

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Writ Appeal No.946 of 2017

% Date: 11-12-2018

- # 1. The Chief Commissioner of Land Administration,
A.P., (Spl. Commissioner), Gollapudi,
Vijayawada, Krishna District
2. The Commissioner and Director of Settlements,
7th Line, Currency Nagar, Vijayawada-8, Krishna Dist.,
3. The Joint Collector cum Settlement Officer, Chittoor
4. The Mandal Revenue Officer, Tirupathi Urban Mandal,
Chittoor District
- ... Appellants/Respondents

Vs.

- \$ 1. V.Rangappa (died) per L.R R-2
2. V.Nataraja Prasad S/o late V.Rangappa, R/o 556,
Balaji Colony, Tirupathi Chittoor District
- ... Respondents/Petitioners

! Counsel for Appellants: Govt. Pleader for Revenue (AP)

Counsel for Respondents: Smt. M.L. Neelima, representing
Mr. G.Krishna Murthy

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Writ Appeal No.946 of 2017

Judgment: (per V.Ramasubramanian, J.)

The Chief Commissioner of Land Administration and other officials of the Revenue Department have come up with the above writ appeal challenging an order of the learned Judge setting aside the order of the Commissioner and Director of Settlements cancelling the patta granted in favour of the 1st respondent by the Settlement Officer.

2. We have heard the learned Government Pleader for Revenue (Andhra Pradesh) and Smt. M.L. Neelima, learned counsel for the respondents.

3. The 1st respondent herein who is now no more and whose son has been impleaded as the 2nd respondent herein, filed a writ petition in W.P.No.19423 of 2004 challenging an order of the Commissioner and Director of Settlements cancelling the patta granted by the Settlement Officer in his favour. The case of the 1st respondent in his writ petition was that he was the absolute owner of the land of an extent of Ac.7.00 covered by Survey No.119 of Mangalam Village, Chandragiri Taluk, Tirupati Urban Mandal of Chittoor District; that the said land originally belonged to the 1st respondent's father who was granted a *Takid* on 05-4-1942 by the original landholder K.K. Bangaru Buchi Venkatacharlu; that ever since then the 1st respondent's

father was in possession and enjoyment of the land by paying rents to the *Inamdar*, as the land was a *ryothi* land; that after the demise of his father in the year 1978, the 1st respondent succeeded to the said property; that the 1st respondent paid the land revenue and obtained receipts for the years 1984 to 1989; that the 1st respondent's name was also incorporated in the Revenue records showing that he was in possession and cultivating the above land; that out of the total extent of Ac.7.00, the 1st respondent sold Ac.1.00 to one Y.Balachandraiah, another extent of Ac.1.00 to M.Subramanyam Reddy and an extent of Ac.1.00 to K.Rajagopal; that during survey and settlement operations, the entire extent of Ac.7.00 was wrongly classified as *poramboke* without recognising the 1st respondent as pattadar; that the 1st respondent therefore approached the Settlement Officer, Nellore, claiming *ryotwari* patta under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948; that the Settlement Officer allowed the application and granted *ryotwari* patta by order dated 16-11-1981; that after a lapse of four years, the Director of Settlements initiated proceedings *suo motu*, in exercise of the revisional powers conferred under Section 5(2) of the Act; that the 1st respondent contested the *suo motu* revision on the ground that he had been in possession and enjoyment and had also acquired occupancy rights under Section 6; that during the pendency of the

proceedings before the Director of Settlements, the 1st respondent applied for certain pre-abolition records, but they were not supplied; that therefore the 1st respondent filed a writ petition in W.P.No.6737 of 2003 seeking a direction to the Mandal Revenue Officer to furnish certified copies of the documents sought for in the application dated 20-11-2002; that the said writ petition was disposed of by an order dated 25-4-2003; that despite the said order the documents were not furnished; that however the Director of Settlements passed an order dated 05-9-2003 setting aside the order of the Settlement Officer dated 16-11-1980; that questioning the order of the Director of Settlements, the 1st respondent filed a revision before the Chief Commissioner of Land Administration; that the Chief Commissioner dismissed the revision by an order dated 14-7-2004 and that therefore the 1st respondent was compelled to come up with the writ petition.

4. The Mandal Revenue Officer, who is the 4th appellant herein and who was the 4th respondent in the writ petition, filed a counter affidavit submitting *inter alia* that the Revenue Village Mangalam was an estate in the erstwhile Chandragiri Taluk of Chittoor District; that the same was notified and taken over by the Government on 01-10-1951, in terms of the provisions of the Estate Abolition Act, 1948; that survey and settlement operations showed that the land in Survey No.119 correlated to Paimash Nos.29, 33 Part, 35 and 26 Part and

classified as water-body *poramboke* i.e. “Thumu Kalva” and “Settipalle Cheruvu Lothattu” in the pre-abolition Estate records; that the land was sub-divided as Survey Nos.119/1 and 119/2, respectively measuring Ac.27.40 cents and Ac.22.09 cents; that the classification was determined as Channel and Assessed Waste Dry; that the Channel in Survey No.119/1 of Mangalam Village is a feeding channel to the irrigation source viz., Settipalle Tank and the land in Survey No.119/2 is still a foreshore area of the existing tank; that the writ petitioner filed a claim petition under Section 11(a) of the Estate Abolition Act, 1948 in the year 1980, seeking grant of ryotwari patta for the land of an extent of Ac.7.00 in Survey No.119; that the writ petitioner, without reference to the sub-division of land, merely mentioned the Survey number as 119 without even specifying the boundaries; that the Settlement Officer, without any opportunity to the Revenue and contrary to law, passed an order dated 16-11-1981, directing the grant of ryotwari patta; that therefore the Director of Settlements exercised *suo motu* revisional powers under Section 5(2) and passed an order dated 05-9-2003 cancelling the patta; that the revision filed by the writ petitioner to the Commissioner was dismissed by an order dated 15-6-2004; that Settipalle Tank along with other tanks had already been handed over to Tirupati Urban Development Authority (TUDA), Tirupati on 06-5-2002, for the purpose of desilting and protection as a water body; that TUDA took up

desilting work in Settipalle Tank and repair work in the Feeding Channel; that the entire claim of the writ petitioner was based upon a *Takid* dated 05-02-1942; that the said *Takid* is a fabricated document; that the land in question is full of water even as on date; that the land was recorded as “Thumu Kalva”, “Kaluju” and “Settipalle Cheruvu Lothattu” in the pre-abolition estate records; that the claim of the writ petitioner to be in possession and enjoyment is factually false; that a claim under Section 11(a) can be considered only if three conditions are satisfied viz., (i) that the land was ryoti in nature, (ii) that the claimant must be a ryot in possession since 01-7-1945 and (iii) that the land must be free from communal interest; that in the instant case, the land in question is a water body and hence a non-ryoti land; that as per Section 3(d) of the Estate Abolition Act and as per Section 3(16-A) of the Estate Land Act, 1908, the lands recorded as communal *porambokes*, especially water course *porambokes*, cannot be given by way of grants; that the Settlement Officer was not empowered to entertain any claim after 08-7-1974, in view of G.O.Ms.No.50, Revenue, dated 16-01-1974; that the writ petitioner approached the Settlement Officer after six years of the issue of the said Government Order; that the Revenue records did not show the name of the writ petitioner, that before passing orders dated 16-11-1981, the Settlement Officer did not issue any

notice to the Mandal Revenue Officer and that therefore the writ petition was liable to be dismissed.

5. The learned single Judge before whom the writ petition came up for final hearing allowed the writ petition and restored the patta granted to the writ petitioner, on the following grounds:

(i) In the course of the proceedings before the Director of Settlements in the *suo motu* revision, the writ petitioner sought copies of certain documents and came up with a writ petition in W.P.No.6737 of 2003 seeking a direction to the Mandal Revenue Officer to furnish documents. But the Mandal Revenue Officer failed to furnish the documents despite a direction issued in the writ petition. When the present writ petition came up for hearing, the learned Government Pleader sought adjournments on several occasions to produce the documents sought for by the writ petitioner, but eventually he reported that the documents have disappeared. Therefore, the learned Judge held that an adverse inference has to be drawn that if the documents are produced, it would have gone in favour of the writ petitioner;

(ii) The learned Judge also felt that without referring to any Revenue records of the pre-abolition period, the Revisional Authority ought not to have come to the conclusion that the land was submergible land. In addition, the learned Judge thought that the finding of the Mandal Revenue Officer

as on 22-6-2002 that the land was submergible, was not relevant for deciding the question of entitlement of the writ petitioner to ryotwari patta under Section 11(a) of the Act;

(iii) The writ petitioner relied upon a *Takid* and land receipts issued during the period from 1942 to 1948. The learned Judge held that the authenticity of these documents cannot be doubted merely because they were handwritten and that in any case, the Revisional Authority could have summoned cultivation accounts for the period from 1942 to 1948 before coming to the conclusion that these land receipts were not genuine;

(iv) The learned Judge finally concluded that the Revisional Authority cannot take advantage of any error of procedure committed by the Settlement Officer while passing the order dated 16-11-1981 under Section 11(a) directing the grant of patta.

6. On the basis of the above reasoning, the learned Judge allowed the writ petition and set aside the orders passed by the Commissioner and Director of Settlements (2nd appellant herein) and the Chief Commissioner of Land Administration (1st appellant herein). Therefore, the Department has come up with the above writ appeal.

7. Assailing the order of the learned Judge, it is contended by the learned Government Pleader that instead of calling upon the writ petitioner to prove his possession, the learned Judge erroneously shifted the burden upon the State.

During the period 1980-81, a Settlement Officer by name A.D.V. Reddy played havoc both on the verge of retirement and thereafter, by issuing orders left, right and centre and that all of them had to be cancelled due to the fraud perpetrated by the Settlement Officer. It is also contended by the learned Government Pleader that a duty is cast upon the Government as well as the Court to protect water bodies. According to the learned Government Pleader, the writ petition was allowed by the learned Judge, without any reference to the counter affidavit filed by the appellants and that therefore the order of the learned Judge was liable to be set aside.

8. In response to the above contentions, it is argued by the learned counsel for the respondents that the land was actually classified as Assessed Waste Dry and not a water body; that in order to establish long possession, the writ petitioner summoned the pre-abolition records and even filed a writ petition and obtained a direction; that despite the said direction, the records were not produced, that after 14 years of the issue of a *mandamus*, the Government reported before this Court in the year 2017 that the records were not traceable and that therefore with the available records, the learned Judge concluded that the exercise of *suo motu* revision after nearly four years, was without any basis. Therefore, the learned counsel for the respondents submitted that the order of the learned Judge is unassailable.

9. We have carefully considered the above submissions.

10. Before examining the rival contentions, it must be noted that the entire Revenue Village Mangalam, was an estate in the erstwhile Chandragiri Taluk of Chittoor District, which was notified and taken over by the Government on 01-10-1951 in terms of the provisions of the Estate Abolition Act, 1948. This fact is not disputed even by the writ petitioner.

11. According to the writ petitioner, the lands originally belonged to one K.K. Bangaru Buchi Venkatacharlu and that he granted a *Takid* on 05-02-1942 to the writ petitioner's father. But even according to the writ petitioner, his father died in the year 1978 and he himself filed an application under Section 11(a) of the Act, only in the year 1981. It is seen from the order of the Settlement Officer dated 16-11-1981 that the Settlement Officer directed the grant of ryotwari patta on the basis of oral evidence of P.Ws.1 to 5 and three different sets of documents. The 1st document was a *Takid* allegedly given by the original owner on 05-02-1942. The 2nd document was a series of kist receipts dated 15-9-1942, 08-6-1946, 01-7-1943, 07-4-1945, 04-9-1944, 02-3-1947 and 10-02-1948. The 3rd document relied upon by the writ petitioner's father was an unregistered sale letter dated 06-3-1946, showing that the parts of the land were sold to one Balachandraiah, Subramanyam Reddy and Rajagopal. On the basis of this oral and documentary evidence, the

Settlement Officer passed the order dated 16-11-1981 directing the grant of patta.

12. But very strangely, the Settlement Officer did not summon the pre-abolition records. The application before the Settlement Officer was filed by the writ petitioner in terms of G.O.Ms.No.50, dated 16-01-1974. But the application was filed after seven years of the issue of the Government Order. The Settlement Officer conveniently condoned the delay, directed the publication of notices in the village and passed an *ex parte* order on the ground that the Tahsildar did not even file a counter.

13. The Director of Settlements who exercised *suo motu* power of revision, found that the Tahsildar was not even issued with any notice. In the 3rd last paragraph of his order, the Director of Settlements recorded a finding, after summoning the records of the Settlement Officer that there were no entries in the docket sheets to show that the case was ever posted for hearing or that notices were ever issued or that the orders were ever pronounced or communicated. In fact, the Settlement Officer by name A.D.V. Reddy, became very famous for issuing pattas both on the verge of his retirement and even thereafter, forcing the Government to issue a general order about the pattas issued by him.

14. A careful look at the order of the Settlement Officer would show that there was no reference to any notice issued to the Tahsildar. In the first paragraph of the order dated

16-11-1981, it is stated that the prescribed notices were issued and got published in the village. This shows that the notices were intended for service on rival claimants. There is no indication in the order of the Settlement Officer that a notice was ever issued to the Tahsildar.

15. The failure of the Settlement Officer to issue notice to the Tahsildar, becomes significant in the light of the fact that no ryotwari patta can be issued in respect of communal porambokes including water bodies.

16. Curiously, the writ petitioner sought copies of pre-abolition records in the course of enquiry in the *suo motu* revision in the year 2003. But he never made any attempt during the course of the enquiry before the Settlement Officer in the year 1981 to have the pre-abolition records summoned. Even the Settlement Officer never made any attempt to look into the pre-abolition records.

17. All the six kist receipts relied upon by the writ petitioner before the Settlement Officer were dated in the years 1942, 1943, 1944, 1945, 1946, 1947 and 1948. But even according to the writ petitioner, more than one-third of the land had been sold to three individuals under Ex.P-3, dated 06-3-1946. It is surprising that the kist receipts of the years 1947 and 1948 were not in favour of the purchasers but continued in the name of the writ petitioner's father. In fact, what was produced as Ex.P-2 series before the Settlement Officer, were not kist receipts but actually rental

receipts allegedly issued by the original owner Bangaru Buchi Venkatacharlu.

18. The Settlement Officer, apparently failed to perform his statutory functions either judiciously or honestly. Without even taking note of the nature of the land, he passed an *ex parte* order holding that no communal interests are involved. But after finding that the land is classified as “Thumu Kalva”, “Kaluju” and “Settipalle Cheruvu Lothattu”, the Revisional Authority found that the communal/public interests did exist. In such circumstances, the learned Judge could not have set aside the orders of the Revisional Authority and the Chief Commissioner.

19. Unfortunately, the learned Judge did not even refer to any of the contentions raised in the counter affidavit. The counter affidavit filed by the Mandal Revenue Officer contained serious allegations such as that the *Takid* relied upon by the writ petitioner's father was a fabricated document and that the land had already been sub-divided and one sub-division classified as Channel and another classified as Settipalle Tank. But these averments were not considered by the learned Judge before allowing the writ petition.

20. It appears that the failure of the Department to produce pre-abolition records, as per the order of this Court dated 25-4-2003 and the statement of the learned Government Pleader in April, 2017 in the course of hearing of

the writ petition that the records are not traceable, shocked the conscience of the learned Judge, forcing him to draw an adverse inference. ***But what is to be borne in mind in cases of this nature is that the Government is different from Government servants and public interest is different from public servants. The failure of the public servants to protect public interest cannot eventually result in public interest becoming the causality.*** Water bodies are the properties of the community at large and hence the courts should keep in mind the fact that individual Government servants, either out of negligence or for extraneous considerations, may create situations forcing the Courts to draw adverse inferences such as the one drawn by the learned Judge. In such circumstances, Courts should look beyond the conduct of the Government servants and protect public properties especially when they are water bodies. The litigation fought by the writ petitioner is not strictly in the nature of an adversarial litigation, to draw adverse inference against the Government for non-production of records. As rightly contended by the learned Government Pleader, it was the duty of the person filing the application under Section 11(a) of the Estate Abolition Act to produce pre-abolition records. At least, the Settlement Officer ought to have summoned those records in the year 1981. The failure of the writ petitioner's father to produce the pre-abolition records and the failure of the Settlement Officer to summon

the pre-abolition records cannot be offset by the failure of the appellants to produce the records in the year 2017.

21. The learned counsel for the respondents contended that the factum of possession was recognised by this Court in W.P.No.11713 of 2002 and that therefore there was no dispute about possession. But it is seen from a copy of the order passed in W.P.No.11713 of 2002 that the said writ petition was filed by the writ petitioner to injunct the authorities from dispossessing him forcibly. When the writ petition came up for orders as to admission, the learned Government Pleader appears to have stated that steps have already been taken for cancellation of patta. Therefore, the writ petition was disposed of at the admission stage, directing the Department not to dispossess the writ petitioner. Since the writ petition was disposed of at the stage of admission itself, the claim of the writ petitioner to be in possession could not even be controverted. Therefore, a statement made in a previous writ petition which was accepted by the Court without an opportunity to the respondents to contradict the same, cannot be taken to be a finding on merits.

22. It is reiterated in several places in the counter affidavit filed by the Department of Revenue that the land in question is still a water body and the same has been taken over by TUDA for desilting. In the light of such a concrete statement, it was not possible for the learned Judge to have allowed the writ petition. When a serious fraud played by the

Settlement Officer not only in this case but also in several other cases is brought to the notice of the Court, the Court cannot go on procedural irregularities and grant relief to the writ petitioner contrary to the public interest. Hence, the appeal is liable to be allowed, accordingly, it is allowed and the order of the learned Judge is set aside. The interlocutory applications, if any, pending in this writ appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

11th December, 2018.
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