

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

WRIT PETITION No.18806 of 2003

Between:

The State of Andhra Pradesh,
Rep.by its District Collector, Chittoor.

....Petitioner

and

The Estate Abolition Tribunal, Chittoor,
(District Judge, Chittoor),
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 17.07.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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% 17.07.2017

The State of Andhra Pradesh,
Rep.by its District Collector, Chittoor.

...Petitioner

vs.

\$ The Estate Abolition Tribunal, Chittoor,
(District Judge, Chittoor),
And others.

... Respondents

!Counsel for the Petitioner : GP for Revenue

^Counsel for the Respondents : Sri S.V.Sundararajan

<Gist :

>Head Note :

? Cases referred

1. (2016) 6 SCC 1



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.18806 of 2003

ORDER:

Heard learned Government Pleader for the petitioner and the learned Counsel for respondent Nos.2 to 5.

This is the story of a tank killed by the system. An avaricious person claimed it as his own. The then Tahsildar assented by non contest. The Settlement Officer, notorious for his misdeeds granted patta to the person. The Appellate Tribunal confirmed. The tank was thus killed and the killers brought it before this Court as saviours. The legal luminaries embalmed it. The story unfolds like this.

As per the affidavit filed by the petitioner, the land admeasuring Acs.12.20 cents situated in Survey No.2/2 of Kasiraopeta Village, Madanapalle Revenue Mandal, Chittoor District, was registered in the revenue records as tank poramboke and after survey and settlement it was entered in the columns of SLR as "Eguvacheruvu" (Tank). The estate was notified, abolished and taken over by the Government on 26.07.1961. The third respondent filed an application before the Settlement Officer for grant of patta on 12.10.1961. The said application was dismissed and challenging the said order, the third respondent filed W.P.No.2376 of 1971, and this Court, by order dated 21.09.1973, directed the Settlement Officer to enquire into the claim of the third

respondent for Acs.5.00. Pursuant to the said order of this Court, the Settlement Officer enquired into the matter and granted patta in favour of respondent Nos.3 to 5 for Acs.12.20 cents. When an appeal was preferred before the first respondent, it was confirmed. Challenging the same, the present Writ Petition was filed.

This Court, by order dated 04.09.2003, granted *status quo*, and the said order has been continuing till today.

During the pendency of the Writ Petition, the second respondent died and respondent Nos.6 to 11 are brought on record in W.P.M.P.No.21602 of 2013.

A counter affidavit was filed on behalf of respondent Nos.2 to 5 stating that the land in question was formerly part of Kasiraopeta Village, which was an inam estate and taken over by the Government on 26.07.1961 under the provisions of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short, the Estates Abolition Act). It was further stated that the father of the second respondent was the purchaser of the land covered by survey numbers other than Survey No.2, he was granted patta way back in 1919 and those orders have become final. The land in Survey No.2 comprises of an extent of 12.20 cents and when enquiry was not finalized, they were constrained to file W.P.No.2376 of 1971 for conducting enquiry. The said Writ Petition was disposed of on 21.09.1973. The Settlement

Officer, Nellore, held an enquiry and passed an order granting patta in respect of Acs.12.20 cents of land situated in Survey No.2. The second respondent claims to have purchased the share of others also. Thus, he became owner of entire extent of land leaving the extent belonging to Polepallivari Annadana Satram. The grant of patta was confirmed by the Estates Abolition Tribunal in A.S.No.1 of 1981 on 13.03.1984. Under the said proceedings, the land in Survey No.2 was treated as patta land and not as a tank poramboke, as alleged. The second respondent stated that he was in continuous possession and enjoyment of the same without any interference from anyone. When the second respondent along with the third respondent filed O.S.No.764 of 1972 on the file of the District Munsif, Madanapalle, for perpetual injunction restraining the villagers from interfering with the possession and enjoyment of all the lands, the same ended in compromise in view of the admission of title of respondent Nos.2 to 5 by the villagers. The second respondent also stated that he filed O.S.No.102 of 1985 on the file of the learned Subordinate Judge, Madanapalle, seeking declaration of title and permanent injunction restraining the defendants therein from interfering with their possession and enjoyment of the land in Survey No.2. The State of Andhra Pradesh, represented by the District Collector, the Sub Collector and the Mandal Revenue Officer, Madanapalle, were arrayed as defendant Nos.21 to 23 in the said suit. The Subordinate

Court, Madanapalle, decreed the suit in favour of the plaintiffs upholding the right and title to the extent of Acs.12.20 cents in Survey No.2 of Kasiraopeta Village. In the village records such as adangals and 10(1) accounts, the cultivation by the second respondent was recorded. When W.P.No.18375 of 2000 was filed by some third parties against the endorsement made by the Mandal Revenue Officer rejecting the request for treating the land as reserved for tank, the said Writ Petition was dismissed for default on 20.06.2007. It is also stated that the Writ Petition was filed after sixteen years and the reasons were not properly explained.

The Writ Petition was filed alleging that there was no evidence to show that the land was under the personal cultivation during the relevant period by the claimant and the Settlement Officer came to the wrong conclusion without any evidence or material before him. It was also stated that the land was entered in the pre-abolition revenue records as tank poramboke and it was also classified as tank poramboke in survey and settlements register after the survey. The correlation of paimash No.14 to Survey No.2 was correct, but the Settlement Officer, on the basis of the oral evidence of the claimant correlated to paimash Nos.25, 26, 27 and 28 to Survey No.2 without personal inspection and verifying the boundaries of each of these paimash numbers. If the land is non ryoti land, no patta can be granted either under Section

11(a) or 13(b)(iii) of the Estates Abolition Act. It was also stated that when the Court directed an enquiry in respect of only Acs.5.00 of land by order in W.P.No.2376 of 1971, dated 21.09.1973, the Settlement Officer went beyond the said extent and granted patta to the extent of Acs.12.20 cents for which he had no jurisdiction. Paimash No.14 correlates to Survey No.2, which is a tank bed land, and no patta can be granted in respect of such lands in view of the decisions of the Supreme Court and this Court. The settlement patta was granted by the then Settlement Officer, Nellore, Sri A.D.V.Reddy, and after his retirement the Government noticed irregularities committed by him and issued a Memo No.486/J2/86, dated 25.04.1984, instructing the District Collectors not to implement the settlement pattas issued by him. In support of the delay in filing the Writ Petition, it is stated as follows:

“It is submitted that the petition’s office has taken steps in the year 1985 to file writ petition before this Honourable Court against the orders of Tribunal passed in A.S.No.1/81 dated 13-3-84 and got approved the draft affidavit from Government Pleader and forwarded the fair affidavits to the Government Pleader’s office, to file the writ petition. There after petitioner’s office had lost the track of the case and not properly pursued the case in the Government Pleader’s office for long period. Hence the petitioner ordered for preliminary enquiry into whole issue to take appropriate disciplinary action against the officers concerned for causing delay in preferring the writ petition against the orders of the Tribunal passed in A.S.No.1/81 dated:13-3-1984. It appears that due to collusion, fraud only the writ petition was not preferred before this Honourable Court in time. Hence there is inordinate delay occurred in filing the petition. Hence it is prayed that this Hon’ble Court may be pleased to condone the inordinate delay of 16 years in preferring the writ petition against the orders of Tribunal passed in A.S.No.1/81 dated 13-3-84 in the interest of justice.”

A perusal of the order of the Settlement Officer dated 28.01.1980 shows that the said order was passed on a petition filed under Section 15(1) of the Estates Abolition Act dated 08.05.1978. When the matter was taken up for consideration on 06.11.1979, the petitioners, their advocates and witnesses were present, but the Tahsildar was absent. It was brought to the notice of the Settlement Officer himself by the Counsel for the second respondent herein that this Court, by order dated 21.09.1973, directed to enquire the claim of the petitioner for patta in respect of an extent of Acs.5.00 only. But, strangely, the Settlement Officer construed the said order as determining the rights of the second respondent in respect of the said extent of Acs.5.00, and considered the claim in respect of the balance extent. The claim of the second respondent was allowed on the basis of the oral evidence of the Karnam of the village, with the following observations:

“The question is whether the lands are private lands of the landholder within the meaning of 3(1)(b) of Estates Land Act or alternately whether the petitioners are entitled to ryotwari under Section 13(b)(iii) of the Estates Abolition Act. The land S.No.2 stands registered as Tank in Post Survey accounts as also in M.Memo. It is a tank Ryotwari Patta cannot be granted. A careful perusal of I.F.R. which is of the year 1861 shows that there is no tank in Kasiraopet I.F.R. shows one channel from Chinnathippasamudram tank. Obviously this was a supply channel for the wet lands of Kasiraopet shown in I.F.R. Thus there was no tank in 1861.”

The said order was passed after seven years of the order of this Court. When an appeal was preferred before the first

respondent, the first respondent noted that the Tahsildar, Madanapalle, who represented the State during the enquiry, absented himself from the enquiry and did not place any material. He dismissed the appeal by repelling the contention raised by the Government that when an enquiry with regard to correlation of Paimash Nos.25 to 28 was pending, without finalizing the said enquiry, the Settlement Officer should not have granted patta. The observations of the Tribunal are as follows:

“The predecessors in interest of the applicants, purchased this land under registered sale deed dated 05.10.1919, a registration copy of it was marked as Ex.P-5. According to the applicants, the land in question was covered by Paimash No.25 to 28 mentioned in this sale deed. The land covered by the said sale deed was described as patta Zameenlu and there was no mention of tank. Ex.P-4 is a certified copy of the inam fair register relating to title deed No.2956 of Kasiraopeta village. This Inam Fair Register shows that there were tank two wells, one Kunta and one Voddu. There is might have been a tank at that time, but it must have been subsequently converted into cultivable lands. Thus this land was in cultivation even prior to the Estate was taken in evidenced by the adangal extracts filed by the appellant and marked as Exs.P-10 to P-1 in this appeal.

Ex.P-6 is a copy of the adangal in respect of S.No.2 for fasalies 1378 to 1384. It shows that the land in question has been under the cultivation of the joint pattadars. This cultivation was subsequent to the taking over of the estate. Ex.P-8 is a certified copy of the compromise petition in O.S.No.764 of 72 on the file of the District Munsif Court, Madanapalle. This shows that the defendants who were Harijans admitted that these pattadars had been in possession of the lands covered by S.No.2 and other lands mentioned in the suit schedule.

Ex.E-7 is a bunch of B.Memos relating to the faslies 1375, 1381, 1383 and 1387 issued in favour of the respondent, one the joint pattadars. In the absence of grant of patta to the respondent, the Government evidently collected assessment from the respondents who have been in occupation of these

lands. All this confusion evidently arose on account of wrong correlation of paimash Nos.25 to 28 to S.No.14 instead of S.No.2. But the evidence of the village Karnam who has been working since 1929 clearly supports the contention of the applicants and belies the contention of the Government that this land is covered by a tank.”

The said order was passed on 13.03.1984 and the present Writ Petition was filed in 2003.

There is no reference in the present Writ Petition with regard to the decree obtained by the second respondent in O.S.No.102 of 1985 from the Court of the learned Subordinate Judge, Madanapalle, wherein the petitioner was a party defendant. A written statement was filed in the said suit by the petitioner herein stating that the plaintiffs were granted permission to cultivate the land during the fasli in 1386 and 1387 and even if they have cultivated the land they would be treated as sivaijamadars and they do not get any adverse title against the Government. It was also stated that the order passed by the Settlement Officer can be ignored as it was not in accordance with the order of this Court in W.P.No.2376 of 1971, dated 21.09.1973. In any event, the order would be binding only to the extent of Acs.5.00 and the claim in excess of Acs.5.00 would be invalid. Since A.S.No.1 of 1981 against the said order was dismissed, the filing of Writ Petition was under active consideration of the Government Pleader. The trial Court framed eleven issues, out of which the following issue framed as issue No.3 is relevant:

“Whether the ryotwari patta is liable to be set aside and whether the settlement office is empowered to grant the same in favour of the plaintiffs?”

Exs.A1 to A6 were marked on behalf of the plaintiffs and Exs.B1 and B2 were marked on behalf of the defendants. P.W.1 and 2 were examined on behalf of the plaintiffs and one Baka Lakshmananna was examined as D.W.1 on behalf of the defendants. Ex.A1 is the copy of order passed by the Settlement Officer, whereas Ex.A2 is the order passed by the first respondent herein, the appellate Tribunal. Exs.A3 to A5 are cist receipts and Ex.A6 is the certified copy of the suit register extract. The suit was filed for declaration of plaintiffs' title and for grant of perpetual injunction restraining defendant Nos.1 to 20 and 24 with the plaintiffs' peaceful possession and enjoyment and also to restrain defendant Nos.21 to 23, who represented the petitioner herein, from issuing any orders adverse to the plaintiffs. While considering issue Nos.2, 3 and 7, the trial Court held as follows:

“Issues 2, 3 and 7:

Though the defendants 1 to 20 and 24 contended that the patta obtained by the plaintiff is vitiated by fraud and mis-representation and that it would not bind them and the settlement officer is not empowered to grant one ryotwari patta, there is absolutely nothing in the evidence of D.W.1 to prove that such fraud and misrepresentation was played and made by the plaintiffs in obtaining ryotwari patta through settlement officer. The fact that the plaintiffs approached the Hon'ble High Court and filed writ of mandamus in W.P.No.2376/71 and in pursuance thereof only the settlement officer conducted enquiry and held it in favour of the plaintiffs and even the fact that the appeal in AS No.1/81 on the file of the Estates Abolition Tribunal preferred by the Government was also dismissed would clearly belie the contention of the

defendants that the plaintiffs by playing fraud and by mis-representation obtained order from the settlement officer, on the other hand, D.W.1 categorically admitted in his cross examination that they derive right over the suit property only if the Government has got any right to the suit property. Since the dismissal order by the Tribunal was passed in A.S.No.1/1981 preferred by the Government and Government did not carry the matter to the Hon'ble High Court against it, the order passed by the settlement officer has become final and though the defendants 21 to 23 contended in their written statements in the year 1986 that the matter was pending consideration with the Government Pleader of High Court of A.P. but even by the date when P.W.1 was examined about 4 or 5 months back. It is clear that the Government did not file any petition and, therefore, it is not now open for any of the defendants to contend that the plaintiffs obtained the order from the settlement officer by playing fraud and mis-representation. Hence these issues are found against the defendants."

Consequently, the suit was decreed with costs by judgment and decree dated 31.08.1996. Thereafter, O.E.P.No.75 of 1999 was filed by the decree holder and a counter was filed in the same by the Mandal Revenue Officer, Madanapalle. It is evident from the letter addressed by the Mandal Revenue Officer, Madanapalle, to the Joint Collector, Chittoor, dated 19.09.2000, that it was advised by the then Assistant Government Pleader in the trial Court not to prefer an appeal as there are no reasonable grounds in the case. Hence, it appears that no appeal was filed and he sought instructions for effecting changes in the village accounts pursuant to the decree. It appears that no appeal was preferred against the said decree by the petitioner herein and the petitioner suppressed the fact of existence of such a decree in the present Writ Petition. The said decree cannot be set at naught in the present proceedings when the present

petitioner was one of the defendants. This Court, in spite of its anxiety to do justice, cannot go to that extent in the name of extraordinary jurisdiction. Thus, this Court could only do postmortem. It could not give life to the dead tank. The cause of death is known. The killers are left scot free. The beneficiaries have the last laugh.

This Writ Petition shows the sorry state of affairs in the conduct of Government cases by the officers and the Law Officer engaged by the Government. The record made available in the instant case shows that the decree in the civil Court was available in the files of the Government but no steps were taken to file an appeal, nor the order of the Appellate Tribunal challenged till seven years after decreeing the suit. The Writ Petition was filed after sixteen (16) years of dismissal of appeal by Tribunal and it is not known whether any action was taken against the Officers responsible for enormous delay. It is not known why an appeal was not preferred against the decree of the civil Court and why a Writ Petition was filed after making the decree final. If the Law Officer of this Court had gone through the record, he would not have advised the petitioner to file the present Writ Petition or he would have advised to file an appeal along with the present Writ Petition. Even the revisional power available in the statute was not invoked. But, none of the steps were taken and the case was filed and coming up for the last fourteen years burdening this Court. The docket proceedings

of this Court show the casual attitude of the Law Officers who handled from time to time. No record was produced at the time of hearing and only when the case was reserved for orders the record relating to settlement proceedings are produced and no copy of the order passed by this Court in W.P.No.2376 of 1971 is made available. In view of this attitude of the Officers of the Government and the Law Officers, it is for the Government to take appropriate steps for strengthening its system of litigation on behalf of Government. This Court in **J.Madhusudhan Reddy v. Government of A.P.** (W.P.No.7001 of 2004 dated 29.04.2014) already directed the Government to frame a litigation policy in order to check unnecessary litigation and also brought to the notice of the Government the need for appointing competent Law Officers. The same view was taken by the Supreme Court in **State of Punjab v. Brijeshwar Singh Chahal**¹. The issue is elaborately dealt with in another batch of cases disposed today relating to a hill in Vizianagaram District in **Pediredla Sarabhannapatrudu v. The District Collector** (W.P.No.22863 of 2002 and batch, dated 17.07.2017).

The correspondence file submitted to this Court shows that the attempt was made way back in the year 1986 to file a Writ Petition, but somehow it was not pursued. Though disciplinary proceedings were directed to be taken the result of such proceedings are not found. The correspondence file

¹ (2016) 6 SCC 1

shows the protest of the local villagers for granting patta to this land on the ground that the water is being used by the villagers from the tank. This Writ Petition appears to have been filed only to secure approval from this Court for the irregularities already committed. The facts of this case clearly show the urgent need for the Government to think over the issue relating to protection of lands rightly belonging to the Government. The supervision by the Joint Collectors and District Collectors require to be strengthened.

However, in view of the decree in O.S.No.102 of 1985 becoming final and in view of the enormous delay in preferring the present Writ Petition, this Court is constrained to dismiss the Writ Petition.

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

JUSTICE A.RAMALINGESWARA RAO

17.07.2017

Note: Mark a copy of this order to the Principal Secretary to Government, Revenue Department, Government of Andhra Pradesh Secretariat, Velagapudi, Amaravati, Guntur District.

B/o.
vs