

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.2917 of 2006

Order:

This Writ Petition is filed to declare the proposed action of the respondents in seeking to dispossess the petitioners from the lands in Survey No.152/3 of an extent of Ac.1-00 each, situated at Kommadi village, Chinagadili Mandal, Visakhapatnam District, without following the procedure under Section 3(d) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short 'the Act'), as illegal and without jurisdiction.

The brief facts of the case, according to the petitioners, are that they are the owners and possessors of the lands in Survey No.152/3 of an extent of Ac.1-00 each, situated at Kommadi village, Chinagadili Mandal, Visakhapatnam District; the said lands are in possession and enjoyment of their family since 1956; pursuant to their representations, the then Tahsildar, Visakhapatnam issued provisional patta dated 29.11.1983 under the Board Standing Orders in respect of the said lands and they never violated the conditions of the patta and the said patta is still in force. They are regularly paying the land revenue; these lands are originally part of erstwhile Vizianagaram estate; the estate was abolished on 07.09.1949; as the lands are in their possession even from the time long prior to the abolition of the estate, they are entitled for issuance of patta under the provisions of the Act; as per Section 3(d) of the Act the Government is not entitled to dispossess the land holders who are entitled to patta under Section 12 in respect of private lands and the respondents, without following the procedure prescribed under the Act, are taking steps to evict

the petitioners; while so, the Mandal Revenue Officer issued notice dated 31.01.2006 in Form-I including their extent of land on the name of one Chenna Rao, who has nothing to do with their lands, and the said notice was erected at the fencing pole of their lands; recently the petitioners noticed that some notices were hung to the trees in the lands nearby their lands notifying that the respondents will take over the lands; though the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act have no application to their lands, pursuant to notice dated 31.01.2006, they have made a representation to the respondents not to dispossess them from the subject lands.

A counter affidavit has been filed by the Tahsildar, Visakhapatnam Rural Mandal stating, *inter alia*, that the village Kommadi was taken over under the provisions of the Act along with other villages of Vizianagaram District; after abolition of the estate, regular survey and settlement operations were conducted in the year 1958; during the course of settlement operations, the settlement authorities entertained all the claims and determined the new rights under the Act; they prepared a Settlement Fair Adangal and other records such as SF VII and SF VIII; survey and settlement operations were completed in the year 1959 and the Survey and Settlement records have been introduced in respect of the village with effect from 01.07.1959; as per the revenue records available the lands in Survey No.152/3 (carved out from Sy.No.118) of Kommadi village were classified as Assessed Waste Dry (Government lands) and the lands were vested with the Government since the date of notification; as per the records, the assignment was made in Sy.No.152/3 to one Narasayya by the then Tahsildar, Visakhapatnam Taluk and D-Form patta was also issued subject to usual conditions specified in BSO-15; due to violation of

conditions of the assignment, the D-Form patta issued to Narasayya has been cancelled vide proceedings dated 08.02.2002 and the subject land was resumed to the Government; the petitioners are claiming the Government lands basing on fabricated proceedings; Section 3(d) of the Act is applicable during taking over and settlement of the Estates and as Kommadi village is a settled village and the subject lands were classified as Vaagu Porambokes vested with the Government the provisions of Section 3(d) are not applicable and the question of following the procedure prescribed under Section 3(d) of the Act does not arise; after following the due procedure, the settlement officers settled all the cases in respect of all the people and the eligible persons were given ryotwari pattas; the writ petitioners have not submitted any application for grant of ryotwari patta; after lapse of 50 years the petitioners are claiming communal poramboke lands as zeroithy lands; they never granted any D-Form patta to the petitioners and the names of the petitioners are not recorded in any revenue records with respect to the subject lands; the records tampering issue was also under investigation by the SIT authorities; as per the provisions of the AP Assignment Rules, the Tahsildar issued notice to Chenna Rao, but not to the petitioners.

No reply affidavit has been filed by the petitioners disputing the averments made in the counter affidavit.

Heard learned counsel for the petitioners and the learned Assistant Government Pleader for Revenue.

Learned counsel for the petitioners contends that since 1956 the petitioners are in possession of the subject lands and the then Tahsidlar, Visakhapatnam had issued a provisional patta dated 29.11.1983 to the petitioners in respect of the subject lands. Since the petitioners are in

possession of the subject lands as on the date of abolition of the erstwhile Vizianagaram estate and they are regularly paying the land revenue, they are entitled for issuance of patta under the provisions of the Act. He further contends that as per Section 3(d) of the Act, the Government is not entitled to dispossess the land holders who are entitled to patta under Section 12 in respect of private lands and the respondents, without following the procedure prescribed under the Act, are taking steps to evict the petitioners.

On the other hand, learned Assistant Government Pleader contends that since the subject lands are not in possession of the petitioners and since they have not filed any application for grant of ryotwari patta and the lands are vested with the Government, the question of following the procedure contemplated under the Act does not arise at all. He further contends that the provisions of Section 3(d) of the Act are applicable during taking over and settlement of estates and as Kommadi village is a settled village, the provisions of Section 3(d) of the Act are not applicable to the present case.

As seen from the counter affidavit, Kommadi village along with other villages of Vizianagaram district was taken over by the Government under the provisions of the Act and after abolition of the estate, regular survey and settlement operations were conducted in the year 1958 and the settlement authorities prepared settlement fair adangal and other records and in respect of Kommadi village settlement records have been introduced with effect from 01.07.1959. As per the revenue records available, the lands in Survey No.152/3 (carved out from Sy.No.118) of Kommadi village were classified as Assessed Waste Dry (Government lands) and the lands were vested with the Government since the date of

notification. As per the records, the assignment was made in Sy.No.152/3 to one Narasayya by the then Tahsildar, Visakhapatnam Taluk and D-Form patta was also issued subject to usual conditions specified in BSO-15; due to violation of conditions of the assignment, the D-Form patta issued to Narasayya was cancelled vide proceedings dated 08.02.2002 and the subject land was resumed to the Government. It is also specifically stated in the counter affidavit that the petitioners were never in possession of the subject lands and they have not submitted any application in respect of the subject lands under the Act for grant of ryotwari pattas. Though the petitioners filed copy of provisional patta granted to them on 29.11.1983, the same is disputed by the respondents stating that the same is a fabricated one and the records tampering issue was also under investigation by the SIT authorities.

A perusal of Section 3(d) of the Act shows that it is applicable during taking over and settlement of Estates. Since the Kommadi village is a settled village and as per the revenue records the lands in the said village were classified as Assessed Waste Dry (Government lands) and the lands are vested with the Government since the date of notification, the said Section is not applicable to the present case. Since the petitioners are not in possession of the subject lands and as the lands vested with the Government, the provisions of said Section are not applicable to the petitioners. They also failed to establish that they are *prima facie* entitled to ryotwari patta.

Having regard to the facts and circumstances of the case and in view of the categorical statements made in the counter affidavit, which are not rebutted by way of a reply affidavit, that the petitioners are not in possession of the subject lands, they have not filed any application for

grant of ryotwari patta, the lands vested with the Government and that the provisions of Section 3(d) of the Act are not applicable to the present case, no relief as sought for by the petitioners can be granted.

The Writ Petition is devoid of merit and the same is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

Date: 30th August 2018
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THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



Date: 30th August, 2018

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