

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.32622 OF 2011

ORDER:

The case of the petitioners is that petitioners 1 to 3, being successors of the Inamdar, are the title holders and possessors of land in Survey No.107/11 and having received total consideration, they executed registered agreement-cum -power of attorney deeds bearing document Nos.1041/03 and 1139/04, dated 10.03.2003 and 16.03.2004, respectively, conferring authority on the power of attorney holders to transfer title by executing any deed of conveyance or to deal with the property in any manner they think appropriate. Subsequent thereto, they executed registered sale deeds bearing document Nos.1556/10 to 1559/10, dated 29.10.2010, for valid and substantial consideration and petitioners 1 to 3 through their power of attorney holder conveyed title for an extent of Ac.8-08 cents of land in favour of petitioner 4 to 7, who have acquired valid title and are in possession of the said property. Petitioners 4 to 7 having learnt that the original Inamdar did not apply for and obtain Ryotwari Patta under the Inams Act, filed an application before 5th respondent on 26.08.2011 and the said application is pending consideration. While the matter stood thus, basing on a newspaper report, the 3rd respondent issued a notice on 20.04.2011 stating that the subject land is classified as 'Inam Dry' and is locally named as 'Baddam Cheruvu' and the same is not converted under Section 7 (1) of the Inams Abolition Act (for short the "Inams Act") and petitioners 4 to 7 encroached into part of the said land without any valid title and were directed to produce documents in support of their claim. In response to the said notice, petitioners submitted detailed explanation, dated 17.05.2011, explaining the details of title and the significance about the relevancy of the revenue records and contended that the subject land is an Inam land and the Government cannot have any claim over the same. It is stated that in fact there is no document to show that the subject land is a 'tank'. The field measurement book for Field No.107 does not show that the subject land is a tank. Basing on the notion that the subject land is a tank, the 2nd respondent directed inquiry and called for a report from 3rd respondent, who, in turn, submitted report, dated 05.05.2011, on the basis of enquiry caused and entries in the revenue records, had categorically stated that no topographical details in the field measurement book and in the Village map are noted to show the subject land is a tank. It is also stated that there is nothing in the revenue records to describe the land as 'Baddam Tank'. The 3rd respondent also reported that the subject land is an inam land and the ancestors of petitioners 1 to 3 are the Inamdars. The Assistant

Engineer, Irrigation Department, also seems to have inquired into the matter and reported that there is no record in the Department to show that the subject land is a tank. While conducting inquiry on the basis of the newspaper report, the 2nd respondent issued directions to the Commissioner, G.V.M.C. and to the Chairman, VUDA, not to grant any permission to the petitioners and if already granted, the same be kept in abeyance. The petitioners made an application under the Right to Information Act seeking copies of the entire correspondence relating to the inquiry into the matter. A perusal of the intra-departmental correspondence made available shows that the respondents have assigned undue significance to the newspaper report and acted with legal malice to deprive the petitioners of the valuable land. Even while the petitioners' application for Ryotwari Patta is pending, the 5th respondent directed the 4th respondent to cancel the sale deeds and thereby nullified the basis of the claim of the petitioners for patta and in another proceedings, dated 12.09.2011, the 2nd respondent also directed the 5th respondent, being the competent authority under the Inams Act, to *suo moto* conduct enquiry into the title of the subject land. Accordingly, the Revenue Divisional Officer and the 5th respondent issued notices to conduct inquiry under Section 3 of the Inams Act. Vide proceedings, dated 21.09.2011 and 10.10.2011, the 2nd respondent has illegally cancelled the sale deeds and seems to have directed the statutory authority under the Inams Act to reject the application for grant of Ryotwari Patta, since the sale deeds in favour of the petitioners are already cancelled. The respondents 2 and 3 have no authority of law to unilaterally cancel the sale deeds. Being aggrieved by the said action of the respondents, the present Writ Petition is filed questioning the proceedings, dated 12.09.2011, of the 2nd respondent and consequential action of the 3rd respondent in cancelling the sale deeds.

Counter is filed by the 3rd respondent on behalf of respondents 1 to 3 and 5 stating that Pendurthi is an estate village governed by Vizianagaram Zamin Estate and taken over under the provisions of Estate Abolition Act, 1948. The Survey and Settlement operations were introduced with effect from July, 1959. As per Survey and Settlement record, the Sy.No.107/11 measuring Ac.08-08 cents (subject land) is classified as Inam Dry and the name of one Vemulakonda Venkanna was recorded as Inamdar vide T.D.No.2703 in SFA of Pendurthi Village and the same is being used as Tank since long time and locally called as " Peddanna Tank" and no conversion was made and no ryotwari patta in Form-VIII is granted to any body including the writ petitioners or their ancestors. It is stated that Section 2-A

of Inams Act was inserted by the Amendment Act 20 of 1975 for the purpose of vesting all communal lands, Porambokes etc., to the Government. It speaks that notwithstanding anything contained in this Act all communal lands and porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances. Basing on the news item on 27-03-2011, the District Administration has appointed Special Task Force Committee for enquiry and after verifying all the records and also after inspecting the land in question and after local enquiry, the Special Task Force Committee has submitted report stating that the subject land covered by Sy.No.107/11 measuring Ac.08-08 cents is recorded as Inam dry in the name of Vemulakonda Venkanna. But, no ryotwari patta was obtained by the Inamdar or their successors. Unless ryotwari patta is obtained, no saleable rights will be vested to anybody. It is revealed that there are no legal heirs to the original Inamdar i.e. Vemulakonda Venkanna and no such legal heirs preferred claim under the Inams Act, some unauthorized persons having surname of Inamdar i.e. Vemulakonda Venkanna sold the lands without having any legal title. The committee also of the opinion that the Inam lands under TD Numbers should get converted into ryotwari by the rightful claimants. If there are no legal heirs, the land vests in the Government under Section 2-A of Inams Act. In view of the observations of the committee, the District Collector, Visakhapatnam by exercising powers under Section 2-A of the Inams Act directed the Tahsildar, Pendurthi for unilateral cancellation of the sale deeds covered by Registered document Nos.1041/2003, 1139/2004, 1556/2010, 1557/2010, 1558/2010, 1559/2010, 1560/2010, 3981/2010, which were registered fraudulently affecting the Government land situated in Sy.No.107/11 measuring Ac.08-08 cents of Pendurthi Village.

It is stated that the respondents are not aware of the judgment of O.S.No.20 of 1955 on the file of Subordinate Judge, Visakhapatnam, as they are not parties therein and the subject land is not covered by the schedule of the said suit and A.S.No.406 of 1959 on the file of Additional District Judge, Visakhapatnam. The petitioners 1 to 3 herein deposed before the enquiry that the petitioners 2 and 3 are the sons of Late Vemulakonda Varaha Narasimham and great grand sons of original TD Inamdar Vemulakonda Venkanna. Whereas, the recitals of the plaint in O.S.No.20 of 1995 speaks that the plaintiff is the nearest legal heir of the original T.D. Inamdar but he did not state that, he is the grand son of original Inamdar. Thus, there are inconsistencies regarding the relationship with the TD Inamdar and the family of the writ petitioners 1 to 3 herein.

The contention of the writ petitioners that the successors of Inamdar are the title holders and possessors of land in Sy.No.107/11 and being the owners of the said land, they sold away the land to the petitioners 4 to 7 is not correct. The petitioners 1 to 3 herein or their ancestors are not in possession and enjoyment of the land in Sy.No.107/11 of Pendurthi Vilalge and it is used as tank for communal purpose, which attracts the provisions of the Section 2-A of the Inams Act and also the executants of the sale deeds have not perfected any title by way of Ryotwari patta in Form-VIII as required by the Act. Hence, the subject land vested with the Government as per Section 2-A of the Inams Act. It is stated that since the subject land is being used as Tank and recorded in revenue records as 'Peddanna Tank' and situated in GVMC limits and nearer to BRTS road and while the land grabbers colluded with realtors occupied the same and trying to level the tank, the same is reported in news papers. The District Collector enquired the same and thought it would be fit to order for cancellation of sale deeds. The petitioners colluded themselves and hatched a plan in the year 2003 and 2004 and subsequently the petitioners 1 to 4 herein executed sale deeds in favour of petitioners 5 to 7 in the year 2010 and in the year 2010 they completed the registration as per their plan. It is stated that as per records in Sy.No. 107/11 measuring Ac.08-08 cents is recorded as "Peddanna Cheruvu" and in the column No.8 of said adangals noted as "Tank". The Task Force Committee also reported the same. It is stated that the District Collector has exercised his powers vested on him under Section 26 (i) k (i) of A.P. Rules under the Registration Act, 1908 (for short the "Rules") and passed orders unilaterally and as such sought for vacating the interim orders.

Counter is also filed by the 4th respondent stating that as per the proceedings of the District Collector on 14-11-2011, the Tahsildar was authorized to present the registered sale deeds for cancellation and as per the proceedings of the District Collector, they are found to be government lands. As there is no statutory prohibition for registration of the schedule properties of the documents, the then Sub-Registrar has entertained the documents and registered. As against the Registration of the documents in pursuance to the proceedings of the District Collector, dated 14-11-2011, the remedy for the aggrieved parties to approach the Civil Court seeking to set aside the cancellation of registered sale deeds. The cancellation of documents was ordered in pursuance to the orders passed by the District Collector. It is stated the presence of both parties for registering cancellation deed does not arise in view of Rule 26 (i) k (i) of the Rules. It is also stated that the District Registrar is no

way concerned with registration of earlier sale deed or the registration of the cancellation deeds.

Learned counsel for the petitioners submits that the District Collector has no power and authority to issue the impugned proceedings for cancellation of registered sale deeds executed by the petitioners 1 to 3 in favour the petitioners 4 to 7 that too unilaterally and the 3rd respondent cannot act on the same in presenting the documents for cancellation and the same would not have been registered unilaterally. He also submits that even in the village map, no tanks were shown in Sy.No.107/11 and even report submitted by the 3rd respondent, dated 05-05-11 stating that in Field Measurement Book, there are no topographic details about the existence of tank. The revenue record does not indicate there was any existing tank and the report indicates that the land in Sy.No.107/11 was not recorded as per Section 22-A of the Registration Act and though as per record, it was not recorded as Tank, physically the land was known as Peddanna tank. As per 10(1) Register of Pendurthy Village, the same is recorded as Peddanna cheruvu with two different inks. Basing on the same, it cannot be said that the subject land is a tank. He also submits that by virtue of cancellation of registered sale deeds executed by the petitioners 1 to 3 in favour of the petitioners 4 to 7, their claim under Inams Abolition Act gets affected. Basing on their application, they were issued notices on 21-09-2011. He submits that by virtue of judgment dated 28-04-1957 in O.S.No.20 of 1955 on the file of the Subordinate Judge at Visakhapatnam, the father-in-law of first petitioner and the father of petitioners 2 and 3 were held to be legal heirs of Vemula Venkata Narayana and the same is confirmed in A.S.No.406 of 1959 on the file of the Additional District Judge, Visakhapatnam. The Second appeal against it was also dismissed by this Court in S.A.No.555 of 1960 and the same has become final. Even as per settlement Fair Adangal shows that for Sy.No.107/11 Vemulakonda Venkanna was issued T.D.NO.2703. Field Measurement Book also does not indicate that Sy.No.107/11 contains tank land. At any rate, he submits that basing on these aspects, there cannot be unilateral cancellation of registered sale deeds and the same is without an authority. He placed reliance on the judgment of **Thota Ganga Laxmi and another v. Government of Andhra Pradesh and others**^[1].

On the other hand, the learned Assistant Government Pleader for Revenue submits that basing on news paper report, the District Collector ordered for enquiry and it was found that the said land is declared as tank land. As such, the Collector by exercising powers under Section 26(i) k (i) of Rules passed the impugned order. When it was found that there are no legal heirs for Vemulakonda Venkanna, the land vests with Government under

Section 2-A of Inams Act. As on today, no ryotwari pattas are granted in favour of Inamdar or successors of Inamdar, the question of sale of lands by petitioners 1 to 3 in favour of petitioners 4 to 7 does not arise and the District Collector basing on the enquiry report found there are no legal heirs to Vemulakonda Venkanna passed the impugned order. Basing on the same, the registered sale deeds executed by petitioners 1 to 3 in favour of petitioners 4 to 7 were cancelled. No exception can be taken to it. He also submits that the Joint Sub-Registrar, who is a party to the transaction is not impleaded as party. He also submits that in similar issue, learned Single Judge of this Court in W.P.No.20683 of 2012 and 2192 of 2013 referred the matter to a Division Bench. He also submits that the Collector represents the Government and since the rule 26 (i) (k) (i) of the Rules empowers the Government to cancel the deeds unilaterally, no exception can be taken and the impugned order should not be interdicted.

In view of above rival pleadings, the only issue that is required to be determined in the writ petition is, whether the 2nd respondent can issue impugned proceedings directing the 3rd respondent to file a cancellation deed to reverse the already registered sale deed transactions in respect of land in Sy.No.107/11 under rule 26 k (i) and rules framed under A.P. Registration Act and whether basing on the same the registered sale deeds executed in favour of the petitioners 1 to 3 in favour of petitioners 4 to 7 can be cancelled unilaterally.

The issue in the writ petition is no more *resintegra* and already the similar issue fell for consideration before the Apex Court in the judgment of **Thota Ganga Laxmi** (1 supra) and wherein it is held as under;

“ In our opinion, there was no need for the appellants to approach the civil Court as the said cancellation deed dated 04-08-2005 as well as registration of the same was wholly void and non est and can be ignored altogether. For illustration, if A transfers a piece of land to B by a registered sale deed, then, if it is not disputed that A had the title to the land, that title passes to B on the registration of sale deed (retrospectively from the date of execution of the same) and B then becomes the owner of the land. If A wants to subsequently get the sale deed cancelled, he has to file a civil suit for cancellation or else he can request B to sell the land back to A but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.

5. In this connection, we may also refer to Rule 26(k) (i) relating to Andhra Pradesh under Section 69 of the Registration Act , 1908, which states:

“ i) The registering officer shall ensure at the time of presentation for registration of cancellation deeds of previously registered deed of conveyances on sale before him that such cancellation deeds are executed by all the executant and claimant parties to the previously registered conveyance on sale and that such cancellation deed is accompanied by a declaration showing mutual consent or orders of a competent Civil or High Court or State or Central Government annulling the transaction contained in the previously registered deed

of conveyance on sale.”

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyance on sale before him if the cancellation deed is executed by a civil Judge or a government officer competent to execute government orders declaring the properties contained in the previously registered conveyance on sale to be government or assigned or endowment lands or properties not registerable by any provision of law.

A reading of the above Rule also supports the observations we have made above. It is only when a sale deed is cancelled by a competent court that the cancellation deed can be registered and that too after notice to the parties concerned. In this case, neither is there any declaration by a competent court nor was there any notice to the parties.”

The Apex Court held that this Rule also makes it clear that both the cancellation deed as well as registration thereof were wholly void and *non est* and meaningless transactions by reversing the judgment of this Court. The District Collector passed the impugned order for presentation of registered documents for cancellation purporting to exercise power under rule 26 (k) (i) of Rules. The proviso does not indicate the Collector is empowered to pass orders for cancellation of registered sale deeds. Ratio in the above judgment squarely covers the facts in the present case. Though other aspects are argued whether the petitioners are entitled for ryotwari pattas or not, all these aspects cannot be decided in this Court, more so enquiry is pending before the competent authority and it is not for this Court to decide the issue that is not the subject matter before this Court. Since the enquiry is pending under Inams Act, the petitioners can submit explanation, if not already submitted, it is for the concerned authorities to pass orders in accordance with law. Since this Court holds that the 2nd respondent has no power to order for cancellation of registered sale deeds unilaterally and direct the 3rd respondent to present the documents for cancellation basing on the impugned order passed by the 2nd respondent is wholly illegal, without authority or without jurisdiction, the impugned order is set aside.

The issue, which was referred to Division Bench in WP.No.20683 of 2012 and 2192 of 2013, pertains to cancellation of General Power of Attorney, as such, the same is not relevant to the present issue and the issue in the present writ petition is squarely covered by decision of Apex Court referred to above.

Having regard to the above, the writ petition is allowed. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

03-03-2016
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[\[1\]](#) (2010) 15 Supreme Court Cases 207