

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.10092 and 10129 of 2007

COMMON ORDER:

1) Since the two writ petitions are filed aggrieved by the orders passed by the Joint Collector dated 09.04.2017 in respect of proceedings No.E2/ 143/ 1/ 07 and E2/ 785/ 06 respectively, they are disposed of by this common order.

2) The petitioner in W.P.No.10092 of 2007 claims to be owner of land admeasuring Ac.0.07 cents in Sy.No.480/ 3A and Ac.8.86 cents in Sy.No.480/ 3C situated adjacent to National Highway No.7 in Dhone, Kurnool District. The petitioner in W.P.No.10129 of 2007 claims to be owner of land admeasuring Ac.3.09 cents in Sy.No.480/ 2A and Ac.2.31 cents in Sy.No.480/ 2C situated adjacent to National Highway No.7 in Done, Kurnool District. As the petitioner in W.P.No.10092 of 2007 died, his legal representatives were brought on record.

3) The father of the petitioner in W.P.No.10092 of 2007 and the father-in-law of the petitioner in W.P.No.10129 of 2007 by name L.Mahaboob Khan, claim to have purchased the said land by means of a registered sale deed dated 15.08.1919. After his death, his son, who is the petitioner in W.P.No.10092 of 2007 and the husband of the petitioner in W.P.No.10129 of 2007 claim to be enjoying the property. It is said that after the death of Mahaboob Khan, there was a partition between the family members by

means of a registered partition deed dated 19.07.1958. Subsequent to his demise, the property came to be in possession of the respective share holders. It is stated that their names were also entered in the revenue records. In the year 1977, about Ac.1.14 cents was acquired for laying a bypass road. As such, proceedings under Land Acquisition Act came to be initiated and compensation was also paid to the petitioners. The averments in the affidavit also show that pattadar pass book and title deeds were issued to the petitioners. While things stood thus, a show-cause notice was issued vide Rc.No.E-204/ 2005 dated 09.06.2005 stating that M/ s. Gayatri Juice Industries submitted a letter dated 04.02.2005, seeking allotment of government land on payment of market value and the same was recommended by the Local M.L.A. It was mentioned in the said notice that the petitioner and others have violated the patta conditions and accordingly they were directed to attend the office on 21.06.2005 with all supporting documents. At that point of time, W.P.No.17968 of 2005 came to be filed before this Court, wherein this Court granted stay of dispossession. Thereafter, respondent No.3 passed an order dated 14.08.2005, stating that the petitioners have no title over the property, as the said land was recorded as “assessed waste” in R.S.R. and the payment of compensation does not establish any title. Hence, the land was sought to be resumed to the Government. Aggrieved by the said order, W.P.No.27809 of 2005 and 18630 of 2005 came to be filed. Vide orders dated 12.04.2006 and 28.12.2006, the writ petitions were disposed of directing the

petitioners to file an appeal before the Revenue Divisional Officer against the proceedings of the Mandal Revenue Officer dated 14.08.2005 and 27.09.2005 respectively. Aggrieved by the same, the matter was carried by way of a writ appeal, which was dismissed. Subsequent thereto, the petitioners preferred an appeal before the Revenue Divisional Officer-second respondent, who, vide its order dated 30.12.2006, held that the petitioners have failed to produce any documentary evidence and as the Re-settlement Register show that the land is government land. Aggrieved by the orders of the second respondent the matter was carried by filing revision before the Joint Collector, who, vide order dated 09.04.2007 confirmed the orders of the Mandal Revenue Officer and the Revenue Divisional Officer. The same is subject matter of challenge in the present writ petitions.

4) While issuing Rule-nisi, this Court by an order dated 09.05.2007 granted interim suspension of the order of the Joint Collector, which was extended until further orders. Challenging the interim order, Writ Appeal Nos.782 and 783 of 2007 came to be filed. By an order dated 24.09.2007, the Division Bench of this Court vacated the stay granted by this Court. Aggrieved by the same, S.L.P.Nos.21815 and 21812 of 2007 came to be preferred before the Apex Court, which were also dismissed on 30.11.2007 with a direction to the High Court to decide the main writ petitions.

5) Counters came to be filed disputing the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that one Mahaboob Khan, an Assistant Village Munsif of Dhone Village, had thorough knowledge about the classification of government and private patta lands as he was the custodian to the government land at the village level. The said Mahaboob Khan, knowingly purchased the government land, created documentary evidence and transformed assessed waste land as patta land and entered the same in 10-1 register and adangal, without the knowledge of the Tahsildar, who was the competent authority. However, he failed to carryout the changes in the R.S.R., due to which, it is still reflected as a government land in R.S.R. It is stated that transactions between Mahaboob Khan and Mahaboob Bi have no validity in the eye of law, and as such, Mahaboob Khan has no title over the land in Sy.No.480. Insofar as the award passed by the Land Acquisition Authorities, it is said that passing of the award was by oversight and the same does not change the nature of land, as it is shown as a government land as per R.S.R. 1908. It is further stated that even in the award No.15/ 1986 it was pointed out that the “awardees have not placed any documentary evidence during award enquiry”. It is also stated that the awardee in Sy.No.480 gave a false statement before the Land Acquisition Officer and mislead him. It is pleaded that though the said award has become final, the petitioners cannot take shelter under the award without having any semblance of right and title over the property. It is further

averred that due to oversight, pattadar pass books and title deeds were been issued and when the said land is a government land the question of issuing the title deeds would not arise. Insofar as the allotment of land to M/s. Gayatri Juice Centre is concerned, it is denied. But however, it is admitted that the said company has applied for alienation of the government land on payment of market value but the said application was not considered. It is further stated that the land in dispute, was earmarked for distribution of house sites to weaker section people and accordingly the same was divided into small plots and distributed to the poor people on 16.08.2005. It is further stated that the procedure as required under law has been followed to evict the petitioners. Referring to the orders passed by the authorities, it is urged that the beneficiaries have constructed the houses in the said land, roads have been laid and electric connections are also given to each of the houses. In that view of the matter, it is urged that the request of the petitioners cannot be granted, more so, when the individual owners are not made as parties to the proceedings.

6) Before proceeding further, it would be necessary to note that the writ petitioners filed W.P.M.P.No.33360 of 2014 seeking amendment of the prayer, whereby the respondents were directed either to pay compensation for the said land or to provide an alternative land to the same extent, to the petitioners.

7) From the averments made in the affidavit and the counter, it is clear that the dispute is in relation to the nature of land namely as to whether it is a government land or a private patta land.

8) The respondents-Government would contend that in view of the entries made in R.S.R. 1908, the land is a government land and that the petitioners have no right over the property. The only plea taken by the respondents is that though the revenue records, 10-1 account and adangal were corrected by Mahaboob Khan, who is was a village munsif, by making false entries, the same could not carried out in the R.S.R. and hence, the land is a government land and the petitioners have no right over the property.

9) On the other hand, learned counsel for the petitioners placed reliance on the documents, more particularly, the registered sale deed, registered partition deed and also entries in the revenue records to show that it is a patta land and they have been in possession over the said property.

10) Apart from that it is urged that the Revenue Divisional Officer has no power to cancel the pattadar pass books and title deeds issued in favour of the petitioners. It is further urged by the petitioners that in W.P.No.18630 of 2005, this Court while disposing of the same observed that “originally the land in Sy.No.480 belonged to Mahaboob Bi, which was purchased by Mahaboob Khan under a sale deed dated 15.08.1919 and since then he has been in possession of the same. In view of the above,

it is urged that the right of the Government to recover possession of the property after a period of 30 years is illegal, improper and incorrect. It is further urged that the Re-settlement Register, 1869 show that the land belongs to Chennama Naidu as a patta land and without there being any notice or explanation the same was changed to Government. Hence, it is urged that the entire proceedings are illegal, improper and incorrect.

11) Keeping in view the averments made in the affidavit and counter, I shall now proceed to deal with the matter.

12) Admittedly, the dispute which is now sought to be raised is more on factual aspects. The respondents only relied upon the entries in R.S.R.1908, to show that it is a government land, hence it would be relevant to refer to the said entry, which is as under:

“Insofar as land in Sy.No.480 is concerned, in column No.4 it was mentioned as ‘G’ and in column No.5 it was mentioned as ‘D’. Similarly in case of Sy.No.479/ C column No.4 shown as ‘G’ and column No.5 is shown as ‘D’. In Column No.16 which relates to the name of the pattadar or Inamdar or the Manager of the Institution to which the land belongs, it is shown as “dots” and no remarks in column No.17.”

13) The above said entries in the register, was certified by the Tahsildar, Done Mandal, Kurnool District. Since column No.16 of R.S.R. show ‘dots’, it is pleaded that it is a government land and that the petitioners herein have no right over the said land. But at the same time it is also to be noted here that the entire land

was allotted to the landless poor persons under Indiramma Housing Scheme, who have raised huts in the said land. The government has laid roads and also provided electricity connection to them.

14) But a perusal of the record and R.S.R. of 1869 issued by the Assistant Director of Survey, Central Survey Office, Hyderabad, would show otherwise. Insofar as the land in Sy.Nos.479 and 480 is concerned, in column No.4 it was shown as 'G' and in column No.5 as 'D', but however in column No.11, the name of the owner is reflected. Insofar as Sy.No.479 is concerned, one Indla Vobula Kondanna Kondanna was shown as the owner and in Sy.No.480 Chennama Nayadu was shown as the owner of the land. The said Chennama Nayadu was also shown as owner of the land in Sy.Nos.481 and 482. This Survey Register which was placed on record by the learned counsel for the petitioners relates to Fasli, 1277.

15) Two things emanate from these two records. In the R.S.R. filed by the third respondent, against the column in which the entry relating to pattadar and remarks column are to be entered, was left blank. The land was classified as patta land in column No.4 and "dry" in Column No.5. But however, in the counter filed by the third respondent, the real owner was stated as Government as per R.S.R.1908 (Basic Land Register). No explanation is forthcoming from the government pleader with regard to the discrepancy. However, in Survey Register of 1869,

the land in Sy.No.480, corresponding to old No.636, was shown as patta land belonging to one Chennama Rayudu. The contents of copy of Survey Register for the year 1869, which is placed on record and to which there is a reference in the affidavit, is not disputed by the respondents in their counters.

16) Learned counsel for the petitioner also placed on record the Register of Holding issued by the Sub-Registrar in the year 1929 to show that the name of Mahaboob Khan was shown as the owner of the land. It is also to be noted here that as per the declaration made under Land Reforms Act, the petitioner in W.P.No.10092 of 2007 was holding Ac.8.56 cents in Sy.No.480. Similarly, the order dated 08.06.1976 passed by the Land Reforms Tribunal declared that the petitioner as a non-surplus holder.

17) At this stage, it may be useful to refer to the orders passed by the Mandal Revenue Officer, Revenue Divisional Officer and Joint Collector, wherein all the three authorities took into consideration the entries made in the R.S.R., which was published in the year 1908. Since the R.S.R.1908, shows that it is a government land, the transaction that took place between Smt. Mahaboob Bi, W/o. Chaman Sab and L.Mahaboob Khan, father-in-law of Shahazadi Khatoon were held is invalid in the eye of law. Further, it was held that the issuance of pattadar pass book has no validity since it was not attested by the Special Deputy Tahsildar (ROR), who was specially appointed by the Government to issue pattadar pass books and the Karanam is not competent to issue

pattadar pass books. Insofar as the payment of compensation is concerned, it was held that by oversight, compensation came to be awarded though the claimants have no documentary evidence in support of their plea.

18) Therefore, ultimately, what boils out is, with regard to entries made in R.S.R. 1908 and the entries in R.S.R. 1869.

19) It is to be noted here that the entire land is now under the occupation of landless poor persons, who were assigned the said land, under a particular scheme. Further, the counters which have been filed by the respondents, nowhere disputes the averments in the affidavit of the petitioners with regard to the entries made in R.S.R. 1869. Therefore, the averments in the writ petition with regard to entries made in R.S.R. 1869, go un rebutted. That being the position, can it be said that the land which is subject matter of dispute in both the writ petitions, is a government land.

20) In the absence of any explanation given with regard to entries made in R.S.R. 1869, though a specific plea has been taken in the affidavit filed in support of the writ petition, a doubt arises as to whether it is a government land. As stated earlier, an attempt has been made to show that the entries in the revenue records are fake, but there is no basis to show that these entries were fabricated in the year 1914-15 by late Mahaboob Khan, except an averment in the counter to that effect.

21) It is also to be noted that except R.S.R. register of 1908 wherein in column No.16 it was mentioned as 'dots', no other documents have been pressed into service to show that the subject land is Government land. What is the affect of making entries as 'dots' in the revenue records came up for consideration before a learned Single Judge of this Court in *G. Satyanarayana V. Government of Andhra Pradesh and others*¹. After referring to judgments of the Apex Court and also this Court, the learned Judge held as under:

“(8) A person in possession of land for 12 years or more without title can claim transfer of registry in his favour as envisaged by para-7 of BSO-31.

(9) Long possession supported by multiple registered sale transactions give rise to presumption of title. Such presumption is however rebuttable.

(10) RSR is not a stand alone document. It is one of the relevant records in determination of ownership.

(11) Description of Government land in RSR only means that it is not an inam land. It can include patta lands also.

(12) Dots or blank in pattadar column does not necessarily mean that the land is vested in or it belongs to the Government. Despite such blanks or dots, a private person can claim ownership based on entries in revenue record prepared both prior to and after the commencement of the 1971 Act, besides registered sale transactions. If the Government

¹ (2014) 4 ALD 358

disputes such entries, it needs to get its right declared by instituting proceedings before the competent court of law.

(13) The entries in TSLR do not constitute conclusive proof of title.

(14) Where there is a bonafide dispute regarding title of a person in possession of the lands other than public roads, streets, bridges or the bed of the sea or the like, summary proceedings under the 1905 Act cannot be initiated. In all such cases, the Government which claims title shall approach the competent Civil Court for declaration of its title.”

22) From the judgment referred to above, it is clear that merely because there are ‘dots’ it does not mean that it is a government land. Despite such blanks or dots, a private person can claim ownership based on the revenue record prepared prior to and after commencement of 1971 Act besides registered sale transactions.

23) As stated earlier, in the instant case there are two sets of entries in R.S.Rs. One set of entry made in RSR of 1869, show it as a private land and in the another R.S.R prepared in the year 1908, it was shown as ‘dots’. But these aspects were never considered by any of the authorities though it was urged.

24) As held by this Court, if the Government disputes such entries and when there is a bonafide dispute with regard to title and possession of the land, the Government shall approach the

civil Court for declaration of title, which is open to them, if permissible under law. .

25) At this stage, learned counsel for the petitioners placed on record the Andhra Pradesh Dotted Lands (Updation in Re-settlement Register) Act, 2017 (Act 10 of 2017), wherein the Government has come up with a procedure for determining the status of the land when the record show 'dots'. The act also speaks of constituting a District Level committee consisting of District Collector as the Chairperson, Joint Collector, Sub-Collector or Revenue Divisional Officer as members and the Tahsildar as member-convenor, shall be competent to hear and issue orders on the claims filed under the said Act. But no material is placed on record to show that such a committee has been constituted as on today. If the matter is remanded back to the committee, and even if the said committee hold that 'dots' referred to in R.S.R.1908, relate to government land, but still there exists entries in R.S.R. of 1869 where in it is shown as private patta land. Therefore, there is no point in referring it to the said Committee.

26) Therefore, under those the circumstances, this Court is of the view that the order passed by the authorities appears to be illegal, improper and incorrect. As the request of the petitioners for recovery of possession of the said land cannot be granted since the said land has already been allotted to 1020 people, who have raised their huts and are living there since last 12 years, the

alternative request of the petitioners either to pay compensation to the value of the land as on today or to allot alternate land to the said extent, shall be considered by the Joint Collector at the earliest.

27) Accordingly, the writ petitions are allowed.

28) Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

18.09.2017
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JUSTICE C. PRAVEEN KUMAR

