

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.4196 OF 2008

ORDER:

Heard Smt.Uma Devi, holding for Mr.G.Ramgopal, counsel for petitioners, the Assistant Government Pleader (Revenue) for respondents 1 to 3 and Sri Kuriti Bhaskara Rao for respondents 4 and 5.

The petitioners pray for Certiorari to call for the records leading up to and inclusive of proceedings in Rc.No.2732/2006 D5 dated 05.02.2008 and quash the proceedings dated 05.02.2008 as illegal and without jurisdiction.

The case of petitioners is that the ancestors of petitioners are the founding fathers of folklore art 'Toorupu Bhagavatham' and the folklore art is the avocation for generations of the petitioners' family and they play Toorupu Bhagavatham in the villages. The petitioners' great grandfather Bontalakoti Janardhanudu @ Dharmiah was granted patta by Bobbili Samsthanam. Patta No.8 covered 4.47 Hectares. The subject matter of grant is part of estate village and the tenures in the estate village have been regularized under the A.P (Andhra Area) Estates Abolition (Conversion of Ryotwari) Act, 1948 ('the Act' for short). The petitioners, to claim right, rely on orders under Section 11-A in file SR No.11(A)/522/BBL dated 30.06.1958 issued in favour of petitioners' father viz., Bontalakoti Jagannadham. The operative portion of the order reads thus:

"No objections have been received.

The schedule land is a post-settlement inam. The tenure and the conditions of the service are not known. The applicants state that they have been in direct and continuous occupation of the schedule land and they have been paying assessment all along. The karnam who is examined as court witness states that the schedule land is a post-settlement inam granted on favourable rate of rent. The applicants have been in direct and continuous occupation of the schedule land for more than 12 years prior to the notified date.

The schedule land is under cultivation. Hence it is ryoti. The applicants or their predecessors-in-title have been in direct and continuous occupation of the schedule land for more than 12 years prior to the notification date. As such they acquired occupancy rights over the schedule land.

I therefore hold that the applicants are entitled to patta under section 11(a) for the schedule land under their respective enjoyment.

Dictated to the shorthand writer and pronounced in open court.

Sd/-
Asst.Settlement Officer,
Srikakulam

SCHEDULE				
Village	Name	Description	O.S.No.	S.No. Area
Chintada	Bontalakoti	Bhagavatha	7/8, 7/12	322/2
	Jagannadham,	Kalachapam		342/5
	Chinna			
	Jagannadham"			

The petitioners assert to be in continuous and physical possession of the ryotwari land referred to above. In the year 1997, on the application filed by the family of petitioners, the Mandal Revenue Officer/3rd respondent passed order of mutation in favour of Bontalakoti family and the names have been recorded in record of rights. One Tammireddi Damodar Rao, s/o Appa Rao and others filed appeal before the Revenue Divisional Officer, Parvatipuram/2nd respondent against the proceedings dated

10.07.1997 of Mandal Revenue Officer. The 2nd respondent through order dated 19.04.1999, on the entitlement, enjoyment and legality of record of rights maintained held in favour of Bonthalakoti family and reads thus:

“The reasons given by the respondents are supported by cogent documentary evidence. Hence, this issue is accordingly answered as proper.

(2) Issue No.2: As seen from the agreement dt.16.04.1975 the land covered by S.No.302-2 is noted as having been alienated and not the land in S.No.322-2. Further during F.C.O., in the year 1978, fresh order of intimation was issued to Sri Bonthalakoti Jagannadam and others and the appellant should have raised objections if any he had at the time of R.P.O.H enquiry against the issue of order of intimation. The land covered by S.No.302-2 does not relate to Bonthalakoti people. Further, the appellant did not produce any documentary evidence to prove that ganta and other families gifted the land to Bonthalakoti people for displaying “Bhama Kalapam” etc., and the appellant could not substantiate his contentions. The land covered by S.No.322/2 is different from the land in S.No.302/2 is different from the land in S.No.302/2.

All the documents on record clearly prove that R-2 and R-6 are entitled for Pattadar Pass Book and Title deed for the land covered by S.No.322/2. I therefore, see no reason to interfere with the orders of the Mandal Revenue Officer, Bobbili and the orders issued in Proceedings R.C.No.80/96, Dt.10-7-96 of the Mandal Revenue Officer, Bobbili are confirmed and the appeal is accordingly dismissed”.

In the light of the above findings and grant of ryotwari patta for the subject matter of writ petition, the petitioners claim absolute right, ownership and possession of subject land. While the matters stood thus, the Sarpanch, MPTC and villagers of Komatipalli Village filed petition before the 3rd respondent complaining either on

inclusion of names of petitioners' family in the record of rights or against the exclusive ownership claimed by Bontalakoti family for the subject land. The 3rd respondent through Rc.No.657/2005 B dated 26.05.2006 forwarded report to the 1st respondent. The 1st respondent purporting to exercise his jurisdiction under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 held as follows:-

"The respondents has submitted the original document of the orders issued by the Assistant Settlement Officer, Srikakulam vide S.R.11(a)/522/Bobbili Dt.30.6.58 before this Court. As seen from the orders of the Settlement Officer, noted as before the S.No.7/8, 7/12, 322/2 and 342/2 is "Bhagavatha Kalapam". As seen from the FCO Fair adangal noted in the pattadar column as Peda Ammavaru and China Ammavaru in S.No.322/2.

After perusing records I have opined that the said owner of the land is Peda Ammavaru and China Ammavaru (village goddess) and the Archakas have no right to sell the land that they are not the owners of the land. They have only Archakas and they limited right to enjoy the said land and to perform Bhamakalapam and maintain the village goddess. Hence I allow the revision petition. The Tahsildar, Bobbili bis directed incorporate the same in the village records".

Hence, the writ petition.

The petitioners challenge the proceedings dated 05.02.2008 on several legal and factual grounds. But at the hearing, the legal objections alone have been canvassed, for according to counsel for petitioners, if the petitioners could satisfactorily demonstrate the illegal exercise of jurisdiction or that the findings recorded by 1st respondent exceed the jurisdiction under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971, the other aspects

need not be considered. The petitioners contend that they have got ryotwari patta through order dated 30.06.1958 and the ryotwari patta is subsisting at on date. The Revenue Department i.e., the 3rd and 2nd respondents on the applications filed by petitioners have entered their names in record of rights or updated record of rights, and accepted the re-grant in favour of petitioners and rejected the claims of opposite parties in mutation proceedings. The appeal filed against recording the entries was dismissed vide order dated 19.04.1999. Thus, the issue under the A.P. Rights in Land and Pattadar Passbooks Act, 1971 had attained finality. The representation now filed either by Sarpanch, MPTC or villagers cannot and could not be treated as a revision filed by a person aggrieved against the order passed under the Record of Rights Act. A representation was given and on such representation, report was called for and to the extent at least to appreciate the jurisdictional limitations under the Record of Rights Act, the findings ought to have been confined only to the legality etc., in the orders passed in favour of petitioners. The 1st respondent, on the contrary, holds that the subject matter of the writ petition is held by deity viz., Pedda Ammavaru and Chinna Ammavaru, and Archakas (petitioners) have no right to sell the land etc. Therefore, the petitioners contend that these findings virtually disturb the proceedings initiated under the Act. At any rate, the 1st respondent does not have jurisdiction to disturb the findings recorded by the Assistant Settlement Officer as early as 1958. The petitioners further contend that the grant of ryotwari patta was accepted, while maintaining entries in the record of rights and, therefore, at any rate, the circumstances of

the case do not warrant taking a revision on the application filed by third parties i.e., Sarpanch, MPTC etc. The passing of order by reference to a report circulated by 3rd respondent cannot be treated as *suo motu* exercise of jurisdiction of 1st respondent. Hence, the petitioners pray for setting aside the proceedings impugned in the writ petition.

The 3rd respondent filed counter affidavit on behalf of respondents 1 to 3. The 3rd respondent admits that Chintada Village was taken over and administered under the provisions of the Act. On the ryotwari patta granted by the Assistant Settlement Officer on 30.06.1958, the reply of 3rd respondent is that the list prepared much earlier to the taking over of estate is not available in the office of 3rd respondent. Likewise, the incorporation of names of pattadars is also not available in the office. On the findings recorded by either 2nd or 3rd respondents in mutation proceedings, the 3rd respondent could not deny the re-grant. According to 3rd respondent, there is a registered document dated 16.04.1975 executed by the forefathers of Karri Lakshminaidu and others in favour of Pedda Ammavaru and Chinna Ammavaru, and also for performing Bhama Kalapam. Therefore, the subject land belongs to deities, but not individuals and the respondents pray for dismissing the writ petition.

From the counter affidavit of 3rd respondent, before proceeding further, this Court would like to delineate the admitted circumstances and the circumstances introduced for the first time by filing counter affidavit. The village is admittedly taken over

under the Act. The effect of Section 3 of the Act cannot and could not be ignored with the issuance of notification on 24.05.1955. The petitioners claim re-grant through the order of the Assistant Settlement Officer dated 30.06.1958. Once the re-grant is made in favour of a person treating him as a ryot in possession entitled for a ryotwari patta, any person, including respondents 1 to 3 or the petitioners before 1st respondent, will have to work out the remedies against the order under Section 11-A only under the Act. In the case on hand, the respondents accepted ryotwari patta, entered the names of the predecessors-in-interest of petitioners in the record of rights. Such orders or decisions are the subject matter of appeal before the 2nd respondent. The 2nd respondent, after examining the record, as already excerpted, accepted the re-grant in favour of petitioners' family. The matter was given quietus at that stage. Now, on a petition by exercising the jurisdiction under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 the 1st respondent passes the order. Section 9 reads thus:

“Revision :- The Collector may either *suo motu* or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue Officer or Revenue Divisional Officer under Sections 3, 5, 5-A or 5-B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for reconsideration, he may pass orders accordingly.

Provided that no such order adversely affecting any person shall be passed under this section unless he had an opportunity of making a representation.”

A bare reading of above section discloses that the jurisdiction of 1st respondent is confined to the legality, propriety or irregularity of orders, decisions proceedings taken up in Sections 3, 5, 5-A or 5-B under the Record of Rights Act, but not to decide on the ownership of property, thereby interfering with the orders passed under the Act.

In the case on hand, after carefully going through the findings recorded by the 1st respondent, this Court is of the view that the 1st respondent strayed into examining re-grant in favour of petitioners by the Assistant Settlement Officer through order dated 30.06.1958 and gone a step further and declared deities as owners of the property. In the case on hand, this Court is concerned with the legality or otherwise of the jurisdiction of 1st respondent in recording the findings noted above. Either by looking at the re-grant dated 30.06.1958 or keeping in view the jurisdiction of the 1st respondent under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971, this Court is of the view that the proceedings impugned in the writ petition are illegal and findings recorded by the 1st respondent are beyond jurisdiction. The proceedings impugned are, hence, liable to be set aside and are accordingly set aside. The counter affidavit refers to fraud or suppression in the matter of re-grant in favour of predecessors-in-interest of petitioners. It is made clear that those aspects are not considered while deciding the legality of the proceedings dated

05.02.2008. It is for the authorities to take up the matter in accordance with law, if so advised.

The writ petition is allowed as indicated above. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, stand closed.

12th October, 2017

Lrkm

S.V.BHATT, J

