

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.26964 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the proceedings of the first respondent dated 03.12.2007 issued through Reference No.47 of 2007 directing the petitioners to vacate the land in R.S.No.191/2 of Pondugula Village, Mylavaram Mandal, Krishna District within two days from the date of receipt of the proceedings, as illegal, arbitrary, unconstitutional and against the principles of natural justice.

2. The case of the petitioners is that the first petitioner purchased dry land to an extent of Ac.12.00 with mango garden in Survey No.191/2 of Pondugula Village, Mylavaram Mandal, Krishna District through registered Sale deeds dated 29.12.2006 and 03.01.2007. He purchased Ac.4.00 of land from one Peta Rambabu and Ac.8.00 of land from one Peta Murali Krishna. His predecessor-in-title, Peta Murali Krishna, purchased Ac.8.00 of land in Survey No.191/2 of Pondugula Village through registered Sale deed dated 20.06.1998 vide Document No.1974/1998 of the Office of SRO, Mylavaram. His predecessor-in-title acquired the property and raised the mango garden in an extent of Ac.8.00 of land. The second petitioner was also purchased Ac.5.00 of dry land with mango garden through different registered Sale

deeds dated 17.11.2006 and 24.11.2006. Since then, the petitioners have been in possession and enjoyment of their respective property.

The petitioners further stated that the lands purchased by them are patta lands situated in Survey No.191/2 of Pondugula Village. The lands are assessed revenue lands and patta lands. The lands were neither assigned nor poramboke lands. The pattadar passbooks and title deeds were also issued to their predecessors-in-title. The mango gardens raised in the lands are more than 15 years. The petitioners' predecessors-in-title were in possession and enjoyment of the lands even prior to Independence. The revenue records clearly show that the lands purchased by the petitioners are patta lands. The Forest officials neither raised any objection nor interfered with the possession and enjoyment of their predecessors-in-title since more than half a century.

The first respondent issued notice dated 19.07.2007 through proceedings in Rc.No.47 of 2007 stating that the petitioners' lands are classified as forest lands and asked the petitioners to submit their reply. Accordingly, the petitioners submitted their reply along with xerox copies of title deeds on 07.08.2007 to the first respondent. When the first respondent and his subordinate officials are prohibiting the petitioners to enter into their patta lands, they preferred a Writ Petition No.23423 of 2007 before this Court questioning

the action of the respondents in prohibiting and restraining them from entering into their lands located in R.S.No.191/2 of Pondugula Village, Mylavaram Mandal, Krishna District. This Court, on 06.11.2007, disposed of the Writ Petition No.23423 of 2007 directing the respondents not to interfere with the lands of the petitioners which are in their occupation and possession till the objections raised by them in reply dated 07.08.2007 are considered and disposed of in accordance with law. The first respondent has passed final orders on 03.12.2007 through Reference No.47 of 2007 and against which, this writ petition is came to be filed.

3. The first respondent filed counter stating that the land in R.S.No.191 of Pondugula village is part of G.Konduru reserve forest. The draft notification proposals under Section 4 of the Andhra Pradesh Forest Act, 1967 (for short 'the Act') in respect of G.Konduru Forest Block was approved by the Government vide G.O.Ms.No.1763, F & A (For.III) Department, dated 02.09.1968. The said notification was published in Andhra Pradesh Gazette dated 19.08.1966 and in Krishna District Gazette dated 09.06.1969. As per the Act, the Forest Settlement Officer, Kakinada vide Rc.No.313/68A dated 06.01.1970 has issued Proclamation under Section 6 of the Act for inviting claims if any. After the procedure followed as contemplated under Section 6 of the Act, the Forest Settlement Officer has finalized the draft notification proposals under Section 15 of the Act in respect of

G.Konduru reserve forest and submitted the said notification to the Government through the Collector, Krishna District and Conservator of Forests, Guntur vide Rc.No.909/72-B, dated 06.02.1975. The said notification was approved by the Government vide G.O.Ms.No.83 F & RD (For.III) Department, dated 02.03.1981, showing the following areas notifying as reserve forest:

Name of the Village	Nature of Land	Sy.No.	Total area in acres	Area included in the Forest in acres
Pondugula	Poramboke	191	1058.00	1058.00
	Forest not covered by any Sy. Nos.	--	--	5672.00
			Total	6730.00

The draft notification under Section 15 of the Act was published in the Andhra Pradesh Gazette dated 16.04.1981 and in Krishna District Gazette dated 10.05.1982. Hence, the purchase of the lands by the petitioners in Survey No.191/2 of Pondugula Village does not arise and it is baseless as the entire area of Ac.1058.00 in Survey No.191 of Pondugula village is notified as forest land. The first respondent - Forest Range Officer, Mylavaram, Krishna District, observed that some mango gardens are there in G.Konduru reserve forest, Pondugula village area under the guise of the patta lands. For verification of pattas, the first respondent issued notice vide Rc.No.47/2007 dated 19.07.2007. The petitioners submitted their claims along with connected revenue records

on 07.08.2007. When it is under process of verification of records, the petitioners filed Writ Petition No.23423 of 2007 before this Court. This Court directed the respondents not to evict the petitioners without considering their objections. The first respondent, on verification of records, rejected the claim of the petitioners and ordered the eviction of the land vide Rc.No.47 of 2007 dated 03.12.2007.

4. The third respondent/State represented by Collector and District Magistrate, Krishna District, who impleaded as per the Court order dated 19.03.2014 passed in WPMP No.47029 of 2013, filed counter stating that Pondugula village of Mylavaram Mandal is a Zamindari village taken over by the Government under the provisions of the Estate (Abolition and Conversion into Ryotwari) Act, 1948. After completion of survey settlement operations, Fair Land Register (FLR) was got introduced. As per FLR, the subject land is classified as 'Adavi Gutta' as detailed below:

Survey No/ Sub-Division No	Classification of the land	Extent covered	Name of the Pattadar	Remarks
191/1	Poramboke	844.60	1058.00	Adavi Gutta
191/2	Dry	213.40	464 See Tapsil list	

Further, on verification of old records, it reveals that at the time of conducting of survey, the Assistant Settlement Officer, Nuzvid vide his proceedings SR 11(a), has directed for issuance of ryotwari pattas to 82 individuals to the extent

under their enjoyment in R.S.No.191/2 of Pondugula Village of Mylavaram Mandal. Whenever an appeal was filed by the Forest Department, the entire pattas issued by the Assistant Settlement Officer were cancelled by the Director of Settlements, A.P., Hyderabad. After that, the Forest Settlement Officer has prepared draft notification under Section 15 of the Act stating that the entire extent in R.S.No.191/1 and 2 is a forest land and part of G.Konduru reserve forest and clubbed the R.S. numbers and noted as R.S.No.191. The said notification was approved by the Government vide G.O.Ms.No.83 F & RD (For.III) Department, dated 02.03.1981. According to the said notification, the land admeasuring Ac.1058.00 in R.S.No.191 of Pondugula Village was included in the forest area as reserve forest. After publication of the gazette vide A.P. Gazette No.16D on 16.04.1981, the Divisional Forest Officer, Vijayawada has requested the Sub-Collector, Vijayawada to instruct the Tahsildar, Mylavaram for making necessary changes in village records to that effect. Accordingly, changes were incorporated in the village records i.e., Fair Land Register and Account No.3 of Pondugula Village of Mylavaram Manal. The subject land was also included in the prohibited properties' list furnished under section 22A of the Registration Act, 1908.

5. Sri B.Chinnapa Reddy, learned counsel for the petitioners, would contend that the land to an extent of Ac.12.00 along with mango garden in Survey No.191/2 of

Pondugula Village was purchased by the first petitioner through registered Sale deeds dated 29.12.2006 and 03.01.2007. The second petitioner purchased the dry land in an extent of Ac.5.00 along with mango garden in Survey No.191/2 of Pondugula Village through registered Sale deeds dated 17.11.2006 and 24.11.2006. The lands are patta lands situated in Survey No.191/2 of Pondugula Village. The lands are assessed revenue lands. The petitioners' predecessors-in-title were in possession and enjoyment of the land even prior to Independence. The petitioners' predecessors-in-title were also issued pattadar passbooks and title deeds to the said lands. The petitioners have been in possession and enjoyment of the lands since their purchase. The lands are covered by mango garden, which is aged more than 15 years. At no point of time, the petitioners and their predecessors-in-title were objected by the Forest department officials. However, suddenly, the first respondent issued notice dated 19.07.2007 through proceedings in Rc.No.47 of 2007 stating that the lands are classified as forest lands and the petitioners submitted their reply along with title deeds on 07.08.2007 to the first respondent. When the first respondent tried to interfere with the possession and enjoyment of the lands, the petitioners filed the Writ Petition No.23423 of 2007 and this Court on 06.11.2007 directed the respondents not to interfere with the lands of the petitioners which were in their occupation and possession till the

objections raised by them are considered and disposed of in accordance with law. The first respondent, without properly considering the objections submitted along with reply dated 07.08.2007, passed the impugned order dated 03.12.2007 stating that R.S.No.191 of Pondugula Village is Ac.1058.00 and R.S.No.191/2 is part of R.S.No.191. The authority further states that total Ac.1058.00 of R.S.No.191 is declared as forest land through State Gazette publication dated 16.04.1981. The land is part of G.Konduru reserve forest. The first respondent directed the petitioners to vacate the land in R.S.No.191 of Pondugula village within two days from the date of receipt of the letter, otherwise he would proceed as per the provisions of the Act.

The learned counsel further contended that the first respondent, before issuing notification declaring the land in R.S.No.191 as forest land under the provisions of the Act, has not followed the procedure prescribed under Section 15 of the Act and no notice was issued to the owners of the patta lands in R.S.No.191/2 of Pondugula village. The notification itself clearly states that R.S.No.191 is poramboke forest land not covered by any survey number. The lands of the petitioners are revenue assessed lands and are classified as patta lands with mango garden in revenue records. The first respondent failed to see that the pattadar passbooks and title deed were also granted to the petitioners' predecessors-in-title. The revenue records show that the lands are classified as patta

lands and nowhere in the revenue records, the lands in R.S.No.191/2 of Pondugula Village, which are in the possession of the petitioners, were recorded as forest lands. The action of the respondents in demanding the petitioners to vacate the land is illegal and the respondents are initiating action without verifying the revenue records. The first respondent has no authority or jurisdiction to decide whether the forest lands are patta lands. Hence, the impugned orders are liable to be set aside.

6. The learned Government Pleader for Forests (AP) appearing for the first respondent would contend that the land Ac.1058.00 in R.S.No.191 of Pondugula Village is part of G.Konduru reserve forest. The learned Government Pleader while reiterating the averments of the counter of the first respondent would contend that the notification under Section 15 of the Act was published in Andhra Pradesh Gazette dated 16.04.1981 and in Krishna District Gazette dated 10.05.1982 and it has become final and the said gazette was published duly following the procedure contemplated under the provisions of Sections 4 and 6 of the Act before issuing final notification under Section 15 of the Act. The petitioners or their predecessors-in-title have not challenged the notification before appropriate authority i.e. the Principal District Court, Krishna District. Accordingly, the first respondent has issued notice to the petitioners on 19.07.2007 to submit their objections for eviction of the petitioners from the land in

R.S.No.191/2, which is part of R.S.No.191 of Pondugula Village and after considering their objections along with records, the impugned order was passed. The claim of the petitioners is untenable as it is not supported by any valid revenue records. The contentions of the petitioners does not merit consideration in view of the notification issued under Section 15 of the Act declaring the lands in R.S.No.191 of Pondugula Village as forest land and part of G.Konduru reserve forest. The writ petition is devoid of merit and is liable to be dismissed.

7. The learned Assistant Government Pleader for Revenue (AP) submitted that the land covered by Ac.1058.00 in R.S.No.191 of Pondugula Village is part of G.Konduru reserve forest. As per the information of the Forest officials, the land was notified as forest land under Section 15 of the Act. The said notification was approved by the Government vide G.O.Ms.No.83 dated 02.03.1981 and the following area is notified as reserve forest:

Name of the Village	Nature of Land	Sy.No.	Total area in acres	Area included in the Forest in acres
Pondugula	Poramboke	191	1058.00	1058.00
	Forest not covered by any Sy. Nos.	--	--	5672.00
			Total	6730.00

It is further submitted that when the Forest Range Officer inspected the forest lands, he found that some mango

gardens are raised in the G.Konduru reserve forest and the first respondent initiated action for eviction of the lands occupied by the petitioners and issued notices dated 19.07.2007, and the petitioner submitted their claims along with connected records on 07.08.2007 and thereby the first respondent passed the impugned order dated 03.12.2007. It is further submitted that the classification of the area including reserve forest in R.S.No.191 is poramboke and it is not patta land. The subject land was also included in the prohibitory properties' list furnished under Section 22A of the Registration Act, 1908. Hence, the claim of the petitioners is untenable.

8. In the facts and circumstances of the case and in the considered view of this Court, the dry land under occupation of first petitioner in an extent of Ac.12.00 in R.S.No.191/2 of Pondugula Village and dry land under occupation of second petitioner in an extent of Ac.5.00 in R.S.No.191/2 of Pondugula Village, are covered by mango garden which is aged more than 15 years. The petitioners purchased the lands through various registered Sale deeds. The lands are patta lands. The petitioners' predecessors-in-title were in possession and enjoyment of the said lands and they were issued pattadar passbooks and title deeds.

9. As per the counter averments of the third respondent – District Collector, old records revealed that at the time of

conducting of survey, the Assistant Settlement Officer, Nuzvid vide proceedings SR No.11(a), has directed for issuance of ryotwari pattas to 82 individuals to the extent under their enjoyment in R.S.No.191/2 of Pondugula Village of Mylavaram Mandal. As and when the Forest Department filed appeals against the pattas issued by the Assistant Settlement Officer to the Director of Settlements, A.P., Hyderabad, the said pattas were cancelled. Thereafter, notification under Section 15 of the Act was issued stating that the entire extent of land in R.S.No.191/1 and 2 as forest land and part of G.Konduru reserve forest and it got approved by the Government vide G.O.Ms.No.83, dated 02.03.1981. But, it could be seen that while issuing notification, the revenue officials or the Government have not considered the pre-abolition records which are in possession of the revenue department and nothing is coming forward from the counter of the third respondent. Basing on the counter of the Collector, which is disputed by the petitioners by reply, no documentary evidence is filed before this Court.

10. Further, there is a glaring disparity between the averments of the counter of the third respondent and the procedure said to be followed in changing the records, such as Fair Land Register (FLR) and Account No.3 of Pondugula Village of Mylavaram Mandal and recorded a survey settlement operations in pursuance of the provisions of Estate (Abolition and Conversion into Ryotwari) Act, 1948 and the

provisions of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971 as the petitioners' predecessors-in-title were issued pattadar passbooks and title deeds basing on the records. It appears that the third respondent – revenue officials changed the entire records, cancelled the pattas and changed the revenue entries without following any due process of law after gazette notification of the land as forest land under Section 15 of the Act. Even before changing of land records, the first respondent issued notification and published the gazette No.16D on 16.04.1981 and thereafter after publication of notification only basing on the request of the Divisional Forest Officer, Vijayawada, the Sub-Collector, Vijayawada and Tahsildar, Mylavaram changed the revenue records i.e. both Fair Land Register and Account No.3 of Pondugula Village of Mylavaram Mandal. It shows that before issuance of notification under Section 15 of the Act and publishing the notification No.16D on 16.04.1981, the revenue records stood appears to be otherwise or not placed before this Court along with the counter and the same could be inferred that the earlier pre-abolition records prior to notified date i.e. 01.05.1945 as per Estate Abolition Act, 1948 are not made available or suppressed.

11. Admittedly, the unsurveyed land in Pondugula Village of Mylavaram Mandal is a forest land. Even if the land in R.S.No.191 is a forest land as per the notification, the land in possession of the petitioners in R.S.No.191/2 is patta land as

per the survey settlement and that petitioners' predecessor-in-title were given pattas under the provisions of the Estate Abolition Act and thereafter the pattadar passbooks and title deeds were also given under the provisions of ROR Act. Further, it is nowhere stated that R.S.No.191/2 is non-existent survey number and it is not the plea of the respondents that R.S.No.191/2 is created or sub-divided without valid proceedings even if the notification is accepted and it only pertains to the land in R.S.No.191/1 only. Clubbing of land in R.S.No.191/1 and 2 by the Forest Department – first respondent is unknown to law. Whether the notification of land is validly done by the authorities competent to classify the land, is in doubt.

12. In those circumstances and in the interest of justice, this Court feels that it is appropriate to remit the matter back to the third respondent to pass appropriate orders while setting aside the impugned order to decide the nature of the lands and pattas granted to various persons who are under occupation of the land in pursuance of the survey settlement conducted as per the Estate Abolition Act, 1948 as averred by the third respondent in his counter and subsequent cancellation of pattas by the Director of Settlements as on the date of issuance of notification under Section 15 of the Act in spite of finalisation of the notification as contended by the learned Government Pleader for Forests. Further, the first respondent being the Forest Range Officer is not the

competent authority to decide the nature of lands as to patta lands or forest lands and the Collector is the only authority to do so. Hence, the Collector is directed to initiate action and pass appropriate orders. Further, the subsequent proceedings could not be challenged without challenging the notification before the competent Court. As the said notification was issued as long back as 1981, whether anybody challenged or what happened to the pattas issued to 82 persons who are in occupation of land and whether they are in continuous possession or enjoyment of the land, are not forthcoming and this Court found that the notification under Section 15 of the Act has issued and the Government published the notification contrary to Sections 4 and 6 of the Act, without verification of the pre-abolition records much prior to the notified date i.e. 01.07.1945 as per the Estate Abolition Act, 1948.

13. Accordingly, the writ petition is allowed, while setting aside the impugned order, in the interest of justice, the matter is remitted back to the third respondent - District Collector and Magistrate, Krishna District, to initiate fresh proceedings and pass appropriate orders. No order as to costs.

(Contd...)

14. Miscellaneous Petitions, if any, pending in this Writ
Petition shall stand closed.

JUSTICE M.GANGA RAO

02-05-2018
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WRIT PETITION No. 26964 OF 2007

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