

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

WRIT PETITION No.19423 of 2004

ORDER:

This Writ Petition is filed by petitioner assailing the order dt.14-07-2004 in CCLA's Ref.No.P3/1696/2003 of the 1st respondent communicating order dt.15-06-2004 in Proceedings No.P3/1696/2003 of the 1st respondent confirming the order dt.05-09-2003 in R.P.No.328/85(B) of the 2nd respondent.

2. The 1st petitioner died pending Writ Petition and his son was impleaded as 2nd petitioner by order dt.19-12-2011 in W.P.M.P.No.36486 of 2011.

3. The subject matter is an extent of Ac.7.00 in Sy.No.119/P of Mangalam Village, Chandragiri Taluk of Chittoor District. It is not in dispute that it was an inam estate notified and taken over by the Government on 01-10-1951 under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short "the Act").

4. One Bangaru Buchhi Venkatacharyulu was the inamdar of the said land. The petitioner filed an application under Section 11(a) of the Act for a ryotwari patta for the above land before the Settlement Officer, Nellore.

THE ORDER OF THE SETTLEMENT OFFICER, NELLORE

5. The Settlement Officer, Nellore in proceedings S.R.No.125/11(a)/80 dt.16-11-1981 passed orders granting ryotwari patta to the petitioner and his vendees for the said land on the basis of a Takid dt.05-02-1942 issued by the inamdar to the petitioner's father, cist receipts issued in favour of petitioner's father dt.15-09-1942, 08-06-1946, 01-07-1943, 07-04-1945, 04-09-1944, 02-03-1947 and 10-02-1948 and also oral evidence adduced by petitioner and his vendees.

THE ORDER OF RESPONDENT No.2

6. On 04-04-1985, 3½ years after the issuance of Section 11(a) patta to petitioner and purchasers from him, the 2nd respondent initiated *suo motu* revision under Section 5(2) of the Act on the following grounds:

“01) It is seen from the lower court record that the docket sheets are kept blank. There is no entry in the docket sheets to show that the case was posted for hearing and that any orders were passed. Notices to the parties concerned were not issued.

02) The patta said to have been granted in S.R.No.125/11(a)/80/CTR dt.16-11-1981 is an irregular order, without following the provisions of the E.A.Act, 1948”.

He framed two questions:

- “ (1) Whether the land in question is ryoti land? and
(2) Whether the respondent was in enjoyment of the land at the relevant point of time?”*

7. He relied upon the counter-affidavit filed by the then Mandal Revenue Officer that during pre-abolition time, the land in question was classified as 'Settipallicheruvu Lothattu'; meaning that it was a submergible land, unfit for cultivation, and that when the Mandal Revenue Officer inspected it on 22-06-2002, he found the land to be submerged in water. The 2nd respondent also stated that he verified the adangal prepared in 1959, which described the land as 'Pagullu Bhoomi', meaning 'cracked land', unfit for cultivation. He therefore held that the land is not ryoti land.

8. As regards 2nd question framed by him as to the enjoyment of the petitioner and others over the land, he rejected the documents produced by petitioner and others on the ground that they are written on white paper with round rubber stamp containing handwritten matter. Though he observed that authenticity of papers produced by petitioner need to be corroborated by extracts of cultivation accounts and simply rejected the documents, the 2nd respondent made no effort to verify any cultivation account and simply rejected the documents produced by petitioner as evidence of occupation from 1948 to 1981. He also noted that petitioner and others were not in occupation of the land on the relevant date i.e. 01-10-1951. He also noted that from the record of the Settlement Officer, there were no orders in the file communicating any grant of patta nor were there any docket sheets to show that the case was ever posted for hearing

and that notices were ever issued to the party and orders were pronounced or communicated.

THE ORDER DT.25-04-2003 IN W.P.No.6737 OF 2003

9. It is pertinent to note that before the matter was decided by 2nd respondent, the petitioner had filed W.P.No.6737 of 2003 before this Court seeking the following documents:

“1. Pre abolition Adangal of Mangalam village in respect of S.No.119.

2. Adangal extracts in respect of S.No.11 of Mangal village for the faslies 1292, 1393, 1398, 1401, 1403 and 1405.

3. Kist receipts for the faslies 1392, 1393 & 1398 in respect of S.No.119 of Mangalam village issued by various village officers.

4. F.M. book copy in respect of S.No.119 of Mangalam village.

5. The village Map of Mangalam village.

6. Copy of the report of the previous M.R.O. Rirupathi Urban between October, 90 to March, 1993 in respect of S.No.119 of Mangalam village.”

by filing an application before the Mandal Revenue Officer, Tirupathi (Urban) Mandal, Chittoor District.

10. After hearing the learned Assistant Government Pleader for Revenue, this Court observed the following in the order on 25-04-2003 :

“After receiving instructions, the learned Assistant Government Pleader for revenue submits that documents mentioned at serial Nos.1 and 3 are in the custody of the Joint Collector-cum-Settlement Officer (Under Estates Abolition Act);

that documents 2, 4 and 5 are in the office of the Mandal Revenue Officer and that document No.6 is not available. He also submits that the Mandal Revenue Officer will furnish the certified copies of documents at serial Nos.2, 4 and 5. In that view of the matter, giving liberty to the petitioner to approach the Joint Collector-cum-Settlement Officer for other copies, the Mandal Revenue Officer is directed to dispose of the application of the petitioner dated 20-11-2002 for furnishing the copies mentioned at serial Nos.2, 4 and 6 within a period of four weeks from the date of receipt of this order.”

WHY THE ORDER OF 2nd RESPONDENT IS BAD IN LAW

11. The petitioner had obviously sought documents mentioned above in support of his case that the land was ryoti land and he was in occupation at the relevant and notified date. It is not in dispute that none of these documents have been furnished to the petitioner by the Mandal Revenue officer.

12. On 24-01-2017, in the instant Writ Petition, this Court sought to know from the learned Government Pleader for Revenue as to whether the documents sought for by the petitioner were furnished to him or not pursuant to the above order.

13. The matter was adjourned to 31-01-2017.

14. The matter was next listed on 06-02-2017, 16-02-2017, 14-03-2017, 15-03-2017, 21-03-2017, 04-04-2017, 11-04-2017 and today.

15. The learned Government Pleader for Revenue appearing for respondents states that the documents sought for by the petitioner are not available and so they cannot be furnished.

16. In the order dt.25-04-2003 in W.P.No.6737 of 2003, this Court had noted specifically that on receiving instructions, the then learned Assistant Government Pleader stated that document at Sl.Nos.1 and 3 are in the custody of the Joint Collector-cum-Settlement Officer and document Nos.2, 4 and 5 are in the custody of the Mandal Revenue Officer, while document No.6 was not available.

17. If the documents had been available on 25-04-2003, how they could have disappeared by April, 2017 is not explained.

18. Obviously, the documents, even though available, are being suppressed by respondents in order to disable the petitioner from establishing his case. Thus adverse inference is drawn against respondents that if documents are produced it would disprove the reasoning given by both 2nd and 1st respondent.

19. I may also point out that the 2nd respondent in the order passed by him on 05-09-2003 simply relied on the statement of the Mandal Revenue Office in his counter that in the pre-abolition time, the land in question was submergible land, not fit for cultivation, without referring to any revenue records of the pre-abolition period.

20. He also could not have relied on the statement of the Mandal Revenue Officer that on 22-06-2002 when the land was inspected by the Mandal Revenue Officer, it was found submerged in water. This is because the situation on 22-06-2002 is not relevant under the Act for deciding whether petitioner and other persons were entitled to ryotwari patta under Section 11(a) of the Act.

21. The 2nd respondent also referred to the fair adangal prepared in 1959. Even the said document is irrelevant because the relevant date, even according to the order of the 2nd respondent, is 01-10-1951 and not the position in 1959.

22. Therefore the finding on the 1st question by the 2nd respondent that the land is not ryoti land is based on no evidence and is clearly perverse and based on irrelevant considerations.

23. Coming to the finding of the 2nd respondent on 2nd question about the enjoyment of petitioner and others of the subject land, I have already stated that petitioner and others produced documents such as takid and land receipt issued by the inamdar for the period 1942 to 1948. The 2nd respondent noted that authenticity of these papers needs to be corroborated by looking into the extracts of cultivation accounts. But the 2nd respondent failed to summon any cultivation accounts for the period 1942 to 1948 to come to the conclusion that the documents filed by petitioner are not genuine. Merely because documents were written on plain paper in Telugu language in handwriting bearing a rubber stamp, they cannot be

doubted because there is no requirement in respect of agricultural lands at any point of time that grant of tenancy should be evidenced by registered document only and any other evidence is not acceptable.

24. As regards 3rd reason mentioned in the order of the 2nd respondent about certain procedural irregularities committed by the Settlement Officer, the petitioner and his vendees cannot be blamed for any error in the procedure allegedly conducted by the Settlement Officer. It is not the case of the respondents that any third party, who is interested in the land, has come forward disputing the claim of petitioner asserting that he is entitled to patta under Section 11(a) of the Act. Therefore the reasoning given by 2nd respondent in his order dt.05-09-2003 is clearly perverse, based on no evidence and is also contrary to law.

THE ORDER OF 1st RESPONDENT

25. Challenging the order passed by 2nd respondent, the petitioner filed a Revision before the 1st respondent. It was numbered as Proceedings No.P3/1696/2003. After recording the contentions of petitioner, the 1st respondent passed the following order:

“The Director of Settlements in his impugned order has examined the substantive issue in detail that whether the land is ryoti land or not and whether the appellant herein was in possession of the said land or not at the relevant time. In the circumstances discussed by him, he has rightly held that the land

was not ryoti land and the appellant herein was not in possession of the land on the relevant date i.e., 1-10-1951. Hence, I find no reason to interfere with the impugned order dt.05-09-2003 passed by the Director of Settlements.”

THE ORDER OF 1st RESPONDENT IS ALSO NOT SUSTAINABLE

26. There is no question of application of mind by 1st respondent to the contentions of petitioner nor did the 1st respondent verify any cultivation account of the relevant period to corroborate the finding of the 2nd respondent that the land is not ryoti land and petitioner was not a tenant in occupation thereof.

27. Therefore, the order passed on 15-06-2004 by 1st respondent, which was communicated by proceedings CCLA's reference No.P3/1696/2003 dt.14-07-2004 is also not sustainable.

28. In the absence of any material produced by respondents to contradict the material produced by petitioner before the Settlement Officer, Nellore and in view of the stand taken now by respondents that such material is not available, the order dt.16-11-1981 in S.R.No.125/11(a)/80 of the Settlement Officer, Nellore is upheld.

29. Accordingly, the Writ Petition is allowed and the orders dt.05-09-2003 in R.P.No.328/85(B) of the 2nd respondent as confirmed by order dt.15-06-2004 in proceedings No.P3/1696/2003 of the 1st respondent as communicated in CCLA's Ref.No.P3/1696/2003 dt.14-07-2004 to the petitioner is set aside. The respondents shall pay costs of Rs.5,000/- (Rupees Five Thousand only) to petitioner.

30. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-04-2017

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