

(2005) 04 AP CK 0054
In the Andhra Pradesh High Court
Case No : Writ Petition No. 21689 of 2000

K. Gnaseshwar

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 Fasli — Regulation 6
Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 100, 101, 102, 158, 158(2)
Andhra Pradesh Board of Revenue (Replacement By Commissioners) Act, 1977 — Section 4

Citation : (2005) 3 ALD 693 : (2005) 4 ALT 130 : (2005) 2 APLJ 306

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : P.V. Vidyasagar, for the Appellant; Government Pleader for Revenue for the Respondent Nos. 1 to 5 and K. Raghuvveera Reddy, for the Respondent Nos. 6 to 10 and 12 to 20, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—This petition is filed questioning the proceedings No. D1/8670/93 dated 30.1.1995 issued by the District Revenue Officer, Ranga Reddy District (4th respondent) ordering rectification of an alleged survey error that took place in respect of Acs.28-18gts in S.Nos.119 and 122 (old) corresponding to S.No. 27 (New) of Khajaguda Village in Serilingampally Mandal on an application filed by Salabathkhan and Ors. u/s 87 of the A.P. (Telangana Area) Land Revenue Act, 1317 F (the Act).

2. The case of the petitioner is that he and 23 others are in possession and enjoyment of Acs.27-18gts of agricultural land in S.No. 27 (New) corresponding to S.Nos.119 and 122 (old) of Khajaguda Village and when the partners of M/s. Shalivahana Builders, Mahendra Hills, Secunderabad, interfered with their possession and enjoyment of the said land, they filed O.S.No. 17 of 1999 in the

Court of the Principal Junior Civil Judge, Saroornagar, Rangareddy District, against M/s. Shalivahana Builders represented by its partner, M. Komaraiah, and filed I.A.No. 85 of 1999 therein seeking an injunction restraining the defendants in that suit and their men from interfering with their possession over the said land during the pendency of the suit, and that the Court, by its order dated 15-7-1999 granted an injunction in their favour, and that M/s. Shalivahana Builders preferred C.M.A. No. 60 of 1999 against that order to Court of the II Additional District Judge, Rangareddy District, and that in the meanwhile, Respondents 6 to 10 herein filed O.S.No. 587 of 1999 on the file of the Court of the II Additional Senior Civil Judge, Rangareddy District, alleging, inter alia, that he and the other plaintiffs in the aforesaid O.S.No. 17 of 1999 under the guise of the orders of injunction granted in LA.No. 85 of 1999 started interfering with their possession and enjoyment over Ac.27-10gts in S.No. 27/2 of Khajaguda Village and filed I.A.No. 1668 of 1999 in that suit seeking an injunction during the pendency of the suit restraining them from interfering with their possession over that property and that the Court passed an order of injunction against them on 18.1.2000 and aggrieved thereby they preferred C.M.A. to this Court and that Respondents 6 to 10, under the guise of the temporary injunction granted in IA.No. 1668 of 2000, started interfering with their possession and enjoyment of the land in S.No. 27/1. It is their contention that from the plaint in O.S.No. 587 of 1999, filed by Respondents 6 to 10, they came to know that they are claiming right to Acs.27-10gts in S.No. 27/2 of Khajaguda Village on the basis of the order of the 4th respondent dated 30-1-1995 impugned in this petition, alleging that they acquired title to the said land by purchasing it from Respondents 11 to 20, who are the successors of Salabath Khan and Ors., the petitioners before the 4th respondent. They are questioning the order of the 4th respondent mainly on the ground that he has no jurisdiction to pass the order u/s 87 of the Act.

3. From the order of the 4th respondent dated 30.1.1995 impugned in this petition, it is seen that the case of the applicants before him is that during re-survey that took place in 1949 private patta land in S.Nos.119 and 122 of Khajaguda Village measuring Acs.7-36gts and Acs.19-22gts respectively were assigned S.No. 27 (New) and is described as Government land and, so that entry, that land is Government land, has to be deleted, and their names and the names of the other heirs of Yaseen Khan and his brother have to be entered as pattedars of that land. Initially, when Yakoob Khan, father of Respondents 11 to 20, filed a petition before the Collector (Land Records) seeking correction of the said entry, he was informed, through Memo dated 17-6-1969, that his case does not fall u/s 87 of the Act and has to be settled by the Revenue Authorities and so he approached the Tahsildar, Hyderabad West, who through Memo No. B-1/2502/79 dated 21-4-1979 directed him to approach the Assistant Director (Survey and Land Records) u/s 87 of the Act. Therefore, he again filed a petition u/s 87 of the Act before the Collector, Rangareddy District. Since the Collector did not pass orders on his petition, he filed W.P.No. 13862 of 1984, which was disposed of with a direction to the Collector to hear and dispose of the claim of

the applicant. Thereafter, the Joint Collector who heard the case, dismissed it by his order dated 10-4-1989 in File No.G8/1279/80, on the ground that the original Assignee late Yaseen Khan and his brother were not in possession and enjoyment of the land and also because there is no evidence to show that he is the direct heir to the estate of Yaseen Khan. Aggrieved thereby, the applicant, Ayoob Khan preferred an appeal to the Commissioner (Survey, Settlement and Land Records), Hyderabad, who while allowing the appeal and setting aside the order dated 10.4.1989 of the Joint Collector, Rangareddy District, remitted the case to the Collector, Rangareddy District, for expeditious disposal. In pursuance of that order of the Commissioner (Survey, Settlement and Land Records), Hyderabad, 4th respondent heard the case and passed the order impugned in this petition.

4. The point for consideration is whether 4th respondent has jurisdiction to pass the order impugned in this petition?

5. Section 87 of the Act reads--

"Settlement Officer to correct clerical and other errors admitted by all parties and application for correction of name to be made within two years:--The Director of Settlements and on making over the settlement records to the Collector, the Collector may, at any time, correct or cause to be corrected any clerical error or errors admitted by the party concerned.

The aforesaid officer shall hear all applications made within two years after the introduction of the settlement, for the correction of any wrong entry of a pattadar's name in the register referred to in the preceding section and if satisfied about the error whether such error has been made through negligence, fraud, or collusion shall correct the same, notwithstanding that the party concerned does not admit the error but no such application shall be entertained after two years, unless reasonable cause is shown to the said officer for the delay, and in such cases if any error is proved it shall not be corrected without obtaining the sanction of the Government."

So, it is clear that the Director of Settlements, before making over the settlement records to the Collector," and after making over the settlement records to the Collector, the Collector, can, at any time, correct any "clerical error" or "errors admitted by the party concerned", at any time. Those officers can, within two years of introduction of the settlement, correct any wrong entry of pattadars name in the registers, on an application, if they are satisfied that the error was due to negligence, fraud or in collusion. Delay beyond two years can be condoned, if it is satisfactorily explained, but the entry cannot be corrected without obtaining sanction from the Government.

6. From the order of the 4th respondent impugned in this petition, it is seen that the village survey was taken up in 1949 and the settlement records were implemented during 1960-61. As seen from Reference No. 2 mentioned in the impugned proceedings, Yakoob Khan's application is dated 17-1-1995, which is beyond two years after the introduction of the settlement. Section 87 of the Act

permits correction of entry relating to the "names of the pattadars". There can be a pattadar only for private lands, but not in respect of Government lands. Deleting the name of the Government and incorporating the names of a private person, by no stretch of imagination, would be correction of an entry relating to the name of a pattadar, because "pattadar" is defined in Section 2(11) of the Act, as "the person who is directly responsible to the Government for payment of land revenue and whose name has been entered as such in Government records whether he be personally in possession of the holding or through his Shikmidar." Change of name of the pattadar means, if the name of "X" is recorded as pattadar, instead of "A", on an application of "A", and if he is able to establish that the name of "X" was recorded, due to negligence, fraud or collusion, his name would be recorded incorporating the name of "A" by deleting the name of "X". Such correction also can be made only within two years from the date of introduction of the settlement. If the application is filed beyond two years, sanction from Government is necessary to correct the entry because in *Khairuddin Ali and Others Vs. State of A.P. and Others*, a Division Bench of this Court held:

"Even the power of the Government or its delegate to give sanction for the correction of errors was confined only to the correction of wrong entry relating to pattadar's name."

Here, I feel it relevant to refer to the circular No. P1/4392/94 (SS & LR) dated 15-10-1994 issued by the Commissioner, Survey, Settlement And Land Records, Hyderabad, relating to rectification of settlement errors, scope and applicability of Section 87 of the Act, clarifying the distinction between "clerical errors" and "errors other than clerical errors". It reads--

"Section 87 of Land Revenue Act 1317 Fasli does not provide definition of clerical errors and errors other than clerical errors. The clerical errors are minor errors which do not involve alteration in area, change of classification, or change of name of the pattadar.

A few examples of errors, which come under the category of clerical errors, are furnished below:-

- (a) Name of the Pattadar misspells,
- (b) Inter-change of survey numbers,
- (c) Survey No. missing in the survey map,
- (d) Area is calculated wrongly though measurement on ground and records support the correct area.

Since the definition of clerical error and errors other than clerical errors is not there in the Act, it is not proper to leave it to the judgment of Asst; Director Survey and Land Records whether particular survey error falls under the category of clerical error or errors other than clerical error. Therefore, the Asst;

Director, Survey and Land Records shall send detailed technical report to Director, Survey Settlement and Land Records, regarding proposed error. This is purely a technical and non-statutory function. The report so sent shall be examined at Directorate whether the error falls under the category of clerical error or error other than clerical error and the fact will be communicated to Asst. Director Survey and Land Records. On obtaining clearance from the Directorate, the Asst. Director shall send the file to District Revenue Officer to dispose of the case at District Revenue Officers level u/s 87 of Land Revenue Act, if the error is a clerical error. If the error is other than clerical error, the District Revenue Officer, shall send proposals to Commissioner Survey Settlement And Land Records duly condoning the delay as per rules for disposal of the case by Commissioner, Survey, Settlement and Land Records, u/s 87-A of Land Revenue Act 1317 Fasli."

Another clarification regarding who should condone the delay after two years, after introduction of settlement rates i.e., whether the Collector (D.R.O.) or Commissioner of Survey Settlement and Land Records reads:

"The District Revenue Officer alone is competent to entertain belated petitions after expiry of statutory period of two years, provided reasonable cause is shown by the petitioners for delay and the error is other than clerical error. Where error is other than clerical error, District Revenue Officer is competent only for condonation of delay of belated petitions and not competent to carryout correction of survey, settlements and Land Records. The District Revenue Officer has to send necessary proposals to Commissioner of Survey Settlement and Land Records for carrying out corrections duly examining the merits of the case including Technical scrutiny. The Commissioner, Survey, Settlement is competent to dispose of the case u/s 87-A of Land Revenue Act 1317 Fasli."

In view of the above, it is clear that the correction sought by Ayoob Khan does not fall under the corrections contemplated by Section 87 of the Act and so 4th respondent was in error in allowing such application.

7. As stated earlier, against the order dated 10.4.1989 passed by the Joint Collector, as per Section 158(2) of the Act an appeal against that order would lie to the Government, subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358-F (the Regulations). An interesting contention is raised by Sri P.V. Vidya Sagar, the learned Counsel for the petitioners. It is his contention that since the order impugned is the result of remitting the case by an authority, who has no jurisdiction to entertain or hear the appeal before him, the order remitting the case to the original authority and the order passed by the 4th respondent in consequence of such remand are wholly without jurisdiction and hence are liable to be set aside. I find force in his contention for the following reasons.

8. As per Regulation 6 of the Regulations an appeal to the Government, as contemplated by the Act, would lie to the Board of Revenue. As Board of

Revenue was abolished and Commissioners were appointed in its place under the A.P. Board of Revenue (Replacement By Commissioners) Act, 1977 (the 1977 Act), which came into force on 1.2.1977 appeals have to be preferred to the Commissioners appointed under 1977 Act, instead of the Government. In pursuance of the powers vested in it, u/s 4 of the 1977 Act, Government by virtue of G.O. Ms. No. 97, Revenue (Z), dated 31-1-1977, as amended by G.O. Ms. No. 1438, Revenue (Z), dated 4-11-1977 appointed Commissioners notifying the powers to be exercised by each of them, under various laws in force in the state. Commissioner of Land Revenue, as per item 40, against his name in the notification, can exercise the powers of the Government under the Act. Commissioner, Survey, Settlement and Land Records, as per entry 26 against his name in the said notification, can exercise the power of Government which it can exercise under Sections 77 to 102 and Sections 167 to 171 of the Act. Section 158 of the Act, which relates to appeals and Revision, is not notified in Item No. 26. So, it is clear that only Commissioner of Land Revenue, who is vested with all the powers exercisable by the Government except the powers under Sections 77 to 102 and Sections 167 to 171 of the Act (which are vested with the Commissioner, Survey, Settlements and Land Records) can only hear the appeal against an order u/s 87 of the Act, but the power exercisable by the Government u/s 87 i.e. giving sanction for correction of the name of pattedar, can be exercised by the Commissioner, Survey, Settlements and Land Records.

9. Since Commissioner, Survey, Settlements and Land Records, who is not vested with power u/s 158 of the Act, entertained the appeal preferred by Yakoob Khan and remitted the case to the Collector, that order is passed by an authority who has no jurisdiction to entertain the appeal and so it is a nullity as per the ratio in *Kiran Singh and Others Vs. Chaman Paswan and Others*, , where the apex Court held that a decree passed by a Court without jurisdiction is a nullity.

10. The other contention raised by the learned Counsel for petitioner is that since this Court in W.P.No. 13862 of 1984 directed the Collector to hear and dispose of the petition, the Collector only, but not the Joint Collector (3rd respondent), can hear and dispose of the petition, and since it is the Joint Collector but not the Collector that had passed the order impugned, it is a nullity, as held in *Government of Govt. of Andhra Pradesh and Others Vs. Gudepu Sailco and Others*, , case where the District Collector ignoring the directions given to him to hear the case, made over the case to the District Revenue Officer, who heard and disposed of the case. The apex Court held that since mandamus was issued to the Collector to hear and dispose of the case, District Revenue Officer had no jurisdiction to consider the case, in violation of the direction of the High Court. The ratio in that case applies on all fours to the order impugned in this petition. For that reason also the order impugned is not sustainable.

11. Hence, the writ petition is allowed. Rule Nisi is made absolute and the order impugned is quashed. No costs.