

(1999) 08 AP CK 0121

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 108 of 1998

Commissioner for Survey, Settlements and Land Records

APPELLANT

Vs

V. Appanacharyulu and Another

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 — Section 14A, 3, 4, 7

Citation : (1999) 6 ALT 761

Hon'ble Judges : M.S. Liberhan, C.J;Goda Raghuram, J

Bench : Division Bench

Advocate : G.P. for Revenue, for the Appellant; M.V.S. Suresh Kumar and M.N. Narasimha Reddy, for the Respondent

Judgement

Goda Raghuram, J.—The Commissioner for Survey, Settlements and Land Records, Government of A.P., has filed this appeal aggrieved by the judgment dt. 28-1-1997 in W.P.No. 18965/93. The 1st respondent herein filed the writ petition assailing the appellant's proceedings VI /240/1986, dt. 22-9-1993, which is a show-cause notice initiating suo motu enquiry u/s 14-A of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956.

2. The facts, according to the writ petitioner, leading to the writ petition are, in brief, as under:

(a) The writ petitioner claims to be the absolute owner of certain specified extents of land in respect of which he was granted ryotwari patta in the years 1961 and 1978 by the Special Deputy Tahsildar (Inams), Kandukur, u/s 7 of the Act.

(b) By proceedings dt. 22-9-93 (impugned in the writ petition) the writ petitioner was called upon to show-cause as to why the orders of granting of pattas in respect of Sy.Nos. 126/1 and 129/2 in an extent of Ac. 51.82 cts., and Ac. 3.82 cts. respectively of Mohinuddiunpuram and Sy.Nos. 346 and 348 in an extent of

Ac. 14.75 and Ac. 13.68 cts., respectively of Pedauallagallu villages, be not cancelled. The said proceedings clearly and specifically averred that the pattas in respect of the aforesaid lands are obtained by mischief, fraud and misrepresentation on the part of the writ petitioner, who was archaka of the temple, to which, it is alleged in the proceedings, the lands belong as is evident from various documents referred to in the proceedings.

(c) Assailing the said proceedings the writ petition was filed alleging that the impugned proceedings have been arbitrarily issued decades after the grant of pattas in favour of the writ petitioner.

3. During the pendency of the writ petition and the subsistence of the order of stay issued by this Court therein, by proceedings dt. 15-11-1996 final orders have been issued by the appellant herein. By the said proceedings the pattas in favour of the 1st respondent were set aside recording that the respondent absented himself from the enquiry despite notice to him in this behalf. Consequently the 1st respondent sought amendment of the relief in the writ petition to assail the final orders dt. 15-11-1996. By the orders dt. 15-11-1996 the pattas were cancelled on a finding that the grant of pattas were in gross violation of the Act and the Rules without reference to the relevant documents which would have disclosed that the lands belong to the temple and that the pattas were also granted without notice to the temple. It was also found that no documentary evidence was produced in support of the claim of the writ petitioner for the grant of pattas and that there was also no publication of the notice as required under the Rules. Consequent on the above finding the appellant, after cancelling the pattas remanded the matter to the Special Deputy Tahsildar for fresh enquiry as per Rules.

4. While disposing of the writ petition the learned single Judge on a perusal of the show cause notice proceedings dt. 22-9-93 concluded that the allegation of fraud and misrepresentation in the matter of obtaining pattas was only in respect of Sy.Nos. 346 and 348 of Peddaullagallu village and not in respect of Sy.Nos. 125/1 and 129/2 of Mohinuddiunpuram village. On this conclusion, learned single Judge held that the show cause notice in respect of pattas in relation to Sy.No. 125/1 and 129/2 of Mohinuddiunpuram village are invalid having been issued after a period 32 (sic. 22) years (i.e., 1961 to 1982) and that in the absence of any allegation of fraud no suo motu enquiry can be initiated merely on the ground that the pattas has (sic. have) been obtained irregularly, improperly or against the provisions of the Act. The learned single Judge also found that even as against the Government, the writ petitioner had perfected his title by adverse possession and that despite the absence of any limitation for initiating suo motu enquiry under the provisions of Section 14 of the Act, exercise of suo motu power would be rendered oppressive and unreasonable if exercised after a considerable efflux of time. On this reckoning, learned single Judge set aside the show cause notice dt. 22-9-1993 and the final orders dt. 15-11-1996 in respect of pattas granted to the writ petitioner of Sy.Nos. 126/1 and 129/2 of

Mohinuddiunpuram village.

5. As regards Sy.Nos. 346 and 348 of Peddaullagallu village, the learned single Judge upheld the show cause notice dated 22-9-93 since it is alleged that these pattas were obtained by fraud and misrepresentation. The final order dated 15-11-1996 was however invalidated as it was issued without affording the writ petitioner an opportunity of hearing. In the result, the writ petition was allowed granting the appellant liberty to proceed with the enquiry in respect of Sy.Nos. 346 and 348 of Peddaullagallu village.

6. Sri E. Madanamohana Rao, learned Government Pleader appearing for the appellant, vehemently contended that the findings of the learned single Judge in respect of Sy.Nos. 126/1 and 129/2 of Mohinuddiunpuram village, are incorrect and contrary to the records. He took us through the contents of the show cause notice dt. 22-9-93, in extenso, to contend that the allegations of fraud on the part of the writ petitioner have been made in respect of the four Sy.Nos. and that the learned single Judge's finding that the allegation of fraud was confined only to Sy.Nos. 346 and 348 of Peddaullagallu village is incorrect,

7. The show cause notice dt. 22-9-93 reads as under:

"Office of the Commissioner for Survey, Settlements and Land Records, Hyderabad.

CSS & LRS Ref.No. V1/240/1986, Dt: 22-9-1993

SRI M. NARAYANA RAO, IAS. COMMISSIONER

Sub:- The A.P. (A.A.) Inams (A & Cinto R) Act, 1956-Prakasham, Darsi Mandal - Mohiddinpuram, Peddaullagallu villages - Inam Lands belonging to Deity Chenna Kesava Swami Temple - Pattas granted by the SDT (I) Kanigiri and Kandukur in favour of Archaka of the Temple viz., V. Appanna Charyulu - Suo Motu Enquiry against the orders of SDT (I) Kanigiri and Kandukur- Show cause Notice Issued.

Ref:- From the Collector, Ongole R. D2/3820/1984, d: 7-3-1986

(2) -do- Re. D2/3828/1984, d: 26-5-87.

(3) From the Asst. Commr. Endowment, Ong, Rc. A4/2252/1987, Admn, dt. 5-1-1982.

The Collector, Ongole, has brought the following information to the notice of the Commissioner, SS & LR, Hyderabad.

The following lands were granted as Inam to the Diety Sri Chenna Kesava Swami Temple of Pothakamur village of erstwhile Darsi Taluq for the purpose of doing service to Temple:

Sy.No. Extent Name of the village 126/1 51.82 Mohiuddinpuram 129/2 3.82 346 14.75 Peddaullagallu 348 10.68 Therefore the ryotwari patta under I.A.Act, should have been issued in the name of Deity Sri Chinna Kesava Swami Temple.

However the SDT(I) Kanigiri declared the Sy.Nos. 126/1 & 129/2 of Mohiuddinpuram village as Inam lands in a ryotwari Vge. and not held by an Institution u/s 3(3) of the Act. The then SDT(I) Kanigiri reported to have granted ryotwari patta for the Sy.No. 126/1 and 129/2 of Mohiddinpuram village in favour of Archakas of Temple viz., Sri V. Appanna Charyulu vide his order dated 22-7-1961. The Inam case file and Inam "B" register of Mohinddinpuram village are not available. The S.F. 9 reveals that the land in question are service Inam Lands of Sri Chinna Kesava Swami Archakas. In the Inam Fair Register Sy. Nos. 1.26/1, 129/2 of Mohiddinpuram village shown as temple Inam and Archaka Inam Temple, respectively. The lands in question which were granted for service of temple cannot be declared as not held by Institution and pattas shall also be not granted in favour of Archakas of Temple. Hence the orders passed by the then SDT (I) Kanigiri declaring the lands in question of Mohiddinpuram vge, as not held by an institution u/s 3(3) of the Act and granting ryotwari patta u/s 7(1) of the Act, in favour of Archaka Sri V. Appan Charyulu is irregular, improper and against the provisions of the Act and Rules.

The SDT(I) Kandakur, has declared the Sy.Nos. 346 and 348 of Pedauullagallu village as Inam Lands in Ryotwari village and not held by an Institution u/s 3(3) of the Act. He also granted ryotwari patta u/s 2(1) of the Act in respect of the lands in question in favour of the Archaka viz., Sri V. Appan a Charyulu vide his proceedings L/446/1978, dated: 30-11 -1978, and implemented the name in the village account. The lands in question are held by Sri Chenna Kesava Swami Temple and the village Karanam has given statement to the effect before the then SDT (I) Kandakur on 20-7-1977. It is noticed from the Inam case file of Pedauullagallu village that the Form I notice as well as decision in Form II are dated 20-7-1977, which clearly shows that Form I notice has not been published as stipulated under Rules. The SDT (I) has given decision without proper enquiry and opportunity to the Institution. The SDT (I) granted patta without issuing notice in Form V and ferifying the records and taking into consideration the statement of the village Karanam. Hence the orders of the SDT(I) Kandakur in declaring the lands in question not held by an Institution u/s 3(3) of the Act and granting ryotwari patta u/s 7(1) of the Act in respect of lands held by Institution in favour of Archaka without following the procedure prescribed is irregular, improper and against the provisions of Act and Rules.

In the letter third cited the Asst Commr. Endowments, Ongole, has reported that the lands in question are owned by Temple and were under the enjoyment of two Archakas viz., (1) V. Appana Charyulu and (2) Venkata Subba Rao previously. One of the Archakas or" the temple viz., V. Appana Charyulu has obtained Benami Patta for the lands in question from the than Dy. Tahr. The Commissions Endowment has appointed an Executive Officer to the said temple during the year 1980-81 who leased out the scheduled lands in pubic auction for six years twice i.e., 1981 to 1986 and 1986 to 1992. The Benami Pattadar (Archaka)never objected for it. The scheduled lands are in possession and enjoyment of the department till today. The approved property register u/s 38 of the Act 17 of

1961 was maintained by Sri V. Appana Charyulu Archakas of Temple and the scheduled lands belong to the temple. The said Archaka played a mischief in manipulating Govt. record and obtain patta in his favour for the lands held by temple. It has been reported that the said Archaka is not doing service to temple. The second archaka viz., Sri Venkata Subba Rao is rendering Archakatvam Service deposed that he has no knowledge about grant of Benami patta in favour of Sri V. Appana Charyulu (Archaka) and that scheduled lands belong to temple only.

The above points disclose the following irregularities.

1. The grant of Patta in the name of Sri V. Appana Charyulu, Archaka in respect of lands in Sy.Nos. 126/1, 129/2 of Mohiddinpuram village and Sy.Nos. 346, 348 of Pedauhallagallu villages held by the then SDT (I) was irregular. The patta should have been given in the name of the Institution. This is the legal position with references to I.A.Act as well as the Endowments Act.

2. The then SDT (1) passed orders without following procedure prescribed under the Act and notice to the Institution.

In view of the above irregularities, under the powers vested in Section 14-A of the A.P. (A.A.) Inames (A&C into R) Act, 1956, the Commissioner, SS & LR's Hyd. Proposes to set aside the orders of the SDT (I) granting patta for lands detailed below:-

-----				Village/
Mandal/	Sy.No.	Extent	Name of the person in District	whose name patta granted -----
1.				
Mohiddinpuram,	126/1	51.58	Sri V. Appana Charyulu	Darsi Mandal, 129/2 3.82
Prakasham Dt.	2.	Pedauhallagullu	346 14.75	-do- Darsi Mandal 348 10.68
Prakasham				Dt.

Sri V. Appanna Charyulu, Ex-Archaka of Sri Chinna Kesava Swami Temple is directed to show cause as to why the orders of the SDT (I) granting pattas in respect of above mentioned lands should not be cancelled for the reasons given in the preceding para. He is directed to put forth his representation within (30) days from the date of receipt of this notice failing which orders will be passed on the material available on records.

This case will be taken up for hearing on 22-11-1993 at 11.00 A.M. by the Commissioner, SS & LR's, Hyd., in the O/o the Commissioner, SS & LR's, A.P., Hyd., if the parties fails to appear either in person or through advocate duly authorised by them to represent their case, the case will be decided on the basis of the material available.

Sd/- V.Anandarau, Commissioner SS & LRAs

To

Sri V. Appanna Charyulu, Ex-Archaka of Sri Chinna Kesava Swami Temple of Pothakamur Vgs., through the M.R.O., Darsi, (in duplicate) for service and return of served copy by RPAD.

The Commissioner, Endowments, A.P., Hyd.

Copy to the Collector, Prakasham

Copy to the M.R.O., Darsi, Prakasham,

Copy to the Asst. Commissioner, Endowments, Ongole,

Copy to stock file."

8. It is clear from the perusal of the above notice that the writ petitioner is alleged to have obtained the pattas in his favour by applying mischief and by manipulating the Government records and that the lands belong to the temple. Implicit in the allegation is a clear indication that the writ petitioner who was an Archaka of the temple by misrepresentation and manipulation has obtained the pattas in his favour. This allegation is neither restricted nor confined to Sy.Nos. 346 and 348, but is in respect of all the four Sy.Nos. i.e., 126/1, 129/2 of Mohinuddinpuram and 346, 348 of Pedaulagallu villages. Consequently, the finding of the learned single Judge is, in our view, not based on a true and correct construction of the above mentioned show cause notice. In the result the reasons that weighed with the learned single judge in upholding the show cause notice in relation to Sy.Nos. 346 and 348 would be equally applicable in respect of Sy.Nos. 126/1 and 129/2, there being no distinction in the factual substratum of the allegations between these two sets of Sy.Nos.

9. In the light of the above analysis we are of the view that the judgment of the learned single judge warrant interference in appeal. Consequently the writ appeal is disposed of with the following directions:

(1) The proceedings dt. 15-11-1996 of the appellant having been passed without the writ petitioner having been heard, are set aside.

(2) The appellant's proceedings dt. 22-9-1993 are upheld in toto and the appellant is at liberty to proceed from the stage of the said proceedings and pass appropriate final orders on merits in accordance with law after affording the respondents an opportunity of putting forth their objections to the proposals contained therein.

(3) The appellant shall conclude the enquiry within a period of 3 months from the date of receipt of a copy of this order and the respondents shall co-operate with the appellant in such enquiry proceedings.

10. The appeal is accordingly disposed of with the above directions. No order as to costs.