

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.2174 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 Nos.119 and 69/1 of 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 the petitioners 2 to 6 are the children of the 1st petitioner, the 1st petitioner is the son of Bypalli Appalaswamy; while Appalaswamy was alive he used to cultivate the lands and after him the 1st petitioner personally cultivated the lands extending about Ac.5-00 in Survey No.119 and Ac.3.31 cents in Survey No.69/1 of Kommadi village of Chinagadili Mandal, Visakhapatnam District; the Tahsildar also issued passbooks in the name of the 1st petitioner; after the 1st petitioner became old, the petitioners 2 to 6 are cultivating the lands; they raised teak and coconut trees in the said lands and obtained electricity connection; these lands are originally part of erstwhile Vizianagaram estate; the estate was abolished on 07.09.1949; as the lands were in their possession from the time of their forefathers long prior to the abolition of the estate, and as on the date of abolition of the erstwhile Vizianagaram estate they are in possession of the subject lands, 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; the petitioners are regularly paying the land revenue; the petitioners noticed that some notices were hung to the trees in the lands nearby the subject lands notifying that the respondents will take over the 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 Nos.119 and 69/1 of Kommadi village were classified as Vagu (Government land) and the lands were vested with the Government since the date of notification; the petitioners were never in possession of the subject lands; 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.

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 long prior to the abolition of estates, the petitioners forefathers were in possession of the subject lands and thereafter the petitioners are in possession of the same and 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 Nos.119 and 69/1 of Kommadi village were classified as Vagu (Government land) and the lands are vested with the Government since the date of notification. 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 Xerox copies of cist receipts which are of the years 1991, 1992, 1994 and 1996 but the mere payment of cist does not confer any right or title to the petitioners.

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 Vagu (Government land) 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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