Assignments appearing on behalf of the respondents.

7. Sri A.Sudharshan Reddy, learned Senior Counsel submits that the petitioners' father namely Singireddy Swamy Reddy never filed declaration under Section 6 of the Act. This Court while granting interim order on 08.04.2010 in WPMP No.9578 of 2010, called for the original record pertaining to the case and learned Judge, *prima facie* compared the admitted signatures and disputed signatures on the declaration and came to the conclusion that declaration filed before the 2nd respondent alleged to be filed by late Singireddy Swamy Reddy appeared to be forged. In pursuant to the same, the learned Single Judge in WPMP

No.9758 of 2010 in W.P.No.7594 of 2010, dated 08.04.2010 observed that after calling for the record in pursuant to the above interim direction the 2nd respondent herein referred the disputed signatures in the declaration form No.1 and admitted signatures in the registered documents to A.P. Forensic Laboratory for verification and examination of signatures whether the signatures on the declaration are original or forged. The A.P.Forensic Science Laboratory submitted report dated 03.03.2012 holding that the disputed signatures on the declaration and admitted signatures of Singireddy Swamy Reddy are not one and the same. The said report was obtained by the petitioners under Right to Information Act vide memo dated 04.04.2012 and same is placed before this Court by way of WPMP No.39512 of 2013. No objections are filed to the said report by the respondents, as such, there is no declaration in the eye of law alleged to have been filed by Singireddy Swamy Reddy and all consequential proceedings said to have been initiated are *void ab initio*, and that it is the result of fraud played by the third parties. He further submits that the third parties, who purchased the subject land might have filed declaration to get ULC clearance. He further submits that even in the so called Enquiry report dated 29.08.2006 in CC No.G1/2722/2006 pursuant to alleged declaration filed by the Singireddy Swamy Reddy under Section 6 of the Act, it is mentioned therein that Singireddy Swamy Reddy is aged about 95 years, he partitioned the subject property amongst his five major sons by giving particulars of allotting shares. He further submits that except above lands, sons of Singireddy Swamy Reddy have no other properties in their names. He would further contend that as per the deposition and the documentary evidence produced by the sons of late Singireddy Swamy Reddy, who are the petitioners in these writ petitions are all majors as on the notified date and the Village Kapra falls under G.O.Ms.No.733, dated 31.10.1988 and each of them i.e., five major sons of Singireddy Swamy Reddy are eligible for retaining Acs.5.00 each. As such the sons of Singireddy

Swamy Reddy, who are the petitioners in these writ petitions are holding less than ceiling limit and they have to be declared as non-surplus holders. He further submits that the 2nd respondent, without issuing any notice to the petitioners, straight away passed orders dated 29.09.2006 without providing the statement under Section 8(1) and notice under Section 8(3) of the Act. Without issuing any further notice, issued proceedings dated 16.10.2006 confirming the orders under Section 8(1), 8(4) and 9 of the Act, purported to be under Section 8 (1) of the Act, even without waiting for the mandatory period of 30 days. Though the order dated 29.09.2006 postulates that objections shall be filed within 30 days from the date of service of the draft statement under Section 8(1) of the Act, the 2nd respondent passed impugned order, which is contrary to the Rules under the Act, 1976 and in violation of principles of natural justice. He also submits that the petitioners' names are entered in revenue records and Khasra pahanies, which are the documents of title of the year 1954-55 shows that Singireddy Swamy Reddy was shown as shareholder. Even subsequent pahanies also makes it clear that Singireddy Swamy Reddy is the shareholder of the subject land and after the same is partitioned amongst the petitioners, who are the sons of Singireddy Swamy Reddy, their names were entered in the revenue records from 1978-79 and they have been issued pattadar passbook and title deeds from the year 2002-2003, which goes to show that the subject lands are ancestral properties, even before the alleged declaration, which is, said to have been filed by late Singireddy Swamy Reddy under Section 6(1) of the Act in the year 2006. As such, the finding of the 2nd respondent that the subject property is not ancestral property is erroneous. He also submits that no notices were issued under Sections 10 (5) and 10 (6) of the Act. Admittedly, Sri Singireddy Swamy Reddy died on 10.08.2007 and the alleged taking possession was on 21.08.2007, which is also erroneous. He submits that the Enquiry Officer in the Enquiry report dated 29.08.2006 clearly held that Kapra

village falls in peripheral area entitling all the sons of Singireddy Swamy Reddy, who are majors as on the date of notified date, to retain Acs.5.00 each as per G.O.Ms.No.733, dated 31.10.1988, but the said aspect was not considered by the 2nd respondent, which is erroneous. He submits that the purchasers from one of the sons of Krishna Reddy, who is son of Singireddy Swamy Reddy filed WP No.19947 of 2010 against the impugned proceedings in the present writ petition, taking almost similar grounds in the present writ petitions, which was allowed quashing the impugned proceedings holding that no notice was issued to the persons in possession and the consequential proceedings were also quashed and the same became final, as such it is not open for the respondents to take a different stand in these present writ petitions, as these writ petitions are also filed by the sons of late Singireddy Swamy Reddy. In support of his contention, he relied on the judgment reported in **State of U.P v. Hari Ram** [\[1\]](#).

8. Sri O.Manohar Reddy, learned counsel appearing for the petitioners in one of the writ petitions, while adopting the arguments of Sri A.Sudharshan Reddy, learned Senior Counsel, submits that on the alleged date of filing declaration under Section 6 of the Act by late Singireddy Swamy Reddy, the subject lands in the writ petition does not fall within the definition of vacant land as defined under Section 2(q) of the Act. As such, question of filing declaration under Section 6(1) of the Act does not arise at all.

9. On the other hand, learned Government Pleader for assignment submits that possession was taken on 21.08.2007 and writ petitions are filed in the year 2010 and 2011 only to avail benefit of ULC (Ceiling and Regulation) Repeal Act, 1999 and the belated challenge amounts to waiver of right to challenge. He submits that at every stage, notices were issued to the petitioners' father i.e., late Singireddy Swamy Reddy in pursuant to statement made under Sections 8(3) and 8(4) of the Act and also to legal heirs of late Singireddy Swamy Reddy under Section

10(5) of the Act, but there are no objections from anybody, as such, impugned orders are passed declaring that late Singireddy Swamy Reddy is having excess land and possession was taken in pursuance to the same. As such, no exception can be taken to the impugned proceedings or taking of possession by the respondents. He submits that when once the orders under Section 8(4) of the Act become final, there is no role of declarant. He would further contend that the orders passed in the writ petition i.e., W.P.No.19947 of 2010, does not cover the issue in the present case and the said decision is erroneous, as the purchasers cannot challenge the proceedings after the orders against declarant, declaring him as surplus land holder has become final. Even the purchasers cannot claim benefit of G.O.Ms.No.733, dated 31.10.1988 and that it is only the original declarant who is entitled to claim benefit. He submits that the decision in WP No.19947 of 2010 has to be distinguished and cannot be made applicable to the facts in the present writ petitions. He also submits that appeal lies under Section 33 of the Act. In support of his contentions, he relied on the judgments reported in the cases of **State of Assam v. Bhaskar Jyoti Sarma**^[2] **Parchuri Ratnakar Rao v. State of A.P.**^[3] and **Sulochana Chandrakant Galande v. Pune Municipal Transport**^[4].

10. At this juncture, it is pertinent to note that this Court, in W.P.M.P.No.9578 of 2010 passed interim order dated 08.04.2010, which reads as follows:

“The writ petition is filed challengig the proceedings and final order under Section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act) passed by the second respondent whereby and whereunder late Singireddy Swami Reddy was held to be surplus landholder to the extent of 56, 767 Sq.Mts. in survey Nos. 191, 329, 336 and 337 of Khapra village. It is the case of petitioners that their predecessor never filed any declaration under Section 6(1) of ULC Act as it was land exclusively used for the purpose of agriculture. Their further case is that they only came to know about the proceedings when the Government tried to take possession of the land. On enquiries, they came to know about the impugned order. They assert that Swami Reddy was aged 95 years when the allegedly filed declaration and his signature was forged by some body. They also allege that no notice was issued under

Sections 10(5) or 10(6) of ULC Act and even the alleged notices were received by somebody forging the signatures.

As serious allegations are made with regard to the very process leading to declaration of surplus land of Swami Reddy, this Court directed the Assistant Government Pleader for Revenue (ULC) to produce the file. Today the file concerning CC No. G1/2722/2006, is produced before this Court. The file contains the affidavit and photocopies of other documents with admitted signature of Swami Reddy. Comparison of the signature on the declaration prima facie supports the contention of petitioners. Therefore the declaration filed before second respondent appears to be forged.

The Parliament enacted Urban Land (Ceiling and Regulation) Repeal Act, 1999, repealing the parent Act. The Government of Andhra Pradesh issued G.O.Ms.No. 603, dated 22-4-2008, bringing into force Repeal Act with effect from 27-3-2008. Therefore the Senior Counsel also contends that all the proceedings are abated. Then matter has to be gone into in final hearing. There is a dispute with regard to possession. The Assistant Government Pleader submits that after issuing notice under Section 10(6) of ULC Act possession was taken under cover of panchanama. A copy of panchanama is placed before this Court. It shows number of blanks therein with regard to dates of notification under Section 10(3) and notice under Section 10(5) of ULC Act. Further petitioners contend that no such notice was issued to petitioners and that the very initiation of proceedings under ULC Act are vitiated by fraud. Therefore this Court is convinced that petitioners have prima facie case and that balance of convenience is in their favour.

For this reason, there shall be interim order suspending the impugned order.

Post the WPMP. after three weeks.”

In pursuant to the same, the 2nd respondent referred admitted signatures and disputed signatures of late Singireddy Swamy Reddy to the AP Forensic Science Laboratory, which submitted report on 03.03.2012 and same made part of record in WPMP No.39512 of 2013, which reads as follows:

“Nature of examination:

Examination of signatures under magnifiers, stereomicroscope and Video Spectral Comparator

Reasons:

I have carefully and thoroughly examined the original documents of this case in all aspects of handwriting identification and detection of forgery with sophisticated instruments.

The questioned signatures marked Q1 to Q10 have been carefully compared with the standard signatures marked S1 to S37. the standards are written freely and show natural variations among them.

The questioned and standards do not agree in the writing characteristics. The questioned signatures exhibit more speed, more skill than the

standards movement, line quality, alignment, slant, spacing, relative proportion of letters differ between standards and questioned. Deep curved sometimes deep angular curved left base in letter ' ' with a prominent bifurcation at the middle base is seen in questioned. Whereas shallow curved left base with a twist or small retrace to the middle base is seen in standards. Extended finish of body in letter ' ' is seen in questioned but not so in standards. Location of commencement of letter body and location of commencement of ' ' differ between standards and questioned. Separate operation to write the circle part in letter ' ' is seen in standards, whereas circle part continues to write body in questioned. Execution of ' ' differ between standards and questioned.

There are no fundamental similarities between standards and questioned. The differences in the writing characteristics are significant and sufficient to form a definite opinion. Moreover, a low skilled person cannot produce better skilled writings than he is capable of.

Opinion:

-

Basing on the above observations, it is opined that;

‘The person who wrote the red enclosed signatures marked S1 to S37 did not write the red enclosed signatures marked Q1 to Q10.’

The above report of the AP Forensic Science Laboratory makes it clear that the standard signatures disputed signatures are not one and the same. Admittedly, no objections were filed against the said report by anybody including the respondent officials. Moreover, a perusal of the original record produced before this Court also goes to show that the so called declaration is made by one by ‘Sattaiah’ as the signature appended reads as ‘Sattaiah’. When once no objections are filed against the report of the AP Forensic Laboratory, it can safely be concluded that the observations of this Court while granting interim order 08.04.2010 in WPMP No.9578 of 2010 together with the opinion of AP Forensic Science Laboratory dated 03.03.2012 that Singireddy Swamy Reddy has not filed any declaration under Section 6(1) of the Act. In the counter affidavit it is stated that late Singireddy Swamy Reddy declared the subject land in question as agriculture (dry) land in the year 2006.

Section 2(q) of the Act defines ‘vacant land’ which reads as follows:

“(q) ‘vacant land’ means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not

include:-

- (i) land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;
- (ii) in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and
- (iii) in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building:

In view of above provision of law, when once it is not a vacant land, there was no necessity to file any declaration by late Singireddy Swamy Reddy. All these aspects go to show that no declaration was filed by Singireddy Swamy Reddy.

Section 15 of the Act reads as follows:

15. Ceiling limit on future acquisition by inheritance, bequest or by sale in execution of decrees, etc.—

- (1) If, on or after the commencement of this Act, any person acquires by inheritance, settlement or bequest from any other person or by sale in execution of a decree or order of a civil court or of an award or order of any other authority or by purchase or otherwise, any vacant land the extent of which together with the extent of the vacant land, if any, already held by him exceeds in the aggregate the ceiling limit, then he shall, within three months of the date of such acquisition, file a statement before the competent authority having jurisdiction specifying the location, value and such other particulars as may be prescribed of all the vacant lands held by him and also specifying the vacant lands within the ceiling limit which he desires to retain.
- (2) The provisions of sections 6 to 14 (both inclusive) shall, so far as may be, apply to the statement filed under this section and to the vacant land held by such person in excess of the ceiling limit.

Section 15 of the Act provides for declaration of subsequent acquisitions, if any, by the declarants. When the petitioners do not have excess land, much less vacant land, other than the subject property mentioned in the writ petitions, there is no need for them to file any declaration under Section 15 of the Act. Moreover, by the time they acquired the subject land, it was only an agricultural land. Even

otherwise, by virtue of G.O.Ms.No.733 dated 31.10.1988, the land held by the petitioners is within the ceiling limits, as late Singireddy Swamy Reddy has five major sons, as the subject land is only Acs.19.11 guntas, each son is entitled for Acs.5.00 each. The Enquiry Report filed by the Enquiry Officer also goes to show the same. In view of the same, there was no necessity to file any declaration by Singireddy Swamy Reddy in the year 2006. When there is no proof that Singireddy Swamy Reddy filed declaration under Section 6(1) of the Act, all subsequent proceedings emanating there from have to be declared as *void ab initio* and nonest in the eye of law. Even otherwise, it is pertinent to note that the Khasra pahanies for the year 1954-55 and subsequent pahanies filed by petitioners goes to show that Singireddy Swamy Reddy is shareholder along with Singireddy Laxma Reddy, being the bother of Singireddy Laxma Reddy, which strengthen the stand of the petitioners that the land is an ancestral property. Though the same is asserted in the writ petitions, the same is not disputed in the counter affidavit, which goes to show that the subject land is ancestral property. When once it is an ancestral property, as the petitioners in these writ petitions are majors, they are entitled for their share in the properties and said aspect was recorded by the Enquiry Officer in his report. The Enquiry Officer also concluded that the petitioners are all non-surplus holders and also that there is division of property amongst the legal heirs of late Singireddy Swamy Reddy. The 2nd respondent, without reference to the above facts, without issuing notice to petitioners, simply came to the conclusion that Singireddy Swamy Reddy has excess land, which is erroneous and without application of mind. When once the Enquiry Officer, basing on the documentary evidence states that the subject property is ancestral property, the contention of the learned Government Pleader that the subject land is not an ancestral property, cannot be accepted. Even otherwise record filed in the writ petitions such as Khasra pahanies for the period from 1954-55, subsequent pahanies and pattadar passbooks are filed along with writ petitions, which goes to

show that the petitioners have inherited ancestral properties. Therefore, the finding of the 2nd respondent that the subject properties are not ancestral properties is without any application of mind.

12. As far as the delay in filing the present writ petitions is concerned, the petitioners have explained that since they are not put on notice before passing impugned order by the 2nd respondent, they were not aware of any proceedings and that they came to know about the same only in the year 2010 when they approached the Sub-Registrar for disposing of the lands. As such, the contention of the learned Government Pleader for Revenue that the petitioners filed the present writ petitions in order to avail benefit of Repeal Act, 1989, cannot be accepted. Even a perusal of letter No.8985-LU/P5/HUDA/2005, dated 27.07.2005 issued by the Vice Charman, HUDA, in respect of land use information with regard to the subject land in Sy.No.191 of Kapra village and that the subject land is stated as Conservation (Dry Agriculture) and the said land is converted into residential zone vide letter dated 05.03.2010 issued by the Metropolitan Commissioner in respect of land in Sy.No.191 of Kapra village. As such, the subject land is not vacant land on the alleged date of filing of declaration in the year 2001.

13. W.P.No.19947 of 2010 was filed by the purchasers of part of the subject land from one S. Krishna Reddy alias S.Kista Reddy, who is one of the sons of late Singireddy Swamy Reddy, taking same pleas as in the present writ petitions. This Court, by orders dated 25.04.2013 allowed the said writ petition by quashing the impugned proceedings. In the said writ petition, it was the specific contention of the learned counsel for the petitioners that notice under Section 10(5) of the Act has not been served on the declarant and also on the petitioners therein. This Court, after considering the factual aspects, held that no notice was issued under Sections 10(5) and 10(6) of the Act to the persons in possession. Though the order in the aforesaid writ petition is passed in the year 2013 and same is brought to the notice of 2nd respondent, which is evident

from the original record produced by the learned Government Pleader, no appeal is preferred against the said order dated 25.04.2013. When the impugned order is quashed in the said writ petition, which has become final, I do not know on what ground the learned Government Pleader wants this Court to take a different view from that of the order in W.P.No.19947 of 2010. If the said decision is rendered in different context, the question of distinguishing would differ. Even otherwise, as stated above, the writ petitions deserved to be allowed as there is no declaration filed by late Singireddy Swamy Reddy and no notices were issued to the petitioners, who are the sons of Singireddy Swamy Reddy, who are in possession of the subject lands.

14. Another factual aspect which needs to be considered herein is that without waiting for the mandatory period of 30 days to consider the objections of the declarants, to the draft statement under Section 8 (1) of the Act, impugned proceedings have been issued. Section 8(3) of the Act reads as follows:

“8.Preparatin of draft statement as regards vacant land held in excess of ceiling limit:

(1).....

(2).....

(3)The draft statement shall be served in such manner as may be prescribed on the person concerned together with a notice stating that any objection to the draft statement shall be preferred within thirty days of the service thereof.”

A perusal of the counter affidavit filed in W.P.No.7594 of 2010, it is averred as follows:

“Accordingly 8(1) orders along with statement U/s 8(3) of the Act were issued and served on the declarant on 30.09.2006. As no objections were received order U/s 8(4) was issued on 16.10.2006 and the notice U/s 9 was served on the declarant on 28.10.2006.”

As per Section 8(3) of the Act, the competent authority, before passing any order under Section 8(4) of the Act, shall wait for a period of 30 days to receive such objections from the concerned person for the draft statement. After considering the said objections, he has to pass

orders on the draft statement. In the present case also 30 days notice is mandatory for filing objections. But, statement under Section 8(3) is issued on 29.09.2006, whereas the order under Section 8(4) was passed on 16.10.2006 i.e., within 30 days. Even on that ground also, the impugned order passed by the 2nd respondent is erroneous.

15. The decision relied on by the learned Government Pleader in **State of Assam v. Bhaskar Jyoti Sarma (supra)** has no application to the facts in the present case on hand. Since in the said case, the possession was taken on 07.12.1991 and declarant died on 03.10.1997 and the writ petitions were filed in the year 2004. Moreso, the purchasers from the declarant questioned the proceedings of surrender and allotment to third parties, which became final and in those circumstances, it is held that belated challenge to dispossession amounts to waiver of right to challenge. In the present case, the landholders filed writ petition, after knowing about the impugned order, since they were not issued any prior notice, as such, decision cited by the learned Government Pleader has no application to the facts of the case. Purchasers from one of the sons of Singireddy Swamy Reddy filed W.P.No.19947 of 2010 against the impugned proceedings, wherein this Court quashed the impugned proceedings, and they have become final.

The other decisions relied on by the learned Government Pleader are not applicable to the facts of the case, as they were rendered in different context.

In view of above facts and circumstances, these writ petitions deserve to be allowed and accordingly, the same are allowed.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.

22.06.2016.

A.RAJASHEKER REDDY, J

kvs

.

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

-
-
-
-
-
-
-
-
-
-

-
-
-
-
-
-
W.P. Nos.7594, 21589 of 2010 and 11623 of 2011
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
Date: 22.06.2016

kvs

--

[\[1\]](#) (2013) 4 Supreme Court Cases 280

[\[2\]](#) (2015) 5 Supreme Court Cases 321

[\[3\]](#) 2006 (5) ALD 132 (DB)

[\[4\]](#) (2010) 8 Supreme Court Cases 467