

HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.24079 AND 24472 OF 2013

COMMON ORDER:

Heard Mr.P.Siraghuram, learned senior counsel holding for Mr.N.Sva Reddy for petitioners, the learned Government Pleader for Revenue and Mr.P.Laxma Reddy and Mr.A.Girdhar Rao for respondents 5 to 7.

The issue for consideration in these two writ petitions arises under the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'the Act') and A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Rules, 1957 (for short 'the Rules').

The petitioners and respondents are same in these two writ petitions. The challenge in W.P. No. 24079 of 2013 is made against the order of the Special Deputy Tahsildar (Inams), at Collectorate, Visakhapatnam/3rd respondent in Inam Case No.AIP No.2 of 2009 dated 30.07.2009 as amended in his proceedings bearing AIP No.2 of 2009/SDT (I), dated 30.04.2010, as illegal, without jurisdiction and violative of principles of natural justice.

In W.P.No.24472 of 2013, the petitioners challenge the order of Revenue Divisional Officer/appellate authority, Collectorate, Visakhapatnam/2nd respondent in Appeal No.4038/2010/C dated 31.12.2012 filed against order of Special Deputy Tahsildar (Inams)/3rd respondent in Case No.AIP No.2 of 2009 as amended in his proceedings No.AIP No.2 of 2009/SDT (I) dated 30.04.2010 and quash the same, as illegal and without jurisdiction.

From the writ prayers excerpted above, it can be stated that the substantive prayer is in W.P.No.24079 of 2013 and the prayer in W.P. No.24472 of 2013 merely confirms the orders challenged in W.P.No.24079 of 2013. Therefore, the counsel appearing for the parties have made submissions substantially in W.P. No.24079 of 2013 and have further stated that the outcome of W.P. No.24472 of 2013 depends on decision in W.P. No.24079 of 2013.

The circumstances relevant for disposing of the writ petitions are stated thus:

In the year 2008, Ravada Appa Rao, Ravada Demudu and Ravada Gurumurthy/respondents 5 to 7 herein filed claim petition under Section 7(1) of the Act claiming ryotwari patta in an extent of Ac.3-60 cents in Survey No.105/1 of Pedamushidivada Village, Parawada Mandal, Visakhapatnam District. It is alleged that Survey No.105/1 of Pedamushidivada Village is covered by T.D.No.335 in the name of Ravada Somulu. The 3rd respondent through proceedings bearing AIP No.2 of 2009 dated 30.07.2009 held that respondent Nos.5 to 7 are entitled for ryotwari patta in Form 8 under Section 4(1) (b) of the Act. The schedule of the property in the order dated 30.07.2009 reads thus:

“SCHEDULE

Mandal :Parawada
Visakhapatnam

District:

Village: Pedamushidivada

R.Sy.No.101/1

S.No.	Name of the Claimant	Sy. No.	Extent	Classification

1	Sri Ravada Apparao, Ravada Demudu and Ravada Gurumuthy, Sons of Late Tatalu, Residents Of Pedamushidivada Village, Parawada Mandal	Sy.No.101/1	Ac.3.60	Dry
		Total	Ac.3.60	

Given under my hand and seal, this 30th day of July, 2009.

Note: An Appeal shall lie to Revenue Court (i.e.) Revenue Divisional Officer, Visakhapatnam within sixty days from the date of receipt of this order.

TAHSILDAR

DIVISION,

VISAKHAPATNAM”

Sd/- xxx (30.07.2009)

SPECIAL

DEPUTY

REVENUE

While matters stood thus, respondent Nos.5 to 7 applied to 3rd respondent for correction of schedule as old Survey No.105/1 corresponding to R.S. No.418/10 to 418/21 of Pedamushidivada Village and extent from Ac.3-60 cents to Ac.3-56 cents. The 3rd respondent in File No.AIP No.2 of 2009/SDT (I) dated 30.04.2010 basing on the report of Tahsildar dated 21.04.2009 amended the schedule as follows:

“Order:-

In the circumstances reported in the reference 2nd read above, the following amendment is issued to the proceedings 1st read above in respect of Sy.No. classification/Extent of land.

For	Read
Sy.No. Old Sy.No.105/1 of Pedamushidivada village	Sy.No. Old Sy.No. 105/1 which corresponding to R.S.No.418/10 to 418/21 of Pedamushidivada village
Extent: Ac.3.60 cts. (Three acres and sixty cents only)	Extent: Ac.3-56 (Three acres fifty six cents only)
Classification: Ryotwari Dry	Classification: Ryotwari Wet

(Inams)

Sd/-

Special Deputy Tahsildar

Revenue Division,
Visakhapatnam”

The petitioners challenge the proceedings dated 30.07.2009 and 30.04.2009 as illegal, beyond the jurisdiction of 3rd respondent, violative of principles of natural justice and unconstitutional.

The petitioners claim to have purchased plots in Survey Nos.418/10 to 418/21 of Pedamushidivada Village and are in possession and enjoyment of purchased plots. It is further stated that the land covered by Survey Nos.418/10 to 418/21 is subject matter of layout approved by Gram Panchayat of Pedamushidivada, vide LP.No. 2 of 1982. On merits, the petitioners

contend that respondents 5 to 7 are not entitled for grant of ryotwari patta either in Survey No.105/1 or Survey Nos.418/10 to 418/21. The definite case of petitioners is that respondents 5 to 7 applied for grant of ryotwari patta to a particular survey number i.e. Survey No.105/1 without reference to any correlation survey number. The notices, enquiry in this behalf etc. have been confined only to the survey number for which ryotwari patta was sought for. The 3rd respondent with the passing of order in AIP No. 2 of 2009 dated 30.07.2009 does not have jurisdiction to correct the order or change the details in the schedule for which the ryotwari patta has been granted. In other words, procedure now followed to amend the schedule of Form-8 amounts to reviewing the order dated 30.07.2009 and the power of review is unavailable to 3rd respondent. The petitioners pray for setting aside the proceedings, as illegal, violative of principles of natural justice and without jurisdiction.

4th respondent/Tahsildar, Parawada Mandal, filed counter affidavit and on the procedure followed by 3rd respondent counter affidavit reads thus:

“ In reply to Para 4 of the affidavit, it is submitted that basing on the report of the 4th respondent, the 3rd respondent has issued orders in Progs. AIP No.3/2009 SDT (I) dt.30.04.2010 duly amended the Survey No. and Extent mentioned in his earlier orders dt.30.07.2009 as detailed below:

FOR	READ
Survey No. Old SNo.0.105/1 of Pedamushidivada Village	Survey No. Old SNo.0.105/1 which corresponding to R.SNo.418/10 to 418/21 of Pedamushidivada village
Extent Ac.3.60 cts. (Three acres and sixty cents only)	Extent: Ac.3.56 cts. (three acres and fifty six cents only)
Classification: Ryotwari Dry	Ryotwari Wet

In this connection it is submitted that the 3rd respondent-SDT, Inams, RDO's office, Visakhapatnam is not at competent as per the provisions under the Act to revise his own orders. But, he has issued orders in Progs.AIP No.3/2009 SDT (I) dt.30.04.2010 amending his earlier orders dt.30.07.2009, which is quite contrary to the provisions laid down under the Act. If such amendment is essentially required to his own orders dt.30.07.2009, the 3rd respondent shall submit necessary proposals to the appellate authority i.e. R.D.O. Visakhapatnam u/s.7(2) of the Act. But, in the instant case, though there is amendment in the Survey No, Classification and Extent, the 3rd respondent has issued his orders dt.30.04.2010 in violation and contrary of the statutory provisions laid down under the Act." (Emphasis added)

The same stand is reiterated by the learned Government Pleader and submitted that the matter requires re-examination by 3rd respondent for order dated 30.04.2010 is without jurisdiction.

Respondents 5 to 7 filed counter affidavit. The case of respondents is that the respondents are absolute owners and possessors of subject matter of writ petition and the ryotwari patta was rightly granted in their favour. The Special Deputy Tahsildar (Inams), Visakhapatnam Division, after conducting enquiry under the provisions of the Act granted ryotwari patta in favour of respondents 5 to 7 for an extent of Ac.3.60 cents in Sy. No.105/1 of Pedamushidivada village by order dated 30.07.2009. Survey No.105/1 is old survey number and corresponds to new re-survey No.418/10 to 21 of Pedamushidivada village and since the new resurvey numbers are not mentioned in the order, it was corrected by order dated 30.04.2010 and therefore there is no illegality or irregularity in the orders impugned in the writ petition. Petitioners who have purchased house site plots have questioned the orders of the Special Deputy Tahsildar (Inams), Visakhapatnam dated 30.07.2009 and 30.04.2010 before the Revenue Divisional Officer by filing appeal under Section 7(2) of the Act and the appeal was dismissed by order dated 31.12.2012.

The emphasis of respondents 5 to 7 is that since the appeal is dismissed there are no merits in the writ petition and the writ petition is liable to be dismissed.

I have heard the counsel appearing for parties and perused the record.

The point for consideration is:

Whether the orders of 3rd respondent dated 30.07.2009 and 30.04.2010 are valid, legal and tenable?

To sum up the case, it is stated respondents 5 to 7 filed application under Section 7(1) of the Act for grant of ryotwari patta. The application for grant of ryotwari patta was made with the definite description of property i.e. for Survey No.105/1. The 3rd respondent has issued (Rules 5 and 6) notices in Forms V and VI by showing the schedule of property as Survey No. 105/1, T.D.No.335. The 3rd respondent since has not received objections for grant of ryotwari patta against Survey No.105/1 decided to grant ryotwari patta for Survey No.105/1. The 3rd respondent ceases to have further jurisdiction with the passing of orders dated 30.07.2009. Respondents 5 to 7 after obtaining ryotwari patta for a particular survey number, it is not disputed, applied for change of schedule of order dated 30.07.2009. In an application filed for grant of ryotwari patta, the substantial issue for consideration is with regard to ryoti land for which ryotwari patta is claimed. Therefore, the enquiry on the application for grant of ryotwari patta is substantially with regard to the subject matter i.e. schedule of land of the application. Hence, right from the filing of application up to the final orders, the enquiry focuses on one aspect i.e. land for which the patta is sought by the applicant. That being the position, if enquiry is taken in respect of one survey number, orders are passed and thereafter on the application of the claimant, if the subject matter is allowed to be changed, the same virtually amounts to

reviewing or revisiting the whole procedure already undertaken by respondent No.3. The notices in the enquiry already would have been taken up with the description shown in the application and receipt or non-receipt of objections would be specific to schedule of property in the application. Now if for asking or otherwise if schedule is changed illustratively said from A to B or A correlate A/1 etc., virtually amounts to changing the order itself. Therefore, such exercise in the considered view of this Court will have to be called review and the power of 3rd respondent to review its own orders is tested on well established principles of law which need no reiteration. The 3rd respondent, as already noted, reviewed his earlier order added the description of property as Survey No.105/1 corresponding to R.S. No.418/10 to 418/21 of Pedamushidivada Village, extent Ac. 3-56 cents.

Now the question for consideration is whether the 3rd respondent has jurisdiction to change the survey number and direct issue of ryotwari patta for corrected survey number. The learned Government Pleader firstly has relied upon by the stand taken in the counter affidavit, secondly even by independent examination of the Act and the Rules, submits that the 3rd respondent does not have power to review or reconsider his orders. It is further stated, and in the case on hand, the order passed by 3rd respondent cannot be treated as correcting a clerical error. Therefore, on the ground that the 3rd respondent does not have jurisdiction to review his order dated 30.07.2009 and change the schedule which virtually changes the entire identity, location etc. vide order dated

30.04.2010 is unsustainable and consequently liable to be dismissed.

The conclusion to the case on the above lines does not give quietus to the claim of ryotwari patta made by respondents 5 to 7, for on their own statement that the schedule of property for ryotwari patta is applied requires to be amended and tenures are regularised as per one's entitlement. Therefore, even if this Court holds that the order dated 30.07.2009 is within the jurisdiction of 3rd respondent still on the very statement of applicants/respondents 5 to 7 the schedule is erroneous. Therefore, the orders dated 30.07.2009 and 30.04.2010 are required to be set aside and matter remitted to 3rd respondent for consideration and disposal in accordance with law. The order of appellate authority, for the reasons stated supra, is unsustainable and accordingly set aside.

The writ petitions are ordered as indicated above and the matter is remitted to 3rd respondent. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date:22.09.2017

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