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

WRIT PETITION Nos.12828 of 2003 and 15987 of 2003

COMMON ORDER :

In these two Writ Petitions, the petitioners assail the proceedings dt.19-02-2003 in reference No.P5/485/1996 of the 1st respondent.

2. Issue in W.P.No.12828 of 2003 relates to an extent of Ac.17.00 gts in Sy.No.46 of Khanapur village while the issue in W.P.No.15987 of 2003 relates to an extent of Ac.40.00 in Sy.No.67/7 of Khanapur village.

3. The facts leading to the filing of these Writ Petitions are as under:

4. The 5th respondent in both these Writ Petitions, who is the Mandal Revenue Officer, Manchal Mandal sent a report vide reference B/1553/85 dt.02-12-1991 stating that during preparation of sub-division records in respect of the Government land bearing Sy.No.43 of Khanapur village, it was observed that an extent of Ac.11.25 guntas in Sy.No.43 is gap area and not accounted for in any of the Revenue records. He requested the District Revenue Officer, Ranga Reddy District (2nd respondent) to include Ac.11.25 gts in Khanapur village in Government lands and issue supplementary Sethwar by assigning new survey number.

5. The 2nd respondent then verified the technical records of Khanapur village, which is adjacent to Ibrahimpatnam and Nomula villages, got a combined sketch prepared and noticed that an extent of Ac.57.01 gts is available, which was not accounted for in the village records.

6. He therefore initiated proceedings under Section 90 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 fasli (for short "the Act) for inclusion of the gap area in the village boundary of Khanapur village, Manchal Mandal.

7. Section 90 of the Act deals with demarcation of village boundaries and directs that the District Collector or any other Officer nominated by the Government for this purpose, or the Settlement Commissioner, if survey operations are proceeding in the village, shall enquire about and fix the boundaries of village and determine disputes, if any, relating thereto.

8. After initiating this proceeding under Section 90 of the Act, notices were issued calling for objections from the villagers of Khanapur and Ibrahimpatnam villages.

9. The petitioner in W.P.No.12828 of 2003 filed objections stating that the excess area is wrongly demarcated, that it is his patta land and sought a resurvey to do justice by filing 7 documents.

10. The 2nd respondent then passed an order on 30-03-1996 in proceedings No.G7/3302/89 stating that though on 17-09-1956, the

Additional Collector, Hyderabad in judgment No.207 gave directions to the Tahsil Office to send the detailed proposals to the L.R. Assistant of Collector (Assistant Director and S & LR) after duly examining the correctness of the records, if necessary, to issue settlementary sethwar, it was not done; that the Inspector of Survey Department surveyed the land and had drawn a detailed map duly fixing the boundaries of the land in Sy.No.46; and the rights of the petitioner in W.P.No.12828 of 2003 are in no way affected in deciding of the present issue and the documents filed by him are not relevant. He opined that the survey report and the records reveal that an extent of Ac.57.00 of land is unaccounted in the Revenue records of Khanapur village and therefore he directed the Assistant Director (S&LR), Ranga Reddy District to include this extent of land in Khanapur village by granting last survey numbers in the Settlement Records *treating it as Government land.*

11. Petitioner in W.P.No.12828 of 2003 assailed the same in an appeal filed under Section 158 of the Act insofar as the 2nd respondent directed treating Ac.57.01 gts in Khanapur village as Government land is concerned. The 1st petitioner in W.P.No.15987 of 2003 was impleaded as 5th respondent in the said appeal, which was numbered as C.C.L.A. proceedings No.P5/485/1996.

12. In the appeal, the petitioner in W.P.No.12828 of 2003 contended that he is claiming an extent of Ac.17.00 of the unaccounted gap area of Ac.57.01 gts stating that this land is adjacent

to his patta land in Sy.No.46 and was in his possession and cultivation since the time of his forefathers and therefore it cannot be treated as Government land. The 1st petitioner in W.P.No.15987 of 2003 claimed that an extent of Ac.40.01 gts out of Ac.57.01 gts is adjacent to Sy.No.67/7, that it is their land and it cannot therefore be treated as Government land.

13. On 13-09-2002, the Assistant Director of Survey and Land Records, Ranga Reddy District inspected the site along with Inspector of Survey in the presence of village ryots and submitted a report stating that the gap area consists of 4 bits and also requested to reject the appeal and treat it as Government land.

14. Taking into account this material, the 1st respondent dismissed the appeal stating that the petitioner in W.P.No.12828 of 2003 did not produce any documentary evidence in support of his contention that Ac.17.00 of land claimed by him belongs to him. By implication, he also rejected claim of 1st petitioner in W.P.No.15987 of 2003.

15. Assailing the same, W.P.No.12828 of 2003 and W.P.No.15987 of 2003 are filed.

16. The learned counsel for petitioners contends that inclusion of the gap land in Khanapur village was already adjudicated by the then Additional Collector, Survey and Land Records vide proceedings bearing No.E3/47/59/30/55 and therefore the proceedings initiated by respondents were hit by the principle of *res judicata*. It is also

contended specifically by the learned counsel for petitioners that while deciding the village boundaries under Section 90 of the Act, it is not permissible for respondent Nos.1 and 2 to decide the title to the land i.e. whether it is Government land or land belonging to petitioners and that respondent Nos.1 and 2 thus transgressed their jurisdiction under Section 90 of the Act by going into the question of title, which could not have been adjudicated by them.

17. This Court initially, on 02-07-2003 directed maintenance of *status quo* pending further orders. The said order was, however, vacated on 04-10-2004 in W.V.M.P.No.2891 of 2004.

18. Aggrieved thereby, the petitioner in W.P.No.12828 of 2003 filed Writ Appeal No.1750 of 2004. A Division Bench of this Court set aside the order passed by the learned Single Judge vacating the interim order and restored the order of *status quo* and directed that it will be continued till the disposal of the Writ Petition.

19. Counter is filed by respondents stating that the petitioners have remedy by way of Revision under Section 166-B of the Act. After repeating what is contained in the impugned orders, it is reiterated that the subject land is Government land. The contention of the petitioners that Sy.No.46 was earlier demarcated was not denied.

20. The learned Government Pleader appearing for respondents sought to contend that though the notice was issued under Section 90 of the Act in respect of Ac.11.25 gts in Sy.No.43 of Khanapur village

and inclusion of this unaccounted for area in Khanapur village invoking Section 90 of the Act, since it was subsequently discovered that unaccounted area is of Ac.57.01 gts and that this was existing in between Ibrahimpatnam, Nomula and Khanapur villages, the action of 2nd respondent in including this unaccounted land in Khanapur village in exercise of the power under Section 90 of the Act cannot be found fault with. He further contended that in that process, since the petitioner in W.P.No.12828 of 2003 had come forward with a claim that excess area of land is adjacent to Sy.No.46, there is nothing wrong in deciding the said issue also and declaring that the land claimed by the said petitioner is Government land.

21. I am unable to agree with the later submission. There is a clear distinction between determination of a village boundary under Section 90 of the Act and determination of field boundaries under Section 92 of the Act. When proceedings are initiated for determination of village boundaries and incorporation of unaccounted for land in the boundary of one of the villages, if the 2nd respondent confines himself to the said job, there would not be any problem. But while doing so, the 2nd respondent cannot be allowed to determine the title to the land claimed by petitioners and declare that the land claimed by petitioners is Government land and not the land of the petitioners. Having said in para-4 of his order that the rights of the petitioners are in no way affected, he ought not to have gone into the plea of title raised by

petitioners and declare that the land claimed by petitioners is Government land.

22. In the appeal filed by petitioner in W.P.No.12828 of 2003, the 1st respondent has not at all referred to the contentions of the appellant and passed a cryptic order saying that the petitioner has not established his title or possession to the land claimed by him and that the 2nd respondent was justified in treating it as Government land.

23. If the 2nd respondent had no jurisdiction to decide the title to the property while exercising power under Section 90 of the Act, the 1st respondent also would have no such power and thus it is clear that both respondent Nos.1 and 2 have transgressed their jurisdiction under Section 90 of the Act in going into the question of title to the property. In my considered opinion, they should have refrained themselves from expressing any opinion on this issue since enquiry initiated by 2nd respondent was not for this purpose.

24. Therefore to the extent that the 2nd respondent had declared that the land claimed by petitioners is Government land, and that the petitioners have no title to the said land, and to the extent that this finding has been confirmed by the 1st respondent, the order passed by the 1st respondent on 19-02-2003 cannot be set sustained. Therefore, only to this extent, the order is set aside. The question of title to the unaccounted for land, which was subject matter of the proceedings before the 2nd respondent even after its inclusion in Khanapur village,

it is left open to be adjudicated in the proper forum at the instance of either of the parties.

25. This Court has not expressed any opinion on the right, title or interest of either the petitioners or the State of Telangana in regard thereto.

26. The Writ Petitions are allowed as above. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date : 19-01-2017
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