

(2003) 06 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15473 of 1992

Indupuru Raghava Reddy and Others

APPELLANT

Vs

Commissioner, Survey, Settlements and Land Records and
Others

RESPONDENT

Date of Decision : 10-06-2003

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act,
1956 — Section 2A, 7

Citation : (2003) 5 ALD 210

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

**Advocate : M. Ravindranath Reddy, for the Appellant; Government Pleader for
Revenue, for the Respondent**

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This Writ Petition is filed by the petitioners aggrieved by the order of the Commissioner, Survey Settlements and Land Records, Andhra Pradesh, Hyderabad, the 1st respondent herein made in File No. VV 153/91 dated 14.9.1992 confirming the order of the respondents 2 and 3 dated 6.11.1990 and 15.5.1989 respectively negating the claim of the petitioners that the petitioners are entitled for grant of patta with reference to Ac. 44.68 cents of land in S.No. 1298 of Jadagogula Agraharam h/o Juwaladinne, Bhogole Mandal, Nellore District and treating the same as waste land in terms of Section 2-A of A.P. (A.A) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short, the Act).

2. According to the petitioners, Jadagogula Agraharam h/o Juwaladinne village is a Garbhakandriga in Juwaladinne revenue village. The provisions of the Act were made applicable to this Kandriga. The formalities of taking over this kandriga were completed during 1977. The total extent of the said Kandriga is Ac.812.32 cents bearing S.No. 321/B, which was re-surveyed and different survey numbers

were assigned. The petitioners and their predecessors claimed that they are the purchasers and possessors of an extent of Ac.88.68 cents of land in S.No. 1298 entitled for grant of patta as they are the successors of the original Inamdars. The claim of the petitioners as purchasers from the Inamdars is not in dispute. However, the Inams Deputy Tahsildar, the 3rd respondent herein, took up enquiry u/s 7 of the Act and considered the claims of the petitioners' predecessors with reference to the land in question along with other extents as well as the claims of other similarly placed persons. The 3rd respondent by order dated 6.11.1990 accepted the claims of the claimants with reference to part of the lands while declaring that the land in an extent of Ac.44.68 cents out of Ac. 88.68 cents vest with the Government free from all encumbrances u/s 2-A of the Act. Aggrieved by the said order of the 3rd respondent, the petitioners predecessors carried the matter in appeal to the Revenue Divisional Officer, the 2nd respondent herein. Even though the Revenue Divisional Officer found that the land in question was purchased by the petitioner's predecessors, however, held that it is a waste land as it was not under cultivation and it would vest in the Government. Even according to the 2nd respondent, the said land was shown in the revenue records as "assessed waste dry land". In fact, even the Inams Deputy Tahsildar in his order recorded a finding that the land was not under cultivation, but is cultivable and could be made fit for cultivation without incurring much expenditure by referring to the decision of the Supreme Court in Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar, . The said finding of the 3rd respondent was also not disturbed in appeal by the appellate authority. But, however, as it was not under actual cultivation, the Revenue Divisional Officer also treated the land as waste-land and held that it automatically vests in the Government free from all encumbrances u/s 2-A of the Act. On further revision to the 1st respondent by the petitioners, the 1st respondent also concurred with the findings of respondents 2 and 3 and passed the impugned order on 14.9.1992, negating the claim of the petitioners and holding that the land in question vests in the Government in terms of Section 2-A of the Act. Hence this writ petition assailing the validity of the said order.

3. Mr. M. Ravindranath Reddy, the learned Counsel for the petitioners, assailing the validity of the order of the 1st respondent, contended that the authorities have misdirected themselves in holding that merely because the land was not cultivated for certain period, it can be treated as waste land in terms of Section 2-A of the Act. According to the learned Counsel, Section 2-A of the Act was inserted by the Amendment Act 20 of 1975 in order to vest the communal lands and other lands which are not fit for cultivation, in the Government free from all encumbrances, but it is not intended to vest any land belonging to individual Inamdars, whether they are in possession of the Inamdars or the tenants. The learned Counsel also referred to the provisions of Section 4 of the Act where it is provided that where the Inam land is in occupation of the tenant, the tenant is entitled to ryotwari patta for a two-third share of that land and the Inamdar is entitled for grant of patta to the extent of the remaining 1/3rd in lieu of

compensation for losing the rights in the two-thirds share of that land. However, if there is no tenant, the Inamdar is entitled to a ryotwari patta in respect of the entire extent of land. Thus, according to the learned Counsel, there is no provision in the Act vesting the lands belonging to the individual Inamdars in the Government free of all encumbrances. The learned Counsel also brought to the notice of the Court the provisions of Section 10-B of the Act where it is provided that the transferee who has acquired interest in good faith and for valuable consideration, or his successor in title, who is in possession of the land on the date of the commencement of the Act, shall be, deemed to be the indamdar. The learned Counsel also referred to the statement of objects and reasons and contended that where there is no tenant with reference to the land in question either on the date of commencement of the Act or as on 7.1.1948, it is only the Inamdar who is entitled to ryotwari patta in respect of the land in his occupation on the date of commencement of the Act. The learned Counsel, therefore, contended that the land in question belongs to the petitioners who are the successors to the Inamdars and in the absence of any tenant, the petitioners are entitled for grant of ryotwari patta. The learned Counsel also contended that with reference to other extents purchased under the same document, ryotwari pattas were granted to the Inamdars. According to the learned Counsel, the land in question is fit for cultivation though it was not under actual cultivation and, therefore, it cannot be treated as waste land in terms of Section 2-A of the Act. The learned Counsel, placed reliance on the judgment of the Supreme Court in Athmanandaswamy Devasthanam's case (supra) and contended that as the lands in question are cultivable lands, and classified as "assessed waste dry land" even in the revenue records which fact was noted by the appellate authority in its order, the same cannot be treated as waste land in terms of Section 2-A of the Act for vesting in the Government.

4. According to the learned Counsel, Section 2-A refers to vesting of the lands enumerated therein, which are not cultivable lands such as communal lands, porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank beds, irrigation works, streams, and rivers, fisheries and ferries and therefore, the term "waste lands" used in Section 2-A must be understood in the context in which it was used and if so construed, the term "waste land" referred to therein means only lands which are uncultivable lands for ever and not otherwise. The learned Counsel, therefore, submitted that the impugned order is liable to be set aside.

5. On the other hand, the learned Government Pleader for Revenue, opposed the contentions raised by the learned Counsel for the petitioner. According to the learned Government Pleader, the land was not in actual occupation and cultivation of the petitioners and unless the petitioners are in actual occupation of the land and cultivate the same, they are not entitled for grant of ryotwari patta and in such case the land would automatically vest in the Government in terms of Section 2-A of the Act. The learned Government Pleader contended that all the authorities found that the land in question was not under actual cultivation

on the date of the Act. It is, therefore, contended that there is no irregularity or illegality in the impugned order vesting the lands in question in the Government in terms of Section 2-A of the Act. The learned Government Pleader also referred to Section 4(2)(b) of the Act and contended that it is only the person in actual occupation of the land, other than the tenant and where the Inamdar is an individual who is entitled for grant of ryotwari patta and not otherwise. According to the respondents, as the petitioners are not in actual occupation of the land, they are not entitled for grant of ryotwari patta and, therefore, the order vesting the land in question in the Government is just and proper and does not warrant any interference by this Court.

6. It is also contended that an extent of Ac. 44.68 cents of land was treated as having vested in the Government and the Inams Deputy Tahsildar granted patta in respect of Ac.44.00 cents out of the total extent of Ac.88.68 cents.

7. From the above rival contentions, the issue to be considered is whether the land in question in an extent of Ac.44.68 cents out of Ac.88.68 cents of Jadagogula Agraharam h/o Juwaladinne, Bhogole Mandal, Nellore District can be treated as waste land in terms of Section 2-A of the Act and whether it vests in the Government.

8. It is not in dispute that the land in question belongs to the Inamdars from which the petitioners' predecessors acquired title by purchasing the same under registered sale deeds. The Inams Deputy Tahsildar who initiated proceedings u/s 7 of the Act treated the same as waste land and declared them to have vested in the Government free from all encumbrances in terms of Section 2-A of the Act, as it was not under actual cultivation. Though the appellate authority, the 2nd respondent, accepted the claim of the petitioners that they have purchased the same from the original Inamdars, however, held that no crops have been raised and no evidence was produced to prove their possession and, therefore, treated the land in question as waste land so as to vest in the Government in terms of Section 2-A of the Act. This view was even confirmed by the 1st respondent on Revision.

9. It is not in dispute that the land in question which was originally in the possession of the inamdars was purchased by the petitioners' predecessors under valid registered sale deeds. However, the authorities proceeded on the footing that no evidence was produced to prove that the petitioners have been in possession, cultivating the same. It is not the case of the respondent-authorities that some third parties are in possession of the land. Under the scheme of the Act, where the Inamdar is an individual, on abolition of the Inam, patta should be granted either to the individual who is in occupation of the land or to the tenant who is in occupation of the land under the Inamdar. Where the tenant is in occupation, he would be granted patta to the extent of 2/3rd of land in occupation while the Inamdar would be granted patta in respect of the remaining 1/3rd land. Where there is no tenant, the Inamdar is entitled for grant of ryotwari patta in respect of the entire land. As could be seen from the records,

the land in question was not under actual cultivation as on the date of the Act. When once it is found that the petitioners have got valid title to the land in question, they are deemed to be in possession and occupation of the land until and unless the contrary is proved.

10. The only contention of the respondents is that as the land in question is not under actual cultivation, it should be treated as waste land so as to vest the same in the Government in terms of Section 2-A of the Act. But as rightly pointed out by the learned Counsel for the petitioner, the term "waste lands" used in Section 2-A of the Act should be read in the context in which it is used along with other similar terms where lands of different categories were sought to be vested in the Government. Under the original scheme of the Act, there is no provision for vesting of the land either in the Government or in any other person except in the Inamdar or if there is a tenant, apportioning between them. Subsequently, by Amendment Act 20 of 1975, Section 2-A was inserted for the purpose of vesting all communal lands, porambokes, grazing lands, waste lands, mines and quarries, tanks, tank beds, and irrigation works, streams and rivers. The above categories of lands clearly show that they are the lands which are not fit for cultivation for ever and nor could they be brought under cultivation. Further, the term "waste land" was also used in the said provision. Going by the statement of objects and reasons of the Amendment Act 20 of 1975 and the words used in Section 2-A of the Act, the term "waste lands" referred to therein should be interpreted as "lands which are unfit for cultivation for ever", and not lands which are fit for cultivation or which could be brought under cultivation without incurring much expenditure, and lands which were not under actual cultivation. The above view of this Court is fully supported by the decision of the Supreme Court in *Athmandanswamy Devasthanam* case (supra) wherein the Apex Court, while considering a similar question, held that shrubs, jungles and the like cannot be held to be uncultivable merely on that count or on account of they being not cultivated for a long time. It was further held that lands which could be brought under cultivation are cultivable lands unless some provision of law provides for holding it otherwise under certain circumstances. In the present case, merely because they are not under actual cultivation on the date of the Act, they cannot be treated as waste lands. It is not in dispute that the land in question is fit for cultivation and in fact the authorities proposed to assign the same to third parties for purpose of cultivation. When once it is found that the land is fit for cultivation, it cannot be treated as waste land so as to vest the same in the Government in terms of Section 2-A of the Act. Further, when once it is found that the petitioners have got valid title over the land in question having acquired the same from the Inamdars, they are considered to be in occupation of the same. Further, none of the provisions in the Act refer to actual cultivation as a condition precedent for grant of ryotwari patta. The only requirement is the occupation of the land by the person. The only dispute is that the lands in question were not under cultivation. This by itself does not infer that the petitioners are not in occupation of the same. In view of the fact that even the

appellate authority has recorded a finding that in the revenue records the land in question was shown as "assessed waste dry land", it presupposes that the land is fit for cultivation and hence treating such land as waste land so as to vest in the Government is clearly illegal and without jurisdiction. In view of the binding precedent of the Supreme Court that the land which is fit for cultivation or which could be brought under cultivation without incurring much expenditure cannot be treated as waste land, the orders passed by the respondent-authorities cannot be sustained.

11. In the result and for the foregoing reasons, the writ petition is allowed and the impugned order of the 1st respondent dated 14.9.1992 confirming the orders of respondents 2 and 3 dated 6-11-1990 and 15-5-1989 is set aside. It is further declared that the petitioners are entitled for grant of ryotwari patta in respect of the land in question under the provisions of the Act and hence they are directed to approach the concerned authorities for grant of such patta. No costs.