

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.24786 OF 2007**

**ORDER :**

Heard counsel for the petitioner, the Government Pleader for Revenue appearing for respondents 1 to 3, and Sri Satyam Reddy, Counsel appearing for respondents 4 to 8.

2. Petitioners have filed this Writ Petition challenging the order dt.13.11.2017 in Letter No.E1/6253/2007 of the 1<sup>st</sup> respondent.

3. The background of facts relating to this litigation is as under:

Petitioners are the absolute owners and possessors of agricultural lands admeasuring Acres 9.24 guntas in survey No.179 (old survey No.153) and Acres 6.01 guntas in survey No.184 (old survey No.515) of Kethepally Village. Petitioners contend that these two survey numbers were adjacent to each other and that the land in survey number 179(old 153) was situated towards northern side of the land in survey No.184 (old 515) and beyond it the land in survey No.183, which is government land, was located.

Petitioners contend that during a revision survey, however, the land in survey No.179 was wrongly shown as situated elsewhere instead being adjacent to land in survey

No.184 and in its place the land belonging to the government in survey No.183 was shown to the northern side of the land in survey No.184 instead of land in survey No.179. They contend that government assigned the land in survey No.183 to respondents 4 to 8, and taking advantage of the assignment pattas, the respondents 4 to 8 tried to occupy the land which is situated towards northern side of the land in survey No.184 by claiming that it is an assigned land.

Petitioners assert that K.Sai Reddy, one of the coparcener of their joint family filed O.S.No.27 of 1977 before the District Munisif, Kollapur for declaration of title to the land in survey No.179(old 153) and also to declare that land in survey No.179 (old 153) is abutting to the land in survey No.184(old 515) towards its northern side. The State Government as well as respondents 4 to 8, who are assignees of land in survey No.183, were impleaded as defendants therein.

The trial Court on 30.11.1978 decreed the suit in favour of Sai Reddy by declaring that his family was the owner of the land in survey No.179(old 153) of an extent of Acres 9-14 guntas and also declared that said land is situated abutting to the land in survey No.184 towards northern side.

Challenging the same, respondents 4 to 8 filed A.S.No.2 of 1979 before the Additional District Judge,

Mahaboobnagar, who reversed the judgment of the trial Court. Against the same, a Second Appeal was preferred by K.Sai Reddy in this Court and by judgment dt.05.03.1987, the judgment of the trial Court was restored and the judgment of the lower appellate Court was set aside.

It is contended by petitioners that the High Court also recorded a finding that the land in survey No.179 (old 153) is patta land of Sai Reddy, that the same is situated on the northern side of the land in survey No.184(old 515), that directions were issued to the Settlement Authorities to re-do the exercise within a period of two (02) months and a further direction was given to the State Government, which was the 1<sup>st</sup> respondent in the Second Appeal, to assign land other than land in new survey No.179 (old 153) to respondents 2 to 10 therein who were defendants No.2 to 10 in the suit.

Petitioners contend that the Civil Court has thus settled the issue that the land in survey No.179 (old 153) is abutting to the land in survey No.184 (old 515) towards its northern side, that the said land is patta land belonging to the petitioners' family and that in a partition among the members of the joint family, the land in survey No.179 and also the land in survey No.184, which were abutting to each other, fell towards the share of the writ petitioners and they

have been cultivating the land and they were also issued pattadar passbooks and title deeds.

They contend that they have been making representations to the Settlement Authorities to correct the village map by mentioning that the land in survey No.179 is situated abutting to survey No.184 towards its northern side, but, the 1<sup>st</sup> respondent issued impugned proceedings dt.13.11.2007 seeking to evict the petitioners from their land in survey No.179 by claiming that the government land in survey No.183 is situated towards northern side of the land in survey No.184.

They contend that 1<sup>st</sup> respondent ignored the findings of the competent Civil Court in Second Appeal 64 of 1982 which had held against the Government. It is further contended that the 1<sup>st</sup> respondent had no jurisdiction to pass the said order and that the said order was also passed without notice to the petitioners. They therefore prayed for the said order to be set aside.

4. On 22.11.2007 this Court admitted the Writ Petition and on 26.10.2009 in WP.MP.No.32288 of 2007 status quo was directed to be maintained as regards possession of the petitioners till the disposal of the Writ Petition.

5. Counter affidavit was filed by respondents 1 to 3 supporting the order passed by the 1<sup>st</sup> respondent and contending that the petitioners have encroached upon government land to an extent of Acres 9-24 guntas in survey No.183 under the impression that it is their private patta land in survey No.179.

6. After adverting to the judgment in the Second Appeal, it is stated in the counter affidavit that though the Court issued direction to clear the doubt of the pattadar of the land in survey No.179 by demarcating the land in survey No.179 and 183, and though they had filed a number of representations before the Assistant Director of Survey and Land Records, Mahabubnagar for correction of map, they were still pending since the records were not received from the High Court.

7. The Government Pleader further states that it is the responsibility of the pattadar of the land in survey No.179 to get the survey error corrected by approaching the Survey and Land Records Department under the normal rules. It is stated that in order to deliver possession to the assignees, the 1<sup>st</sup> respondent summoned the 1<sup>st</sup> petitioner, who was the pattadar of land in survey No.179, and some of the assignees of the land in survey No.183, recorded their sworn

statements, perused the material and then passed the impugned order. It is stated that the said order was passed on verification of important revenue records, which establish that the land in survey No.179 is patta land of an extent of Acres 9-24 guntas and land admeasuring Acres 33-00 guntas in survey No.183 is government land and that the Deputy Inspector of Survey, who inspected the land, did the demarcation for handing over possession and confirmed this fact. He stated that the petitioners should voluntarily relinquish the government land, which was encroached by them and handover the same to the beneficiaries. It is stated that the 1<sup>st</sup> respondent in the interest of assignees of government land passed the impugned order and that it is the duty of the petitioners to get their land located, demarcated and also get the error in the survey corrected.

8. Sri Satyam Reddy, Counsel appearing for respondents 4 to 8 contended that the land in survey No.183 of Kethepally village admittedly belongs to government, that it was assigned to the respondents 4 to 8 in 1976, and they are in possession of the land, but Acres 9.24 guntas in survey No.183 was encroached by the 1<sup>st</sup> petitioner alleging that it forms part of survey No.179. He contends that petitioner is actually an encroacher of the government land in survey

No.183. The stand taken by respondents 1 to 3 is adopted by respondents 4 to 8.

9. From the above facts it is clear that there is no dispute that the extent of Acres 9.24 guntas in old survey No.153 belongs to the petitioners' family, apart from an extent of Acres 6-01 guntas in old survey No.515 of Kethepally village. Petitioners contend that since inception old survey Nos.153 and 515 are adjacent to each other and land in old survey No.153 was situated towards north of the land in survey No.184 and beyond this, the land in old survey No.109/13 which is government land is located. According to them, during the revision of survey, however old survey No.153 was given new survey No.179 and old survey No.515 was given new survey No.184 and old survey No.109/13 was given new survey No.183 and erroneously, the land in survey No.179 which ought to have been shown as adjacent to the land in survey No.184, was shown elsewhere and survey No.183 which is government land, was shown as adjacent to the land in survey No.184 on its northern side, instead of land in survey No.179.

10. It is not in dispute that a coparcener of the petitioners by name Sai Reddy filed O.S.No.27 of 1977 before the District Munsiff, Kollapur for declaration that he is the owner and

possessor of old survey No.153 admeasuring Acres 9-14 guntas of Kethepally village as shown in the sketch map and for an injunction restraining the State Government and the respondents 4 to 8 herein and sought relief of perpetual injunction restraining them from interfering with his possession.

11. The following three issues were framed in the said suit.

- 1) Whether the plaintiff is the pattadar and possessor of mazi Sy.No.515 and 153 and whether these Sy.Nos. were adjacent to each other prior t the revision and giving Sy.Nos.184 and 179 respectively?
- 2) Whether the area of old Sy.No.153 is 9 acres 14 guntas after excluding phote kharabi?
- 3) Whether the Settlement Department in the revision has shown the Sy.No.179(new) old Sy.No.153 at a far off place from Sy.NO.184 (Old Sy.No.515) instead of showing adjacent to **one** another?

12. After considering the evidence on record, finding was given that the plaintiff in the suit was the pattadar and possessor of the land in old survey Nos.515 and 153 and that these two survey numbers were adjacent to each other prior to the revision of survey and given new survey Nos.183 and 179 respectively, that the area of old survey No.153 is Acres 9-14 guntas, that the Settlement Department in the Revision has shown erroneously survey No.179 (old survey No.153) at a far off place from survey No.184 (old survey No.515) instead of showing them adjacent to one other.

13. Admittedly, this judgment of the trial Court was confirmed by the judgment dt.05.03.1987 in Second Appeal No.64 of 1982. In the Second Appeal also the High Court observed that there is no iota of evidence on behalf of the Government to show that the land in survey No.179 was not adjacent to new survey No.184 and that even the State Government, which is a party to the suit and appeal, had not adduced any evidence to show that land bearing new survey No.179 is actually part of the land in new survey No.183. It was declared that the land bearing new survey No.179 (Old 153) admeasuring Acres 9-24 guntas situated in Kethepally Village was wrongly shown at a far-off place from land in survey No.184 (old 515) though they are adjacent to each other as per Ex.A2 map of 1311 Fasli. It further held that the plaintiff is the owner and he was in possession of the land throughout the civil proceedings. It directed the Settlement Authorities to dispose of the representation of the appellant within two (02) months from the date of receipt of its order, after giving notice to both parties and directed the Government to assign land other than that in new survey No.179 to respondents 2 to 10 therein. These findings attained finality, since neither the State Government nor the assignees questioned it in any forum.

14. While so, the respondents 4 to 8 herein appear to have approached the 1<sup>st</sup> respondent alleging that they were assigned land in survey No.183, which is government land, but possession thereof was not given to them and that the 1<sup>st</sup> petitioner whose land was in survey No.179 of an extent of Acres 9-24 guntas had occupied land in survey No.183, that he should be evicted and possession should be handed over to them.

15. The 1<sup>st</sup> respondent was aware that the High Court had decided the matter in Second Appeal, but the 1<sup>st</sup> respondent nowhere adverted to the findings of the High Court and instead proceeded as if land in survey No.183 which is alleged to be government land was adjacent to the land in survey No.184 and that land in survey No.179 claimed by the petitioners is far away and not on the northern side of the land in survey No.184 and adjacent to it and passed the impugned order directing delivery of possession of Acres 9-24 guntas of land under the occupation of the 1<sup>st</sup> petitioner to the respondents 4 to 8.

16. The 1<sup>st</sup> respondent nowhere disputed the fact that the land in survey No.179 is patta land. If the 1<sup>st</sup> respondent had perused the judgment in the Second Appeal, the 1<sup>st</sup> respondent would have clearly noticed that the land in

survey No.179 was declared by this Court in the Second Appeal to be adjacent to the land in survey No.184 and not far away. The 1<sup>st</sup> respondent also would have noticed that, in view of the decision in the Second Appeal, the 1<sup>st</sup> petitioner could not be said to be an encroacher of land of an extent of Acres 9-24 guntas in survey No.183 in view of the fact that the location of survey No.183 is not adjacent to the land in survey No.184. The 1<sup>st</sup> respondent therefore ought to have held that the land in occupation of the 1<sup>st</sup> petitioner of an extent of Acres 9-24 guntas is in fact in survey No.179 and not in survey No.183.

17. It is shocking that an officer of the rank of District Collector like the 1<sup>st</sup> respondent should ignore the decision of the High Court and blame the petitioners for not getting the survey corrected on the ground that the survey department did not receive the record from the High court. It is clear that the 1<sup>st</sup> respondent has acted contrary to the judgment dt.05.03.1987 in Second Appeal No.64 of 1982 in passing the impugned order. Therefore the impugned order passed by the 1<sup>st</sup> respondent cannot be sustained.

18. Therefore, this Writ Petition is allowed; the impugned order is set aside, and the respondents 1 to 3 are directed to allot land in some other survey No. other than survey No.179

(which is abutting to the land in survey No.184 of Kethepally Village) to respondents 4 to 8 in view of the direction to that effect in S.A.No.64 of 1982.

19. Since the 1<sup>st</sup> respondent acted contrary to the judgment dt.05.03.1987 in Second Appeal No.64 of 1982 in passing the impugned order, he shall pay costs of Rs.5,000/- to the petitioners.

20. Consequently, miscellaneous petitions pending if any, shall stand closed.

25<sup>th</sup> January, 2017  
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**M.S. RAMACHANDRA RAO, J**

