
(2005) 10 AP CK 0041
In the Andhra Pradesh High Court
Case No : Writ Petition No. 24936 of 1996

K. Venkat Reddy	Vs	APPELLANT
Government of A.P. and Others		RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Citation : (2006) 1 ALD 29

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

Bench : Single Bench

Advocate : B. Viswanatha Reddy, for the Appellant; Government Pleader for Revenue for Respondent Nos. 1 to 4 and S.V. Muni Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Mandal Revenue Officer (4th respondent) assigned Ac. 1.70 cents in S.No. 306/1 and Ac.0.47 cents in S.No. 308/ 4 of Nellapalli Village, Gangadharanellore Mandal under a patta to the petitioner on the basis that he has been in possession of the said land from a long time. Questioning the said assignment, on the ground that the land assigned to the petitioner is a tank bed, E. Karipi Reddy (5th respondent), who died during the pendency of the petition and whose legal representatives are brought on record as respondents 6 to 8, filed an appeal to the Revenue Divisional Officer, which was dismissed on 25-5-1990. Aggrieved by that dismissal, 5th respondent preferred a further appeal to the Joint Collector, Chittoor, relying on G.O. Ms. No. 157 Rev.(M) dated 13-2-1987 which prohibits assignment of tank bed lands and also on the ground that the wife of the petitioner was earlier assigned Ac.2.28 cents in S.No. 40/2 and Ac.0.17 cents in S.No. 74/2. That appeal was allowed by the Joint Collector on 31-3-1992. Against that order of the Joint Collector, petitioner preferred a revision to the Special Commissioner, Land Revenue (2nd respondent), who remanded the case to the Joint Collector for fresh consideration after hearing both parties. Thereafter the Joint Collector, after hearing the petitioner and the 5th respondent, through his order dated 4-10-1994 held that inasmuch Ac.1.70

cents in S.No. 306/1 is not a part of tank bed, interest of the ayacutdars would not adversely be affected, and thereby confirmed the assignment of that extent, but set aside the assignment in respect of Ac.0.47 cents in S.No. 308/4, on the ground that it is being used as thrashing floor etc. by the villagers. That apart of the order cancelling the assignment in favour of the petitioner in respect of Ac.0.47 cents in S.No. 308/4 became final as petitioner did not question the same in revision to the second respondent. On a revision preferred to him by the 5th respondent against the order of the Joint Collector confirming the assignment of Ac. 1.70 cents in S.No. 306/1, 2nd respondent set aside the said order of the Joint Collector. That order of the 2nd respondent is impugned in this petition, by the petitioner.

2. On behalf of the respondents 1 to 4, 4th respondents filed his counter-affidavit, 5th respondent filed his counter-affidavit opposing the petition.

3. The contention of the learned Counsel for the petitioner is that since Ac.1.70 cents in S.No. 306/1 assigned to the petitioner is in the middle of the cultivable lands, and is not a party of the tank bed, and since the Collector had in fact reclassified the land in S.No. 306 deleting it from tank bed, it ceased to be a part of the tank bed and so there is no impediment for its assignment. For that reason and since no rules relating to assignment are violated 2nd respondent erred in setting aside the assignment of Ac.1.70 cents in S.No. 306/1 in favour of the petitioner. The contention of the learned Assistant Government Pleader is that since the land in S.No. 306/1 is a part of the tank bed order of the 2nd respondent impugned in this petition needs no interference. The contention of the learned Counsel for respondents 6 to 8, is that since the order of the Collector denotifying the land in Sy.No. 308/1 as tank bed is unsustainable, as he has no such power to denotify and since B.S.O. specifically forbids assignment of tank bed lands, order of the 2nd respondent impugned in this petition is unassailable, because in *S. Reddeppa Naidu v. The Joint Collector W.P.No. 9250 of 2001* dated 14-3-2002, relying on the observations in *Hinch Lal Tiwari Vs. Kamala Devi and Others*, , it is held that water bodies, water courses, kunta porambokes and foreshores of such porambokes cannot be assigned, and that Revenue Officials are not competent event to reclassify such lands.

4. On my direction, the learned Assistant Government Pleader produced the relevant file. It shows that some of the villagers made a representation to the Collector alleging that petitioner and his son, who are enjoying the tank bed poramboke from some years past, are trying to obtain patta in respect of that land, though the said land is required for public purpose, as it is Pullareddicheruvu tank and as morava water goes through the above said land, there would be no other way for the water to escape, if that land is assigned. They narrated other reasons also in support of their claim that the said land cannot be assigned to the petitioner. That file also contains a copy of the proceedings R.Dis.44664/86, dated 10-5-1987 of the Joint Collector, who, basing on the reports of the erstwhile Tahsildar, Chittoor Mandal, reclassified and sub-

divided land in S.No. 308, which was a tank bed land as assessed waste dry, into survey Nos. 308/1, 308/2 and 308/3 on the ground that it is surrounded by patta lands, issued orders for making necessary changes in the relevant Revenue Registers shortly thereafter, petitioner made an application for assignment of Ac.1.70 cents in S.No. 308/1 and Ac.0.47 cents in S.No. 308/3, and the same was ordered by the Mandal. Revenue Officer.

5. The fact that petitioner filed an application for assignment shortly after the denotification of the land in S.No. 308 and not before that reclassification shows that petitioner does have knowledge of or access to the happenings in the revenue department.

6. As stated earlier, order cancelling the assignment of Ac.0.47 cents in S.No. 306/ 3 became final as the petitioner did not question that order of cancellation and so we are concerned with Ac. 1.70 cents in S.No. 308/1 only in this revision.

7. In my considered opinion, the order of the Collector reclassifying in the land in S.No. 308 from that of a tank bed to assessed waste dry without the approval of the Government is unsustainable because in S. Reddeppa Naidu Case (supra), it is clearly held that revenue officials are not competent to reclassify water bodies, water courses etc. In fact as per the B.S.O. abandoned tanks etc. can be sold in auction after being made into plots, after the previous sanction of the Government. When there is total prohibition for assignment of tank bed lands, in BSO 15, which only permits such lands being leased out with a condition for resumption, when required for any public purpose, and when the Government in G.O. Ms. No. 157 Revenue (M) Department, dated 13-2-1987 directed that no cultivation even on Eksal basis should be allowed in the tank-bed area under any circumstances, it is prima facie clear that the reclassification of S.No. 308 from tank bed to assessed waste dry was resorted to, only with a view to assign a part of that land to the petitioner, to make it appear that there is no violation of BSO 15. Therefore the order impugned needs no interference and so I find no merit in this petition.

8. In view thereof question whether wife of the petitioner was assigned some land earlier and if the petitioner has some other land to make him ineligible for assignment in view of Para-3 of BSO 15 which prescribes the maximum extent of land that can be assigned as 2 1/2 acres of wet land or 5 acres of dry including the land held by him as owner, need not be gone into and so this petition is dismissed with costs.