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

W.P.Nos.4565, 4569, 7270, 5421, 6532 and 6533 of 2004

COMMON ORDER:

In all these Writ Petitions, order dt.23-12-2003 in Ref.No.V1/608/97 of the Commissioner, Appeals, Office of the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad (1st respondent) is assailed.

2. The said order was passed in exercise of *suo moto* revision powers conferred on the 1st respondent under Section 14-A of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short “the Act”). In the said order, he set aside order in Rc.No.385/85 dt.22-05-1985 of the Tahsildar, Puttaparti granting ryotwari patta under the Act to 17 persons in respect of an extent of Ac.811.57 cents and also orders in Rc.No.1439/85 dt.10-02-1989 and 11-04-1981 of the Mandal Revenue Officer, Penukonda to 7 persons for an extent of Ac.323.20 cents in Cherlapally village, Penukonda Mandal, Anantapur District.

3. One V.Narayana Sarma was the inamdar of Cherlapally village. He had two sons by name S.Nagasayanam and V.Venkateswarlu.

4. It is not in dispute that decision was taken by the Tahsildar, Penukonda under sub-Section (3) of Section 3 of the Act

that the lands in various survey numbers in Cherlapally village were inam lands in an inam village and not held by an institution and this was published in the Anantapur District Gazette on 10-11-1987.

5. The Tahsildar, Puttaparti and the Mandal Revenue Officer, Penukonda had granted ryotwari pattas under Section 7 of the Act to the family members of the Inamdar and purchasers from them.

THE QUESTION IN THE LEGISLATIVE ASSEMBLY IN 1997

6. In the Legislative Assembly of the Andhra Pradesh Legislature, a starred question No.6352 was posed by certain Members of the then Legislative Assembly in 1997 that for an extent of Ac.2356.00 of inam land valued at Rs.5.00 crores in the said village, there was irregular assignment to members of a single family and whether this has come to the notice of the Government, whether title deeds have been assigned as per Record of Rights Act and if so, what action is being proposed to be taken in the matter.

7. This issue was then referred by the Government vide memo No.G1/48492/JA/1/97-1 dt.30-07-1997 to the Commissioner, Survey Settlement and Land Records, Andhra Pradesh and a copy was marked to the Collector, Anantapur District to furnish answer along with a note on or before 10-08-1997.

THE REPORT Rc.A13/4428/97 dt.07-12-1997 OF DISTRICT COLLECTOR, ANANTAPUR

8. The District Collector, Anantapur vide reference Rc.A13/4428/97 dt.07-12-1997 addressed the Commissioner, Survey Settlement and Land Records, Andhra Pradesh, Hyderabad stating that ryotwari pattas were granted by the Tahsildar, Puttaparti and the Mandal Revenue Officer, Penukonda in the above proceedings were not only to the inamdars but also sons-in-law, relatives and other distant relatives, who are neither inamdars nor tenants; before granting ryotwari pattas, Tahsildar/Mandal Revenue Officer should have conducted filed inspection/enquiry to identify the genuineness of both inamdars and tenants at the commencement of the Act, but this was not done; they have not granted ryotwari pattas to tenants who are entitled for 2/3rd share of the land as per Section 4 of the Act and the tenants were completely ignored though they were cultivating the land; that the Tahsildar, Puttaparti had granted ryotwari patta to 18 persons much before the publication of Form-II decision under Section 3 of the Act in the Anantapur District Gazette on 10-11-1987 that the land in Inam land in an inam village; during enquiry conducted by the Revenue Divisional Officer, Penukonda it was identified that 233 landless poor persons belonging to the weaker sections were cultivating the lands for last 100 years, but they were not taken cognizance while granting ryotwari pattas; and there is no possibility of taking any action against them since both the Tahsildar as well as Mandal Revenue Officer had retired long back.

THE SHOW CAUSE NOTICE DT.11-12-1997

9. Thereupon a show cause notice No.V1/608/97 dt.11-12-1997 was issued to the petitioners who are family members of the inamdar as well as purchasers from them. It stated that *prima facie* the following irregularities were committed by the Tahsildar, Putaparthi/the Mandal Revenue Officer, Penukonda in granting pattas:-

(1) *The Noticiers did not have actual occupation on the date of commencement of the Act as required to entitle them for patta*

(2) Before granting ryottwari patta, the Tahsildar/Mandal Revenue Officer did not conduct statutory enquiry or verified the relevant Inams/Village records thus violated the provisions of the I.A. Act.

(3) Form II declaration u/Section 3 of the Act was published in Anantapur District Gazette on 10-11-1987. But, the Tahsildar, Puttaparti granted ryotwari patta to 18 persons on 25-05-1985 i.e. much earlier to the publication.

They were asked to show cause why the ryotwari pattas granted by the Tahsildar, Puttaparti and the Mandal Revenue Officer, Penukonda should not be cancelled.

10. Before the Commissioner, the purchasers had impleaded themselves.

THE EXPLANATION OF THE PETITIONERS

11. Explanations to the show cause notice were filed by both inamdars' family members, relatives as well as purchasers as under:

"(1) The respondents herein are the successors and relatives of the original inamdar of Cherlapally lands. That the respondents were in joint possession and enjoyment of the lands along with the original inamdar Sri V.Venkatanarayana Sarma and subsequently under a family settlement in 1966, the lands were settled to the members of the family and since then they have been in separate possession and enjoyment of the lands by paying land revenue.

(2) That the then Tahsildar, Puttaparty, after conducting due enquiry as contemplated under the Act, granted ryotwari patta as per their enjoyment of the land on 22-5-1985 in Rc.No.385/85 and subsequently they were given pattadar pass books and title deeds in respect of lands proposed by ryotwari patta.

(3) That they were in joint possession and enjoyment of the lands along with original inamdar on the date of commencement of the Act, as such they are entitled for ryotwari patta. Hence, irregularity No.(1) mentioned in show cause notice is not correct.

(4) That they were granted pattas only after conducting enquiry as contemplated under the Act. Hence, there is no violation of the provisions of the I.A. act with regard to alleged irregularity No.(2) mentioned in the show cause notice.

(5) That it is not mandatory under the Act that the publication of decision U/s.3(3) of the Act in the District Gazette shall precedes the grant of ryotwari patta. The act do not contemplate grant of ryotwari patta only after the Gazette publication and they cannot be faulted for the same as the lands are admittedly inam lands. Hence the irregularity No.(3) mentioned in the show cause notice do not stand for scrutiny. Further the MRO, Penukonda granted pattas to (7) respondents in the year 1989 after the publication of section (3) decision in the District Gazette in the year 1987.

(6) That they did not play any fraud or misrepresentation before the Revenue Authorities in obtaining Ryotwari pattas as they were entitled for the same under the Act.

(7) That the Hon'ble High Court of A.P., in number of cases held that the suo moto powers of revision shall be invoked within a reasonable

period and that too it must be exercised to render justice but not to disturb the settled rights of the parties. The respondents were issued ryotwari pattas in the years 1985 & 1989 which have become final about 12 & 9 year back respectively. Hence there is no justification in invoking revision under Section 14-A of the I.A. Act, 1956 after a lapse of 12 & 9 years respectively as per Ruling of High Court of A.P. reported in 1981(2) APLJ 158; 1997(4) ALT 409; 1998(1) ALT 25.

(8) That they are in possession of the lands and spent huge amount for its development by borrowing loans from the financial institutions.

(9) That they have perfected their title even by adverse possession for over 40 years.

(10) That they sold away their lands to 3rd parties long back and the 3rd party rights are also involved in the lands hence invoking suo moto powers u/S.14-A of the Act after a lapse of 12 years is not justified.

(11) That they have shown these lands in the declarations filed under Agricultural Land Ceiling Act."

THE IMPUGNED ORDER DT.23-12-2003 OF THE 1ST RESPONDENT

12. Thereupon the impugned dt.23-12-2003 in Commissioner Appeals proceedings No.V1/608/97 was passed by the 1st respondent relying on the report of the Collector, Anantapur dt.07-12-1997 referred to above and setting aside the proceedings dt.22-05-1985 in File No.385/95 of the Tahsildar, Puttaparti and proceedings dt.10-02-1989 in Rc.No.1439/85 of the Mandal Revenue Officer, Penukonda.

13. As regards the order dt.22-05-1985 of the Tashildar, Puttaparti, the 1st respondent held that he had issued ryotwari pattas even before the decision in Form No.II given on 19/20-03-1985 was published in the District Gazette on 10-11-1987; that the record did

not show publication of notice by beat of tom tom in the village and serving of notice on persons who are in possession of the land and in fact, no notice was served either on the inamdars or tenants about the proposal to conduct enquiry under Section 3 of the Act; and his action in granting pattas to inamdars and relatives on 22-05-1985 is null and void and it can be questioned at any time.

14. As regards the order dt.10-02-1989 in Rc.No.1439/85 of the Mandal Revenue Officer, Penukonda, it was held that though the said Mandal Revenue Officer granted pattas only after publication of the decision in Form-II dt.19/20-03-1985 in the District Gazette on 10-11-1987 only, the enquiry conducted by him was irregular since notices were not published in the village by beat of tom tom, no notice was affixed in the Chavidi or any conspicuous place, no inspection was done and notices were not served on tenants who were in possession of the land on 07-01-1948 and 14-12-1956. He held that tenants were not identified in any Field Inspection and no proper publication of notice was done as required by Rule 3(3) of the Rules; and the Collector's report dt.07-12-1997 showed that there were several tenants in possession of the land for over 100 years, but none of them were served with any notice.

15. He also held that though *suo moto* revision proceedings under Section 14-A of the Act were to be initiated in a reasonable time, decisions cited by the petitioners' counsel indicated that what is reasonable time depends upon facts and circumstances of the case;

and therefore for the reasons given by him, there is justification for initiation of *suo moto* powers under Section 14-A of the Act.

16. Assailing the same, these Writ Petitions have been filed.

CONTENTIONS OF THE COUNSEL FOR THE PETITIONERS:

17. Counsel for the petitioners Sri O.Manohar Reddy contended that the inamdars are in no way responsible for non compliance by the Tahsildar, Puttaparthy or Mandal Revenue Officer, Penukonda of the procedural provisions of the Act which have to be followed before issuing ryotwari patta; that no tenant in occupation of the land as on 07.01.1948 had challenged the issuance of ryotwari pattas to the petitioners under Sec.7(4) of the Act; and it is not open to the 1st respondent to invoke *suo moto* revisional powers under Section 14-A of the Act when no such complaint from such tenants was received. He contended that the tenants as on 7.1.1948 were either not alive or had migrated to new place shortly thereafter and had no interest in the land and the State has no jurisdiction to give the land to persons of it's choice.

18. He contended that under Section 4(2)(b) read with Section 7 of the Act, only a tenant of land who is declared to be in occupation of that land on 07.01.1948 by the Revenue Court (the Revenue Divisional Officer concerned) would be entitled to ryotwari patta for 2/3rd share in the land and inamdar would be entitled to ryotwari patta for the remaining 1/3rd share; no effort had been made

by any of the respondents to ascertain who the tenants of the land in Cherlapally Village as on 07-01-1948 were; that the persons identified by the Revenue Divisional Officer, Penukonda in his report Rc.No.3652/96/B dt.19-11-1997 addressed to the District Collector, Ananthapur as persons in occupation, are not eligible for grant of ryotwari patta since their possession as on 11-04-1997/19-04-1997 cannot be the basis for grant of ryotwari patta to them under the Act; there is no way that the respondents could decide whether or not the persons who are cultivating the lands in 1997 are related to the tenants in occupation of the land on 07-01-1948 since almost 50 years from the said date has elapsed; and the Commissioner (1st respondent) without realising this fact exercised *suo moto* revisional powers without any justification.

19. He contended that if the purpose of exercise of *suo moto* revisional powers under Section 14-A of the Act is to enable the tenants in possession of the land as on 07.01.1948 to get 2/3rd share in the land, then this purpose has been rendered futile since there is no record available with the respondents to know who such tenants were; and if the impugned order dt.23-12-2003 of the 1st respondent is allowed to stand, then grave and irreparable loss would be caused to the petitioners since it would enable the respondents 3 and 4 to distribute the land to persons of their choice ignoring the requirement in Section 4(2)(b) of the Act that only tenant who is in occupation of the land as on 07.01.1948 can get the 2/3rd share in the inam lands.

20. He contended that without even knowing the identity of the tenants in occupation of the lands on 07.01.1948, the respondents cannot seek to set aside the ryotwari pattas granted to the inamdar's family members or others and grant ryotwari pattas in respect of the land to persons found to be in occupation in 1997.

21. He pointed out that at this point of time in 2017, almost 70 years from 07.01.1948, it is even more difficult for the respondents to identify who the tenants of the lands as on 07.01.1948 are or how the persons in occupation in 1997 or as on today are related if at all to the tenants who were in occupation as on 07.01.1948 since at least three generations would have come into existence in the intervening time between 07.01.1948 and April, 2017.

22. He lastly contended that *suo moto* revisional powers ought to be exercised within reasonable time and in the present case, the 1st respondent exercised the same and initiated action 12 years from the date of the order dt.22-05-1985 of the Tahsildar, Puttaparthy and 8/6 years from the date of the orders dt.10.02.1989 and 11-04-1991 of the Mandal Revenue Officer, Penukonda and therefore this exercise of jurisdiction by the 1st respondent is not legally sustainable.

<u>CONTENTIONS OF THE GOVERNMENT PLEADER FOR REVENUE FOR RESPONDENTS:</u>

23. The Government Pleader appearing for respondents supported the order passed by the 1st respondent.

24. He contended that several irregularities were revealed if the report dt.07-12-1997 of the District Collector, Anantapur in the matter of issuance of ryotwari pattas to petitioners and taking note of the same, *suo moto* revisional powers were rightly exercised by the 1st respondent invoking Section 14-A of the Act.

25. According to him, since the Tahsildar, Puttaparthy had granted ryotwari pattas to petitioners on 22-05-1985 under Section 7 of the Act even before the publication of the decision under Section 3 of the Act in the District Gazette on 10-11-1987, his order is vitiated. It is also not valid because notice to the cultivating tenants was not properly issued since they were interested in the lands. According to him, the Mandal Revenue Officer, Penukonda also granted pattas to the petitioners without properly giving notice to the cultivating tenants and without identifying the tenants in any field inspection.

26. In any event he pointed out that granting of ryotwari pattas to members of inamdars family or purchasers from them for the entire land in Cherlapally Village without considering the claim of the cultivating tenants is patently illegal and cannot be sustained.

27. He stated that the Revenue Divisional Officer, Penukonda had taken oral statement of 233 tenants in his inspection on 11-04-1997 and 19-04-1997 and such persons would be entitled to grant of ryotwari patta under Section 4 and 7 of the Act.

THE CONSIDERATION BY THE COURT:

28. There is no dispute that late Sri Venkata Narayana Sarma was inamdar of Cherlapally Village, Penukonda Mandal, Ananthapur District. It is a Shrotriem Village as per Inam B register with Title Deed No.1246.

29. According to the 1st respondent, the said village was surveyed in 1982 and was found to be of extent Ac.2356.12 cents.

30. It is not in dispute that the Tahsildar, Penukonda Mandal decided under Sub-Section (3) of Section 3 of the Act on 19/20-3-1985 that the land in Cherlapally Village is Inam land in an Inam Village and is not held by an institution. This decision in Form No.II under the Act was published in the Ananthapur District Gazette on 10.11.1987.

31. Out of the area in Cherlapally Village, the Tahsildar, Puttaparthy granted ryotwari pattas to 17 persons on 22-05-1985 for an extent of Ac.811.57 cents on 22-05-1985 in Rc.No.385/85 and the Mandal Revenue Officer, Penukonda granted pattas to 7 persons to an extent of Ac.323.26 cents vide Rc.No.1439/85, dt.10-02-1989 and 11-04-1991. All the persons who were granted pattas belong to the family of the Inamdar and no person was granted patta who was a cultivating tenant of the land as on 07-01-1948 or his legal heir. Such pattedars and purchasers from them are the petitioners before this Court.

32. It is not in dispute that no cultivating tenant of the said land for which ryotwari pattas were granted had questioned the same under the Sub-Section (4) of Section 7 of the Act before the Collector within the period of 60 days from the date of communication of the order.

33. Section 4(2) of the Act states that if land is held by an Inamdar other than an institution on the date of commencement of the Act, and is in his actual occupation on the said date, the tenant who is declared to be in occupation of that land as on 07-01-1948 by the Revenue Court under Sub-Section (3) of Section 5 of the Act or the Collector under Sub-Section (5) of that Section, as the case may be, shall be entitled to a ryotwari patta for 2/3rd share of that land and Inamdar shall be entitled to a ryotwari patta for the remaining 1/3rd share.

34. There is no dispute as to possession of the Inamdar of the land in Cherlapally Village on the date of commencement of the Act. However, there is no evidence placed on record by the respondents as to who were the cultivating tenants as on 07-01-1948 who would be entitled to grant of ryotwari patta under Section 4(2)(b) of the Act.

35. Even though opportunity was provided by the Court to the Government Pleader for Revenue to produce the Adangal of Cherlapally Village for the period 07-01-1948, he stated, on instructions, that the Adangal was not available. No other material

showing who were the cultivating tenants as on 07-01-1948 of the subject land was placed on record by the respondents.

36. No doubt the intention of the Members of the Legislative Assembly when they asked the starred question in 1997 was to ensure that tenants who were entitled to ryotwari pattas under the Act were deprived of the same since all the land was granted under ryotwari to the Inamdars family members only.

37. This prompted the exercise of *suo moto* revisional powers by the 1st respondent under Section 14-A of the Act.

38. According to the 1st respondent, notice was issued on 11-12-1997 in reference V1/608/97 to 22 persons to show cause why ryotwari pattas granted to them by the Tahsildar, Puttaparthy/Mandal Revenue Officer, Penukonda should not be cancelled.

39. Had the 1st respondent, before issuing said notice ascertained who the cultivating tenants as on 07-01-1948 of the subject lands were, there might be some justification for invoking the *suo motu* revisional powers.

40. He called for a report from the Collector, Ananthapur who in turn asked the Revenue Divisional Officer, Penukonda to submit a report. But the latter made no attempt to identify by reference to revenue records who the tenants cultivating the land on 07-01-1948 were.

41. In his report Rc.No.3652/96/B, dt.19-11-1997, the Revenue Divisional Officer, Penukonda claimed to have identified 233 tenants pursuant to an enquiry made on 11-04-997 and 19-04-1997 on the basis of oral statements of persons who are appeared before him. In fact, no enquiry was conducted by the Revenue Divisional Officer as to who the cultivating tenants of the subject land as on 07-01-1948 were and how any of the 233 persons found to be tenants by him in his enquiry in 1997 were related to the said cultivating tenants.

42. Also since almost 50 years had elapsed by then since 07-01-1948, it was probable that many of these persons were not in possession as on 07-01-1948.

43. There was no way the relationship of these persons with the cultivating tenants of 1948 could be determined by the Revenue Divisional Officer since succession to persons cannot be determined by Revenue Officials since they are not conferred any jurisdiction under any law to do so.

44. The District Collector, Anantapur in proceedings Rc.No.A13/4428/97, dt.07.12.1997, on which reliance is place by the 1st respondent in the impugned order, also did not refer to any material as to who were the cultivating tenants of the land on 07-01-1948.

45. It is not the case of the respondents that Inam lands in an inam village can be distributed by them to anybody they choose other

than the cultivating tenant as on 07-01-1948 or the Inamdar. Even retention of the Inam land in an Inam village by the State for it's own purposes is not permitted by the Act. This legal position is not disputed by the Government Pleader.

46. So merely because some persons were cultivating the land in 1997, they cannot be given ryotwari pattas by the respondents since that would violate the prescription in Section 4(2)(b) of the Act that only cultivating tenants as on 07.01.1948 or the Inamdar would be entitled to ryotwari pattas.

47. Therefore, in the absence of any material before the 1st respondent as to which cultivating tenant of the land as on 07-01-1948 or his legal heir is entitled to 2/3rd share land for the purpose of issuance of ryotwari pattas, even if there was found to be some irregularity in grant of pattas to inamdar's family members, he was not justified in invoking *suo moto* revisional powers under Section 14-A of the Act and setting aside the orders passed by the Tahsildar, Puttaparthy and the Mandal Revenue Officer, Penukonda in favour of the Inamdar's family members.

48. When no material is available with the respondents to determine who the cultivating tenants as on 07-01-1948 were, and even if such material is available, the respondents are not conferred with any jurisdiction to determine the successors of such cultivating tenants under any law, the impugned order cannot be allowed to stand.

49. If it is not set aside, it would enable the respondents to allot the lands/grant ryotwari pattas to persons in occupation who are not cultivating tenants as on 07-01-1948 and act contrary to the provisions of Section 4(2)(b) of the Act.

50. It cannot be said that the intention of the legislature in conferring *suo moto* revisional power on the 1st respondent is to enable the Revenue Officials to act contrary to the provisions of the Act and benefit ineligible persons to get ryotwari pattas under the Act.

51. More importantly, the Government Pleader did not dispute that any cultivating tenant as on 07-01-1948 had challenged grant of ryotwari pattas to the family members of the Inamdar under Sub-Section (4) of Section 7 of the Act by way of appeal.

52. This was probably because such persons were either not alive at the time when the enquiry was taken up under the Act by the Revenue Officials or because such cultivating tenants as on 07-01-1948 had migrated subsequently to some other place and were not interested in the land at all.

53. It is settled law that a Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances **(Rafique Bibi v Sayed Waliuddin[1]).** If not, the order, whether it is illegal or void, continues to be valid and

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[1] (2004) 1 SCC287

effective. This is also a factor which is in favour of the petitioners and against the respondents.

54. Additionally, I also find merit in the contention of the counsel for the petitioners that exercise of *suo moto* revisional powers is not within reasonable time.

55. Recently the Supreme Court of India in **Joint Collector, Ranga Reddy District and another v D.Narsing Rao**[2] considered the question of exercise of *suo moto* revisional powers under Section 116-B of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli and held that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, such power must be exercised within a reasonable period and that this is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. It observed that what would constitute reasonable time would depend upon fact of each case. It held that delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it would mean avoidable and endless uncertainty in human affairs, which is not the policy of law. It observed that simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity and that otherwise the exercise of revisional power would itself tantamount to a fraud upon the statute that vests such power in an authority.

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[2] (2015) 3 SCC 695

56. In the present case, the 1st respondent initiated the exercise of the *suo moto* revisional power on 11-12-1997, 12 years from the date of the order dt.22-05-1985 of the Tahsildar, Puttaparthy and 8/6 years from the date of the orders dt.10-02-1989 and 11-04-1991 of the Mandal Revenue Officer, Penukonda and therefore this exercise of jurisdiction by the 1st respondent is not legally sustainable. By no stretch of imagination, can the 1st respondent be said to have acted within reasonable time.

57. For all the aforesaid reasons, the Writ Petitions are allowed and the Commissioner Appeals proceedings No.V1/608/97 dt.23.12.2003 of the 1st respondent is set aside. No costs.

58. As a sequel, the miscellaneous petitions, if any pending in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-04-2017
Vsv/Kvrm