

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION Nos.26022 of 2008 & 46 of 2009**

**ORDER:**

Both these writ petitions are filed seeking writ of Certiorari calling for the records in respect of Government Memo No.42762/J.A(2)/2006-9, dated 12.11.2008 and to quash the same.

**WP No.26022 of 2008**

2. Brief facts which are necessary for disposal of the writ petition are as follows:

It is the case of the petitioners that Damavaram Village was an Inam village owned by Addanki S.K.L.N.Venkata Charyulu and Tiru Venkata Charyulu. The ancestors of the petitioners were occupancy ryot holders holding land under the Inamdars. The Inamdars allotted "Dakshinapu Beedu" measuring Acs.2,000.00 for grazing purpose to the cattle and for fuel, on payment of specified amount towards Pullari. As there was default in payment of stipulated amount, initially the Inamdars filed a suit in the year 1914, which ended in compromise. Again when disputes arose between ryots and inamdars, the Inamdars filed O.S.No.29 of 1925 on the file of District Court, Nellore, which ended in compromise and a Compromise Decree was passed on 06.07.1925, where under the Inamdars granted perpetual lease for Acs.700.00 (hereinafter will be referred to as 'subject land') only out of the total extent of Dakshinapu Beedu on condition of payment of specified amount by ryots to the Inamdars. Though

some of the ryots filed O.S.No.82 of 1929 for setting aside the compromise decree passed in O.S.No.29 of 1925 alleging that the same was obtained by fraud and collusion, the OS No.82 of 1929 was dismissed on 09.12.1932 and since then, the ryots were in occupation of the subject land continuously till now. The petitioners' ancestors were all ryots holding less than 5 acres dry besides the land granted on perpetual lease for grazing purpose and the petitioners inherited the rights in the subject land from their ancestors; that the lessees have made improvements by bringing the subject land under cultivation authorized under the provisions of the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 (for brevity 'the Act of 1908') and also raised dry and wet crops in a part of the land and also raised fruit bearing trees and improved the value of the land; as such, the perpetual lease is enforceable against the Government under Section 20(1) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act of 1948'). That the Government delegated its powers under Section 20(1) of the Act of 1948 in favour of the then Board of Revenue as per the Rules framed by the Governor of Madras and Published in the Gazette dated 16.08.1949 and as per the delegation of powers, the Board of Revenue passed orders in its BPRT No.5829/1960, dated 29.12.1960, after conducting enquiry, observing that the perpetual lease is enforceable against the Government. The said power under Section 20 having been exercised by the delegate 48 years ago, it became functus officio and that the said order having not been challenged for the last 48 years, it had attained

finality and it is not open to any authority to pass any orders under Section 20 of the Act of 1948. That the Government used to collect land revenue on par with other ryots in the adjoining areas in the village and treated the lands as ryoti land and also accepted the improvements made by the ryots in accordance with the provisions of the Act and that the villagers have not contravened any provision of law. While so, the petitioners received show-cause notice from the Government in Memo No.42762/JA (2)/2006, dated 04.12.2007 calling upon the petitioners to show-cause within three months as to why the perpetual lease granted in respect of the subject land shall not be terminated for violation of conditions of lease. The petitioners have submitted explanation to the said show-cause notice. There is no provision in the Act authorizing the Government to terminate the lease for any alleged violation of the conditions of lease. Petitioners came to know that the Collector, Nellore submitted a report to the Government regarding the subject matter on 21.08.2008 but the said report was not served to the petitioners. However, the Government passed orders vide MemoNo.42762/JA(2)/2006-9, dated 12.11.2008 terminating the leasehold rights and cancelled the perpetual lease in respect of the subject lands. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 1<sup>st</sup> respondent on her behalf and also on behalf of other respondents denying the averments in the affidavit filed in support of the writ petition stating that Damavaram village was an Inam estate village taken over by the

Government under Estate (Abolition and Conversion into Ryotwari) Act, 1948 on 01.10.1951 and settlement rates were introduced on 01.07.1959, thus the Government is the owner of the village. While implementing the settlement operations passed statutory orders, the extent of Acs.700 land covered by perpetual lease has been merged with R.S.No.1/1 with a total extent of Acres 2607.95 and classified as 'Adavi Poramboke' unreserved and that no soil classification, Taram and Assessment was fixed to the said survey number and is earmarked for grazing purpose. Neither the shotriumdars nor the ryots of the village claimed ryotwari patta under section 15(1) or 11(a) of the Act of 1948 though they were fully aware of the matter, that they have not cultivated any bit of land in the subject survey number or in the leased out land prior to 01.07.1945 or subsequent to 01.07.1945 till the village was notified by the Government. That the Inamdars or lease holders did not cultivate the land even on the date of introduction of the settlement rates. That the ryots of the village approached the Board of Revenue in the year 1960 only, for the recognition of the perpetual lease created by the land holders in respect of the subject land, when the District Collector, Nellore recommended to the Board of Revenue for termination of perpetual lease created in O.S.No.29/1925. That the Board of Revenue considered the request of ryots and dropped further action with a condition to create a corridor between the leased land and the remaining land in R.S.No.1/1. The subject land was required by the ryots only for grazing purpose even in the year 1960. Since the subject issue falls under Section 20 of the

Act of 1948 and said power had already been exercised by the Board of Revenue about 48 years ago, the question of granting of patta under Section 15(1) or 11(a) of the Act does not arise. That the ryots never paid any land revenue to the Government during the statutory period for the land under their occupation in Sy.No.1/1. As the lessees violated the condition of the perpetual lease of 1925 i.e., 'grazing' and converting land to agricultural operations, alienations of the land to others by way of sale agreements and trying to grab larger extent of Government land for their own in addition to the lands owned by them, proposals were submitted to the District Collector to submit report to the Government through Chief Commissioner of Land Administration, Hyderabad for cancellation of perpetual lease. The District Collector and the Chief Commissioner of Land Administration have recommended to the Government for cancellation of the lease as there is clear violation of the condition of the grazing and also the land is required for public purpose. The Government after issuing notices to the lessees and after conducting enquiry, issued impugned Memo dated 12.11.2008 terminating the perpetual lease of the petitioners. That the Board of Revenue vide proceedings in BPRT No.5829/60, dated 29.12.1960 confirmed the lease title only but the Board had not given any orders enforceable against the Government. According to Section 11 of the Act of 1908, a ryot may use the land in his holding in any manner. But in this case, the lessees are not ryots as per Section 3(15) of the Act of 1908. As per proviso 3 of Section 20 of the Act of 1948, if the subject land is required for

public purpose, the Government has every right to terminate the lease. Since the land is required for public purpose, the Government had terminated the perpetual lease, as such, the acquisition of the same does not arise. Hence, it is stated that there is no illegality or irregularity in the action of the Government in taking over the land for public purpose and sought for dismissal of the writ petition.

4. Heard Sri C.V.Mohan Reddy, learned Senior Counsel for the petitioners and learned Government Pleader for Revenue.

5. Sri C.V.Mohan Reddy, learned Senior Counsel while reiterating the averments in the affidavit filed in support of the writ petition submits that there is no provision in the Act of 1948 to terminate the perpetual lease by exercising the powers under Section 20(1) of the Act of 1948 for alleged violation of conditions of lease. He submits that there is no such condition in the lease to prohibit the alienation of the subject land to others. He would contend that the lease is a contract and lessees are tenants under the landholder and they are entitled to sub-lease the land to sub-tenants in view of Sections 128 and 129 of the Act of 1908. He would further submit that the Board of Revenue passed orders vide proceedings dated 29.12.1960 under Section 20(1) of the Act of 1948, therefore, the Government, by exercising the power under third proviso to Section 20(1) of the Act of 1948, cannot terminate the perpetual lease, that too after 48 years of the orders of Board of Revenue. He further submits that the lease was granted by the original Inamdars by virtue of Compromise decree in O.S.No.29 of 1925 and there is no

condition of non-alienation of the subject land in the said decree and there is no prohibition for cultivation of the subject land. He submits that even as per the orders of the Board of Revenue dated 29.12.1960, an attempt was made to terminate the lease by the government on the ground that the privilege of grazing on the lands leased out by the landholders to the lessees are not being enjoyed by the entire community and that about 100 families are not enjoying the privilege. But the said allegation was not accepted by the Board of Revenue and held that there is no reason to terminate the perpetual lease granted in O.S.No.29/25 on the file of the Court, Nellore, as it does not run counter to any public purposes as envisaged in proviso 3 to Section 20(1) of the Act of 1948. He further submits that the show-cause notice dated 04.12.2007 is beyond the scope of proviso 3 to Section 20(1) of the Act of 1948 and it also prejudged the issue. He further submits that the show-cause notice is vague and it does not indicate which condition of the lease is violated. He submits that power under proviso 3 to Section 20(1) of the Act of 1948 can be exercised by the Government only for public purpose, but no public purpose is mentioned in the show-cause, as such, the Government is estopped from terminating the perpetual lease on that ground.

6. Per contra, learned Government Pleader for Revenue submits that though public purpose is not mentioned in the show-cause notice, but the facts indicated in the show-cause notice go to show that the termination of lease is for public purpose, as such, it is open for the Government to initiate

proceedings when there is public purpose by invoking proviso 3 to Section 20(1) of the Act of 1948. He submits that now the circumstances have changed and the requirement of land has increased, as such, the Government has initiated proceedings for termination of lease.

7. In view of rival contentions of both parties, the point that arises for consideration is whether the lease granted in favour of the ancestors of petitioners by the original inamdars by virtue of compromise decree in O.S.No.29 of 1925 is terminable?

**8. Point:**

It is an admitted fact that ancestors of the petitioners were granted perpetual lease in terms of Compromise Decree in O.S.No.29 of 1925 entered into by original inamdars and ryots, for the purpose of grazing and also for fuel. The suit filed by the some of the ryots of the village in O.S.No.82 of 1929 on the file of Sub-Court Nellore against the Inamdars and some other ryots for setting aside the compromise decree in O.S.No.29 of 1925 on the ground that it was obtained by fraud and collusion, was dismissed on 09.12.1932, as such, both the judgments have become final. Now, in view of changed circumstances, the subject lands are being used for agriculture purpose. Since the petitioners have changed the use of land from grazing purpose to agriculture, the Government issued show-cause notice dated 04.12.2007 calling upon the petitioners to explain as to why the perpetual lease granted earlier shall not be terminated on the

ground of violation of conditions of lease. Before dealing with the said issue, it is necessary to extract Section 3 of the Act of 1908.

Section 3(4) of the Act of 1908 reads as follows:

3(4): "Improvement" means with reference to a ryot's holding any work which materially adds to the value of the holding, which is suitable to the holding and consistent with the character thereof, and which if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it, and, subject to the foregoing provisions, includes-

(a) the construction of tanks, wells, water channels, and other works for the storage, supply, or distribution of water for agricultural purposes;

(b) the construction of works for the drainage of land, or for the protection of land from floods, or from erosion or from other damage by water;

(c) the reclaiming, clearing, enclosing, levelling, or terracing of land and the preparation of land for irrigation;

(d) the erection of buildings on the holding or in its immediate vicinity, elsewhere than on the village-site, required for the convenient or profitable use or occupation of the holding and the erection of dwelling houses for the ryot and his family and servants;

(e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and

(f) the planting of fruit trees and fruit gardens; but does not include, unless made with the written consent of the landholder, any work which prejudicially affects any other land of the landholder.

Section 10 and 11 of the Act of 1908 reads as follows:

**Section 10 - Occupancy right heritable and transferable**

(1) All rights of occupancy shall be heritable, and shall be transferable by sale, gift or otherwise.

**Section 11 - Use of land by the ryot**

A ryot may use the land in his holding in any manner which does not materially impair the value of the land or render it unfit for agricultural purposes.

**Section 13 - Right of occupancy ryot to make an improvement**

(1) Neither a ryot nor the landholder shall as such be entitled to prevent the other from making an improvement in respect of the holding except on the ground that he is willing to make it himself.

(2).....

(3) Notwithstanding any usage or contract to the contrary, the ryot shall not, by reason of his making an Improvement at his expense, become liable to pay a higher rate of rent on account of any increase of production or of any change in the nature of the crop raised, as a consequence of such improvement.

**Section 187. Restrictions on contract: (1)** Nothing in any contract between a landholder and a ryot made before or after the passing of this Act:-

- (a) shall take away or limit the right to the ryot to make improvement in accordance with the provisions of this Act;
- (b) shall take away or limit the right of [ a ryot] to use the land as provided by Section 11;”

9. A reading of Section 187 of the Act goes to show that the ryots are entitled to make improvements as per Section 3(4) of the Act of 1908 and use the land as per Section 11 of the Act, i.e., a ryot may use the land in his holding in any manner which does not materially impair the value of the land or render it unfit for agricultural purposes. In view of same, it is clear that the ryots may use the land subject to condition that it does not impair the value of the land or render it unfit for agriculture. Here in this case, petitioners have made improvements by doing agriculture and other improvements. As per Section 10 of the Act, all rights of occupancy are heritable and shall be transferable. Section 13 of the Act further gives right to make an improvement and even if improvement is made, it does not entail in enhancement of rent. Therefore, it cannot be said that there is any violation of conditions of the perpetual lease as alleged by the learned Government Pleader for Revenue. As rightly contended by the learned Senior Counsel for the petitioners that nowhere it is mentioned in the show-cause notice as to which condition of the lease was violated by the petitioners and which prohibits conversion of the land from grazing purpose to agriculture purpose. In fact, the above provisions of the Act of 1908 authorize the ryots to make improvements, notwithstanding anything contained in any contract.

10. The other ground on which the show-cause notice was issued that there is alienation of the subject land by the petitioners in favour of third parties. Though the Government has taken note of the explanation of the petitioners, but the same was not considered and reiterated their stand that the ryots have no power to question the Government to terminate the lease. However, no condition of lease was brought to the notice of this Court prohibiting alienation of subject land in favour of third parties.

11. It is pertinent to note that even there was proposal to terminate the lease in the year 1960 on the ground that entire community of the village is not utilizing the subject land for grazing purpose, but only few people are utilizing, but the said allegation was not accepted by the Board of Revenue and further proceedings were dropped under Section 20(1) of the Act of 1908 by proceedings dated 29.12.1960 holding that 3<sup>rd</sup> proviso to that Section is not attracted once again Government cannot exercise power under very same provision and terminate the lease.

12. A perusal of the show-cause notice goes to show that it was issued under third proviso to Section 20(1) of the Act of 1948, but no public purpose was mentioned therein. Section 20 of the Act of 1948 reads as follows:

**“20. Saving of rights of certain lessees and others:-**

(1) In cases not governed by Sections 18 and 19, where before the notified date, a landholder has created any in any land (whether by way of lease or otherwise) including rights in any forest, mines or minerals, quarries, fisheries or ferries, the transaction shall be deemed to be valid; and all rights and obligations arising thereunder, on or after the notified date, shall be enforceable by or against the Government:

Provided that the transaction was not void or illegal under any law in force at the time;

Provided further that any such right created on or after the 1st day of July 1945 shall not be enforceable against the Government, unless it was created for a period not exceeding one year;

Provided also that where such right was created for a period exceeding one year, unless it relates to the private land of the landholder within the meaning of Section 3, clause (10), of the Estates Land Act, the Government may, if, in their opinion, it is in the public interest to do so, by notice given to the person concerned, terminate the with effect from such date as may be specified in the notice, not being earlier than three months from the date thereof.

Even otherwise, a perusal of third proviso to Section 20 (1) of the Act clearly goes to show that the Government can terminate if it is of the opinion that it is for public purpose. As such, the contention of the learned Government Pleader for Revenue that since the show-cause notice was issued under proviso 3 to Section 20(1) of the Act, public purpose need not be mentioned in the show-cause notice, cannot be accepted. The assumption of public purpose cannot be automatic unless is specifically mentioned in the show-cause notice, because the third proviso to Section 20(1) of the Act of 1908 makes it clear that the Government can terminate the lease, if it is in the opinion of the Government that it is required for public purpose.

13. It is a fact that the petitioners and their ancestors are cultivating the land since 1925 and their perpetual lease was confirmed by a Court decree, which was also confirmed by the Board of Revenue in the year 1960.

14. Though the learned Government Pleader for Revenue in support of his contention, has placed reliance in the judgment reported in **The Commissioner, Survey, Settlement & Land Records,**

**A.P, Hyderabad v. Indupuru Raghava Reddy<sup>1</sup>.** In the aforesaid judgment, the dispute was with regard to granting of pattas in respect of the subject land in the writ appeal. In the instant case, the grievance of the petitioners is not with regard to granting of pattas in respect of the subject land, as such, same is not applicable to the facts and circumstances in the present writ petitions.

15. Though several allegations are made against the petitioners in the counter affidavit including an allegation that one Dr.Ravi R.T purchased an extent of 450 acres of land from the petitioners in the subject land and applied for issuance of pattadar pass books and title deeds. But the said facts are not part of the show-cause notice. As such, the averments in the counter affidavit are beyond the scope of show-cause notice and the said grounds are not reflected in the impugned order. The impugned order cannot be supported by grounds raised in the counter affidavit as held in **Mohinder Singh Gill v. The Chief Election Commissioner<sup>2</sup>**. The order should reflect the same, as such; it is nothing but violation of principles of natural justice as the same were included in the impugned memo. The impugned memo dated 12.11.2008 traveled beyond the facts, which do not form basis in the show-cause notice, as such, the same is liable to be quashed and accordingly quashed.

16. The petitioner in W.P.No.46 of 2009 claims to have purchased leasehold rights from perpetual lease holders i.e., from

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<sup>1</sup> 2012 (2) ALD 164

<sup>2</sup> AIR 1978 (1) SCC 851

the petitioners in W.P.No.26022 of 2008, in the year 2000, but they were not made as parties to the aforesaid writ petition. More over, when the petitioners filed WPMP No.36601 of 2014 in WP No.26022 of 2008 for their impleadment, this Court dismissed the same stating that this Court cannot decide *interse* rights over the subject land between petitioners in W.P.No.26022 of 2008 and petitioners in W.P.No.46 of 2009, as both these writ petitions have been filed for quashing the impugned Memo dated 12.11.2008 issued by the Government. More so, petitioners in W.P.No.46 of 2009 have not made their vendors as parties to the Writ Petition. As such, the petitioners in W.P.No.46 of 2009 have to avail appropriate remedies available to them under law for redressal of their grievance, against petitioners in W.P.No.26022 of 2008. It is made clear that this Court has not expressed any opinion on the *interese* disputes between the petitioners in WP No.46 of 2009 and their vendors with regard to title in respect of the subject property.

In view of above facts and circumstances, the impugned Government Memo No.42762/J.A.(2)/2006-9, dated 12.11.2008 is quashed.

Accordingly, both the writ petitions are allowed to the extent indicated above. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in these writ petitions, shall stand closed.

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**A.RAJASHEKER REDDY,J**

**THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION Nos.26022 of 2008 & 46 of 2009**



Date: 14.02.2017

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