

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION Nos.21168 and 23414 of 2007

COMMON ORDER:

Both these writ petitions are disposed of by this common order as they have been filed assailing the very same orders passed by the Joint Collector, dated 01.09.2007, vide Case No.F1/4566/2006.

2) For the sake of convenience, the facts mentioned in W.P.No.23414 of 2007 are narrated for eliciting the history of the case.

3) It is the case of the petitioners that they are owners and possessors of the land in Survey No.188 admeasuring Acs.8.36 guntas at Kondapur Village, Serilingampally Mandal. The lands being Inam lands, they have applied for issuance of Occupancy Rights Certificate (ORC) under the provisions of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short 'the Act'). The Primary Authority i.e. Revenue Divisional Officer after going through the entire record has granted ORC vide order, dated 20.07.2006, in Case No.L/2584/2005 for an extent of only Ac.2.00 guntas in survey No.188 of Kondapur Village, giving 1/3rd share each in Ac.2.00 guntas to M.Bikshapathi, Smt.Kubra Bee and Smt.Sogra Been. In the appeal filed under Section 24 of the Act, the Joint Collector vide order, dated 01.09.2007, has set aside the orders of the Revenue Divisional Officer, dated 20.07.2006, holding that the same is passed contrary to the record and held as under:

“For the reasons explained above, the impugned orders of Revenue Divisional Officer, in Proceedings. No L/2584/2005 dated 20-07-2006 is hereby set aside. The land in question being **Inam lands** vest with the State upon abolition of Inams as per Section 3 of the Act. As the lands in question fall within the submergence of a water body, under the Kunta Katta, in respect of these lands occupancy cannot be registered as per Section 4 (1) (a) of the Act. The lands therefore, vest with the State and Tahsildar Serilingampally is directed to safeguard the said lands. The appeal is accordingly disposed of.”

Aggrieved by the above order of the Joint Collector passed in Case No.F1/4566/2006 on 01.09.2007, the present Writ Petition is filed.

4) Heard Sri D.Madhava Rao and Sri Hari Hara Kumar, the learned counsel for the petitioners, and the learned Government Pleader for Revenue.

5) It is the contention of the learned counsel for the petitioners that the Joint Collector without appreciating the facts of the case and by misinterpreting the provisions of Section 4 (1) (a) of the Act, has set aside the order of the Revenue Divisional Officer without any legal basis contrary to the record. Learned counsel has drawn the attention of this Court to the findings given by the Joint Collector at page No.5 of the impugned order, he has strenuously contended that the Joint Collector by erroneously misinterpreting the report submitted by the Tahsildar vide Lr.No.B/702/2006, dated 15.12.2006, has set aside the order of the Revenue Divisional Officer granting ORC to the petitioners herein to the extent of Ac.2-00 gts. The learned counsel has drawn the attention of this Court to the relevant portion of the report filed

by the Deputy Collector & Tahsildar, Serilingampally, before the Joint Collector which reads as follows: *“regarding present status of the land in respect of Sy.No.188 of Kondapur village. The total extent of the land in Sy.No.188 is Acs.8-36 gts, out of which, as per Tahsildar’s report, an extent of Acs.6-36 gts is submerged in Kudikunta Shikam and an extent of Acs.2-00 gts is under the Kunta Katta which is fallow”*. The contention of the learned counsel for the petitioners is that the report of the Tahsildar is in favour of the petitioners as the description of the land of Ac.2.00 guntas by the Tahsildar is follow which makes it clear that the same is vacant but not cultivated.

6) Per contra, the learned Government Pleader has drawn the attention of this Court to the provision of Section 4 (1) (a) of A.P.T.A. Abolition of Inams Act, 1955, and contends that the Occupancy Right Certificate cannot be issued in respect of lands set apart for the village community grazing lands, mines and quarries, tanks, tank beds and irrigation works, streams and rivers and contended that the Joint Collector was right in setting aside the order of the Revenue Divisional Officer granting ORC for an extent of Ac.2.00 gts and same does not call for any interference in the writ petition.

7) A perusal of the report given by the Dy. Collector & Tahsildar, Serilingampally, makes it crystal clear that out of Acs.8-36 guntas of land situated in Survey No.188, only an extent of Acs.6-36 gts. is submerged in Kudikunta Shikam and an extent of Acs.2.00 guntas of land is under Kunta Katta which is fallow. As rightly pointed out by the learned counsel for the petitioners,

the Joint Collector, without giving any finding regarding the length or breadth of the katta/bund of Kudikunta or without there being any record to show that the entire land of Acs.8.36 guntas was submerged or that the extent of Ac.2.00 of land was covered by katta, has set aside the orders of the Revenue Divisional Officer granting ORC.

8) This Court as well as the Hon'ble Supreme Court, in catena of judgments, while dealing with the grant of ORC under the Act, have repeatedly held that the date of vesting for the purpose of granting ORC is 01.11.1973 and the possession of the lands existing as on the said date of vesting has to be taken on record for the purpose of granting ORC and the persons in actual occupation of the same have to be issued the ORC.

9) The order of the Revenue Divisional Officer makes it abundantly clear that the extent of Acs.2.00 guntas out of Acs.8-36 guntas of land in survey No.188 of Kondapur Village, is a vacant land and it is only the remaining land admeasuring Acs.6-36 guntas that is submerged in Kudikunta tank. The Revenue Divisional Officer having found that the petitioners are in actual possession of the land to the extent of Ac.2.00 gts. has granted ORC. The report of the Deputy Collector & Tahsildar, Serilingampally, dated 15.12.2006, makes it clear that an extent of Ac.2.00 gts of land is not submerged nor any katta/bund is constructed over the land in question, but, on the other hand it is kept fallow, which makes it abundantly clear that it is not cultivated on the date of inspection. Had the Tahsildar found that land was covered by patta, he could have stated so and not mentioned the words "which is fallow". Only

vacant and cultivable which is not been cultivated at that point of time will be recorded as fallow, obviously at the time of inspection prior to sending the report it was not cultivated and hence the words “which is fallow” were used by the Tahsildar. In view of the above mentioned facts and circumstances of the case, the order of the Joint Collector setting aside the order of the Revenue Divisional Officer granting ORC, was not proper and contrary to the report of the Deputy Collector & Tahsildar, hence, the same is set aside restoring the order of the Revenue Divisional Officer granting ORC in Case No.L/2584/2005, dated 20.07.2006.

10) For the above mentioned reasons, both the writ petitions are allowed to the extent indicated above.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 12-12-2019.
smr/sur