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Court : Andhra Pradesh

Decided On : Sep-08-2008

Reported in : 2008(6)ALD566; 2008(6)ALT164

Judge : V. Eswaraiah and; G.V. Seethapathy, JJ.

Acts : Estates Land Act, 1908 - Sections 3(1), 3(17), 10 and 77; Andhra Pradesh Estates Abolition Act, 1948 - Sections 2(1); Andhra Pradesh Agricultural Land Ceiling Act; Foreign Exchange Regulation Act, 1973; Foreign Exchange Management Act, 1999

Appeal No. : Writ Appeal No. 53 of 1999

Appellant : Director of Settlements and ors.

Respondent : Lingareddy Ramakrishna Reddy and ors.

Advocate for Def. : A. Rangacharyulu, Adv.

Advocate for Pet/Ap. : G.P. for Revenue

Disposition : Appeal dismissed

Judgement :

G.V. Seethapathy, J.

1. This appeal is directed against the order dated 28.01.1997 in W.P. No. 21218 of 1995, wherein the said writ petition filed seeking writ of prohibition restraining' the first respondent-Director of Settlements from proceeding further with the suo motu enquiry pursuant to the notice dated 08.04.1995, was allowed.

2. Heard the learned Government Pleader for the appellants and the learned Counsel for the respondents. Perused the records.

3. The respondents herein filed writ petition contending that they have been in possession and enjoyment of the subject lands situated in Somavarappadu and Ethamukkala villages, having purchased the same from the original grantees or by inheritance and they acquired occupancy rights in respect of their holding long prior to 01.07.1945. According to them, the lands were originally granted by Raja of Venkatagiri in favour of the predecessors of the writ petitioners more than 100 years ago for the purpose of cultivation and pasturage and the said lands were partly cultivated with dry crops and partly used for grazing purpose by the original grantees and their successors and that under Section 10 of the Estates Land Act 1908, the land being transferable and heritable, different portions of the land were purchased by the petitioners from the original grantees and by virtue of their long possession and enjoyment, they acquired occupancy rights even prior to 01.07.1945.

4. It is not disputed that Venkatagiri estate was taken over by the Government under A. P. Estates Abolition Act 1948 on 07.07.1949. In support of their claim of title, the petitioners relied upon various registered deeds, which are referred to in the order of the learned Single Judge. It is also not disputed that prior to the abolition of the estate, the office of the Estate maintained Land Register for each village in the estate, which corresponds to Survey and Settlement Register in the Government villages. The names of the petitioners and their predecessors were found noted as pattedars in the said Land Register pertaining to Somavarappadu village, which was marked as Ex.B.9 in a suit O.S. No. 115 of 1969 filed by Dulla @ Dudala Anjaiah against the petitioners and their predecessors for declaration of title and injunction. The Karnam of the estate village prepared a register called

'Dittam' corresponding to village account No. 10 (1) of government village and after abolition of the Estate, Survey and Settlement operations were conducted and pattas were issued to the persons who are found in possession and enjoyment of the lands after taking into consideration the records maintained by the Estate officials, which included the Land Register, Dittam and adangals. Relying on the said record maintained by the Estate officials and after holding necessary enquiries, pattas were issued in favour of the occupants under the provisions of the Estates Abolition Act. Apart from Ex. B.9 Land Register (Dittam) for the year 1917 marked as Ex. X.2 relating to Somavarappadu village, Ex. X.3 relating to Madanur village was also produced in the earlier suit filed by Dudala Anjaiah. The patta granted by the Proprietor of Venkatagiri Estate, was marked as Ex. X.1 and 10(1) account of Somavarappadu village was marked as Ex. X.5. The survey extract from the Survey and Settlement Register for Somavarappadu village prepared by the Government in 1958 was exhibited as Ex.A.2 in the said suit OS No. 115 of 1969. It was therefore clear that the pre-abolition records namely Estate Land Register, Dittam and 10(1) account prepared by the Estate officials were in fact taken by the revenue authorities at the time of abolition of the estate and relying on those records, the Settlement Officer after holding enquiry in 1958 granted pattas to various persons as can be seen from the judgment in OS No. 115 of 1969, which was subsequently confirmed by the High Court in AS No. 11 of 1971.

5. The first ground mentioned in the impugned show cause notice is that the settlement form-17 registers, which are the basis for Settlement Fair Adangal and Manuscript Diglot Register, are not available in respect of the two villages. The second ground is that the pre-abolition records of these two villages are not available in spite of diligent search made. The third ground is that in the absence of the two basic and vital records, it cannot be said that the pattas granted in respect of the lands in question are genuine.

6. The various documents exhibited in the earlier suit OS No. 115 of 1969 on the file of the Subordinate Judge, Ongole some of which were produced by the Government and marked as 'X' series, would clearly falsify the plea of loss of pre-abolition records. It is not disputed that the Tahsildar, Pellur prepared Estate Land

Register for the purpose of administering the estate lands till the re-survey operations were concluded under the Estates Abolition Act 1948, relying on the Estate Land Register prepared in 1917 and the said register was signed by the Jamabandi Officer on 29.03.1954 and marked as Ex. A.12 in OS No. 43 of 1953 on the file of the District Munsif, Ongole. One Battula Anasuyamma filed OS No. 7 7 of 1974 on the file of the District Munsif, 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 22.09.1983. Even as long back as in 1934 Raja of Venkatagiri filed a rent suit No. 20 of 1934 before the Sub Collector, Ongole under Section 77 of the Estates Land Act 1908 for recovery of arrears of rent for the years 1930 to 1932 and the said suit was decreed and EP No. 129 of 1936 was filed for recovery of the decretal amount. It is also not disputed that part of the land was acquired by the Government for Nagarjuna Canal Project and compensation was also paid to the petitiones. It is further admitted that the petitioners filed declaration under A.P. Agricultural Land Ceiling Act and the competent authority declared that the petitioners were holding excess land and pursuant thereto, the petitioners surrendered certain portions of the land to the Government.

7. From the various earlier proceedings, judicial and quasi judicial, referred to above and dealt in detail by the learned Single Judge, it is abundantly clear that the petitioners or their predecessors were in possession and enjoyment of the subject lands since over several decades and they acquired occupancy rights by 01.07.1945, which enabled them to claim patta under the provisions of Estates Abolition Act. The material on record also established that the alleged loss of pre-abolition records, which is projected as basis for suspecting the genuineness of the pattas while proposing suo motu enquiry is shown to be false, as the said records were in fact produced as evidence in the earlier judicial proceedings. It is not the case of the respondents (appellants) that there was any enquiry into the alleged loss of pre-abolition records and no material is also placed as to since when the records were not available and how and when the Director of Settlement came to know about the non-availability of pre-abolition records. In the absence of any such material and there being no complaint or enquiry in to alleged loss of records, the only inference that can be drawn and rightly drawn by the learned Single Judge is either Director of Settlement has not applied his mind before

issuing show cause notice or is intentionally withholding the best evidence in his possession. In view of the production of the pre-abolition records in the earlier judicial proceedings indicating that they were in fact taken by the revenue officials at the time of survey and settlement consequent upon taking over the estate, the alleged loss or non availability of the said records does not afford a valid or sustainable ground for ordering suo motu enquiry.

8. The next ground mentioned in the show cause notice is that the huge extent of lands have been left un-cultivated for several years and they were used as pasture lands by the pattedars and if the pattas had been genuine, they would not have left the lands without cultivation and this gives scope for doubt whether these lands are classified as pasture lands in pre-abolition period i.e., prior to 01.07.1945. As can be seen from the show cause notice itself, the said ground No. 4 is based only on surmise and suspicion. It is not disputed that to enable the occupants to claim ryotwari patta, the land need not be under actual cultivation, but is enough if it is capable of cultivation or it has the potentiality for cultivation.

9. Section 3(1) of the A.P. Estates Land Act, 1908 defines 'Agriculture' as including horticulture. Section 2(1) of the Estates Abolition Act 1948 states that 'all expressions defined in the Estates Land Act shall have the same respective meanings as in that Act with modifications, if any, made by this Act'.

10. In 'Meenakshamma v. Commissioner of Wealth Tax : [1967]63ITR534(AP) , the Division Bench of this Court held that 'if an agricultural land is left fallow in a particular year owing to adverse seasonal conditions or done to some other special reasons, it would not cease to be agricultural land'.

11. In 'Athmanathswami Devasthanam v. K. Gopalaswami Ayyangar : [1964]3SCR763 . the Apex 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'.

12. Following the above judgments of the apex Court, this Court held in WP No. 1295 of 1967 that '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'. It was further held that 'what is relevant for the purpose of determining the character is whether the land possessed the potentiality for cultivation'. Thus 'agriculture' includes pasturage and the fact that the land was not cultivated though capable of cultivation for any reason, does not mean that the land ceased to be capable of cultivation. Simply because, portion of the land was used for pasturage, the land does not lose character of agriculture land or ryothi land. At any rate, no inference that the pattas granted were not genuine can be drawn from the fact that a portion of the land was left without cultivation and used for pasturage.

13. The last ground urged in the show cause notice is that rough pattas do not contain the seal of the Assistant Settlement Officer, Guntur and that they contain only facsimile signatures. It is no where alleged in the show cause notice that the petitioners have played any fraud and obtained the rough pattas by resorting to any dubious methods. It is only in the counter-affidavit, a vague reference is made to the aspect of fraud by stating that revisional authority can invoke suo motu revisional jurisdiction where it is apprehended that fraud was committed while grant of rough patta. In the absence of any specific allegation in the show cause notice that the rough pattas were the result of any fraud or any other vitiating factor, the above said averment in the counter-affidavit by way of insinuation is of no avail. The learned Single Judge following the decision of the Apex Court in 'Mohinder Singh v. Chief Commissioner : [1978]2SCR272 .'has rightly rejected the said plea holding that the respondents cannot be permitted to substantiate the show cause notice with the aid of fresh grounds mentioned in the counter-affidavit.

14. In 'S.B. Dharma Reddy v. Director of Settlements 1989 (1) ALT 137 : 1989 (1) APLJ 598.' referred to by the learned Single Judge, it was held by this Court that 'in the absence of any allegation of fraud or misrepresentation, the proposal to revise the order after a lapse of about 27 years is unreasonable and oppressive exercise of powers'.

15. In the present case also, the first respondent-Director of Settlement sought to reopen the issue by taking up a suo motu enquiry almost 37 years after issuance

of the rough pattas and that too without making any specific allegation of fraud or misrepresentation.

16. No doubt as contended by the learned Government Pleader for the appellants that the rough patta is not a document of title nor even evidence of title. In 'Elumalai Chetty v. Rathana Velu Chetty 1971 (2) An. W.R. 193', this Court held that 'rough patta is only a notice issued to the registered holder with a view to enable him to make his representation with regard to the proposed revision of rate, taram and other particulars mentioned in the said rough patta. The issue of rough patta is one of the steps taken in the process of carrying out resettlement in respect of ryotwari area and it has no bearing at all on the question of title to the holding itself.' As rightly observed by the learned Single Judge, the question is not whether the rough pattas granted confer any title on the petitioners or not, but the question is whether the authorities can reopen the proceedings which have concluded 37 years ago in the absence of any valid or justifiable reasons.

17. In the show cause notice, it is further stated that the rough pattas do not contain the seal of the Assistant Settlement Officer, but they contain only facsimile signatures. From this, the first respondent-Director of Settlement appears to be surmising that they are not genuine. Sub-Section (17) of Section 3 of Estates Land Act 1908 defines expression 'signed' as 'including stamped with the name of the person purporting to sign'. From the mere fact that the rough pattas contain facsimile signatures, which is permissible in view of the above definition, no adverse inference can be drawn against the genuineness of the rough pattas 37 years after their issuance. It is quite possible as rightly contended by the learned Counsel for the respondents herein that having regard to large number of pattas that came to be issued in pursuance of the Survey and Settlement consequent upon abolition of the estates and advent of ryotwari tenures, it was virtually impossible for the authorities concerned to sign each and every such document. At any rate, in the absence of any specific allegation of fraud etc., and there being no material even prima-facie supporting the suspicion raised over the genuineness of the rough pattas, the same does not afford valid or sustainable ground to initiate suo motu enquiry as proposed, long after issuance of the pattas.

18. No doubt as contended by the learned Government Pleader for the appellants, no limitation is prescribed for initiating suo motu

enquiry and the show cause notice cannot be defeated on account of any bar of limitation. It is well settled that in the absence of any period of limitation prescribed under the statute, action proposed has to be taken within reasonable period in exercise of the statutory power and it shall not smack of oppressiveness or arbitrariness. The impugned show cause notice seeks to suo motu reopen the issue of grant of pattas more than 37 years after their issuance, that too without any valid or justifiable grounds. Such a course of action certainly amounts to exercise of power in unreasonable, arbitrary and oppressive manner. As rightly observed by the learned Single Judge, a perusal of the record would show that the whole exercise was started with extraneous motive and under political pressure and without application of mind.

19. In 'Koyya Veerraju and Ors. v. MRO Gollaprolu : 1998(6)ALD594 , the Division Bench of this Court held as follows:

The powers which the authorities sought to exercise are neither just nor reasonable. By the present proceedings, they started to unsettle the things, which were settled long ago. Keeping silent for several decades and then to come up with an explanation that lands in question (were) prohibited for alienation and the alienators (sic. Alienees) are not entitled for, mutation is not tenable. The powers to revise are guasi-judicial in nature. The same shall be exercised within a reasonable period and while exercising shall give valid and acceptable reasons. The power exercised clearly establishes that the authorities acted under dictation influenced more by extraneous consideration; the proceedings are not only arbitrary and unreasonable, but they exercised powers with mala fide intention.

It was further held as follows:

In none of the orders, there was a finding referred to earlier, there was a finding as to fraud or misrepresentation. The facts narrated by the petitioners disclose that after purchase of the land, they were put in possession of the land, they improved it and they have been enjoying the same. If the authorities felt that the land in

question was required for some public purpose, then they had to resort to invoke the provisions contained in some other land to take over the land and not by unsettling the things and annealing act. Exercise of suo motu revisional powers is unwarranted, mala fide, unreasonable and illegal.

20. The learned Government Pleader appearing for the appellants relying upon the decision in 'Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr. (2007) 3 SCC 440, would contend that the writ petition challenging mere show cause notice issued by the statutory functionary is not maintainable. In the above case, the Apex Court held 'unless the High Court is satisfied that the show. cause notice is totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, the writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands high-lighted in the writ petition'. The above decision was rendered in a case where show cause notice was issued regarding violation of the provisions of Foreign Exchange Regulation Act 1973 and Foreign Exchange Management Act, 1999, by committing financial irregularities involving about rupees 270 crores and forging documents and manipulating accounts. The writ petition was filed challenging legality of the said show cause notice. The High Court issued interim orders restraining the authorities from initiating any proceeding pursuant to the said show cause notice by ordering status quo and without furnishing any reasons for giving such interim protection. The principle laid down in the above decision is not applicable to the facts of the present case, where the authorities sought to unsettle the matters which remained settled for more than 37 years by initiating suo motu enquiry without any valid or justifiable grounds and without any application of mind.

21. Under those circumstances, the order of the learned Single Judge allowing the writ petition holding that the impugned notice cannot be sustained as the same is unreasonable, oppressive and based on no material, does not call for any interference.

In the result, the writ appeal is dismissed. No order as to costs.

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