

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.32684 of 2011 and 426 of 2012

COMMON ORDER:

Heard Sri Shaik Jilani for petitioners, learned Assistant Government Pleader (Revenue) for respondents 1 to 5, Sri Srinivas Emani for respondents 6, 7 and 9 to 19 and M/s.Indus Law Firm for 8th respondent.

The prayers in these two writ petitions are substantially same and similar. The petitioners though are different but claim to be residents of Amancherla Village, Nellore Taluk, SPSR Nellore District.

The subject matter of writ petitions is Sy.No.1P of Mattempadu village, Nellore Taluk, SPSR Nellore District.

The prayer in W.P.No.32684 of 2011 reads as follows:-

“.... to issue an order, direction or a writ more particularly one in the nature of WRIT OF MANDAMUS directing the respondent Nos. 3 and 5 to restrain the officials under their authority from evicting and dispossessing the petitioners from the lands in their occupancy and possession in Sy.No. 1P of Mattempadu Village, Nellore Taluk, and to further direct them to issue pattas to these petitioners in respect of the land allotted to us vide proceedings bearing ref. No. D.Dis No. 8064/ 78 dt. 29.1.1979 of Tahsildar Nellore in terms of the proceedings of the 3rd Respondent Collector, Nellore in GR No. 277 dt. 7.8.1978”.

The prayer in W.P.No.426 of 2012 reads as follows :-

“.... to issue an order, direction or a writ more particularly one in the nature of WRIT OF MANDAMUS directing the respondents No.3 and 5 to restrain the officials under their authority from evicting and dispossessing us from the lands in our occupancy and possession in Sy.No.1P of Mattempadu Village, Nellore Taluk, and to further direct them to issue pattas to these petitioners in respect of the above said land allotted vide proceedings bearing ref.No.D.Dis No.8064/ 78. dt.29.1.1979 of Tahsildar Nellore in terms of the proceedings of the 3rd Respondent Collector, Nellore in GR No.277 dt. 7.8.1978”

On 11.08.2016, this court while accepting the request of learned Assistant Government Pleader for Revenue passed interim direction. The gist of the direction reads as follows :-

“At request of Assistant Government Pleader for production of record and filing chronology of dates and events in writ petitions, post on 17.08.2016.

If the records/chronology are not presented before the Court, the Assistant Government Pleader was directed to ensure the presence of Tahsildar, Nellore Taluk, SPSR Nellore District.”

The chronology is placed on record and the records are also produced for inspection of this Court.

The prayers in these two writ petitions have already been excerpted above and the prayers contain two limbs, firstly restrain respondent Nos.3 and 5 from evicting and dispossessing petitioners from the lands in their possession and enjoyment in Sy.No.1P of Mattempadu Village, Nellore Taluk and secondly,

direct the respondents to issue pattas to petitioners in terms of proceedings bearing D.Dis.No.8064/78, dated 29.01.1979 of Tahsildar, Nellore-5th respondent.

The subject matter of writ petitions was examined or considered by the Chief Commissioner of Survey, Settlement and Land Records, the Revenue Divisional Officer and the Tahsildar in the proceedings under the A.P.(Andhra Area) Abolition of Inams and Conversation into Ryotwari Act, 1956 (for short 'Inams Abolition Act') and/or the A.P.Rights in Land and Pattadar Pass Books Act, 1971. These proceedings are not under challenge, but are referred by counsel appearing for parties

The copy of chronology is prepared and made available by the 5th respondent and the same was given to the learned counsel appearing for petitioners and the learned counsel appearing for unofficial respondents. The counsel are not disputing the chronology of 5th respondent.

The scope of the writ petitions is limited to the extent of considering the prayer of petitioners either for protecting their possession or for issuing direction to grant pattas to petitioners in terms of proceedings, dated 29.01.1979.

Mattempadu is an Inam village. Mattempadu is taken over by the Government under the Inams Abolition Act. According to the 5th respondent, the total extent of inam village

is Acs.1528.37 cents, out of which, Acs.1466.67 cents are cultivable dry lands and an extent of Ac.61-70 cents is covered by Government land. The 5th respondent through proceedings D.Dis.No.8064/1978, dated 29-01-1979, allotted an extent of 494.72 acres in favour of petitioners in these writ petitions. It is further stated that though the allotment order refers to Ac.494.72 cents, records are available in respect of Ac. 272.50 cents and for the balance extent, the office of the 5th respondent is unable to trace the record for inspection or perusal by the Court.

While the matter stood thus, on 16.08.1983 the Special Deputy Tahsildar (Inams), Nellore, issued ryotwari pattas under Section 7 of the Inams Abolition Act in favour of Marella Svaramaiah Chary and others. For the purpose of present writ petitions, these details are not adverted to.

The Revenue Divisional Officer, Nellore/4th respondent against the grant of ryotwari patta had initiated *suo moto* enquiry and the initiation was challenged by the beneficiaries by filing W.P.No.3335 of 1984 and batch. On 02.03.1988, the batch of writ petitions was disposed of by this Court. Thereafter, the Commissioner, Survey, Settlement and Land Records initiated *suo moto* enquiry under the Inams Abolition Act.

On 15.03.1993, the Commissioner, Survey, Settlement and Land Records passed order in Case No.V1/1566/88 and the operative portion of the order reads as follows:-

“The M.R.O., Nellore Mandal, should first start with an enquiry U/s.5 and thereafter conduct an enquiry U/s.7. In the enquiry U/s.7, he will look into the nature of the land i.e., whether it is a land which vests with the Govt. U/s.2-A or a land for which patta is to be given, as laid down by the High Court in Writ Petition No.1267/ 1976 and batch dt.4-3-1980 reported in APLJ.1982 (1) (DB) 421. He will note that only tenants are eligible for patta and the tenancy rights are not alienable. Encroachers are not eligible for patta. Pattas should be given to Inamdars also wherever they are eligible for the same. Though orders may be passed now, the patta is to be granted with reference to the date of 14-12-1956. Updating of registry thereafter can be done under the normal mutation rules. This is necessary to ensure that the Land Ceiling Law is not violated.

I am marking a copy of this order to the Collector, Nellore, in respect of another aspect, namely, the sequence to be followed in the implementation of Inams Abolition and Ceiling on Agricultural Holdings Acts. According to the Scheme of both the Acts, the Inams Abolition Act, should be first implemented, thereafter the Ceiling on Agricultural Holdings Act, should be implemented. In this case, this has not been done. The Collector, should examine whether it is possible to set-right this mistake at present. If necessary, he will have to suggest amendments to the Ceiling on Agricultural Holdings Act to rectify the mistakes committed earlier in the district. The Collector, should initiate disciplinary action against the I.D.T., who has granted pattas without following procedure and to persons who are encroachers.”

It is a matter of record that thereafter the 5th respondent in exercise of his power under the Inams Abolition Act issued proceedings Rc.No.B/1085/1996 dated 19.11.2003 granting ryotwari pattas and the operative portion of the order reads as follows :-

“After initiation of the action on remand, I have received a large No. of claims and representations claiming title over the land and seeking grant of pattas under Section 7. I have scanned all the representations and claims that were received from various persons who came to the possession of the land and claiming to be legal title holders. But I am not at liberty to give cognizance of any such claim from any person who comes into possession of land either by tenancy, by sale etc., after 14-12-1956. The directions of the Commissioner are very specific that though order is passed now, patta has to be granted with reference to the date of 14-12-1956 only. Therefore, I have to satisfy myself with one's claim whether he is entitled for grant of patta as on 14-12-1956 either as Inamdar or tenant. As seen from the claims received none of the claimants was in legal possession of the land either as tenant or purchaser of the land from the Inamdar by proper legal transfer of the title. Hence, I reject all the claims that were made by the claimant as listed in the Annexure-I claimants who purchased the land, Annexure-II claimants who encroached the land and Annexure-III claimants/present legal heirs of the Inamdars but who came into existence after 14-12-1956 for the extent and the SNos. as noted against each for grant of patta under Section 7 of the Act.

After elimination of the claims of these persons now I have to confine myself to deal with the cases of original Inamdar who were holding the legal title over the lands excluding the lands that are vested in Government as narrated at para 3 of this order.

The inamdars who were holding legal title over the lands as per the material on record are as follows :-

S. No.	Name of the Inamdar. Holding legal title over the land as on 14-12-1956.	S No.	Extent
1	Bandhuvula Ranga Sastrulu	2	6.13
2	Bandhuvula Rama Krishnaiah	3	385.26
3	Bandhuvula Narayana Sastrulu	12	65.73
		13	133.56
		14	123.43
		15	104.03
		16	62.21
		18	3.26
		19-1	2.77
		19-2	7.34
		21	2.57
		22	8.38
		23	5.68
		24	182.98
		25	229.31
		26	133.93
		Total	1466.67

Therefore having satisfied with the ownership, possession and entitlement for grant of patta under Section 7 of the Inam Abolition Act and as per other legal pronouncements available on the subject to decide the eligibility of a person for grant of patta under Section 7 of the Inam Abolition Act itr is hereby order that a ryothwari patta be granted to the following Inamdars with reference to the date of 14-12-1956 for the extent as noted against each.

S.No.	Name of the Inamdar, Holding legal title over the land as on 14-12-1956	S.No.	Extent
		2	6.13

		3	395.26
		12	65.73
		13	133.66
		14	123.43
		15	104.03
		16	62.21
		18	3.26
		19-1	2.77
		19-2	7.34
		21	2.57
		22	8.38
		23	5.68
		24	182.98
		25	229.31
		26	133.93
		Total	1466.67
I	Legal representatives of Bandhuvula Ranga Sastrulu A. Vadari Venkataramaiah } B. Vadari Ramachandraiah } C. K. V. Subrahmanyam } As per orders } Out of the above total extent of Acs.1466.67 1/3 share	Acs.488.89	
II	Legal representatives of Bandhuvula Rama Krishnaiah A. Bandhuvula Narasimhamurthy } B. Bandhuvula Venkatachalam } C. Bandhuvula Krishna Swamy } Out of the above total extent of Acs.1466.67 1/3 share	Acs.488.89	
III	Legal Representatives of		

	Bandhuvula Narayana Sastrulu A.Bandhuvula Venkatesaiah } B.Bandhuvula Ramana Dhaiah} Out of the above total extent of Acs.1466.67 1/3 share	Acs.488.89
--	--	------------

As directed by Commissioner, Survey Settlements and Land Records, it is open to all the persons who wish to be registered as pattadar in Revenue Registry to apply to the competent authority under normal mutation rules for change of registry with supporting claim, documents for the relevant periods to get appropriate orders subject to the provision of Andhra Pradesh Land Reforms (COAH) Act, 1975 and the respective orders to be passed by the Land Reforms Tribunal.

An appeal shall lie to the Revenue Divisional Officer, Nellore within 60 days from the date of receipt of this order.”

It is not in dispute that the proceedings of the 5th respondent dated 19.11.2003 have become final and also grant of ryotwari patta.

From the findings recorded by the 5th respondent, it is clear that the possession of encroachers/petitioners, which is subsequent to the appointed date, is not accepted by the 5th respondent. The aggrieved persons against the proceedings dated 19.11.2003 filed appeal before the 4th respondent. The appeal was dismissed as well as further revision before CCLA. Thus, as on today, to the extent of re-grant under the Act is concerned, the proceedings have acquired finality.

From the above findings, it is clear that the Commissioner as well as Tahsildar have adverted to the legality or otherwise of proceedings dated 29.01.1979. It is matter of legal effect or implication vis-à-vis ryotwari patta granted to inamdars and the entitlement of Government to grant assignment in respect of very same land.

This Court, in the present writ petitions, need not further elaborate or record a separate finding in this behalf.

But it is suffice to notice that by reference to proceedings dated 29.01.1979, the petitioners cannot and could not compel the authorities to grant assignment of pattas in their favour for the respondents can grant assignment to eligible persons in respect of Government land. Once the subject matter is treated as ryoti land and ryotwari pattas were granted, the Government loses jurisdiction and control to grant assignment in respect of ryotwari land. Therefore, the second prayer cannot be considered and accordingly rejected.

Now reverting back to the 1st prayer, the case of petitioners is that respondents 3 and 5 be restrained from evicting or interfering with petitioners' possession vis-à-vis the subject matter of the writ petitions.

The 5th respondent filed counter affidavit and the operative portion reads as follows:-

“I submit that consequent on issue of Ryotwari Pattas, the petitioners herein who are said to be the encroachers in the land continued their possession over the land and doing agriculture. The allegations of the petitioner that action is being initiated by the respondents 3 to 5 herein to dispossess the petitioners are not true and without record. I submit that no action has been initiated by the official respondents to evict the petitioners. The other allegations raised by the petitioners are also denied.

I submit that as Ryotwari Pattas were granted to the entire extent of land measuring Ac.1466.67 to the eligible under the provision of Inam Act, consequent on cancellation of Pattas issued to the petitioners by the then Deputy Tahsildar (Inams), Nellore, the petitioners herein are just encroachers in the land without any right and title and the petitioners cannot claim occupancy right over the land under reference and the request of the petitioners for grant of ryotwari pattas deserves no consideration. The petitioners are liable to be evicted from the land.”

From the above, it is clear that respondents 3 and 5 are going on record by stating that they are not interfering with the possession of petitioners.

The statement is placed on record.

Placing on record the stand of respondents 3 and 5 could not be understood as this Court is expressing view on possession of petitioners or respondents.

This Court is of the view that a Court of law presumes possession in favour of a party or refuses to presume physical and actual possession in respect of property, from a particular state of pleadings and the proof placed on record on the case

pleaded by a party. Now petitioners claim to be in actual and physical possession and at the same time unofficial respondents contest their claim and assert that they are in actual and physical possession of the property by reference to various proceedings and orders. In view of these assertions and denials, this court is of the view that a disputed question of fact on the actual and physical possession between the parties namely the petitioners and unofficial respondents arises for consideration, having regard to the scope of enquiry undertaken by this Court in this behalf, the writ remedy between petitioners and unofficial respondents is misconceived.

By leaving this aspect of the matter open for consideration in suit instituted by a party by the competent court, the writ petitions are disposed of. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt:04-08-2017
Prv

S. V. BHATT, J

THE HON'BLE SRI JUSTICE S.V.BHATT



WRIT PETITION Nos.32684 of 2011 and 426 of 2012

04-08-2017

Prv

