THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P. Nos.20133 of 2007 and 7087 and 14230 of 2008

COMMON ORDER:

These three Writ Petitions are being disposed of by this common order since the same order passed by the Commissioner of Appeals in Proceedings No.P3/1101/2001 dt.16.03.2006 is impugned in all three matters and the parties to these three Writ Petitions are also one and the same.

2. One Smt.J.Vasanthamma, has purchased an extent of Acs.2-65 cents in survey No.31/1P(New survey No.31/1A) situated at Mangalam village, Tirupathi Urban Mandal, Chittoor District under a registered sale deed dt.21.11.1968 from one Arjun Pillai, who in turn got the land from one Yellappa Reddy in exchange in 1954.

3. The said Smt.Vasanthamma is the 6th respondent in W.P.No.7087 of 2008 and 4th respondent in WP.No.20133 of 2007 and W.P.No.14230 of 2008.

4. Smt.Vasanthamma had applied for grant of Ryotwari Patta under 11(a) of the A.P. (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1947(for short 'the Act') before the Settlement Officer, Nellore.

5. By order dt.30.06.1982 in Proceedings SR/11(a)/82-CGR, Ryotwari Patta was granted to Smt.Vasanthamma by the Settlement Officer, Nellore.

6. There was no challenge to the said Ryotwari Patta granted to Smt.Vasanthamma by anybody.

7. Petitioner in W.P.No.7087 of 2008 claims that his father G.Muniswamy Naidu purchased Ac.0-65 cents in survey No.31/1A from said Smt.Vasanthamma under registered sale deed dt.15.02.1985 and that he succeeded to the said land after the death of his father. He is also impleaded as 6th respondent in W.P.No.20133 of 2007 and W.P.No.14230 of 2008.

8. One G.Gopal, who is 5th respondent in all the three Writ Petitions claimed that he had purchased an extent of Ac.1-26 cents out of Acs.2-65 cents from Smt.Vasanthamma under an unregistered sale deed and that it is validated by the Civil Court on 12.04.2000.

9. The Special Commissioner and Director of Settlements, Hyderabad in exercise of power conferred under Section 5(2) of the Act initiated a *suo moto* revisional enquiry in R.P.No.290/84(H1) on the ground that the said patta was granted to Smt.Vasanthamma without examining the pre and post abolition records and without verifying whether the property was ryoti or non-ryoti land and also without verifying whether Smt.Vasanthamma or her predecessors were in physical vacant possession and enjoyment of the land prior to 01.07.1945.

10. Notice of the said proceeding was issued to Smt.Vasanthamma.

11. In the said Revision Sri G.Gopal also got impleaded.

12. After hearing Smt.Vasanthamma and Sri G.Gopal, the Special Commissioner and Director of Settlements came to the conclusion that the land in respect of which Ryotwari Patta was

granted to Smt.Vasanthamma was Ryoti land and it had been in continuous possession and enjoyment of Smt.Vasanthamma and her predecessors in title well before 01.07.1945 and that it was patta land during pre and post abolition periods. Therefore he upheld the order of the Settlement Officer in SR.No.68/11(a)/82 CGR, and dropped the *suo moto* revisional enquiry. But in the said order, an observation was made that the document dt.25.03.1980 produced by Sri G.Gopal indicated that he acquired Ac.1-26 cents from Smt.Vasanthamma and that copies of the land revenue receipts for Faslis 1388 to 1395, 1396, 1397, 1399 and 1400 showed that he paid land revenue to the Government from the date of his purchase.

13. Challenging this order of the Special Commissioner and Director of Settlements, Hyderabad in R.P.No.290/84/H1, dt.09.08.2000, the Mandal Revenue Officer, Tirupati(Urban) filed a Revision in RP.No.1101/2001 before the Commissioner of Appeals(Settlements) A.P., Hyderabad.

14. The said Revision was filed under Section 7(d) of the Act and was numbered as Commissioner of Appeals Proceedings No.P3/1101/2001.

15. Smt.Vasanthamma and Gopal were made parties in the said Revision. Subsequently, the petitioner in W.P.No.7087 of 2008 and the sons of Smt.Vasanthamma by name J.Ramesh and J.Bhaskar Rao filed applications to implead them.

16. By an order dt.16.03.2006, the Commissioner of Appeals allowed the Revision of MRO, Tirupati(Urban) partly. This was done notwithstanding a finding by the Commissioner of Appeals in the said order that the Mandal Revenue Officer, Tirupati(Urban)

was not an affected party against the orders passed by the Settlement Officer, Nellore in SR.68/11(a)/82-CGR, dt.30.06.1982 where under Ryotwari Patta had been granted to Smt.Vasanthamma. The Commissioner of Appeals observed that this order has not been challenged by the then Tahsildar, Chandragiri or the Mandal Revenue Officer, Tirupati by way of Revision before the Director of Settlements under Section 5(2) of the Act. It was also observed that the Special Commissioner and Director of Settlements had initiated *suo moto* Revision against the orders passed by the Settlement Officer, Nellore as a general case and the file of the Director of Settlements indicated that the Mandal Revenue Officer, Tirupati (Urban) never attended before the Director of Settlements though the case was pending with the said Official from 1984 to 2000 in order to safeguard the interest of the Government as well as the public purpose.

17. Insofar as the Commissioner of Appeals had held that the Mandal Revenue Officer, Tirupati Urban, Chittoor District was not an affected party against the orders passed by the Settlement Officer, Nellore, the said Mandal Revenue Officer, Tirupati(Urban) Mandal, filed W.P.No.14230 of 2008.

18. In the order passed by the Commissioner of Appeals, he referred to the claim of the petitioner in W.P.No.7087 of 2008 and observed that he was claiming an extent of Ac.0-65 cents in survey No.31/1A under registered sale deed dt.15.02.1985 executed in his favour by Smt.Vasanthamma, that this sale took place subsequent to the grant of Ryotwari Patta in 1982 by the Settlement Officer, Nellore to Smt.Vasanthamma, and therefore he could approach the Civil Court if he has any dispute with regard to this title. The Commissioner of Appeals therefore rejected the

claim of the petitioner in W.P.No.7087 of 2008 that he is entitled to Ryotwari Patta. Insofar as these findings of the Commissioner of Appeals are concerned, W.P.No.7087 of 2008 has been filed by the petitioner therein.

19. While dealing with the claim of the sons of Smt.Vasanthamma by name J.Ramesh and J.Bhaskar Rao, the Commissioner of Appeals held that they also need to approach the Civil Court if they have any grievance in respect of the alleged sale of property by Smt.Vasanthamma in favour of Sri G.Gopal, since the said sale was done by Smt.Vasanthamma purportedly as the head of the Joint Hindu Family comprising of herself and her sons. Insofar as these findings are concerned, W.P.No.20133 of 2007 was filed by the sons of Smt.Vasanthamma.

20. I have heard Sri Y.Narsimha Reddy, counsel for the petitioner in WP.No.7087 of 2008, who is also arrayed as 6th respondent in W.P.No.14230 of 2008 and W.P.No.20133 of 2007; Sri P.Gangaiah Naidu, Senior Counsel appearing for Sri K.Ram Mohan Mahadev, Counsel for 5th respondent(Sri G.Gopal) in all the Writ Petitions; and Sri J.U.M.V.Prasad, Counsel for J.Ramesh and J.Bhaskar Rao(sons of Smt.Vasanthamma).

21. Although Smt.Vasanthamma, who is a party in all the Writ Petitions, is served, there is no representation on her behalf.

W.P.No.14230 of 2008

22. I shall first deal with W.P.No.14230 of 2008 filed by the Mandal Revenue Officer, Tirupati(Urban) Mandal, Tirupati, Chittoor District.

23. In this Writ Petition, the petitioner (MRO, Tirupati(Urban)) contended that the Commissioner of Appeals could not have given a finding in his order dt.16.03.2006 that the petitioner is not at all aggrieved by the order dt.09.08.2000 in RP.No.290/84(H1) passed by the Special Commissioner and Director of Settlements, Andhra Pradesh Hyderabad.

24. Other contentions on the merits of the case were also sought to be raised by the learned Government Pleader including a plea that the land was originally DKT Patta land and therefore could not have been alienated.

25. However, I am afraid that such contention cannot be accepted, since the very Writ Petition filed by the petitioner in W.P.No.14230 of 2008 is not maintainable in view of the law declared by the Supreme Court in ***District Collector, Srikakulam and others v. Bagathi Krishna Rao and another*[1]*; Mihtesham Mohd. Ismail v. Special Director, Enforement Directorate and another*[2]** and ***Joint Collector, Ranga Reddy District, Hyderabad and others v. P.V.Narasimha Rao and others*[3]*.***

26. In these decisions it was held that it is the State, if any rights are claimed by it, who can pursue and contest the claim before the statutory authorities as well as before this Court, but the officials such as Mandal Revenue Officer cannot consider themselves to be aggrieved and challenge the orders passed by the statutory authorities.

27. In ***Joint Collector, Ranga Reddy District*** 's case(3 supra) this Court held while dealing with a case under the A.P. (TA)

Abolition of Inams Act, 1955 that quasi judicial authorities such as the Joint Collector and Mandal Revenue Officer, who decide the dispute on merits cannot be said to be the persons aggrieved if their orders are set aside by the superior authorities.

28. In ***Chief Conservator of Forests, Government of A.P. v. Collector and others***[4], the Supreme Court held that an official of the Government cannot maintain a petition in the name of his post and it is only the State Government which can do so. In that case, the question was 'whether the Chief Conservator of Forest could maintain a Writ Appeal in the High Court'.

The Supreme Court referred Section 79 of Civil Procedure Code and observed as under:

> *"13. The question that needs to be addressed is, whether the Chief Conservator of Forest as the petitioner/appellant in the writ petition/appeal is a mere misdescription for the State of Andhra Pradesh or whether it is a case of non-joinder of the State of Andhra Pradesh - a necessary party. In a lis dealing with the property of a State, there can be no dispute that the State is the necessary party and should be impleaded as provided in Article 300 of the Constitution and Section 79 of C.P.C., viz., in the name of the State/Union of India, as the case may be, lest the suit will be bad for non-joinder of the necessary party. Even post in the hierarchy of the posts in the Government set-up, from the lowest to the highest, is not recognised as a juristic person nor can the State be treated as represented when a suit/proceeding is in the name of such offices/posts or the officers holding such posts, therefore, in the absence of the State in the array of parties, the cause will be defeated for non-joinder of a necessary party to the lis, in any court or Tribunal. We make it clear that this principle does not apply to a case where an official of the Government acts as a statutory authority and sues or pursues further proceeding in its name because in that event, it will not be a suit or proceeding for or on behalf of a State/Union of India but by the statutory authority as such."*

29. Therefore I hold that W.P.No.14230 of 2008 is not

maintainable and the same is accordingly dismissed.

W.P.No.7087 of 2008

30. Coming to the claim of the petitioner in W.P.No.7087 of 2008, since admittedly the claim of this petitioner is under a registered sale deed dt.15.02.1985 executed in favour of his father by Smt.Vasanthamma, and this event occurred subsequent to the order of the Settlement Officer, Nellore passed on 30.06.1982, and since admittedly A.S.No.88 of 2004 filed by the petitioner herein against the Smt.Vasanthamma is pending before the V Additional District Judge, Tirupati wherein the claim of the petitioner in W.P.No.7087 of 2008 would be adjudicated, I do not find any error in the order of the Commissioner of Appeals, insofar as he directed the petitioner in W.P.No.7087 of 2008 to approach the Civil Court for redressal of his grievances.

31. However, coming to the claim of Sri J.Ramesh and J.Bhaskar Rao, whose claim for Ac.1-26 cents out of Ac.2-65 cents, was accepted by the Special Commissioner and Director of Settlements in the order dt.09.08.2000 in R.P.No.290/84(H1) and which was confirmed by the Commissioner of Appeals is concerned, counsel for the petitioner in W.P.No.7087 of 2008 contended that when the Revision preferred by the Mandal Revenue Officer, Tirupati(Urban) Mandal, Chittoor District was held to be not maintainable (and since the Commissioner of Appeals had himself observed that the MRO, Tirupati(Urban) was not an affected party on account of the order passed by the Settlement Officer), the Special Commissioner and Director of Settlements or Commissioner Appeals cannot hold in favour of J.Ramesh and J.Bhaskar Rao in respect of Ac.1-26 cents in survey No.31/1P claimed by Sri G.Gopal and that it is erroneous.

32. Sri P.Gangaiah Naidu, Senior Counsel for Sri G.Gopal refuted the above contentions and pointed out that Smt.Vasanthamma has not disputed his client's claim, particularly, when sale deed dt.25.03.1980 executed in his client's favour by Smt.Vasanthamma was validated by the Court of Junior Civil Judge on 12.04.2000 on payment of stamp duty.

33. In my considered opinion, there is force in the contentions of the counsel for petitioner in W.P.No.7087 of 2008 that the Commissioner of Appeals could not have given any finding on the purchase of Ac.1-26 cents by Sri Gopal in the Revision filed by the Mandal Revenue Officer, Tirupati(Urban) while holding that the Mandal Revenue Officer, Tirupati(Urban) was not an affected party against the orders passed by the Settlement Officer, Nellore. This is because if the very appeal is not maintainable, it should be dismissed and no finding of this nature could be given.

34. Also Sri G.Gopal is claiming under an unregistered sale deed and it is settled law that title does not pass under an unregistered document. Anyway the claim of Sri G.Gopal is subject matter of A.S.No.88 of 2004 pending before the V Additional District Judge, Tirupati.

35. Therefore, I am of the opinion that the findings of both the Special Commissioner and Director of Settlements in R.P.No.290/84(H1) dt.09.08.2000 and the Commissioner of Appeals in Proceedings No.P3/1101/2001 dt.16.03.2006 as regards Ac.1-26 cents claimed by Sri G.Gopal cannot be sustained. To this extent, W.P.NO.7087 is allowed.

<u>W.P.No.20133 of 2007</u>

36. Coming to the claim of the petitioners in W.P.No.20133 of 2007, who are sons of Smt.Vasanthamma, is concerned, their plea is that the sale in favour of G.Gopal by Smt.Vasanthamma, is not valid.

37. If they have any dispute with their mother Smt.Vasanthamma with regard to the sale in favour of Sri G.Gopal, they ought to approach the competent Civil Court for redressal of their grievances and they cannot agitate their claim before the Authorities under the Act.

38. Therefore, I am of the opinion that the Commissioner of Appeals in his order dt.16.03.2006 had rightly rejected the plea of the petitioners in W.P.No.20133 of 2007 giving them liberty to approach the competent Civil Court. I do not find any reasons to interfere with the said order insofar as the petitioner in W.P.No.20133 of 2007, is concerned.

39. For the aforesaid reasons, W.P.No.14230 of 2008 and W.P.No.20133 of 2007 are dismissed and W.P.No.7087 of 2008 is partly allowed. No costs

40. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

13th July, 2016

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[1] 2010(6) SCC 427

[2] 2007(8) SCC 254

[3] 2011(1) ALD 103 (DB)

[4] 2003(3) SCC 472