

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.5572 and 5587 of 2004

COMMON ORDER:

Both these Writ Petitions have been filed to call for the records relating to the order, dated 22.11.2003, in File Nos.P3/936/2000 and P3/566/2001 on the file of the 1st respondent Commissioner of Appeals, confirming the order of the 2nd respondent Special Commissioner and Director of Settlements, dated 08.06.2000, made in R.P.No.38 of 1981 which, in turn, confirmed the order of the 3rd respondent Settlement Officer, Nellore, dated 22.12.1980 made in S.R.No.61/11(a)/80.

2) The facts, which are necessary for disposal of the Writ Petitions, are as follows:

3) In 1921, Daminedu Village, Chandragiri Taluk, Chittoor District was put to sale, wherein late T. Krishnamachary participated and became the successful bidder in respect of one-fourth of the sale so held and he was accordingly, granted patta. On demise of the said Krishnamachary, his son late T. Sundra Chary made an Application for transfer of patta and the same was ordered *vide* proceedings of the Tahsildar, dated 23.12.1940.

4) While so, after the enactment of the Estate (Abolition and Conversion into Ryotwari) Act, 1948 (for short, 'the Act'), the petitioner's fore-fathers, filed an application, dated 30.01.1969 under Section 15(1) of the Act before the 3rd respondent Settlement Officer, who, *vide* order dated 25.08.1969, after conducting enquiry, allowed the said Application granting patta over an extent of Acs.4.00 in Survey No.134/1. In the Appeal (A.S.No.32 of 197 on the file of the Estates Abolition Tribunal-cum-District Judge at

Chittoor), the order, dated 25.08.1969 was confirmed and thereafter, most of the property covered by the order under Section 15(1) of the Act was sold to various individuals and only an extent of Acs.12.50 cents in Survey Nos.134 and 135 was retained.

5) Thereafter, on a petition filed by Sri K. Chenga Reddy (ancestor of respondents 6 to 12), the Settlement Officer granted Ryotwari patta in S.R.No.61/11(a)/80, dated 22.11.1980 in his favour under Section 1(a) of the Act in respect of Acs.8.00 and Ac.4.60 in Survey Nos.134 and 136/1 respectively. Aggrieved thereby, the District Collector filed a Revision before the 2nd respondent, wherein, the petitioner filed an objection petition. *Vide* order dated 08.06.2000, the Revision was dismissed. The said order was challenged by the petitioner (Case No.P3/936/2000) and the Government (Case No.P3/566/2001) before the 1st respondent and both the Revisions were also dismissed by the order dated 22.11.2003.

6) While Writ Petition No.5572 of 2004 was filed questioning the order, dated 22.11.2003, in File No.P3/936/2001, Writ Petition No.5587 of 2004 was filed with respect to File No.P3/566/2001.

7) This Court, by order dated 24.03.2004, directed status quo to be maintained with respect to the lands in Survey No.134 and 135 of Daminedu Village.

8) Subsequently, the District Collector, Chittoor filed Writ Petition No.16781 of 2008 questioning the order, dated 22.11.2003, dismissing the Revision preferred under Section 7(d) of the Act by the 1st respondent. The said Writ Petition was dismissed on 11.08.2008 holding that the authorities have concurrently found that there is no infirmity or flaw in the order

granting ryotwarri patta in favour of the father of respondents 4 and 5 therein. Thereafter, the 7th respondent herein filed Writ Petition No.26911 of 2010, which was allowed by order, dated 29.12.2010, directing the respondents to implement the settlement patta by mutating the name of the petitioners therein in the revenue records and issue pattadar passbook and title deeds except to the extent of the land, which is covered by an order of *status quo* in Writ Petition No.5572 of 2004. It was further directed that mutation of the petitioner's names in the revenue records and issuance of pattadar passbooks in their favour should be subject to the orders that might be passed by the competent authority on the validity of the settlement patta. The Appeals preferred against the order, dated 11.08.2008 and 29.12.2010 were also dismissed.

9) A counter-affidavit was filed by the Tahasildar, Tirupati (Urban) mandal on behalf of respondents 1 to 5, wherein it has been stated that the Settlement Officer, Nellore on 22.11.1980 granted Ryotwari patta in favour of Sri K. Chenga Reddy in respect of the land in Survey Nos.134 and 136/1 measuring an extent of Acs.8.00 and Acs.4.60 cents of Daminendu Village and the appeal filed there against and the objection petition filed by the petitioner stating that his father was already granted patta for the lands in Survey No.134 over an extent of Acs.4.00 on 25.08.1969 and the order, dated 22.11.1980, passed granting Ryotwari patta for the same lands, were dismissed. Revisions filed before the Commissioner of Appeals, also received the same fate. It was further stated that the Settlement Officer, Nellore *vide* proceedings, dated 25.08.1969 granted Ryotwari patta in respect of various

extents of lands in Survey Nos.172/1, 172/2, 175/13, 196/5, 47/2, 48/2, 52/, 134 Part, 212 situated at Daminedu village in favour of Sri T. Thiruvengadachari, MS..Pattamal, N. Subramanyam Chetty and Y. Yellapa Reddy. One of the grantees of the land in Survey No.134 Sri Thiruvengadachari was the father of the petitioner. The other Settlement Officer, Nellore *vide* order, dated 16.10.1974 rejected the claim of the petitioner's father and others in respect of the lands in Survey Nos.196/5, 47/2, 47/5, 48/2 and 134 part. Against the order, dated 25.08.1969, A.S.No.33 of 1974 was filed before the Estates Abolition Tribunal-cum-District Judge and the said appeal was dismissed by the order, dated 22.02.1978. Hence, the action is being taken by the Government to nullify the order, dated 25.08.1969 and the consequent order in the Appeal by filing a Writ Petition. It was also stated that since there was no mention of Survey No.135 in the order, dated 25.08.1969, the contention of the petitioner that the area retained by them was Acs.12.50 in Survey Nos.134 and 135 is not correct. It was further stated that the Government *vide* memo dated 25.04.1984 issued instructions to the Commissioner, Survey Settlements and land Records to bring to the notice of all the Collectors about the bogus patta issued by Sri A.D.V. Reddy, Retired Settlement Officer, Nellore and not to implement the settlement pattas. In view of the same, the contention of the petitioner that the settlement pattas granted by Sri A.D.V.Reddy by the order, dated 22.12.1980, in favour of Sri K. Chenga Reddy for the lands in Survey Nos.134 and 136/1 measuring an extent of Acs.8.00 and 4.60 cents respectively of Daminedu Village, would automatically stand cancelled, cannot be accepted, for, the said pattas are required to be set aside by the

appellate or revisional authorities. It was further stated that the lands in Survey Nos.134, 136/1 measuring an extent of Acs.8.00 and Acs.4.60 cents of Daminedu Village were classified as A.W.D and Nagapillai Kunta Poramboke respectively of Daminedu village of Tiruapti Rural Mandal and hence, neither the petitioner nor respondents 6 to 9 have right or title whatsoever since the lands vest with the Government for all purposes under Section 3(b) of the 1948 Act.

10) Another counter-affidavit has been filed on behalf of respondents 10 to 12 stating that the Writ Petition itself is not maintainable since the petitioner has not preferred any revision before the Director of Settlements under Section 5(2) of the Act, against the order, dated 22.11.1980s granting patta to their grandfather; he filed only objections which were dismissed, against which, the petitioner filed Revision. According to respondents 10 to 12, the land was ryoti land and their grandfather was in possession and enjoyment of the land by virtue of the sale deed, dated 05.06.1945 and on an Application, the Ryotwari patta was granted on 22.11.1980, by referring the proceedings of the Settlement Officer, dated 16.10.1974 negating the claim of the petitioner. It is stated that the order, dated 25.08.1969 passed by the Settlement Officer, Nellore under Section 15 (1) of the Act has no application to the facts of the case as the patta is to be granted under Section 11(a) of the Act. They denied the pleading that the petitioner or his predecessors are the landholders insofar as, Survey No.134 is concerned. It was further stated that the question of filing the Revision by their grandfather would never arise as the patta in his favour was not cancelled. Writ Petition

No.26911 of 2010 filed by their grandfather for implementation of the order of the Commissioner of Appeals was also allowed except to the extent of land covered in this Writ Petition. The appeal filed there against was dismissed.

11) Learned counsel for the petitioner submits that the 3rd respondent ought not to have granted patta in favour of respondents 6 to 9, by the order, dated 22.12.1980, as it was only after enquiry under Section 15(1) of the Act on the petition filed by the land holder i.e., the ancestors of the petitioners, patta was granted on 25.08.1969 and the appeal filed there against by the Government was also dismissed. According to him, the pattas granted by Sri A.D.V.Reddy, Settlement Officer, were directed to be cancelled by a Government Memo, hence, the patta granted by him in favour of respondents 6 to 9 will not hold good. It is further argued that against the order, dated 25.08.1969, Appeal under Section 15(2) of the Act was filed by the Government which was dismissed, and hence, the order of the 3rd respondent had become final.

12) Learned Government Pleader for Revenue, on the other hand, submits that since the lands in Survey Nos.134, 136/1 measuring an extent of Acs.8.00 and Acs.4.60 cents of Daminedu village were classified as A.W.D. and Nagapillai Kunta Poramboke respectively, neither the petitioner nor respondents 6 to 9 have right or title whatsoever thereon, as the land vest with the Government for all purposes under Section 3(b) of the 1948 Act.

13) From a perusal of the material on record, it is evident that through the order, dated 25.08.1969, the 3rd respondent granted patta in favour of the ancestors of the petitioner with respect to the

land admeasuring Acs.4.00 in Survey No.134/1 of Daminedu Village, Tirupati Rural Mandal, Chittoor District, and the said order became final on account of the fact that when the Government challenged the same by way of filing A.S.No.33 of 1974, the Presiding Officer, Estates Abolition Tribunal-cum-District Judge, Nellore, dismissed the said appeal vide judgment, dated 22.02.1978, and that the said aspect was not even dealt with by the 1st respondent in his order, dated 22.11.2003 passed in Revision Petitions No.P3/936/2000 and P3/566/2001 preferred by the petitioner herein and the Government respectively, as well as the 2nd respondent in his order, dated 08.06.2000 passed in R.P.No.38/81 H1 preferred by the Government against the order, dated 22.11.1980 passed by the 3rd respondent with respect to grant of patta in favour of Sri K. Chenga Reddy, who is the father of respondents 6 and 7 and grandfather of respondents 10 to 12, with respect to the lands admeasuring Acs.8.00 and Acs.4.60 cents in Survey No.136/1 situated at Daminedu Village.

14) Further, though it is asserted in the counter-affidavit filed by respondents 10 to 12 that the petitioner has failed to file appeal before the 2nd respondent against the order, dated 22.11.1980, passed by the 3rd respondent, with respect to the grant of patta in favour of their grandfather, it is not in dispute that questioning the very same order, the Government approached the 2nd respondent by way of filing Revision Petition, being R.P.No.38/81 H1, in which, the petitioner also filed his objections. Thereupon, the 2nd respondent dismissed the said Revision Petition vide order, dated 08.06.2000, a perusal of which discloses that the objections raised by the petitioner were dealt with by the 2nd respondent in

paragraph 16 thereof, there is no reference with respect to the order, dated 25.08.1969, passed by the 3rd respondent as well as the judgment, dated 22.02.1978 of the Presiding Officer, Estates Abolition Tribunal-cum-District Judge, Nellore, in A.S.No.33 of 1974, and there is a reference with respect to the order, dated 16.10.1974 passed by the 3rd respondent, who is the other Settlement Officer, Nellore, in S.R.No.546/15(1)/1963, rejecting the claim of the petitioner's father and others in respect of the land in Survey Nos.196/5, 47/2, 47/5, 48/2 and 134 Part. However, it is not clear whether any ground verification was done by the 3rd respondent before granting patta in favour of the ancestors of the petitioner with respect to the land admeasuring Acs.4.00 in Survey No.134/1 of Daminedu Village. One aspect of the matter is clear that by judgment, dated 22.02.1978, the Estates Abolition Tribunal dismissed A.S.No.33 of 1974 confirming the order, dated 25.08.1969 passed by the 3rd respondent.

15) On a scrutiny of the record produced by the learned Government Pleader in relation to the order, dated 16.10.1974 passed by the 3rd respondent in S.R.No.546/15(1)/1963, this Court finds that the subject matter therein was in relation to various Survey Numbers, as mentioned in the schedule thereof, of Daminedu Village of Chandragiri Taluq, Survey No.134 was not included therein and Survey No.135 (new) with respect to the land of an extent of Acs.7.30 cents was mentioned.

16) Therefore, it is *prima facie* evident that while dismissing the revision preferred by the Government in R.P.No.38/81 H1 vide order, dated 08.06.2000, the 2nd respondent misread the order, dated 16.10.1974 passed by the 3rd respondent.

17) A perusal of the order, dated 22.11.2003, passed by the 1st respondent-revisional authority, dismissing the revision petitions filed by the petitioner as well as the Government, indicates that though it is mentioned in paragraph 4 thereof that the counsel for the revision petitioner contended that the 2nd respondent failed to see the order, dated 25.08.1969 passed by the 3rd respondent and the judgment, dated 22.02.1978 of the Estates Abolition Tribunal in A.S.No.33 of 1974, there is no discussion about the same nor their effect was adverted to by the 1st respondent, but, reliance was placed on the judgment, dated 16.10.1974 of the Estates Abolition Tribunal in A.S.No.33 of 1974.

18) Having regard to the above and in view of the fact that the patta was granted by the 3rd respondent vide order, dated 25.08.1969, with respect to the land admeasuring Acs.4.00 in Survey No.134/1 in favour of the ancestors of the petitioner and the said order became final as the Estates Abolition Tribunal vide judgment, dated 16.10.1974 dismissed A.S.No.33 of 1974 filed by the Government, the order, dated 22.11.2003 passed by the 1st respondent, confirming the order, dated 08.06.2000 passed by the 2nd respondent, stands vitiated and is liable to be set aside.

19) In normal circumstances, this Court would have relegated the petitioner to the primary authority, but, on account of time lag involved at various stages and the 1st respondent being the superior authority and empowered with the power to rectify the errors either *suo motu* or on an application, the matter can be remanded to the 1st respondent for considering afresh with respect to the rights of the petitioner on account of the order, dated 25.08.1969 passed by the 3rd respondent, as affirmed by the

Estates Abolition Tribunal in A.S.No.33 of 1974 vide judgment, dated 16.10.1974.

20) In view of the above, these two Writ Petitions are allowed. The order, dated 22.11.2003 passed by the 1st respondent is set aside and the matter is remanded to the 1st respondent, who in turn, shall dispose of the same afresh, after giving opportunity to both the parties, within a period of eight (8) weeks from the date of receipt of a copy of this order. It is made clear that in the present order, this Court made only *prima facie* observations with respect to various facts of the case.

21) Miscellaneous Petitions, if any pending, shall stand disposed of. There shall be no order as to costs.

20th AUGUST, 2018.

Ssv / kvni

CHALLA KODANDA RAM, J

