

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.6261 of 2008

ORDER:

Heard the learned Counsel for the petitioner, learned Government Pleader for respondent Nos.1 to 4, and the learned Counsel for respondent No.5.

The petitioner claims that his father was a patta holder in respect of land of an extent of Acs.5.05 cents in Survey Nos.1/1 and 1/2 corresponding to old paimash No.950 and 951 of Yogimallavaram Village of Tirupathi Rural Mandal in Chittoor District. His case is that his father occupied the land long prior to 1941 and reclaimed the said land by spending huge amounts. A patta was issued in favour of the petitioner's father on 12.04.1941 on condition of paying fixed rent to the estate authorities. Since then his father was in possession and he died in the year 1976. Since his father was an illiterate he did not apply for grant of ryotwari patta and after the death of his father, the petitioner applied for ryotwari patta and the same was rejected by the proceedings of the Joint Collector – cum – Settlement Officer, dated 22.03.1997, on the ground that the land was classified as “Eguva Mallamgunta Poramboke” and a communal land falling under Section 3(d) of the Estates Abolition Act, 1948. Against the said order, the petitioner preferred a revision to the Special Commissioner and Director of Settlements, who, after going through the documents filed before him, set aside the order of the Joint Collector dated

22.03.1997 and allowed the revision petition. While allowing such revision petition he took note of the contentions raised on behalf of the revision petitioner and that of the Mandal Revenue Officer. He ultimately came to the conclusion that the documents produced by the revision petitioner marked as Exs.P1 to P6 proved possession and enjoyment prior to 01.07.1945. Against the said order, the Mandal Revenue Officer, Tirupathi Rural Mandal, Chittoor District, preferred a further revision to the Commissioner, Appeals, and he set aside the order of the Director of Settlements by order dated 31.05.2007 holding that the land is a tank called “Eguva Mallamgunta poramboke” and is a communal land and there is no scope or provision to grant any ryotwari patta. While coming to that conclusion he took note of the fact that there were civil disputes pending in respect of the said land between a private party and the District Collector arising out of suit for permanent injunction. In order to come to such conclusion the first respondent observed as follows:

“Before going into the question of the veracity of the documents and evidence produced by the respondent to stake his claims to the lands, the issue regarding the classification of the land needs to be determined. As per the schedule Form-7 of the village prepared at the time of and prior to the abolition of Estate, this land is shown as Eguva Mallamma Gunta cheruvu. In the village map prepared at that time i.e., around 1960, this land was shown as a Tank with clear indication of water markings. Form-B which was also prepared at the same time also show the land to be a Tank called as Eguva Mallamma Gunta Cheruvu. While the impugned order of the D.O.S., reveal that relevant documents have not been filed before him, however in the affidavit and the counter filed by the Joint Collector it is mentioned that the land is ‘Eguva Mallamma Gunta poramboke’. The D.O.S., while considering the evidence should have called for the records prepared at the time of the Abolition of the Estate

and verified the classification and status of the land, instead of merely dismissing the claim of the Revenue Officials that no evidence was filed. As an appellate Court, the D.O.S., ought to have summoned the records and determined clearly whether the land is Eguva Mallamma Cheruvu gunta or not.”

Though he has commented with regard to the order of the Director of Settlements in not coming to a proper conclusion on the basis of the relevant documents, he also did not rely on any documents to come to the said conclusion. On the other hand, the order in W.P.No.10322 of 2003, dated 12.12.2003, shows that there were some encroachments on the land and the respondents were permitted to evict unauthorized encroachers after following due process of law. The presence of the fifth respondent in this Writ Petition also clearly shows that the land was meant for house sites. In fact when the fifth respondent tried to interfere with the possession of the land, the petitioner herein filed a Writ Petition before this Court in W.P.No.5632 of 1986 and the same was ultimately disposed of on 18.01.1989 directing the respondents not to disturb the possession of the petitioner over the land. In addition to the same the petitioner filed certain additional documents including the letter dated 05.09.2014 of the Executive Engineer, Irrigation Division, Tirupati, addressed to one Sri A.Venugopal, who is the son of the petitioner, stating that there is no record to the effect that the land in Survey Nos.1/1 and 1/2 pertains to Cheruvu or Gunta. The Executive Engineer also informed that there is no tank on the name of Yogimallavaram Village. All these show that there is some dispute with regard to the nature of the land

situated in Survey Nos.1/1 and 1/2 of Yogimallavaram Village. Since the first respondent did not record a finding based on the documentary evidence, this Court is constrained to set aside the order dated 31.05.2007 passed by him and remand the matter to him for consideration of the matter afresh on the basis of the documentary evidence available with the Government as well as the documents to be filed by the respondents.

In view of the long pendency of the matter, it is needless to observe that the first respondent shall dispose of the matter as expeditiously as possible, but not later than six months from the date of receipt of a copy of this order. The petitioner as well as the respondents shall cooperate with the first respondent for disposal of the matter within the said period. It is needless to observe that the petitioner shall continue to be in possession, if the petitioner is in possession as on the date of filing the Writ Petition.

The Writ Petition is, accordingly, allowed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

08.06.2017
vs