

Lingareddy Ramakrishna Reddy and ors. Vs. Director of Settlements and ors.

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Court : Andhra Pradesh

Decided On : Jan-28-1997

Reported in : 1997(4)ALT409

Judge : S.V. Maruthi, J.

Acts : Andhra Pradesh (A.A.) Estates Land Act, 1908 - Sections 10 and 64;
Andhra Pradesh (A.A.) Estates (Abolition and Conversion into Ryotwari) Act, 1948
- Sections 1(4) and 11

Appeal No. : Writ Petition No. 21218 of 1995

Appellant : Lingareddy Ramakrishna Reddy and ors.

Respondent : Director of Settlements and ors.

Advocate for Def. : G.P. for Revenue

Advocate for Pet/Ap. : A. Ranga Charyulu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.V. Maruthi, J.

1. This writ petition is filed for a Writ of Prohibition restraining the first respondent-Director of Settlements from proceeding further with the suo motu enquiry pursuant to the notice dated 8-4-1995.

2. The facts in brief are as follows: The Raja of Venkatagiri Zamin Estate granted land in Paimaish No. 679 of Madanuru village BitNo. 2 (now surveyed in Ethamukkala village) in favour of eight families of Alla, Ulchi, Samanthula, Maturi, Kunkala, Lingareddy, Bapireddy and Kalahasthi Reddy more than 100 years ago for the purpose of cultivation and pasturage on payment of usual rent due thereon. Raja Saheb granted land in Paimaish Nos. 17, 18, 23 and 24 situate in Somavarappadu village in favour of Kolagatla Peda Narasimham and others 100 years ago for the purpose of cultivation and pasturage. The petitioners acquired these lands either by purchase from the original grantees or by inheritance from the original grantees. The land was cultivated partly with dry crops like greengram etc., and the rest was used for grazing purposes exclusively by the petitioners and their predecessors-in-title. The petitioners claimed that they have acquired occupancy rights in respect of their holding situate in Ethamukkala and Somavarappadu villages long before 1-7-1945. The Venkatagiri Zamin Estate was taken over by the Government Under Section 1(4) of the Estates Abolition Act, 1948 (hereinafter referred as 'the Act') on 7-7-1949. Prior to the abolition of the Estates, under the Estates Land Act of 1908, the lands were transferable and heritable Under Section 10 of the Estates Land Act, 1908. The petitioners as the transferees stepped into the shoes of transferors Under Section 64 of the Estates Land Act of 1908. The following documents establish their title to the property in dispute namely:-

(i) 8-1-1898 - Registered sale deed executed by Koratla Krishna Reddy and others in favour of Lingareddy, Rami Reddy and others,

(ii) 4-1-1898 Registered sale deed executed by Kolagatla Peda Narasimham and others in favour of Lingareddy Rami Reddy and others,

- (iii) 27-3-1900 registered sale deed executed by Sivaraju Kotaiah in favour of Bommireddy Ramalinga Reddy.
- (iv) 24-7-1908 Registered sale deed by Kothapalli Ademma in favour of Valivarthi Adiraju.
- (v) 27-7-1908 Registered sale deed by Lingareddy Subbamma, w / o Subba Reddy and Gollamudi Gannamma, w/o. Subba Reddy in favour of Linga Reddy Venkata Subba Reddy, s/o Yella Reddy situate in Madanuru village.
- (vi) 20-11-1931 Registered Will by Linga Reddy Venka Reddy bequeathing his undivided share in the land situate in Madanuru Bit No. 2 village in favour of Balleli Pulla Reddy.
- (vii) 25-3-1994 Registered Sale deed by Vemuri Seetha Ramaiah in favour of Vemuri Subbaramaiah.
- (viii) 16-5-1947 Registered Sale deed executed by Voyyeti Rami Reddy in favour of Alia Narayana Reddy.
- (ix) 29-5-1951 Registered Partition deed executed by Voyyeti Polamma in favour of (1) Kulakala Sankaramma and (2) Musunuru Venkata Subbamma.
- (x) 15-8-1955 Registered Settlement deed executed by Maram Rukminamma in favour of Bapireddy Venkata Reddy.
- (xi) 27-10-1957 Registered Partition deed executed by Kesavarapu Subba Reddy and Ramalinga Reddy.
- (xii) 19-8-1967 Registered Partition deed executed by Vemuri Subbaramaiah in favour of Mobbireddy Nara Reddy.
- (xiii) 6-11-1968 Registered Sale Deed executed by Kesavarapu Ramalinga Reddy in favour of Bapireddy Venkata Reddy.
- (xiv) 6-11-1968 Registered sale deed executed by Kalahasthi Venkata Krishna Reddy in favour of Rachagolla Venkateswarlu.

(xv) 6-11-1968 Registered Sale Deed executed by Kesavarapu Ramalinga Reddy in favour of Jangili Venkateswarlu.

(xvi) 6-11-1968 Registered Sale deed executed by Kesavarapu Ramalinga Reddy in favour of Adigopula Rajagopal.

(xvii) 6-11-1968 Registered Sale deed executed by Kesavarapu Ramalinga Reddy in favour of Adigopula Venkata Subbamma.

(xviii) 14-7-1976 Registered sale deed executed by Alia Varada Reddy in favour of Ulchi Nanda Kumara Reddy and Sudhakara Reddy.

(xix) 10-12-1976 Registered sale deed executed by Boggavarapu Pitchaiah in favour of Vayala Veerabhadram and others.

3. The Raja of Venkatagiri filed a rent suit in the Revenue Court before the Sub-Collector, Ongole in Rent Suit No. 20/1934 against Maturu Venka Reddy and others Under Section 77 of the Estates Land Act, 1908 in respect of Patta No. 19 for recovery of arrears of rent for the years 1930 to 1932. The suit was decreed and E.P.No. 129 was filed on 21-6-1936 for recovery of the decretal amount.

4. One Dudala Anjaiah filed a suit O.S.No. 115/69 in the Court of Subordinate Judge, Ongole for a Declaration of title and injunction against Ulchi Koti Reddy and 7 others in respect of the lands situate in Somavarappadu village. Some of the documents referred to in the earlier paragraph were exhibited on behalf of the defendants who are the petitioners in the present writ petition. Dittam 10(1) account and certified copies of Somavarappadu village were marked as Exhibits in favour of the defendants who are the petitioners on 28-12-1970. One Smt. Bathula Anasuyamma also filed a Suit O.S.No. 77/94 on the file of the District Munsif Court, Ongole for partition of her share of the property against the petitioners and the suit was decreed on 27-7-1979 and a final decree was passed on 22-9-1983.

5. A part of the land was acquired by the Government for Nagarjuna Canal Project and compensation was paid to the petitioners. The petitioners also filed declarations under the Andhra Pradesh Agricultural Land Ceiling Act and the Competent Authority declared that three petitioners are holding excess land

pursuant to which the said three petitioners had surrendered the land to the Government. In the Estate Land Register of Madanur Bit No. 2 Village (Ethamukkala) 1917 Survey Paimaish No. 679 correlated to O.S.Nos. 1, 4, 5, 8 and 9 with a total extent of Acs. 152, 69 cents and the names of Lingareddy Ramakrishna and others were entered as Pattedars. In the Estate Land Register of 1917, Survey of Somavarappadu village Paimaish Nos. 17, 18, 23 and 24 were correlated to survey numbers 15, 17, 18 and 21. The extent of land covered by the survey number was found to be Acs. 135.21 cents. The Tahsildar, Pellur prepared Estate Land Register for the purpose of administering the Estate lands till the re-survey operations were concluded under the Act, 1948 relying on the Estate Land Register prepared in 1917 survey. The said register was signed by the Jamabandi Officer on 29-3-1954. The said register was marked as Ex. A-12 in O.S.No. 43/53 on the file of the District Munsif Court, Ongole.

6. The Estate dittam was also prepared in 1336 Fasli and 1338 Fasli which mentions the names of the ryots and their individual shares disclosing the patta numbers and survey numbers and the rent payable to Zamindar and classification of land as dry or wet. The dittam of 1338 Fasli distinctly mentioned the actual extent of land held by each individual sharer in O.S.Nos.1,4,5,8 and 9 of Madanur bit-2 (Ethamukkala). After the abolition of estate, survey was conducted under the A.P. Survey and Boundaries Act after issuing notices to Bommireddy Raghava Reddy and 56 others indicating survey Nos. 843, 850, 851, 846 and 847 of Ethamukkala village. In this survey, the lands in old survey number I of Madanuru Bit-2 were merged in Ethamukkala survey group. Old survey No. 1 of Madanur Bit.2 was correlated to S.No. 843 of Ethamukkala with an extent of Acs. 10.29 cents, O.S.No. 4 of Madanur Bit-2 was correlated S.No. 846 with an extent of Acs. 33.21 cents. O.S.No. 5 of Madanuru Bit-2 was correlated to S.No. 847 with an extent of Acs. 42.80. O.S.No. 8 of Madanur Bit-2 was correlated to S.No. 850 with an extent of Acs. 37.90 cents. O.S.No. 9 was correlated to S.No. 851 with an extent of Acs. 28.49 cents. The patta numbers that were given are 1137, 1138, 1139, 1140 and 1141 in 10 (1) account of 1368 Fasli. The petitioners' names were mentioned against each patta with survey number, extent, land revenue, classification etc. Some of the petitioners who are purchasers subsequent to 1967, their names were not included in 10(1) account prepared in 1368 Fasli but their

vendors' names were mentioned.

7. Similarly in 10(1) account of 1368 Fasli of Somavarappadu village S.No. 15/2 measuring Acs. 26-76 cents, S.No. 17 measuring Acs. 34.80 cents, S.No. 18 measuring Acs. 42.05 cents and S.No. 21 measuring Acs. 31.60 cents under patta Nos. 37, 35, 36, the names of the petitioners have been entered except those names of the petitioners who purchased land subsequently. The names of the vendors of those petitioners were duly entered in 10(1) account of 1368 fasli. During the settlement operation either the petitioners or their vendors were recognised as ryots in 10(1) account of 1358 Fasli. Under the Estates Abolition Act, 1948, every ryot who was inducted into possession of ryoti land prior to 1-7-45 is entitled to a ryotwari patta Under Section 11 of the Act and the names of the pattedars will be entered into 10(1) account of the village. All the petitioners' names were duly entered in 10(1) account of 1368 Fasli which was prepared during the settlement operations by the Settlement Authority. In 1956, after the abolition of Estate, rough pattas were also granted to them.

8. However, the Collector, Prakasham requested the Director of Settlements to initiate suo motu proceedings in respect of the land held by the petitioners situated in Ethamukkala and Somavarappadu villages. The Collector, Prakasham instructed the Mandal Revenue Officers of Kothapatnam and Tangutur to publish in the village by torn torn that a suo motu case in respect of the above lands is pending before the Director of Settlements and restraining the occupants from alienating the land during the pendency of the suo motu enquiry. Accordingly, torn torn was made on 12-8-1985 in the village. Since the petitioners did not receive any suo motu notice from the Director of Settlements during the last 10 years on 20-2-1995, the petitioners filed a petition before the Director of Settlements requesting him to inform whether any such suo motu revision petition is pending before him. On 2-5-1995, the Counsel of the petitioners was informed that a suo motu revisional enquiry is pending in R.P.No. 10/95 before the Director of Settlements. Challenging the information received by the Counsel that a suo motu enquiry is pending, the present writ petition is filed.

9. Number of arguments were advanced by the Counsel for the petitioners as well as the respondents challenging the suo motu enquiry. To consider the arguments of the learned Counsel for the petitioners as well as the respondents, it is necessary to refer to the grounds mentioned in the impugned proceedings proposing to hold a suo motu enquiry:-

(1) The settlement Form -17 Registers which are basis to build up the Settlement Fair Adangal and Manuscript Diglot Register are not available in respect of the two villages in question.

(2) The pre-abolition records of these two villages are not available in spite of diligent search made. The pre-abolition records are vital to know the classification of the lands in the pre-abolition period and to decide the entitlement of ryotwari patta to a ryot.

(3) In the absence of the abovementioned two basic and vital records, it cannot be said that the patta granted in respect of the lands in question are genuine.

(4) The huge extents of the lands have been left uncultivated for several years and the lands are being used as pasture lands by the pattedars. If the pattas had been genuine, the pattedars would not have left the lands without cultivation. This gives scope of a doubt whether these lands are classified as pasture lands in pre-abolition period i.e., prior to 1-7-1945.

(5) The only evidence with the Pattedars to prove that they are patta lands is the rough pattas and Govt. accepting surrender of surplus lands under Land Ceiling Act. But, the said rough pattas do not contain the seal of the Assistant Settlement Officer, Guntur and that they contain only facsimile signatures.

10. Admittedly, the Director of Settlements is referring to Estate Land Register, Estate Dittam, Rent reduction statement and the Survey Land Register which are the pre-abolition records. To consider the ground that pre-abolition records were not available, it is necessary to refer to one of the suits filed by one Dulla @ Dudala Anjaiah not only against the predecessors of the petitioners but also against some of the petitioners for declaration of his title and injunction in respect

of S.No. 21/2 in the village of Somavarappadu. In the said suit, the following documents were marked. Ex.A-2 dated 15-12-1969 is a certified copy of Re-survey and Re-settlement register of S.No. 52 Somavarappadu of Pellur taluk of Guntur District. Ex.A-6 dated 17-11-1969 is a certified copy of the Settlement Register of Somavarrappadu village No. 52 issued by the Settlement Officer. Ex.B-9 the Land Register of Somavarappadu village (Duplicate No. 52)Ex.X-2 of Fasli 1327 dittam of Somavarappadu village of 1917. Ex.X-5 Fasli 1359 is No. 10 (1) Account of Somavarappadu village. Ex.X-8 1959 is the Adangal 10(1) account. The suit of the plaintiff was dismissed holding that the defendants who are the petitioners in the present writ petition are the Pattedars of Survey No. 21/2. The learned Judge while dismissing the suit held that the Zamindar of Venkatagiri Estate in 1917 got the villages resurveyed by adopting the field survey system obtained in the ryotwari villages under the Government and the large blocks of land bearing different paimaish numbers before 1917 were divided into different plots of land bearing different survey numbers. After completion of survey in 1917, the officials of the estates prepared what is known as Land Register for each village which corresponds to the Survey and Settlement register in the Government villages. The said Register contained the names of the pattedars who were in possession of land in 1917 and Ex.B-9 is one of the Land Register of Somavarappadu village which was prepared in 1917. Similarly the Karanam of the estate village prepared a register called Dittam which corresponds to village account No. 10 (1) of the Government villages. This Dittam was prepared by the Karanam every year noting the changes in patta numbers and changes in the names of the Pattedars and other details. After the Abolition of the estate, the Government had taken up the survey and settlement operations in the estate villages and surveyed the lands and pattas were issued to persons who were in possession and enjoyment of the land at the time of taking over the estate by the Government. The Settlement Officer has taken the village registers maintained by the officials of the estate. The records that were taken by the Settlement Officer are Land Register, various Dittams and Adangals and other connected records. Relying on the above records maintained by the officials of the erstwhile estate and after holding enquiries issued pattas to the persons who satisfied the provisions of the Estates Abolition Act, 1948. The learned Judge also relied on

Ex.B-9 land Register. He also found that the land under Ex.B-9 is dry land and not Pasture Land. If the lands were pasture lands the Zamindar would have collected pasturage fees and hence S.No. 21/2 is not a pasture land but a dry land. Ex.X-2 the Dittam of the year 1917 corresponds to Fasli 1327 and it relates to Somavarappadu village maintained by the erstwhile estate officials corresponding to 10(1) account in the Government village. Ex.X-2 Dittam mentions the names of the Pattedars who enjoyed the lands. The names of Madanur ryots were mentioned in Ex.X-3 . He also found the entries in the Land Register and the Dittam mentions that the ryots of Madanur village are pattedars in 1917 and they are owning Kudivaram right in the land. The learned Judge also referred to Ex.X-1 patta granted by the Proprietor of the Venkatagiri estate in fasli 1352 relating to survey Nos. 21, 15, 17 and 18 and patta number is 19 wherein the names of Samanthula Subbareddy, Ulchi Koti Reddy and the others are mentioned as Pattedars. Ex.X-1 bears the Mohar of the estate and facsimile of the signature of Zamindar. Ex.X-5 is 10(1) account of Somavarappadu village from fasli 1359 to 1368 Fasli i.e., from 1949 to 1958 which is prepared by the Karanam who was examined as D.W. 7. He also referred to Ex. A-2 which is the survey extract from the survey and resettlement register of Somavarappadu village prepared by the Government officials in 1958. He found that the survey was completed in 1958 and from the Registers which were taken over by the Revenue Authorities from the estate officials in 1949, the pattedars for the suit land were the ryots of Madanur.

11. In other words in O.S.No. 115/69 pre-abolition records namely, Estate Land Register, Dittams and 10(1) account prepared by the estate officials were exhibited and it was admitted that the Revenue authorities have taken the records at the time of abolition of Estate under the Act and relying on the said records the Settlement Officer after holding an enquiry in 1958 granted rough pattas to various persons. It appears that the Judgment in O.S. No. 115/69 has been confirmed by the High Court in A.S.No. 11/1971. It is true that the judgment only refers to the pre-abolition records of Somavarappadu village alone. However, the previous proceedings disclose that the estate officials prepared systematically the Estate Land Register, Dittam and 10(1) account and the said records were taken over by the Government officials after the abolition of the estate.

12. The only inference that can be drawn is that the officials of the estate have systematically prepared the Estate Land Register, Dittam every year and 10(1) account recording the names of persons who are in actual possession of the land to whom the grant was made. Therefore, the ground that the pre-abolition records of these two villages are not available in spite of diligent search is not based on any preliminary enquiry. On the other hand, from the Judgment of the Sub-Judge, Ongole dated 28-12-1970 pre-abolition records of Somavarappadu were exhibited and marked in the suit.

13. When the pre-abolition records were taken over by the Government officials and were exhibited and marked in the previous civil proceedings, what provoked the respondent to say that the pre-abolition records are not available is not forthcoming from the records or the counter affidavit. It is not the case of the respondents that a complaint was made and on preliminary enquiry it was found that the pre-abolition records were missing and that action was taken against the concerned officials who were responsible for the loss of records.

14. From the above, the only inference that can be drawn is that either the Director of Settlements has not applied his mind before issuing show cause notice nor did he make preliminary enquiry into the non-availability of the records. When pre-abolition records of Somavarappadu were exhibited and marked in a civil proceedings the observation of the Director of Settlements, that the pre-abolition records are not available, is based on no material.

No material is placed before me since when these records were not available and how and when the Director of Settlements came to know of the nonavailability of the pre-abolition records, the only inference that can be drawn from the material placed before me is that the Director of Settlements is intentionally withholding the best evidence in his possession which would throw light upon the correct state of affairs (Refer Hiralal v. Badkula, : [1953]4SCR758).

15. Therefore, I am of the view that the ground that pre-abolition records of these two villages are not available in spite of diligent search is not based on any material evidence. On the other hand, in spite of extensive arguments advanced in the writ petition, the respondents have neither made an attempt to produce the

records which were taken over by the Revenue Officials at the time of taking over of the estate, nor did they make any attempt to explain as to what happened to these records taken over by them and who were responsible for the loss if any, specially in this case when the Courts have taken judicial notice of the existence of pre-abolition records.

16. The next ground is that huge extents of lands have been left uncultivated for over years and the lands are used as pasture lands by the Pattedars. Under Section 11 of the Estates Abolition Act, ryotwari patta is granted in respect of ryoti lands which is included in the holding of a ryot. Section 3 (16) of the A.P. (Andhra Area) Estates Land Act, 1908 defines ryoti land as cultivable land in an estate other than private land but does not include..... Section 3(1) of the Act defines 'Agriculture' as including Horticulture. The expression 'agriculture' has been interpreted by the Supreme Court under the Income tax Act in I.T. Commissioner v. Benoy Kumar, : [1957]32ITR466(SC) and held that

' In considering the connotation of the term 'agriculture' we have so far thought of cultivation of land in the wider sense as comprising within its scope the basic as well as the subsequent operations described above, regardless of the nature of the products raised on the land. These products maybe grain or vegetables or fruits which are necessary for the sustenance of human beings including plantations and groves, or grass or pasture for consumption of beasts or articles of luxury such as, betel, coffee, tea, spices, tobacco etc., or Commercial Crops like cotton, flax, jute, hemp, indigo etc.'

17. In Athmanathaswami Devasthanam v. K. Gopalaswami, : [1964]3SCR763 the Supreme Court held that

'waste lands covered with shrubs, jungle and the like cannot be held to be uncultivable merely on that account or on account of their being not cultivated for a long time. Land which can be brought under cultivation without any undue expenditure of money and labour is cultivable land unless some provision of law provides for holding it otherwise in certain circumstances.'

A Bench consisting of Krishna Rao and Sharfuddin Ahmed, JJ. of this Court in *Meenakshamma v. Commissioner of Wealth-tax*, : [1967]63ITR534(AP) following the judgment of the Supreme Court in *I.T. Commissioner v. Benoy Kumar*, : [1957]32ITR466(SC) held that

' In determining whether a land is an agricultural land, the present criterion and not the potentialities of a land are material. If a land is originally used for the purposes of agriculture or for purposes subservient to or allied to agriculture, it would be agricultural land. If it is not so used, it would not be agricultural land. The question how a land is ordinarily used would be one of fact depending on the evidence in each case, for instance if an agricultural land is left fallow in a particular year owing to adverse seasonal conditions or to some other special reasons, it would not cease to be agricultural land.'

18. In W.P.No. 1295/67 dated 7-4-1969, a learned Single Judge of this Court held that:

'admittedly the land, when let out, was a pasture land. But from this alone, it cannot be inferred that the land was not cultivable land. What is relevant for the purpose of determining the character is whether the land possessed the potentiality for cultivation. That the land is capable of cultivation is clear from the very conditions of the lease-deed. The mere description of the land as pasturage land is not determinative of the character of the land. Even otherwise, the description does not lead to the only inference that the lands are fit only for grazing purpose and not for cultivation.'

The learned Judge while holding as above relied on the judgment of the Supreme Court in *Athmanathia Swami Devasthanam v. K. Gopalaswami*, : [1964]3SCR763 (3 supra).

19. It follows that agriculture includes pasturage and the mere fact that land is not cultivated though it is capable of cultivation on account of adverse seasonal conditions or some other special reasons it does not cease to be a land capable of cultivation. Therefore, as long as the land in respect of which the petitioners were granted pattas is capable of cultivation, the mere fact that a part of the land is used

for pasturage purpose, it does not cease to be an agricultural land or a ryoti land. Therefore, the ground that the land is being used as pasture land by the pattedars and consequently the pattas granted to the petitioners are not genuine, cannot be sustained. No inference that the pattas granted to the petitioners are not genuine can be drawn from the mere fact that a part of the land is used for pasturage.

20. The next ground is that only rough pattas are granted which are not authenticated. The learned Counsel for the respondents relying on a judgment of this Court in *Elumalai Chetty v. Rathana Velu Chetty*, 1971 (2) An.W.R. 193 contended that rough patta is only a notice issued to the registered holder with a view to enable him to make his representations with regard to the proposed revision of rate, taram and other particulars mentioned in the said rough patta and therefore, it cannot be termed as a document of title or constituting evidence of title. Since the petitioners were granted only rough pattas the petitioners have no title to the property.

21. It is true that the learned Judges in *Elumalai Chetty* held that a rough patta cannot be treated as a document of title but only a notice issued to the registered holder at the time of re-settlement assessment.

22. But the question is not whether the rough pattas granted confers title on the petitioners or not; the question is, is it open to the authorities to reopen a proceeding which concluded thirty seven years ago.

23. The proceedings proposing to hold suo motu enquiry does not say that the pattas were obtained by the petitioners by playing fraud or misrepresentation. On the other hand, the counter filed by the respondents states that it is open to the Revisional Authority to invoke suo motu Revisional jurisdiction in case where it is apprehended that the fraud was committed while grant of rough patta. In other words, the case of the respondents in the counter is that fraud was played while obtaining pattas Under Section 11 of the Act. This is not a ground mentioned in the show cause notice. It is well settled that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes

to Court on account of a challenge, get validated by additional grounds later brought out (Refer Mohinder Singh v. Chief Commissioner, : [1978]2SCR272 . Therefore; the respondents cannot be permitted to substantiate the show cause notice by substituting fresh reasons in the counter-affidavit.

24. This Court in S.B. Dhartna Reddy v. Director of Settlements, 1989 (1) ALT 137, 1989 (1) AJPLJ 598 held that 'keeping in view the nature of the right and the nature of the proceedings sought to be revised more particularly in the absence of any allegation of fraud or mis-representation on the part of the petitioner-appellant that the proposal to revise the order dated 31-1-1961 after a lapse of about 27 years is unreasonable and oppressive exercise of power. The facts of the present case are on all fours with the judgment referred to above.

25. In A. Kodanda Rao v. Government of A.P., 1981 (2) APLJ 158 this Court held that in the absence of period of limitation prescribed under the Act, the question of bar of limitation cannot arise. It is a question of reasonable period of limitation within which that power should be exercised where the question is one exercising that power within a reasonable time and what is reasonable period would undoubtedly be dependent upon the facts and circumstances of each case and the suo motu power must be exercised to advance the cause of justice and not to upset settled rights.

26. It is true in Govt. of Andhra Pradesh v. V. Kalleti Chengaiah, 1996 (3) Supreme 488 the Supreme Court justified the suo motu exercise of power Under Section 5(2) of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 to set aside the order of the Settlement Officer dated 2-7-1983 granting ryotwari patta Under Section 11 (a) of the Act. However, the learned Judges held that the very grant of patta Under Section 11(a) of the Act was in contravention of the provisions of the Act. Further, the grant of patta Under Section 11(a) is in 1983 and suo motu proceedings were initiated in 1990 within a period of seven years. Therefore, the said judgment is not applicable to the facts of the present case as in the present case, the suo motu power is sought to be exercised after a period of 37 years from the date on which patta was granted to the petitioners.

27. In *Kannaiah Naidu v. Commissioner of Survey and Settlement*, 1978 (2) An.W.R. 11 this Court held that it is not within the province of the judiciary to read into Section 5(2) of the A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 any such limitation not warranted by the intendment of the Act itself. However, as pointed out in the earlier paragraphs, the question is not whether the exercise of power Under Section 5(2) of the said Act is within the period of limitation but the question is whether the exercise of power is oppressive and unreasonable.

28. *K. Venkata Reddy v. Director of Survey*, 1975 (1) APLJ 111 is a case where claim for patta was rejected in 1959 and 1961. Thereafter, in respect of the very same lands pattas were granted to the petitioners which was sought to be revised pursuant to a show cause notice dated 1-2-1972. It was held that since no period of limitation is fixed under the Act, the suo motu proceeding is not barred by limitation. As pointed out earlier, the question is not the exercise of suo motu power within the period of limitation, but the oppressive or unreasonable nature of exercise of power. Similarly the judgments in *N. Ramachandra Reddy v. Commissioner of Survey Settlements and Land Records, A.P.*, 1990 (2) An.W.R. 534 and *S.B. Dhrama Reddy v. The Director of Settlements.*, 1989 (1) ALT 137, 1989 (1) AJP.L.J 598 (6 supra) are not relevant to the facts of the present case.

29. Further the petitioners are in possession of the land for over a period of more than thirty seven years after the abolition of estate and they have perfected their title by adverse possession even as against the Government. Therefore, the respondents cannot initiate suo motu enquiry under the Act as even if suit is to be filed by the respondents in a Civil Court it would be barred by limitation.

30. On perusal of the records produced before me, I find that the whole exercise of suo motu power started at the instance of a Member of Legislative Assembly. In the counter-affidavit, it is stated that some landless poor persons of Ethamukkala village of Kothapatnam Mandalam of Prakasham District have put applications representing that a large extent of land belonging to Survey Nos. 843, 846, 847, 850 and 851 of Ethamukkala village and survey numbers 15/2, 16, 18 and 21 of Somavarappadu village of Prakasham District have been granted pattas to rich

caste ryots in collusion with Survey and Settlement Department and that the pattas granted were bogus pattas and therefore, they have to be cancelled. Thereupon, the District Collector, Prakasham District was requested to verify and send his views pursuant to which the suo motu enquiry was initiated. Therefore, the impugned notice is not as a result of finding loss of records on a preliminary enquiry but at the instance of M.L.A. and on the request of the landless poor persons. In other words, the authorities have yielded to the pressure brought by the landless poor persons through their political representatives without applying their mind to the facts on record.

31. In view of the above, the impugned notice cannot be sustained as it is unreasonable, oppressive and based on no material and without application of mind by the Director of Settlements. The writ petition is to be allowed and is accordingly allowed with cost. Advocate's fee Rs. 2,000/-.

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