

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.15380 OF 2005

ORDER:

Heard learned counsel for petitioner, learned Government Pleader for respondents 59 to 61 and learned counsel for unofficial respondents.

The case of the petitioners is that they filed a petition under Section 56(1) of the Estate Abolition Act, 1948 before the Joint Collector and Settlement Officer, Visakhapatnam stating that the land in R.S.Nos.38/8, 36/9, 38/2, 3, 4, 47/7 and 47/2 measuring Acs.1.96 cents situated in Buchirajupalem Village originally belonged to Janapareddy Sansayya, predecessor in title of the petitioners, who was having two sons, namely Venkataswamy and Adinarayana. The said Sanyasayya was ryot in the above land and raised mango garden and other fruit bearing trees in the said land. He subleased the land for a period of three years on payment of Rs.13/- per annum in instalments. On 17.06.1908, Neela Appayya executed a Kadapa in favour of sons of Sanyasayya, Venkataswamy and the sons of Adinarayana, Janapareddy Venkatreddy Naidu. On 17.12.1941, Bureddy Appanna, Bureddy Suryanarayana and Bureddy Lakshminarayana executed Kadapa in favour of Janapareddy Venkat Reddy Naidu, S/o Venkata Swamy Naidu and Janapareddy Adinarayana rama Rao, S/o Venkata Ramayya in respect of Acs.0.17 cents zeroyti dry land in survey No.63/1 for one year. On the same day, another Kadapa was executed by Bureddy people in favour of Venkata Reddy Naidu and another in respect of Acs.0.27 cents of land in survey No.62 in Patta No.38.

It is further stated that Buchirajupalem Village was notified as "Inam" and accordingly it was taken over by the Government on 07.01.1959. Settlement and survey operations were conducted and completed in the year 1963. Since the predecessors in title were shown as

pattadars for old patta No.36, the petitioners filed petition S.R.No.56(1) 1/98-VSP before the Joint Collector and Settlement Officer, Visakhapatnam for a declaration as lawful ryots for the land measuring Acs.1.96 cents in R.S.Nos.36/8, 9, 38/2, 3, 47/2 and 7 of Buchirajupalem Village along with relevant documents. The petition was disposed of on 19.09.1998 stating that a patta was already issued by the Settlement Officer, Visakhapatnam in favour of Bora Chiina Appalaswamy, Bora Appanna, Bureddy Pydayya, Apparao etc., the petitioners failed to produce any evidence and accordingly held that the claim for whole land is not maintainable. It was also held that the petitioners kept quiet for all these years and filed the claim petition after lapse of 40 years though the claims should have been filed within thirty days from the date of commencement of ryotwari settlement under Section 22 of the Act and no reason was shown for the delay. The petitioners filed T.A.No.10 of 1999 before the District Judge-cum-Appellate Estate Abolition Tribunal, Visakhapatnam, under Section 56(2) of the Estate Abolition Act and the same was also dismissed by order, dated 26.12.2003. Challenging the said orders, the present writ petition was filed.

The respondent No.61, Tahsildar, filed a counter stating that along with the claim petition, the petitioners did not file any evidence in support of their case, but, however, submitted the following documents at the time of hearing of the case.

1. Kadapa dated 17.06.1908
2. Kadapa dated 17.12.1941
3. Kadapa dated 17.12.1941
4. Extract of S.L.R.

The Joint Collector and Settlement Officer perused the documents and dismissed the claim of the petitioners. The Tribunal, to whom the Appeal was preferred, also dismissed the Appeal in T.A.No.10 of 1999, dated 26.12.2003. It is stated that the provisions of the Indian Limitation

Act are applicable to the proceedings under the Andhra Pradesh (Andhra Area) Estates Abolition Act, 1948. The claimants are supposed to file their claims within thirty days from the date of commencement of ryotwari settlement under Section 22 of the Act, but they failed to do so.

Learned counsel for the petitioners submitted that no time limit was fixed under Section 56 of the Act nor any rule was framed providing for the time within which the applications have to be filed. The Rules, if any, framed are only in 1974 and they are prospective in nature. It is further submitted that the survey conducted after notification of the Estate was not notified under the Survey and Boundaries Act and hence, Section 14 of the Survey and Boundaries Act has no application. No suit need to be filed to set aside the order of the Settlement Officer. He further submitted that the order of the Settlement Officer was based on a decision, which was overruled and hence, it is liable to be set aside. He further submitted that while obtaining pattas by Bora people, fraud was played and in view of the same, the period of limitation is not applicable. He relied on **Karri Rama Murthy v Adimalla Nagamma**¹, **Maddada Chayanna v Karnam Narayana**² and **Mangu Ram v M.Venkataraman**³.

In **Karri Rama Murthy's** case, this Court considered whether the petition filed under Section 56(1) of the Estates Abolition Act is maintainable after grant of ryotwari patta to one party. This Court held that Section 56(1) of the Estates Abolition Act will come into play only after an estate is notified and a proceeding has to be initiated only at the instance of a party when a dispute has been raised regarding the question as to who the lawful ryot in respect of a holding for the grant of the ryotwari patta is. The application under Section 56(1)(c) is maintainable even after grant of fair patta to someone under Section 11(a) of the Act.

¹ 1971 (2) AnWR 106

² (1979) 3 SCC 42

³ (1987) 2 SCC 228

The Supreme Court in **Maddada Chayanna** approved the Judgment of the five Judges Bench of this Court in **T.Muniswami Naidu v R.Venkat Reddy**⁴, which overruled the Full Bench Judgment in **Cherukuru Muthayya v Gadde Gopalakrishnayya**⁵ and the position settled was, Section 56(1)(c) of the Estates Abolition Act was not controlled by Sections 55 and 56(1)(a) and (b) of the said Act. In view of the same, the application under Section 56(1)(c) of the Estates Abolition Act to decide who was the lawful ryot is maintainable. The decision in **Mangu Ram** holds that even if a decision was taken under Section 15 of the Act, it would not operate as *res judicata* in proceedings under Section 56 of the Act.

The decisions clearly show that even after issuance of patta under Section 15 of the Act, the proceedings under Section 56(1)(c) of the Act are maintainable. In the light of the above legal position, it has to be seen whether the orders passed by the Joint Collector and Settlement Officer, which are confirmed by the Tribunal, are correct or not.

The copy of the order of the Joint Collector and the Settlement Officer is not made available to this Court in the present proceedings and the petitioners filed a set of material papers containing the application filed under Section 56 of the Act and the grounds of Appeal. As per the application, the petitioners filed the same under Section 56(1) of the Act and they have specifically stated that after the demise of their parents, the petitioners came to know that the unofficial respondents were granted pattas and they in turn sold the same to various individuals. Accordingly, they sought a declaration that they are lawful ryots in respect of the lands in R.S.Nos.36/8, 38/3, 38/4, 47/2 and 47/7.

⁴ AIR 1978 AP 200

⁵ AIR 1974 AP 85

As stated above, the petitioners filed only four documents before the Settlement Officer. The Settlement Officer, as could be seen from the observations made by the Tribunal, in paragraph 4 thereof, came to the conclusion that the four documents filed by the petitioners are not correlated to the present survey numbers and they are not to be treated as ryots in respect of the land for which the present application was filed for grant of ryotwari pattas. It could be seen that the Settlement Officer also came to the conclusion that the application was filed nearly 40 years after enforcement of the Estate Abolition Act and after change of hands many times and hence, the application was not maintainable.

The Tribunal while dismissing the Appeal observed that the petitioners failed to show that as on the date of enforcement of the Estates Abolition Act, 1948, they have got right and possession in the schedule land entitling them to a patta under Section 56(1) of the Estates Abolition Act and even though no limitation was prescribed, they should show sufficient reason for not moving the matter for nearly 40 years after enforcement of the Estates Abolition Act. The Tribunal noticed that the first document did not mention any survey number and the lease deed was for a period of three years. Though the documents 2 and 3 mentions old survey Nos.63/1 and 62 of Buchirajupalem Village, the old survey numbers were not correlated to the present survey numbers, for which the ryotwari pattas are sought to be obtained. Accordingly, it was held that the petitioners failed to prove that they are entitled for ryotwari patta. The Tribunal ultimately held that the view of the Settlement Officer that the petitioners could not show that they have been in possession and enjoyment over the schedule land as on the date of notification and the application moved nearly 40 years after introduction of settlement operations was not maintainable was correct.

Even in the present writ petition, the copy of the order of the Settlement Officer was not filed and there is no dispute that the petitioners initiated proceedings after 40 years of introduction of settlement operations. During the last 50 years, the unofficial respondents and others came into possession and constructed houses and it cannot be set at naught for the lapse of the petitioners. Though the decisions cited by the learned counsel for the petitioners support the plea that the application under Section 56(1)(c) of the Estates Abolition Act is maintainable, the entertainment of application is one thing and deciding the application in favour of the petitioners is another thing. Though the proceedings before the first respondents are maintainable, the petitioners are not entitled for any relief due to lack of evidence in support of their claim and also in view of enormous delay. The view taken by the Settlement Officer and affirmed by the Tribunal cannot be called as perverse and accordingly the writ petition deserves to be dismissed.

The writ petition is accordingly dismissed. Miscellaneous petitioner, if any pending in the writ petition, shall stand closed.

A.RAMALINGESWARA RAO, J

12.07.2017
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