
(1961) 11 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 781 of 1961

Dasari Satyanarayana

APPELLANT

Vs

Dasari Bapayya and Another

RESPONDENT

Date of Decision : 28-11-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1963 AP 148

Hon'ble Judges : Seshachelapathi, J

Bench : Single Bench

Advocate : L. Jagannadha Rao, for the Appellant; Sithamahalakshmi and P. Ramachandra Reddi, Third Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Seshachelapathi, J.—This is a petition under Article 226 of the Constitution of India for the issue of a Writ of Prohibition directing the 2nd respondent, the State of Andhra Pradesh, from proceeding with the hearing of the revision petition in Memo. No. 574/J/61-2 dated 31-5-1961.

2. This petition is filed under the following circumstances: The petitioner applied for and obtained a patta from the zamindar of Vuyyur of a land of an extent of 2 acres in R. S. No. 183 in the village of Amudalapalli, and another patta was issued with respect to the balance of 6.2 cents in the same survey number. The petitioner claims to have been admitted into possession in 1944. though the two aforesaid pattas were issued on 26-6-1945 and 19-7-1946 respectively. The petitioner alleges that he has been cultivating the lands from 1944, and expending sums of money for reclaiming the lands and making them fit for cultivation. The Vuyyur Zamindari in which Amudalapalli village is situate was notified under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act XXVI of 1948, and taken over by the Government in 1950. The Estates Manager concerned passed an order u/s 3 (2) (d) of the Act holding that the petitioner was not prima facie entitled to a ryotwari patta with respect to his

holding in R. S. No. 183 except to the extent of 2 acres. In appeal by the petitioner, the Revenue Divisional Officer, Nuzvid, by an order dated 2-8-1954 reversed the order of the Estate Manager, and held that the petitioner having been inducted into possession in 1944 was not liable to be dispossessed. The 1st respondent Dasari Bapayya and others filed a revision against the order of the Revenue Divisional Officer before the Collector, Krishna. By an order dated 26-12-1955, the Collector dismissed the revision petition. In the meantime, it is alleged, that in conformity with the Revenue Divisional Officer's order the petitioner's name was entered in the Amarkam and other relevant accounts of the village.

3. The Special Deputy Tahsildar would appear to have reported that the assignment in favour of the petitioner by the Zamindar of Vuyyur would fall under the proviso to Section 11 of the Act. Upon that report, the Additional Assistant Settlement Officer, Nuzvid, made enquiries and held that the assignment by the Zamindar in favour of the petitioner was not one falling under the proviso to Section 11 of Act XXVI of 1948, and that the further proceedings in that behalf should be dropped. He held further that the assignee might apply for patta u/s 11 (a) of the Act, if so advised. Thereupon the petitioner applied for a patta u/s 11 (a) of the Act. In accordance with the prescribed procedure objections were called for. In the enquiry, the 1st respondent gave evidence on behalf of the objectors. The Assistant Settlement Officer, Nuzvid held that though on the evidence it would appear, the Zamindar had admitted the petitioner to possession in 1944, the land assigned was entered as "Budameru Poramboke" in the village "A" register, and that, therefore, it was not ryoti land. In that view, he held in and by his order dated 24-70-1956 that the petitioner was not entitled to the ryotwari patta.

The petitioner filed a revision before the Settlement Officer, Masulipatam. In a long and considered order dated 2-5-1957, the Settlement Officer, reversed the decision of the Assistant Settlement Officer, and directed the issue of a ryotwari patta to the petitioner. The 1st respondent Dasari Bapayya and others filed a revision petition before the Director of Settlements, Andhra Pradesh, who allowed the petition, thereby setting aside the order of the Settlement Officer. The petitioner tiled a revision before the Board of Revenue. After considering the representations of the petitioner and Pasari Bapayya, who were both represented by counsel, the Board of Revenue held that the assignment in favour of the petitioner was made after collecting Nazarana, that the petitioner had been in occupation of the land for nearly 10 years, spending considerable amount for reclamation, that the land had ceased to serve the purpose for which it was intended, and therefore, there was no use in keeping it as "Budameru Poramboke", and that in the circumstances, the order of the Director of Settlements should be set aside and patta granted to the petitioner. Against thy orders of the Board of Revenue, the 1st respondent filed a revision petition before the Government, contending that R. S. No. 183 is a communal poramboke, and should not have been assigned to the petitioner. The

Government held that with respect to the 2 acres in R. S. No. 183, for which patta was obtained on 26-6-1915, the order of the Board of Revenue had become final, but that in respect of the remaining 6-2 acres, for which patta was obtained subsequent to 1-7-1945, the order of the Board of Revenue was wrong as the case actually fell under the proviso to Section 11 of the Act, and should have been dealt with as such. In that view, the Government set aside the order of the Board of Revenue.

It also held that, inasmuch as there was no order of the Collector u/s 20(a) of the Estates Land Act, before or after the assignment, the petitioner could not be given a ryotwari patta with respect to the disputed land under the proviso to Section 11 of the Act, but in view of the long possession of the petitioner on the land, it was for the Collector to consider the question of assignment of the land to the petitioner under ordinary darkhast rules. This order of the Government dated 11-12-1958 was made without notice to the petitioner.

4. The petitioner filed in this Court W. P. No. 1507 of 1958 urging two principal grounds : (i) that the Government had no jurisdiction to revise the order of the Board of Revenue; and (ii) that, in any event the order of the Government was vitiated by reason of the failure to give the petitioner notice. Basireddy, J., who heard the petition thought that in the circumstances of the case the Government should have given the petitioner an opportunity to make his representations, and the failure to do so had rendered the order of the Government unsustainable. In that view, the learned Judge, while allowing the writ petition declined to express any opinion on the question of the want of jurisdiction of the Government to revise the order of the Board of Revenue. The learned Judge also observed :

"It is open to the Government, if so advised, to deal with the matter according to law after giving a reasonable opportunity to the petitioner to present his case."

5. After the aforesaid order was passed, the Government issued a memorandum on 31-5-1961 calling upon the petitioner to show cause within 15 days as to why the order passed by the Board of Revenue, in so far as it relates to the assignment of 6-3 cents in S. No. 183 of Amudalapalli village, should not be set aside. In this petition, the petitioner seeks a Writ of Prohibition interdicting the 2nd respondent from proceeding with the hearing of the revision petition.

6. On behalf of the petitioner, it is contended, first, that under the scheme of the Estates Abolition Act, the Board of Revenue is the final revisional authority in respect of grant of ryotwari pattas u/s 11 (a) of the Act, and that there is no further revision to the Government; secondly, that the order of the Assistant Settlement Officer, dated 9-10-1956 dropping the proceedings under the proviso to Section 11 of the Act, and referring the petitioner to an application u/s 11 (a) had become final and, thirdly, that the proviso to Section 11 of the Act has obviously no application to the instant case, as the petitioner was admitted into possession of the land in 1944.

7. On the contrary, the learned Government Pleader contends that Basi Reddy, J.,

while allowing the Writ Petition (W. P. No. 1507 of 1958) observed that the Government could entertain the revision petition, if so advised, after giving notice to the petitioner, and that what has now been done is in conformity with that order. It is next contended by the learned Government Pleader that it is open to the petitioner to put forward all his objections, including those relating to jurisdiction before the Government, and the present writ petition is both premature and misconceived. Lastly, it is argued, that the Government being the final authority on the questions relating to proviso to Section 11 of the Act, they can entertain the present revision petition and seek to correct the orders of the Board of Revenue.

8. I am unable to assent to the contention advanced by the learned Government Pleader that the impugned notice of the Government is more or less consequential upon the order of Basi Reddy J. The learned Judge very carefully avoided expressing any opinion upon the tenability of the legal contentions advanced on behalf of the petitioner as to want of jurisdiction in the Government, and if I may say so with respect, very correctly observed that the Government may, "if so advised, deal with the matter after giving a reasonable opportunity to the petitioner." It cannot, therefore, be said that the continuance of the revision petition has had the blessing of the learned Judge.

9. Nor am I impressed with the contention of the learned Government Pleader that the petitioner may as well put forward his objections before the Government instead of rushing to this Court at this stage, as all that the Government has so far done was merely to ask him to show cause why the order of the Board of Revenue should not be revised. In the case of a total want of jurisdiction it is open to a party to come to the Court at the earliest opportunity and seek a Writ of Prohibition. It is well known that both writs of prohibition and Certiorari have for their object the restraining of inferior Courts from exceeding their jurisdiction. As pointed out by the Supreme Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*,

"there is one fundamental distinction between the two writs, and that is what is material for the present purpose. They are issued at different stages of the proceedings. When an inferior Court takes up for hearing a matter over which it has no jurisdiction, the person against whom the proceedings are taken can move the superior Court for a Writ of Prohibition, and on that, an order will issue forbidding the inferior Court from continuing the proceedings. On the other hand, if the Court hears that cause or matter and gives a decision, the party aggrieved would have to move the superior Court for a Writ of Certiorari and on that, an order will be made quashing the decision on the ground of want of jurisdiction."

In other words, a writ of prohibition will lie when the proceedings are to any extent pending, and a writ of certiorari will be an appropriate remedy after the proceedings have terminated in a final decision. In a case, therefore, where the petitioner challenges the lack of jurisdiction of the Tribunal to hear the matter pending before it, the aggrieved party can ask for a Writ of Prohibition. It is no

answer to that claim to say that the petitioner can as well put forward his defence before the Tribunal, and then if the decision is adverse to him seek a writ of Certiorari. If there is a clear want of jurisdiction, it is open to the party to seek to interdict the proceedings by applying at the earliest stage for a Writ of Prohibition,

10. The first question, therefore, I have to determine is, whether the Government has jurisdiction to entertain a revision petition at the instance of Dasari Bapayya, the 1st respondent. That it is at his instance that the revision against the orders of the Board of Revenue is being entertained by the Government admits of no doubt. In paragraph 2 of the impugned notice dated 31-5-1961, it is expressly mentioned that Dasari Bapayya, the 1st respondent herein, filed a further revision before the Government. Has the Government a right to entertain such a revision? In this case, the Additional Assistant Settlement Officer, by his order dated 9-10-1956 directed the petitioner to apply for a patta u/s 11 (a) of the Act, if so advised. Accordingly, the petitioner made an application. By an order dated 24-10-1956, the Assistant Settlement Officer, held that the lands were non-ryoli and so patta could not be granted. The Settlement Officer, by his order dated 2-5-1957 held that the Government have no right to claim the land is a poramboke, that the land could be assigned to the petitioner as ryoti land and, therefore, he was entitled to a ryotwari patta. The Director of Settlements in his order dated 10-7-1957 held that since no orders were obtained u/s 20 (a) of the Estates Land Act, the land continued to be non-ryoti and so the petitioner was not entitled to a ryotari patta u/s 11 (a). In a long a detailed order, the Board of Revenue took a contrary view, and held that the petitioner was entitled to a ryotwari patta. It may, therefore, be taken that in this case the proceedings throughout were only tinder Section 11 (a) of Act XXVI of 1948.

11. Section 4 of the Act provides that the Government should appoint a Director of Settlements to carry out the survey and settlement operations in these estates and introduce ryotwari settlement therein, and that the Director should be subordinate to the Board of Revenue. Section 5(1) provides that as soon as may be after the passing of the Act, the Government shall appoint one or more Settlement Officers to carry out the functions and duties assigned to them under the Act. Subsection (2) to Section 5 provides that every Settlement Officer shall be subordinate to the Director of Settlements and shall be guided by such lawful instructions as he may issue from time to time, and the Director shall have power to cancel or revise any of the orders, acts or proceedings of the Settlement Officers, other than those in respect of which an appeal lies to the Tribunal. Section 7 confers upon the Board of Revenue general powers of control and in particular clause (d) provides that the Board of Revenue has the power to cancel or revise any of the orders, acts or proceedings of the Director of Settlements or of any District Collector, including those passed, done or taken in exercise of revisional powers. u/s 11 (a) every ryot in an estate has, with effect on and from the notified date, a right to obtain ryotwari patta in respect of all

ryoti lands which immediately before the notified date, were properly included or ought to have been properly included in his holding, and which are not either lanka lands or lands in respect of which a land-holder or some other person is entitled to a ryotwari patta under any other provision of the Act.

The orders passed by the Assistant Settlement Officer, and the Settlement Officer u/s 11 (a) are subject to revision by the Director of Settlements u/s 5 (2) of the Act. The orders of the Director of Settlements including those made in revision u/s 5 (2) are subject to revision by the Board of Revenue u/s 7 (d). Under the Act, there is however no provision for any further revision to the Government, the Board of Revenue being the final revisional authority in matters arising u/s 11 (a) of the Act. In the absence of an express provision, there is no warrant for the assumption that by implication there is some residuary power in the Government to revise the orders of the Board of Revenue. In *K. Nagarathnammal Vs. S. Ibrahim Saheb and Another*, a Full Bench of the Madras High Court held that u/s 10 (5) of the Madras Hereditary Village Officers Act, the Collector is the final authority, and neither the Board of Revenue nor the Government has any right to interfere. That decision is an authority for the proposition that where the statute does not expressly provide for a revisional jurisdiction, the Government cannot claim to exercise such a jurisdiction under an assumed residuary power. I respectfully adopt the reasoning of Balakrishna Ayyar, J., who spoke for the Full Bench. I hold, therefore, that in this case the Board of Revenue is the final revising authority against the orders of the Directors of Settlements, and no further revision to the Government lies. That being so, the proceedings now pending before the Government as a result of the revision petition filed by the 1st respondent are wholly lacking in jurisdiction.

12. The learned Government Pleader has very strongly contended that even on the assumption that the Government have no jurisdiction to entertain a revision petition against the orders of the Board of Revenue passed u/s 7 (d) of the Act, they have a right to consider the question whether the case falls under the proviso to Section 11 or not. According to the rules issued u/s 11 of the Act, the Board of Revenue is the authority to direct ryotwari patta to be issued in cases falling within the ambit of the proviso to Section 11 of the Act. The power of the Board of Revenue is subject to revision by the Government. It is, therefore, contended by the learned Government Pleader that it is competent for the revising authority to consider the question as to whether in the circumstances of the case the application of the petitioner for ryotwari patta should have been allowed in accordance with the terms of the proviso to Section 11 of the Act.

13. I am unable to agree with this contention. There is no warrant for ignoring the express language employed in the notice dated 31-5-1961 and the circumstances under which it came to be issued. The question that was debated throughout by the hierarchy of the Tribunals is whether the lands comprised in R. S. No. 183 are ryoti lands or not. It is against the final decision of the Board of Revenue holding the lands to be ryoti lands in respect of which a ryotwari patta

could be granted to the petitioner that the 1st respondent filed a revision. In such a situation, there is no force in the contention that the Government were acting under their re-visional powers under the proviso to Section 11 of the Act.

14. It is also contended by Mr. Jagannadha Rao, that on the facts of this case, it should be held that the petitioner was admitted into possession in 1944 itself. The Settlement Officer held that the petitioner was in possession of the 8.2 cents from 1944, and the issue of patta by the Zamindar was only a matter of correspondence. Upon that footing, it is contended that the petitioner should be deemed to have been admitted into possession within the meaning of the expression in proviso to Section 11 of the Act in 1914 itself. He has relied in this behalf on a decision of the Madras High Court in Madini Doraswami Naidu Vs. Syed Mir Hussain and Others, . The finding of the Settlement Officer that the petitioner was admitted into possession of the land in 1944 has not been up-Bet by the Director of Settlements, or any other authority. If, therefore, the petitioner was admitted into possession in 1944, the case would not fall within the proviso to Section 11 of the Act.

15. I therefore hold that the proceedings now pending before the Government pursuant to the notice dated 31-5-1961 are without jurisdiction. A writ of Prohibition shall, therefore, issue directing the 2nd respondent, the Government of Andhra Pradesh, to forbear from proceeding further with the revision in Memorandum No. 574/J/61-2 dated 31-5-1961. The petitioner will have his costs from the respondents. Advocate's fee Rs. 100/-.