

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.21880 OF 2009

ORDER:

This writ petition is filed seeking to issue writ of mandamus declaring the order passed by the Settlement Tribunal-cum-Principal District Judge, West Godavari at Eluru, in CMA No.16 of 2006 as being illegal, unjust, contrary to law and violative of principles of natural justice and consequently set aside the same.

2. Facts stated briefly are:-petitioner's firm claims to be leasee for extracting white clay in an extent of Ac.105.39, in BS No.—1 (R.S.No.358) of Venkata Krishna Puram Village, Dwarak Tirumala Mandal, West Godavari District and the lease was granted in the year 1963 initially for a period of 10 years and was extended from time to time on payment of rents and royalties to the Government till 22-04-2014. While so, a claim petition under Section 15(1) of the Estate Abolition Act, 1958 was filed by the 5th respondent before the 3rd respondent-Settlement Officer-cum-Joint Collector, West Godavari, seeking grant of ryotwari patta for the land admeasuring Ac.8-00 in R.S.No.358/part, forming part of

the leased land to the petitioner. 5th respondent based her claim on the ground that it was acquired by her husband and his brother from one Pakalapati Atchuta Ramaiah through registered Document No.3040/1958, dated 09-09-1958 who in turn acquired the said property from one Parvataneni Sitaramaiah through Document No.115/45 dated 23-01-1945. Later the said land was partitioned into two equal parts i.e., Ac.4-00 each by the 5th respondent's husband and his brother. After partition, 5th respondent's husband purchased the share of his brother also through sale of agreement dated 06-09-1969 and after the death of her husband, she inherited the total property of Ac.8-00 in R.S.No.358 part. The claim petition filed by the 5th respondent came to be dismissed by the 3rd respondent-Settlement Officer-cum-Joint Collector on the ground the subject land is not fit for cultivation and it is rocky hill area. Aggrieved thereby, the 5th respondent filed appeal in CMA No.16/2006 before the Settlement Tribunal-cum-Principal District Judge, West Godavari at Eluru, and by the impugned order dated 20-12-2006, the Settlement Tribunal allowed the claim of the 5th respondent setting aside the order passed by

the 3rd respondent-Settlement Officer-cum-Joint Collector.

Hence, this writ petition by the petitioner.

3. Counter affidavit is filed by the 2nd respondent-MRO, Dwaraka Tirumala, including on behalf of respondents 1 and 3 stating that rytowari patta has been granted in respect of the subject land admeasuring Ac.8-00 covered by R.S.No.358 part in favour of the 5th respondent. It is stated that petitioner was given lease for mining by the Mining Department only to an extent of Ac.60-00 in R.S.No.358/1 and the said lease was extended from time to time upto 22-04-2014 and as per Adangals of the village, the name of the petitioner is shown in an extent Ac.60-00 only, S.C.Colony in an extent of Ac.6-00, Vacant site in an extent of Ac.31.39 and in R.S.No.358/2, the name of the 5th respondent is shown in an extent of Ac.8-00. In the counter it is admitted that 5th respondent's husband and his brother have purchased the land from one Pakalapati Achutaramaiah and his sons through registered sale deed dated 09-09-1958 who in turn has purchased the same from one Sita Ramaiah and later the 5th respondent's husband purchased the share of his brother through sale of agreement dated 06-09-1969 and after death

of 5th respondent's husband, she inherited the property of Ac.8-00 in R.S.No.358 part of Venkatakrishnapuram. It is further stated that in the revenue records, the subject land is classified as Konda instead of zeroithi dry land and no quarry operations are going on in the land relating to the 5th respondent. It is also stated that the 5th respondent has not grabbed any Government land as alleged by the petitioner, muchless concerned with the land of the petitioner and, therefore, sought for dismissal of the writ petition.

4. Counter affidavit is also filed by the 4th respondent- Assistant Director of Mines and Geology asserting on the lines of the averments made in the counter of respondents 1 to 3. It is stated that the petitioner vide GO Ms.No.167, dated 20-05-1998 was granted lease for a period of 20 years which continued upto 22-04-2014. Thereafter several applications were received from different persons for grant of lease and among them, one SVS Swamy made application for grant of mining lease over an extent of Ac.100-00 in Sy.No.358 of Venkatakrishnapuram Village, to which the Tahsildar, Dwaraka Tirumala vide letter dated 02.09.2010 submitted a

report to the 1st respondent-District Collector, West Godavari,
giving the details as under:-

1	Extent approximately covered by old housing colony.	Ac.6.00
2	Land handed over to Smt S.Renuka Devi (5 th respondent) through Settlement land as per orders of the District Court, Eluru.	Ac.8.00
3	Land leased out to M/s.Vijaya Bharathi Corporation.	Ac.60.00
4	Land available for digging out the mineral (approximately).	Ac.31.39
Total		Ac.105.39

5. That though recommendation was made to consider the application of SVS Swamy to an extent of Ac.31.39 cents, the said application was rejected on the ground that the total applied area is overlapping with the mining lease granted to M/s. Vijaya Bharathi Corporation, the petitioner. That in pursuance of the 4th renewal application filed by the petitioner, the same was forwarded to the Director of Mines and Geology duly reducing the extent to Ac.54-00 only and the said proposal is pending, and in the circumstances sought for dismissal of the writ petition.

6. Counter affidavit is filed by the 5th respondent reiterating the averments of the counters filed by the respondents 1, 2, 3 and 4. It is stated that the subject land was always treated as patta land from decades and that the petitioner is holding lease only to an extent of Ac.60-00 cents out of Ac.105.39 cents as is evident from the proceedings in Roc.No.27/2009 (DT), dated 02-01-2010 and Roc.No.27/2009 (DT), dated 16-10-2009 of 2nd respondent and, therefore, sought for dismissal of the writ petition.

7. Additional counter affidavit is filed by the 6th respondent, impleaded party, stating that subsequent to the filing of writ petition, the petitioner filed suit OS No.156/2014 on the file of Junior Civil Judge, for permanent injunction against him claiming that he is in possession of land to an extent of Ac.105.39 cents covered by R.S.No.358, but the said suit was dismissed by judgment dated 27-02-2014. It is stated that the land of the 6th respondent is covered in an extent of Ac.21.70 cents in R.S.No.358. That the claim of the petitioner that it is the lease holder in respect of the entire land in RS No.358 is incorrect.

8. Heard learned counsel for the petitioner, learned Government Pleader for Revenue (AP), learned Government Pleader for Mines and Geology (AP), learned counsel for the 5th & 6th respondents. Perused the impugned order passed by the Court below.

9. Learned counsel for the petitioner states that the impugned order upholding the claim of the 5th respondent was passed without issuing notice to the petitioner which is in violation of the principles of natural justice. Learned counsel further contended that petitioner was granted lease in respect of the land to an extent of Ac.105.39 cents in Sy.No.358 in the year 1963 and the same was extended from time to time. It is also stated that the petitioner's application for renewal is pending. It is submitted that the Settlement Officer-cum-Joint Collector has rightly dismissed claim petition of the 5th respondent inasmuch as the land in question being a rock hill area and not fit for cultivation, therefore, the impugned order is liable to be set aside.

10. Learned Government Pleaders appearing for the official respondents contended that the land in possession of the 5th respondent is different and is not part of the land in respect

of which the petitioner is granted lease. Learned counsel for the 5th respondent contended that the property rights of the 5th respondent are crystallized in the light of the order of the Settlement Tribunal, and therefore, the writ petition is liable to be dismissed.

11. It has come on record that Venkata Krishnapuram village in which the subject land is situate, now Dwaraka Tirumala mandal, was declared as inam estate land under the Estate Abolition Act and the village was taken over by the Government on 18-01-1962. 5th respondent made claim petition in view of the title to the land of Ac.8-00 in RS No.358 of Venkata Krishnapuram village acquired through her husband. The Court below considering the report of the MRO, Dwaraka Tirumala, to the effect that the land in question is in possession of the 5th respondent and is fit for cultivation and further the MRO, Dwaraka Tirumala, clarifying that the land in question is a zeroity dry land, but it was erroneously recorded as Konda porambok land, allowed the claim petition by setting aside order of Settlement Officer. The main contention of the petitioner's counsel is that no notice was given to the petitioner before allowing the claim of the 5th

respondent to an extent of Ac.8-00 in RS No.358 part. As discernable from the counter affidavits of the official respondents, the land of the 5th respondent is different from the lease land of the petitioner. Incidentally both the lands are situated in the same RS No.358, but it is the categorically assertion of the 2nd respondent-MRO, Dwaraka Tirumala, that the land of the petitioner is different and the petitioner has nothing to do with the land of the 5th respondent. Even otherwise, 5th respondent worked out her remedies based on the title she inherited through her husband, where as the petitioner is only a lessee and from the averments of the 4th respondent-Assistant Director of Mines and Geology, the lease period also expired and the application for renewal of lease is pending, that too not for the entire extent of the land in RS No.358, as is evident from counter of the 4th respondent, but the proposal seems to have been sent to the Director of Mines and Geology duly reducing the extent to Ac.54-00 in RS No.358. The petitioner being a lessee cannot prevent the 5th respondent from working out her remedies based on the title deeds which relates back to the year 1958 and contend that notice ought to have been given to him, in the absence of

infringement of any rights, muchless any property rights accrued to it.

12. It is also a matter of record that the petitioner filed suit OS No.156 of 2014 against the impleaded 6th respondent seeking permanent injunction in respect of the same land in RS No.358 and the said suit is dismissed vide judgment and decree dated 27-02-2014, which is not disputed in the reply affidavit filed by the petitioner. This goes to show that the petitioner is not in possession of the land in question. In the counter affidavit filed by the respondents 1 to 3, it is stated that the lease was granted to the petitioner only to the extent of Ac.60-00cents and that there is no mining activity going on in respect of other areas. Even in the revenue records furnished by the MRO, Dwaraka Tirumala to the 1st respondent-District Collector, it is shown that the petitioner is granted lease in respect of Ac.60-00 cents only. The counter affidavit filed by the 2nd respondent also shows that the land in respect of which patta was granted to 5th respondent does not overlap with the land in which lease was granted to the petitioner.

13. On the above analysis of the matter, the Court below after considering the case of the 5th respondent and basing on the report of the 2nd respondent-MRO rightly allowed the claim of the 5th respondent by setting aside the order passed by Settlement Officer-cum-Joint Collector, West Godavari.

14. In view of the above facts and circumstances, I do not see any merit in the writ petition and it is accordingly dismissed. Miscellaneous petitions, if any, pending in the writ petition also stand dismissed. No order as to costs.

26.10.2016
Dv/NRG



A.RAJASHEKER REDDY, J

