
(1992) 03 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16482 of 1990

Kalleti Chengaiah

APPELLANT

Vs

Director of Settlement and Others

RESPONDENT

Date of Decision : 20-03-1992

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,
1948 — Section 11, 5(2)
Constitution of India, 1950 — Article 226

Citation : (1992) 2 ALT 464

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Advocate : S. Venkateswara Rao, for the Appellant; The Govt. Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Rao, J.—This is a Writ Petition filed by the petitioner for issue mandamus declaring the order of the Director of Settlement, Government of Andhra Pradesh, Hyderabad, dated 25-10-1990 as illegal, improper and arbitrary.

2. The preliminary question to which this writ petition gives rise to is, whether the Director of Settlement while exercising powers u/s 5(2) of Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.(herein after referred to as the Act), is vested with the power to remand the matter to the Settlement Officer.

3. The brief facts involved in this writ petition are:

4. The Settlement Officer by an order dated 7-2-1983 granted a patta to the petitioner in respect of the land measuring Ac.1.59 cents in S. No. 108 of Akkarampalli village, Chandragiri taluk of Chittoor district, u/s 11(a) Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1984. This patta granted was sought to be cancelled by the 1st respondent/

Director through an order dated 10-10-1984 calling upon the petitioner to show cause why the patta should not be cancelled since it was granted without verifying the pre-abolition records and also because the petitioner failed to produce any records in support of the grant. To this notice the petitioner filed his explanation dated 6-11-1984 stating that the Settlement Officer after considering the evidence adduced by him, viz., the evidence of P.Ws. 1 to 3, Exs.P-1, P-2, etc., and after satisfying himself granted patta and, therefore, there are no grounds to cancel the same. Ultimately, Director through the impugned proceedings remanded the matter to the Settlement Officer/2nd respondent for disposal afresh.

5. It is this order of remand i.e., the subject matter of challenge mainly on the ground that Section 5(2) of the Act does not clothe the Director of Settlement with the power to remand and, therefore, the impugned proceedings are liable to be quashed. It is relevant at this stage to have a look into Section 5(2) of the Act, which reads:

"Every Settlement Officer shall be subordinate to the Director and shall be guided by such lawful instructions as he may issue from time to time; and the Director shall also have power to cancel or revise any of the orders, acts or proceedings of the Settlement Officer other than those in respect of which an appeal lies to the Tribunal."

6. The above provision thus makes it clear that the Director has power to cancel or revise any order of the Settlement Officer, of course excluding those against which an appeal lies to the Tribunal. The words "cancel or revise" occurring in the above section are wide enough to take in, the incidental power of remand to the lower authority by the Director while exercising his powers u/s 5(2) of the Act, irrespective of the fact whether the revision is a preferred one or taken up suo motu. It is not the case of the learned counsel for the petitioner that this is a matter wherein an appeal lies to Tribunal so as to disable the Director to cancel or revise, orders u/s 5(2) of the Act. In view of this, I am not able to accede to the submission of the learned counsel for the petitioner that the Director has no power to remand u/s 5(2) of Act. Accordingly, the preliminary question is answered in the affirmative.

7. It is next contended by Mr. S. Venkateswara Rao, the learned counsel for the petitioner, that the very proceedings initiated by the 1st respondent, taking up the revision suo motu and issuing the show-cause notice dated 10-10-1984, are neither the resultants of any complaint made nor based upon any material then available with the first respondent, and, therefore, the impugned order is improper and needs to be quashed. In support of this submission, the learned counsel for the petitioner pointed out that the very impugned order discloses that no record whatsoever was available with the first respondent except the order granting patta - that too filed by the petitioner pursuant to the show-cause notice. It, therefore, indicates that at the time of issuing the show-cause notice, the Director, 1st respondent, was not having even the order granting patta so

that he could peruse and find a ground to take up the revision suo motu. In these circumstances, it is very hard to believe that the first respondent has applied his mind before initiating the proceedings for cancellation of patta.

8. A Division Bench of this High Court also had the occasion to consider the powers of the Director u/s 5(2) of Act in A. Kodanda Rao v. Government of A.P.1981 (2) APLJ 158 which it is held:

"The exercise of revisional jurisdiction suo motu must be exercised to advance the cause of injustice and not to upset settled rights."

This is a case where the patta was granted as long back as in the year 1983 and the present revision taken up suo motu is disposed of in October, 1990 upsetting the settled rights conferred through the patta in favour of the petitioner to the land in question. Therefore, on the ground of non-application of mind, before initiation of the proceedings, and the resultant upsetting of the settled rights, the impugned order is liable to be quashed.

9. Before parting with this, I may record the clarification mentioned by the learned Government Pleader across the bar that the impugned proceedings relate only to Ac.1.59 cents in S.No.108 and not to Ac.3.38 cents as apprehended by the petitioner. It is, therefore, not necessary for me to deal with the extent of Ac.3.38 cents.

10. In the result, the writ petition is allowed and the impugned order is quashed. No costs. Advocate's fee Rs. 350/-.