

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

+ Writ Appeal No.516 of 2017

% Date: 11-12-2018

#Between:

1. The Joint Collector-cum-Settlement Officer,
Chittoor, Chittoor District

2. The Revenue Divisional Officer, Tirupathi,
Chittoor District

3. The Mandal Tahsildar, Tirupathi Rural,
Chittoor District

... Appellants/Respondents

Vs.

\$ 1. Smt. S.Kamalamma W/o late S.Ramanaiah,
R/o D.No.173, Nethaji Road, Tirupathi,
Chittoor District

2. S.Venkateswara Rao S/o late S.Ramanaiah,
R/o D.No.173, Nethaji Road, Tirupathi,
Chittoor District

3. S.Ravi Kumar Yadav S/o late S.Ramanaiah,
R/o D.No.173, Nethaji Road, Tirupathi,
Chittoor District

... Respondents/Petitioners

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

Counsel for Respondents: Mr. A.Chandraiah Naidu

< Gist:

> Head Note:

? Cases referred:

1. 1992 (2) ALT 464
2. AIR 1961 SC 1457
3. AIR 1964 SC 1013
4. AIR 1965 SC 1150
5. (1979) 3 SCC 135
6. 1985) Suppl. SCC 432
7. (2014) 11 SCC 672
8. AIR 1976 SC 2095
9. 2001 (6) ALT 182
10. AIR 2006 SC 1350

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

Writ Appeal No.516 of 2017

Judgment: (per V.Ramasubramanian, J.)

The State has come up with the above appeal questioning an order of the learned Judge setting aside an order of the Joint Collector-cum-Settlement Officer with costs of Rs.20,000/- and further directing the appellants to issue pattadar pass book to the writ petitioners (the respondents herein) under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971.

2. Heard the learned Government Pleader for Revenue (Andhra Pradesh) and Mr. A.Chandraiah Naidu, learned counsel for the respondents.

3. The respondents herein filed a writ petition in W.P.No.24980 of 2009 challenging the proceedings of the Joint Collector-cum-Settlement Officer, dated 04-8-2009, declaring the entire land in Survey No.251 as a river and also directing the cancellation of all forged and fake entries in the Fair Adangal. The case of the writ petitioners was that the husband of the 1st respondent herein and the father of the respondents 2 and 3 by name Ramanaiah was granted Saswatha Patta by the then Mahant of Sri Hathiramji Mutt on 05-3-1943; that as such, Sri Ramanaiah became the owner of the land of an extent of Ac.9.00 in Survey No.251/1 in Vedanthapuram Village, formerly of Chandragiri Taluk,

Chittoor District; that the said Ramanaiah approached the Settlement Officer claiming ryotwari patta under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948; that the Tahsildar contested the application on the ground that the land was part of Swarnamukhi river *poramboke* and not a ryoti land; that the Settlement Officer overruled the objections of the Tahsildar and passed an order dated 19-01-1982 granting settlement patta in favour of Ramanaiah; that thereafter Ramanaiah was granted pattadar pass book by the Mandal Revenue Officer; that the said Ramanaiah thereafter availed a loan on the said land from S.V. Grameen Bank, Tirupati and raised a mango garden; that however the Director of Survey and Settlement took up the case by way of a *suo motu* revision in R.P.No.251/84 and set aside the Settlement Officer's order; that questioning the order of the Director of Survey and Settlement dated 30-4-1990, Ramanaiah filed a revision before the Chief Commissioner of Land Administration; that the said revision was allowed by the Chief Commissioner by an order dated 20-8-2000; that thereafter the said Ramanaiah made representations to the Mandal Revenue Officer seeking the issue of pattadar pass book; that however the Tahsildar filed a writ petition in W.P.No.22069 of 2003 questioning the order of the Chief Commissioner of Land Administration dated 20-8-2000; that the said writ petition was dismissed by a learned Judge by an

order dated 21-10-2003; that a writ appeal in W.A.No.2322 of 2003 filed by the Mandal Tahsildar was also dismissed by a Division Bench on 31-3-2009; that during the pendency of the writ appeal, Ramanaiah died on 06-01-2009 leaving behind him, the 1st respondent herein as his widow and the respondents 2 and 3 as his sons; that even after the orders passed by this Court, the Mandal Tahsildar did not grant patta; that however the Joint Collector passed an order dated 04-8-2009 declaring the entire land in Survey No.251 to an extent of Ac.200.68 as Swarnamukhi river; that the Joint Collector also cancelled the previous orders and directed the Mandal Tahsildar to take action under Sections 9, 10, 11, 12, 13 and 14 of the Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884; that the Joint Collector also directed to evict all persons in occupation of the said land except those who are members of a Cooperative Joint Farming Society and that therefore the respondents were compelled to challenge the order of the Joint Collector.

4. The Tahsildar filed a counter to the writ petition contending *inter alia* that as per the village accounts of Vedanthapuram in Tirupati Rural Mandal, the land in Survey No.251 corresponding to Paimash Nos.192, 196, 198, 200, 199, 194 and 195 measuring an extent of Ac.200.68 was classified as Swarnamukhi River Poramboke; that out of the same, an extent of Ac.34.00 was set apart and sub-divided as Survey No.251/1 for the purpose of formation of

a Cooperative Joint Farming Society for Harijan welfare in the year 1973; that except this single sub-division, the land was never sub-divided any further; that the river Swarnamukhi passes through several mandals in Chittoor District and finally joins river Pennar near Vellore, before entering the Bay of Bengal; that the river has Inter-State interests and is a natural source of drinking water to several villages, cattle and other animals; that no individual can claim a right over the property of a community, especially that of a water body; that the Government had spent thousands of Crores for the restoration of the river and had also constructed several Surface Dams, Check Dams etc., both in the upper and lower shore of the subject land; that the Government alone is the rightful owner of land free of all encumbrances in terms of Section 3(b) of the Estate Abolition act, 1948; that since the land has been classified as *river poramboke*, neither any individual nor even institutions like Mutts can have a claim; that pursuant to the orders of the Government in G.O.Ms. No.50, Revenue, dated 16-01-1974, the Settlement Officer ought to have rejected the claim petition filed by Ramanaiah; that it came to the notice of the Government that three successive officers who held the post of Settlement Officer, during the period from 1981 to 1988, abused their official position to create rights in favour of private individuals on water bodies; that the patta granted in favour of Ramanaiah was also by one of those officers by name Sri A.D.V. Reddy

and that therefore the overwhelming public interest compelled the Joint Collector to pass the order that was under challenge in the writ petition.

5. The learned Judge, found fault with the action of the Joint Collector in passing the impugned order and allowed the writ petition with exemplary costs of Rs.20,000/- and further directed the Government to initiate disciplinary action against the Joint Collector. The learned Judge, as can be seen from his order, came to the conclusion that he did, primarily on five grounds viz.,

(i) that the earliest order of the Settlement Officer dated 19-01-1982 granting patta under Section 11(a) of the Estate Abolition Act, 1948, has already attained finality, inasmuch as the same received the seal of approval from this Court in a writ petition and a writ appeal, leaving no scope for the Joint Collector to reopen the issue;

(ii) that though the Settlement Officer Mr. A.D.V. Reddy was found in some cases to be guilty of abuse of official position in the matter of grant of pattas, the same cannot be a ground to set aside the patta granted in favour of Ramanaiah, inasmuch as the patta granted in favour of Ramanaiah was confirmed by the Chief Commissioner of Land Administration and the order of the Chief Commissioner was confirmed by a learned single Judge of this Court in a writ petition filed by the Mandal Revenue Officer and later in a writ appeal by a Division Bench of this Court;

(iii) that the contention now raised in the impugned order of the Joint Collector as though the land was not a ryoti land but a river poramboke, was already raised in the previous round of litigation but the same had already been rejected;

(iv) that though fraud may vitiate all proceedings, a party to a proceeding cannot raise the plea of fraud after the same was raised in the previous proceedings and rejected; and

(v) that an officer of the rank of Joint Collector exercising powers under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, cannot sit in judgment over the judgment of superior officers under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.

6. Assailing the order of the learned Judge, it is contended by the learned Government Pleader that the learned Judge did not permit the Joint Collector to file a counter affidavit raising a preliminary issue regarding the maintainability of the writ petition; that the writ petition was not maintainable since the State was not made a party; that when this objection was raised, the learned Judge *suo motu* impleaded the Principal Secretary to Government, Revenue Department, as the 4th respondent; that however no notice was ordered and no opportunity was given to the Principal Secretary to explain the stand of the Government in the

matter; that the learned Judge erred in proceeding with an assumption that some of the facts such as the grant of Saswatha patta way back in 1943 by the Mahant of the Mutt and the possession of Ramanaiah were all admitted; that the learned Judge failed to note that an application under Section 11(a) ought to have been made within the time prescribed in terms of G.O.Ms.No.50, dated 16-01-1974; that Ramanaiah filed an application under Section 11(a) only in the year 1981 after huge delay; that the pattas granted by Sri A.D.V. Reddy, Settlement Officer, at the time of his retirement and even thereafter, were declared by this Court in other proceedings not to be acted upon; that the land in question is classified as Swarnamukhi River Poramboke in the Revenue records and hence, the Joint Collector owed a duty to protect the same; that one of the officials of Hathiramji Mutt himself came under cloud when fabricated documents were seized in a police raid; that since fraud was not one of the issues raised in the previous proceedings, the orders passed in the writ petition and writ appeal in the previous proceedings, cannot operate as *res judicata* and that therefore, the order of the learned single Judge is liable to be set aside.

7. In response, it is contended by Mr. A.Chandraiah Naidu, learned counsel for the respondents, that the State cannot keep on litigating over the very same issue time and again; that orders of Court ought to be respected by the

Administrative Authorities, as otherwise there will be anarchy; that the Joint Collector by his order impugned in the writ petition virtually set at naught the order of the Division Bench of this Court and hence the learned Judge was rightly annoyed by his conduct; that in the previous proceedings, the Tahsildar took a stand that a portion of the land was earmarked for Harijan Colony and that the land was about 300 meters away from the actual river course and hence the Joint Collector was factually incorrect in contending that the land is a water course; that the attempt of the Joint Collector and the appellants to project the land as though it is a water course, is factually wrong even as per the stand taken by the appellants in the previous proceedings and that therefore the order of the learned Judge did not call for any interference.

8. We have carefully considered the rival contentions.

9. As pointed out earlier, the learned Judge allowed the writ petition primarily on five grounds. The first ground on which the learned Judge allowed the writ petition was that the earliest order of the Settlement Officer dated 19-01-1982 passed under Section 11(a) of the Estate Abolition Act, 1948, had attained finality in the previous round of litigation and that the orders passed in the writ petition and writ appeal in the first round of litigation operate as *res judicata*. To test the correctness of the above conclusion, let us have a look at the

first order of the Settlement Officer dated 19-01-1982 and all proceedings that arose out of the same.

10. A careful look at the order of the Settlement Officer Sri A.D.V. Reddy, dated 19-01-1982, would show that Ramanaiah filed an application under Section 11(a) in the year 1981 claiming that Hathiramji Mutt was the Inamdar of Vedanthapuram Village; that the Inamdar granted Saswatha Patta in favour of Ramanaiah's father on 05-3-1943; that ever since then the family was in possession and enjoyment; that Ramanaiah succeeded to the lands after the death of his father in the year 1960; that the lands are ryoti in nature with no communal interests involved and that during survey and settlement operations the suit lands were wrongly classified as river poramboke. In support of his contention, Ramanaiah examined himself as P.W.1 and an Ex-Village Munsif of the Village as P.W.2. The Settlement Officer examined the Truine Officer of the Village as Court Witness. The Saswatha Patta granted in favour of Ramanaiah's father on 05-4-1943 by Hathiramji Mutt was marked as Ex.P-1. The kist receipts issued by the Inamdar were marked as Exs.P-2 to P-4. Interestingly, the Tahsildar, Chandragiri, appears to have filed a counter before the Settlement Officer to the effect that the lands are ryoti in nature and that they are situate at a distance of 300 metres away from the actual river course. Therefore, without even calling upon the Revenue to produce the pre-abolition records, this infamous

Settlement Officer A.D.V. Reddy directed the grant of patta under Section 11(a).

11. The Director of Settlements invoked his *suo motu* power of revision under Section 5(2) of the Estate Abolition Act, 1948, as against the order of the Settlement Officer and issued notices to Ramanaiah and conducted an enquiry. Thereafter, the Director of Settlements passed an order dated 30-4-1990 allowing the revision and setting aside the order of the Settlement Officer on the following grounds:

(i) that the application for grant of patta under Section 11(a) was made for the first time after a lapse of 22 years after survey and settlement operations;

(ii) that a verification of the correlation statement and the survey land register revealed that R.S.No.251 corresponded to Paimash Nos.194, 192, 196, 198 etc., which stood registered as Swarnamukhi River Poramboke both under the Estate regime and during survey and settlement operations;

(iii) that even the Paimash Adangal for certain Faslis showed that these lands were classified as Swarnamukhi River with no encroachments;

(iv) that even the post-abolition adangals confirmed this position;

(v) that kist receipts issued by the Inamdar can never form the basis for establishing possession;

(vi) that Ramanaiah's possession and enjoyment was not reflected in the paimash adangals;

(vii) that the certified copy of the adangal for the Faslis 1356 to 1358 do not appear to be genuine but created for the occasion;

(viii) that the Settlement Officer had no power to grant patta in respect of a river poramboke;

(ix) that under Section 20A(2) of the Estate Abolition Act, 1948, no land set apart for any of the purposes referred to in Clauses (a) and (b) of Clause (16) of Section 3 can be assigned or used for any other purpose without a written order of the District Collector; and

(x) that therefore the order of the Settlement Officer was liable to be set aside.

12. As against the said order of the Director of Settlements, Ramanaiah filed a revision under Section 7(d) of the Act. Two interesting developments took place before the Chief Commissioner of Land Administration, who was the Appellate Authority. The first was that the Mandal Revenue Officer, Tirupati, did not either appear or made anyone represent him. The Chief Commissioner of Land Administration virtually proceeded *ex parte* after recording that the Mandal Revenue Officer, Tiruapti Rural, did not choose to file a counter inspite of service of notices to him well in advance. But what is intriguing is that the revision filed under Section 7(d) was of the year 1990. It was pending

before the Chief Commissioner of Land Administration for nearly ten years. The office of the Chief Commissioner of Land Administration was in Hyderabad. It is not stated in the order of the Chief Commissioner that any notice of enquiry was sent for the hearing that took place on 01-8-2000. The office of the Chief Commissioner of Land Administration was not like a Court where the Department was represented by any Government Pleader on a daily basis. Therefore, unless the Chief Commissioner of Land Administration had sent notice of enquiry for the hearing on 01-8-2000, especially in a matter that was pending for ten years, he could not have proceeded to pronounce orders.

13. The second intriguing thing that the Chief Commissioner of Land Administration did was to take on record a lot of additional documents filed by Ramanaiah. It may be recalled that before the Settlement Officer, Ramanaiah filed only four documents, one of which was the Saswatha Patta and the other three were kist receipts issued by the Inamdar Hathiramji Mutt. But before the Revisional Authority viz., the Chief Commissioner of Land Administration, Ramanaiah filed certain adangals, kist receipts etc., as well as copies of the judgment and decree of the Civil Court in A.S.No.46 of 1991 and judgment of the Civil Court in O.S.No.342 of 1985. The Mandal Revenue Officer, who was defending (or who was supposed to defend) the order of the Director of Settlements, did not have an opportunity to

challenge these additional documents filed by Ramanaiah before the Chief Commissioner of Land Administration.

14. However, the Chief Commissioner of Land Administration proceeded to allow the revision filed by Ramanaiah by an order dated 28-8-2000, on the grounds viz.,

(i) that as per the counter filed by Tahsildar, Chandragiri, before the Settlement Officer, the land was situate 300 metres away from the actual river course and was ryoti in nature;

(ii) that as per the judgment of this Court in **Kalleti Chengaiah v. Director of Settlement**¹, the *suo motu* power of revision should not be exercised after a long lapse of time;

(iii) that since the Mandal Revenue Officer, Tirupati, did not file a revision against the order of the Settlement Officer, it was evident that no Governmental interests were involved;

(iv) that the judgments of the Civil Courts filed as additional documents clearly showed Ramanaiah to be in possession and enjoyment; and

(v) that therefore the Settlement Officer was right and the Director of Settlements was wrong.

15. The order of the Chief Commissioner of Land Administration was challenged by the Mandal Revenue Officer by way of a writ petition in W.P.No.22609 of 2003. The said writ petition was dismissed even at the stage of admission by a learned Judge of this Court, on two grounds viz., (i) that the

¹ 1992 (2) ALT 464

writ petition was filed after more than three years of the order of the Chief Commissioner of Land Administration; and (ii) that in any case the order of the Commissioner was based upon appreciation of evidence.

16. The order of the learned single Judge dismissing the writ petition at the stage of admission, was taken on appeal in W.A.No.2322 of 2003. The writ appeal was dismissed by a Division Bench, by an order dated 21-3-2009, primarily on the ground that even as per the admission of the Tahsildar, Chandragiri, made in the course of the enquiry before the Settlement Officer, the land was ryoti in nature and not a river poramboke and that the entertainment of the *suo motu* revision by the Director of Settlements, was contrary to the decision of this Court holding that a *suo motu* power of revision should also be exercised within a reasonable time.

17. In the light of what had transpired from the order of the Settlement Officer dated 19-01-1982 culminating in the order of this Court in W.A.No.2322 of 2003, dated 31-3-2009, we shall now see whether there was finality to the order of the Settlement Officer and whether the previous proceedings operate as *res judicata*.

18. As stated earlier, the order of the Director of Settlements dated 30.04.1990 passed by invoking the *suo motu* power of revision under Section 5(2) of the Estate Abolition Act, 1948 was set aside by the chief Commissioner of Land Administration, without affording adequate

opportunity to the Mandal Revenue Officer, Tirupati Rural, to defend the department properly. What was before the Chief Commissioner of Land Administration was a revision under Section 7(d) filed in the year 1990. He took it up for hearing in the year 2000 and virtually proceeded to pass ex parte orders. What is worse is the fact that a lot of additional documents filed by the claimant Ramanaiah was taken into account by the Chief Commissioner without even putting on notice the Mandal Revenue Officer. Therefore, the order of the Chief Commissioner of Land Administration passed on the revision filed under Section 7(d) of the Estate Abolition Act, 1948 was completely in violation of all cannons of natural justice.

19. Unfortunately, the challenge made by the Mandal Revenue Officer to the order of the Chief Commissioner of Land Administration by way of a writ petition in W.P.No.22069 of 2003 got dismissed even at the admission stage by an order dated 21.10.2003. The primary reason why the writ petition was dismissed was that it was filed after more than three years of the order of the Chief Commissioner of Land Administration.

20. It is well settled that a writ petition dismissed in limine even at the stage of admission, on the ground of delay or laches, may not operate as *res judicata*, in subsequent proceedings arising out of a separate cause of action. The leading case on this point is **Daryao v. State of U.P.**². This

² AIR 1961 SC 1457

decision was followed with a rider in **Amalgamated Coalfields Ltd., v. Janapada Sabha**³. Though a different note was struck in **Devilal Modi v. Sales Tax Officer**⁴, the same was confined to the applicability of the principle of constructive res judicata to writ proceedings.

21. But all the decisions starting from **Daryao Rao** were taken note of and explained in **Hoshnak Singh v. Union of India**⁵. Even in this decision, the Court pointed out that when a writ petition is dismissed in limine on the ground of delay or laches or on the ground of alternative remedy or by a non-speaking one-line order, the same will not attach finality so as to bar a second writ petition from being filed. *Eventually the Supreme Court clarified in V. Prabhakar Rao v. State of A.P.*⁶, *that the dismissal in limine of a writ petition can possibly inhibit the discretion of the Court, but not its jurisdiction.* Therefore, the dismissal of W.P.No.22069 of 2003 filed by the Mandal Revenue Officer as against the order of the Chief Commissioner of Land Administration cannot be said to have attached finality to the order of the Chief Commissioner of Land Administration.

22. But that was not the end of the matter. The order of the learned Judge dismissing the writ petition in limine was taken on appeal to the Division Bench in W.A.No.2322 of 2003. This writ appeal was dismissed only after ordering

³ AIR 1964 SC 1013

⁴ AIR 1965 SC 1150

⁵ (1979) 3 SCC 135

⁶ (1985) Suppl. SCC 432

notice and hearing both the parties. Therefore, it is contended by Mr. Chandraiah Naidu, learned counsel for the respondents that finality did attach to the proceedings of the Chief Commissioner of Land Administration.

23. But we are unable to agree. A writ appeal, as against an order passed by a learned Single Judge, is actually under Clause 15 of the Letters Patent. Letters Patent, as held by the Supreme Court in **P.S. Sathappan (dead) by L.Rs., v. Andhra Bank Ltd.**,⁷ is a special statute and the power under Clause 15 is not a constitutional power of a High court. Actually, Letters Patent were issued in terms of the power conferred under the Indian High Courts Act, 1861 and is therefore, a subordinate Legislation. Though it has the force of law, the Supreme Court held in *P.S. Sathappan* that the Letters Patent is not a statutory enactment. Therefore, it was held not to prevail over the Code of Civil Procedure. As a corollary the jurisdiction of this Court in an appeal under Clause 15 of the Letters Patent is not like the jurisdiction of this Court in an appeal under Section 96 or 104 of the Code of Civil Procedure.

24. Keeping the nature of the jurisdiction available to a Division Bench of this Court under Clause 15 of the Letters Patent, if we look at the order passed by the Division Bench in writ appeal No.2322 of 2003, it can be seen that the hearing given to the writ appeal, cannot be treated as a

⁷ (2014) 11 SCC 672

substitute for the hearing that was necessary in the original writ petition. The original writ petition W.P.No.22069 of 2003 was for the issue of a Certiorari to call for the records of the Chief Commissioner of Land Administration and to quash the same. In the normal course, if the writ petition had been admitted, Rule Nisi would have been issued and the records relating to the impugned proceedings would have been examined by a learned Judge in exercise of the power conferred under Article 226. This benefit, viz., that of ordering the issue of Rule Nisi, calling for the records relating to the impugned proceedings and examining them, did not become available to the writ petitioner namely, the Mandal Revenue Officer, on account of the writ petition getting dismissed in limine at the admission stage. Therefore, the admission of the writ appeal and a hearing granted therein, cannot be treated as a substitute, for the opportunity that was denied to the State in the writ petition.

25. It is well settled that an opportunity granted by the appellate authority is no substitute for an opportunity that was available before the original authority. Without multiplying authorities for the proposition, a reference may be made to the decision of the Supreme Court in **Farid Ahmed Abdul Samad v. Municipal Corporation of the City of Ahmedabad**⁸. Therefore, we are of the considered view that no finality attached to the order of the Settlement Officer,

⁸ AIR 1976 SC 2095

merely because of the reversal of the order of the Director of Settlements by the Chief Commissioner of Land Administration and the dismissal of the writ petition and writ appeal filed by the State as against the order of the Director of Settlements.

26. As stated earlier there was a congenital deformity in the whole proceedings. The order of the Director of Settlements, *suo motu* revising the order of the Settlement Officer, was set at naught by the Chief Commissioner of Land Administration in complete violation of the principles of natural justice. This violation got white washed with the dismissal of the writ petition in limine on the ground of delay and laches and hence the confirmation of the order of the learned Judge in the writ appeal, would not cure such deformity/defect that goes to the root of the matter.

27. Hence the first ground on which the learned Judge allowed the writ petition (out of which the present writ appeal arises), as though the grant of patta by the Settlement Officer way back on 19.01.1982 had attained finality, cannot be sustained.

28. In fact the principle of law that finality should attach to litigation, is based upon the common law maxim "*interest republicae ut sit finis litium*" meaning that public policy and necessity makes it the interest of the State that there will be end to litigation. The principle of *res judicata*, which is only a derivative of the former, is derived from the

maxim “*res judicata pro veritate accipitur*” which means that “a thing adjudicated is received as the truth”.

29. It is a paradox that when the very object of adjudication by Courts is to find out the truth, the Roman law declared and which we follow even now, that whatever is adjudicated is the truth. When what is adjudicated, is actually a product of fraud and deceit, it is not possible, to go by the Latin Maxim that “what is adjudicated should be received as the truth”.

30. In the case on hand, what was clearly found to be part of the River Swarnamukhi in the pre abolition records was treated as a private property without reference to the pre abolition records and a patta issued by the Settlement Officer, who attained notoriety in Chittoor District. In fact, the manner in which the said Settlement Officer by name “Sri A.D.V. Reddy” issued pattas left, right and centre provoked to this Court to observe that apart from the various types of pattas known in revenue jargons, this officer created one more category known as “A.D.V.Reddy Pattas”. It is too late in the day for anyone to doubt the proposition that fraud vitiates all solemn acts and that no finality can ever attach to a product of fraud.

31. But the learned Judge, despite recording a finding that the concerned Settlement Officer was found in some cases to be guilty of abuse of official position in the matter of grant of pattas, came to the conclusion that the same need

not vitiate all pattas granted by him especially when the patta issued in favour of Ramanaiah in this case was confirmed by the Chief Commissioner of Land Administration.

32. But the aforesaid reasoning of the learned Judge is unacceptable. Once it is admitted that the concerned Settlement Officer was found to have abused his official position in the matter of grant of pattas in a large number of cases, it is not possible to sift the orders into two categories. Every order passed by the said officer may have to be looked at with suspicion, especially when the lands in respect of which pattas were granted by the officer were communal lands such as water bodies and rivers.

33. Digressing a little from the main course of the debate, we may point out that Swarnamukhi is a river that rises in Chandragiri Hills and passes through a valley to reach Srikalahasthi and flows through Vellore before joining the sea. The original name of the river was Uttaravahini. But its course is said to have changed at the request of Sage Agasthya and it flows from South to North. References to this river are found in Skanda purana.

34. Unfortunately, the width of the river along its course has been subjected to serious encroachments as on date. Some of the encroachments have received the blessings of the revenue officials such as the Settlement Officer Sri A.D.V. Reddy. Therefore, the Director of Settlement, *suo motu* revised the orders of the Settlement Officer, but the Chief

Commissioner of Land Administration set aside the order of the Director on a revision filed by the aggrieved party under Section 7(d) of the Estate Abolition Act, 1948, on technical grounds without giving adequate opportunity to the Mandal Revenue Officer to contest the case, after keeping it pending for 10 years. Therefore, the second ground on which the learned Judge allowed the writ petition of the respondents, viz., that merely because the Settlement Officer was tainted, all orders passed by him need not be tainted, cannot be accepted.

35. The third ground on which the learned Judge allowed the writ petition of the respondents is that the contention raised by the revenue that the land was a river poramboke, had already been raised and rejected in the previous round of litigation.

36. It is true that right from the beginning, the revenue had taken a plea that the land in question was part of a total extent of Ac.200.68 in Sy.No.251, constituting a part of the river. But the said contention never received the attention that it deserved in public interest, from any of the authorities or the Court. In the first round of litigation, Sri Ramanaiah examined a retired village munsif as a witness on his side before the Settlement Officer and the Tahsildar, Chandragiri, in collusion with the party, filed a statement as though the lands are ryoti in nature located at a distance of 300 meters from the actual river course. As a Settlement Officer, who had

a statutory duty to perform, keeping an eye on public interest, the Settlement Officer ought to have summoned the pre abolition records to see whether the land in question was part of the river poramboke. Since he failed to do so, the Director of Settlements invoked his *suo motu* power of revision under Section 5(2) of the Estates Abolition Act. The Director of Settlements recorded certain positive findings in his order dated 30.04.1990, which are as follows:

1. That the correlation statement and the Survey Land Register showed that R.S.No.251 corresponded to Pimash Nos.192, 194, 196, 198 etc.,
2. That these survey numbers indicated the land to be Swarnamukhi river both under the estate regime and during the survey and settlement operations;
3. That even the Paimash Adangal for certain faslis clearly showed the lands as Swarnamukhi river;
4. That even the post-abolition Adangal confirmed the said position and that the cist receipts issued by the Inamdar cannot form the basis for lawful possession.

37. Unfortunately the aforesaid findings of the Director of Settlements were upset by the Chief Commissioner of Land Administration in an appeal filed in the year 1990, which decided in the year 2000 without notice to the Mandal Revenue Officer, but after taking on record a lot of additional material filed by the claimants.

38. One of the important findings recorded by the Director of settlements (in the suo motu revision) was that under Section 20A (2) of the Estate Land Act, 1908, no land set apart for any of the purposes referred to in sub-clauses (a) and (b) of clause (16) of Section 3, can be assigned or used for any other purpose without a written order of the District Collector. This important finding with reference to a serious issue of law, was not even dealt with by the Chief Commissioner of Land Administration while reversing the order of the Director of Settlements. Section 3(16) of the A.P. (Andhra Area) Estates Land Act, 1908 defines "Ryoti land". It means a cultivable land other than private land, but it does not include beds and bunds of tanks and irrigation channels. Andhra Pradesh (Andhra Area) Estates Land Act, 1908 is an Act to declare and amend the law relating to the holding of land in estate. If the land was actually a cultivable land but on a river bed, it could not have been diverted even under the 1908 Act for private use without the order of the Collector. The Settlement Officer, who simply accepted the statement of the Tahsildar that the land is Ryoti land, did not even examine this aspect. This is why the Director of Settlements exercised the *suo motu* power of revision to upset the order of the Settlement Officer.

39. In fact, the interplay between the Andhra Pradesh (Andhra Area) Estates Land Act, 1908 and the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into

Ryotwari) Act, 1948, was also never taken note of either by the Settlement Officer or by the Chief Commissioner of Land Administration. As a matter of fact, the word “estate” is defined in Section 2(3) of the 1948 Act to mean a Zamindari or an undertenure or an Inam Estate. The definitions of all the three expressions (1) Zamindari (2) Undertenure; and (3) Inam Estate, under Section 2 of the 1948 Act is only with reference to the 1908 Act. The only officer, who applied his mind to this aspect, was the Director of Settlements, but his order was reversed by the Chief Commissioner of Land Administration without sufficient opportunity to the Mandal Revenue Officer, especially on certain additional documents filed by the claimant. Hence the third ground on which the learned Judge allowed the writ petition of the respondents, as though the nature of the land as a ryoti land, already got confirmed in the first round of litigation, cannot be countenanced.

40. The fourth ground on which the learned Judge allowed the writ petition of the respondents is that the question of fraud was already raised in the earlier proceedings before this Court and that the same having been rejected by this Court, it cannot be raised all over again.

41. But the said finding of the learned Judge in paragraph-VIII (j) does not appear to be factually correct. The writ petition W.P.No.22069 of 2003 was dismissed at the stage of admission primarily on the ground of delay and

laches. The judgment dated 21.10.2003 in W.P.No.22069 of 2003 does not contain even a formal recording of a finding on the plea of fraud.

42. Even the Division Bench, in its judgment dated 31.03.2009 passed in W.A.No.2322 of 2003 did not go into the question of fraud. Therefore, we do not know how the learned Judge came to the conclusion in Para-VIII (j) of the impugned order that the plea of fraud was already raised in the earlier proceedings, but had been rejected. Since this finding is factually incorrect, the reliance placed by the learned Judge upon the decision in **Chatrati Mallikharjuna Rao v. Government of A.P.**⁹, is also misplaced. In the first round of litigation where the order of the Director of Settlements was set aside by the Chief Commissioner of Land Administration and the writ petition and writ appeal filed by the Mandal Revenue Officer as against the same got dismissed, the plea of fraud was not gone into. The fraudulent manner in which patta was issued by the Settlement Officer treating a part of the river as a ryoti land, was simply brushed under the carpet. Therefore, it was the bounden duty of the Court to look into this issue. In fact in paragraph-VIII (j) of the impugned order, the learned Judge has come to the conclusion that the plea of fraud was already raised and rejected in the earlier proceeding, merely because the order of the Settlement Officer was upheld in the proceedings. An

⁹ 2001 (6) ALT 182

order, which is a product of fraud, cannot escape scrutiny when serious allegations of fraud are made, solely on the ground that the order had already been upheld in the previous proceedings.

43. As rightly pointed out by the Joint Collector in his order dated 04.08.2009, which was set aside by the learned Judge by the impugned order, the Settlement Officer granted patta only on the basis of a takid said to have been issued by the Mahanth of Hathiramji Mutt. But in the year 2004, 13 cases pertaining to Tirupathi urban were sent to A.P. Forensic Sciences Laboratory, Hyderabad to verify the signatures of the Mahanth. Based upon the reports it was concluded that the takids were fabricated documents created for the purpose of appropriating water bodies and river courses for private use. Those forgery and fabrication and the playing of fraud came to be known only after the year 2003 and hence the issue of fraud could not have been raised and decided in the first round of litigation filed in the year 2003. A portion of the order of the Joint Collector, that was set aside by the learned Judge in his impugned order reveals shocking facts. Therefore, it is extracted as follows:

“The claim is based on the purported document i.e. Takid said to have been issued by Prayagdassji Mahanth, Sri Swami Hathiramji Mutt, Tirupati. All these Takids were said to be issued in the year 1940 and so. Basing on the said takids and thereby the receipts, the claimant requested the then Settlement Officer, Nellore for grant of ryotwari patta and that was granted by the then Settlement Officer, Nellore.

Mahanth vaaru was not competent to alienate the property of the Mutt by granting pattas in the

absence of Registered documents. Prior to enacting of Madras Hindu religious endowments Act, 1951 there was no law regulating the affairs of the Mutt and even in the absence of any such law any grant by the Mahanth is not competent to alienate the properties of Mutt by grant of pattas/Saswatha Pattas/Takids. Even if such pattas were issued, they shall be registered since registration Act was in force prior to 1900.

Sri Mahanth varu used to sign in Hindi and not in Telugu. Similarly round seal affixed in these orders are also not of the Hathiramji

During the year 2004, 13 cases pertaining to Tirupathi (U) were sent to A.P.F.S.L. Hyderabad to verify the signatures of Sri Mahanthu Vaaru. All the cases were proved as fraud. Fraud is clearly established and proved beyond reasonable doubt both scientifically and also by applying legal aspects of A.P.E.A. Act 1948. These are clear case of snatching away valuable water course communal lands, by misleading the authorities by means of created, fabricated, and bogus documents. Hence criminal cases were filed against the culprits.

Coming to the suit land in Sy.No.251 with a total extent of Acs.200.68, it is classified as Govt. poramboke land as Swarnamukhi River. Since the land is water course poramboke land, it is an objectionable poramboke land, and not available for grant of ryotwari patta to any body under any act.

44. In fact, the Joint Collector cited several decisions in his order dated 04.08.2009, which is now set aside by the learned Single Judge, for his conclusion that fraud vitiated all the earlier proceedings. Therefore, when fabrication of records and forgery got confirmed only after the dismissal of the first writ petition, it cannot be stated that the question of fraud had already been raised and rejected in the previous proceedings.

45. The last ground on which the learned Judge found fault with the order of the Joint Collector was that a Joint Collector exercising powers under the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971, cannot sit in judgment over the judgment of superior officers under the

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.

46. But the said finding loses sight of one important aspect. The Joint Collector, did not, on his own accord, take up anything *suo motu* under the A.P. Act No.26/1971, to annul the order passed under the 1948 Act. On the contrary it is the respondents who approached the Joint Collector, after the demise of Ramanaiah for the issue of pattadar passbooks. Towards the end of paragraph-3 of the affidavit filed by the 1st respondent herein (wife of Ramanaiah) in support of the writ petition, she had pleaded that after the death of Ramanaiah, she approached the office of the Mandal Revenue Officer for the issue of pattadar passbook and title deed. The relevant averments in the affidavit in support of the writ petition read as follows:

“After receipt of the copy of the said order we have been making rounds to the office of the Mandal Tahsildar, Tirupati Rural the 3rd respondent herein for issuing pattadar Pass Book and Title Deed. But the 3rd respondent assured us that he will issue Pattadar and Title Deeds after consulting the Joint Collector, Chittoor the 1st respondent herein. But one way or other the matter has been dragging on. However with a fond of hope that the 3rd respondent will issue PPB and TD we were waiting.”

47. It is only when the respondents approached the Mandal Revenue Officer for the issue of pattadar passbook that he referred the matter to the Joint Collector, in view of the history of this litigation.

48. Actually Section 4 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 obliges every person acquiring

any right as owner, pattadar, mortgagee, occupant or tenant of a land, by any method, to intimate to the Mandal Revenue Officer, the factum of acquisition of such a right. Section 4 of the Act reads as follows:

4. Acquisition of rights to be intimated: – (1) Any person acquiring by succession, survivorship, inheritance, partition, Government patta, decree of a Court or otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land and any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such right, to the Mandal Revenue Officer within ninety days from the date of such acquisition, and the said Mandal Revenue Officer shall give or send a written acknowledgment of the receipt of such intimation to the person making it:

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other persons having charge of his property shall intimate the fact of such acquisition to the Mandal Revenue Officer.

(2) Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908) every registering officer appointed under the Act and registering a document relating to a transaction in land, such as sale, mortgage, gift, lease or otherwise shall intimate the Mandal Revenue Officer of the Mandal in which the property is situate of such transaction.

Explanation I:– The right mentioned above shall include a mortgage without possession and a right determined by Civil Court.

Explanation II:– A person in whose favour a mortgage is discharged or extinguished, or a lease is determined, acquires a right within the meaning of this section.

49. In this case, Ramanaiah got an order from the Settlement Officer on 19.01.1982. The same was reversed by the Director of Survey and Settlements, by order dated 30.04.1990. Ramanaiah filed a revision and the same was allowed by the Chief Commissioner of Land Administration on 20.08.2000. The writ petition filed against the said order was dismissed by a learned Judge in a writ petition filed in the year 2003 and the writ appeal filed against the said order got

dismissed in the year 2009. Therefore, Ramanaiah and his legal heirs became obliged under Section 4 of the A.P. Act No.26/1971 to inform the Mandal Revenue Officer of the acquisition of rights under the previous proceedings.

50. Upon receipt of such an intimation under Section 4, the Mandal Revenue Officer is obliged under Section 5 to determine as to whether and if so in what manner, the record of rights may be amended.

51. Therefore, it is clear that the respondents approached the Mandal Revenue Officer in terms of the obligation cast upon them under Section 4 of Act 26/1971. But the matter was referred to the Joint Collector. The expression Collector is defined in Section 2(2) to include a Joint Collector. Therefore he decided whether such mutation could be carried out or not. This exercise cannot be considered as the exercise of an appellate jurisdiction over the orders of the superior officer such as Chief Commissioner of Land Administration passed under the 1948 Act.

52. In any case, any proceeding, emanated from any authority, however high he may be, is liable to be set at naught, once fraud is established. Therefore, the last ground on which the learned Judge allowed the writ petition, also deserves to be rejected.

53. In **Intellectuals Forum, Tirupathi v. State of A.P.**,¹⁰, the Supreme Court pointed out that a water body is a

¹⁰ AIR 2006 SC 1350

communal property and the State authorities are trustees to hold and manage such properties for the benefits of the community. In para 82 of the report, the Supreme Court indicated that they cannot be allowed to commit any act or omission, which will infringe the right of the community and alienate the property to any other person or body. In paragraph 67 of the report the Supreme Court, while invoking the Doctrine of Public Trust, quoted the US Supreme court in *Illinois Central Railroad Company v. People of the State of Illinois* (146 US 537 (1892)) to the following effect –

“The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted.”

54. In fact the ownership vests with the State not because they hold title to the bed of navigable waters, but because they hold it in public trust. Therefore, the Courts have a duty to come down upon any attempt by individual officers to alienate or dispose of such property.

55. In view of the above, the writ appeal is allowed and the order of the learned Judge is set aside. There will be no order as to costs. The interlocutory applications, if any, pending in this writ appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

11th December, 2018.
Ak/js
LR copy to be marked

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

Writ Appeal No.516 of 2017
(per VRS, J.)



11th December, 2018.
(Js)