

(1970) 03 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1851 of 1968

Madduri Venkataratnam

APPELLANT

Vs

Mangu Ramadas and Others

RESPONDENT

Date of Decision : 16-03-1970

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 15, 64
Civil Procedure Code, 1908 (CPC) — Section 11

Citation : AIR 1971 AP 281 : (1971) 2 APLJ 185

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : P. Ramachandra Reddy and M.S.R. Subrahmanyam, for the Appellant; P.V.R.Sarma, for Govt. Pleader and G. Bala Parmemswarai Rao, for the Respondent

Judgement

1. This is an application under Art. 226 of the Constitution of India, for the issue of a writ of certiorari and for quashing an order of the Estates Abolition tribunal, East Godavari, in T.A. No. 1/66 dated 26-3-1968.

2. The petitioner herein claims to be a ryot in respect of lands covered by R.S. Nos. 47,52/1 and 52/3 of an extent of about Ac. 59-00 which are post-settlement inam lands situated in Suryaraopet village, which formed part of the erst while Pithapura, Zamindari Estate, which was notified and taken over by the Government on 7-9-1949 under the provisions of the Madras Act, now the Andhra Pradesh, (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, Act No. 26 of 1948, (hereinafter called the Act). The Assistant Settlement Officer, Anakapalli conducted a suo motu enquiry u/s 15 (1) of the Act in S.R. No. 15 (1) 2496/58, to determine the nature, history of the lands and to consider the claims of the land-holders for a Ryotwari patta. The land-holders claimed ryotwari patta u/s 12 of the Act on the footing that they were their private lands. At a later stage in the said enquiry, the land-holders set up a plea that the lands were leased out to one mangu

Narasimbarao Panatela, that there was an exchange of patta and Mutchilika between the land-holders and the said Narasimhrao Panatela in the year 1910, that the Raja of Pithapuram filed O.S. No.35/23 on the file of the Court of the District Music, Kakinda, for enhancement of rent. A compromise was effected and an annual rent of Rs. 39-9-0 was fixed, that the said Narasimbarao, dies in the year 1942 leaving behind him his daughter-in-law one Mangu Venkatanarasamma as a sole surviving heir, as her husband predeceased her, that the said Venkata Narasamma is the sister of the land-holders, that one of the land-holders M. Seshagiri Rao, was managing narasamma, that she was entitled to a patta as a ryot and that the petitioner is only a tenant of the said Venkatanarasamma. The petitioner herein stated that he had been in possession of the lands as a ryot under the landlords since the year 1934, that he was shown in the village accounts as the person in occupation ever since that year, that he was entitled to a patta u/s 11 of the Act, and that the land-holders claimed for a patta u/s 12, was not tenable.

3. The Assistant Settlement Officer, by an order dated 23-5-1959 disallowed the claim of the land-holders for a patta u/s 12, but without dropping the further proceedings u/s 15, proceeded to consider the claims of the said Venkatanarasamma and the petitioner herein for a patta u/s 11 of the Act and directed to issue a ryotwari patta to Venkatanarasamma. Against the said order, the petitioner herein preferred an appeal to the Estates Abolition tribunal, in A.S. No.44/59 and the tribunal, by its judgment dated 13-8-1960, dismissed the same. The matter was carried by way of a Writ Petition in W.P.No.709/60 to this Court. The Writ Petition was dismissed by a judgment dated 27-7-1961. The further appeal W.A. No.72/61 preferred against the said judgment, was also dismissed on 11-9-1961.

4. On 2-11-1961, the petitioner herein filed an application under S.56 of the Act before the Assistant Settlement Officer, Viziangram, for deciding the question as to who is the lawful ryot in respect of these lands. In the petition it is stated that the previous enquiry u/s 15 of the Act was confined to the determination of the question as to whether the land-holder was entitled to a patta or not, that any observations or decisions given therein with regard to a patta u/s 11, were not valid and would not have any binding effect on the parties, that the question as to who is the lawful ryot in respect of the holding, should be determined by the Assistant Settlement Officer u/s 56 of the Act and declare the petitioner herein as the lawful ryot of the holding and issue him a ryotwari patta. This petition was opposed by Venkatanarasamma on various grounds, A preliminary objection was raised stating that in the earlier enquiry, the dispute between the parties was decided and that said decision had become final and that the same matter could not be re-agitated by an application u/s 56 of the Act. The said Venkatanarasamma, filed an application before the Assistant Settlement Officer, praying that the question with regard to the maintainability of the petition should be decided as a preliminary question and this was rejected by the Assistant

Settlement Officer, But on a revision to this court in C.R.P.No.636/62, this court allowed the revision petition and directed the Assistant Settlement Officer to decide the question as a preliminary issue. The matter was taken up by the Assistant Settlement Officer and by his order dated 24-4-1965 he held that the previous decision was under Sections 15 and 11, that the present proceedings were taken u/s 56 (1) (c) of the Act and therefore the previous decision u/s 11 would not operate as res judicata. It may be mentioned that subsequent to the order passed by this court in revision, the said Venkatanarasamma died and the present first respondent, Mangu Ramada, was brought on record as the legal representative of the said Venkatanarasamma in the proceedings before the Assistant Settlement Officer.

5. Against the order of the Assistant Settlement Officer, the first respondent preferred a revision to this Court under Art, 227 of the constitution, and this court by an order dated 25-8-1965 held that the decision of the Assistant Settlement Officer could be challenged in the appeal. Thereafter the Assistant Settlement Officer, could be challenged in the appeal. Thereafter the Assistant Settlement Officer, held an enquiry and after considering the oral documentary evidence held that the rent receipts Exs. P.2 to P.11 did not show that the brother of Venkatanarasamma issued the receipts on behalf of his sister, that he issued them in the capacity of a land-holder, that he was not the power-of-attorney holder of his sister Venkata Narasamma, that she had no occupancy rights in respect of the lands, that the petitioner was entitled to the occupancy rights having been inducted into possession as a ryot by the land-holder, and that he was the lawful ryot in respect of the lands in question and that he would be entitled to the grant of a ryotwari patta for the said lands.

6. Against the decision of the Assistant Settlement Officer, the first respondent preferred an appeal to the Estates Abolition Tribunal (District Judge) East Godavari at Rajahmundry. The Tribunal held that Venkatanarasamma, never cultivated the lands, that she never cultivated the lands that she never paid any rents to the land-holder, that the petitioner did not take the lands on lease from the respondents, that he had direct dealings with the land-holder and executed kadapas in respect of the lands in his favour, that the rent receipts Exs. P.2 to P.11 ranging from 1949 to 1958 were issued by the land-holder, that when the defense department took possession of the property in the year 1942, they paid compensation to the petitioner, that Mangu Venkatanarasimharao, the father-in-law of Venkatanarasamma, who was said to have been inducted into possession of the lands, died in the year 1942, that Venkatanarasamma could not succeed to the estate of her father-in-law under the Hindu Women's Rights to Property Act of 1937, that even otherwise there was no evidence to show that Mangu Venkatanarasimha Rao continued to be in possession until his death, and that the land-holder did not file any documents to show that he had acted as the power of attorney holder. The tribunal found that the land-holder himself gave a notice Ex. P.12 on 18-12-1953 to the petitioner calling upon him to vacate the lands, that it was not mentioned in the notice that it was being issued on behalf of his sister

Venkatanarasamma that in the Azmaishi Register (Ex. P-13), the petitioner was shown as the lessee, that in the Amaragam accounts, the name of Venkatanarasamma was not mentioned that in the earlier statement Ex. P.23, the land-holder admitted that the lands were in their possession, that there was admission on behalf of the land-holder who was examined as R.W. 1 that there was no document to show that Mangu Venkatanarasimha Rao, cultivated the lands after 1914. The Tribunal therefore came to the conclusion that the petitioner was a tenant of the lands in question under the land-holder, and that the first respondent was not the lawful ryot in respect of the said lands. It however held that the previous decision given by the Assistant Settlement Officer u/s 15 of the Act, as confirmed by the Estates Abolition Tribunal and ultimately by this Court in W.A.No72/2261, operated as res judicata, and that the petition u/s 56 was not maintainable. He therefore allowed the appeal, set aside the order of the Assistant Settlement Officer and held that the first respondent would be entitled to a ryotwari patta. The petitioner has now filed this writ petition challenging the decision of the Tribunal .

7. The concurrent finding of the Settlement Officer and the Estates Abolition Tribunal, that neither Mangu Venkatanarasimha Rao, nor his daughter-in-law, Venkatanarasamma, was in possession or cultivation of the lands as a tenant, that the petitioner was cultivating the land as a tenant under the land-holder, is not challenged in the Writ petition by the respondent. And rightly so, inasmuch as the said finding is a finding of fact and is based on relevant evidence.

8. The only question that has been urged by Sri P. Ramachandra Reddy, the learned counsel for the petitioner is that the view taken by the Tribunal that the petition was barred by res judicata, is erroneous in law. He submits that the previous decision was rendered u/s 15 of the Act , in which the enquiry was confined to the question as to whether the land-holder was entitled to the grant of a patta u/s 13 of the Act, and the questions as to who was entitled to a ryotwari patta or who the lawful ryot in respect of the said land was did not fall for determination therein, that a decision with regard to these questions, is entirely outside the purview of the enquiry u/s the purview of the enquiry u/s 15, and that at best it would be an unnecessary or incidental determination and would not have the effect of res judicata.

9. Sri G. Bala Parameswari Rao, the learned counsel for the first respondent on the other hand submits that it is only the Assistant Settlement Officer that has to decide all matters falling u/s 15 or u/s 11 or u/s 56 of the Act, that though the enquiry was started under S. 15, the finding of the decisions given by the Assistant Settlement Officer with regard to the persons entitled to a ryotwari patta u/s 11 of the Act, cannot be said to be without jurisdiction and that the present petitioner and the first respondent or his predecessors-in-title having been parties to the earlier decision, the same would operate as res judicata. Alternatively it is contended by the learned counsel that the said decision having been confirmed by this court in W.P.No. 709/60 and on further appeal in W.A. No.

72/62, the judgments of this court at any rate would operate as res judicata and would bar reopening of the matter once again u/s 56 of the Act.

10. The two questions that arise for consideration in this writ petition are:-

(1) Whether the decision of the Assistant Settlement Officer in S.R.No. 15/2495/58 dated 23-5-1959 as confirmed by the Estates Abolition Tribunal (District Judge), East Godavari at Rajahmundry, in A. S. 44/59 by its order dated 13-8-1960 would operate as res judicata, and

(2) Whether the decision of this court in W.P. No. 709/60 as confirmed in W.A. No.72/61 would operate as res judicata.

11. The Estates Abolition Act is a self-contained Code and has prescribed various authorities for determining the various rights or claims which could be made under the Act. Various authorities like the Managers of Estates, the Assistant Settlement Officers, the Settlement Officers, the Director of Settlement, the Board of Revenue the Governments, the Estates Abolition Tribunal and the Special Tribunal have been constituted for determining different types of disputes. So far as the grant of a ryotwari patta is concerned, enquiries have to be held u/s 11 or 15 of the Act by the Assistant Settlement Officer. A dispute as to who is the lawful ryot in respect of a holding as to be decided by the Assistant Settlement Officer under Sec. 56 of the Act. But the scope of the enquiry under each of the aforesaid sections. is separate and distinct and the subject-matter is different. u/s 11, the questions to be determined are, whether a particular person is ryot, whether the lands in question are ryoti lands whether the said lands are not either Lanka lands or the lands in respect of which the land-holder or some other person is entitled to a ryotwari patta, and if the lands are lanka lands, whether the ryot or his predecessors-in-title have been in occupation of the same continuously from 1-7-1939. The enquiry under this section does not contemplate deciding a dispute between two rival claimants for a ryotwari patta, as ryots. Section 15 on the other hand contemplates examination of the nature and history of the lands in respect of which a land-holder claims a ryotwari patta under Sections 12,13 or 14 as the case may be and a decision with regard to such a claim. The claim of a ryot for a patta cannot be gone into in an enquiry u/s 15 of the Act. Section 56 of the Act contemplates decision of disputes of entirely different kind, viz. (a) Whether any rent is in arrear or; (b) what amount of rent is in arrear or; (c) who the lawful ryot in respect of any holding is. The nature Sec. 56 is entirely different from that of Section 11 or 15 of the Act. There is also a difference the procedures to be followed in the enquiries under the different sections. u/s 15, an enquiry can be made either suo motu or on an application made by the land-holder. Then all persons who have any objections to the land-holder's claims, could file the same before the Assistant Settlement Officer. The final decision of the Settlement Officer has to be rendered inform No. (II) in Appendix (B) prescribed under Rule 6 of the rules framed u/s 15 read with S. 67 of the Act. So far as the enquiry u/s 56 is concerned, it can be held on an application filed in that behalf, one Rule 2 of the said rules expressly provides

that any dispute of the nature mentioned in Section 56(1), shall not be inquired into without any written application by a person interest., Section 56 of the Act comes into play when there is a dispute existing and that dispute is brought before the Settlement Officer by way of an application in the manner prescribed. While in the case of an enquiry u/s 15, the application by the land-holder is restricted to a single village, in the case of a dispute u/s 56. the application is restricted to the lands in a single holding and there should be separate applications with regard to the matter in dispute in respect of each holding. The rules prescribed the form in which the application has to be made and the form in which the notice has to be issued to the respondent. These provisions therefore indicate that the nature and scope of the enquiry under these three sections are different and distinct. Therefore the decision to be rendered in an enquiry under those sections should be strictly confined to the matters or disputes covered by each of these sections, and if any observation or decision is given with respect to a matter not coming within the scope of the enquiry falling under a particular section, that decision cannot have binding effect. This distinction has been recognized and is well brought out in three decisions of this court. In *Pentamma v. Lakshman* 1963 2 AWR 19, Basi Reddy, J., as he then was held.

"That the Assistant Settlement Officer holding an enquiry u/s 15 (1) could not convert the same into an enquiry u/s 11 and that an appeal did not lie against the order granting a ryotwari patta u/s 11 (a) at the instance of the person who claimed a ryotwari patta u/s 11 of the Act. The learned Judge held that the enquiry conducted by the Assistant Settlement Officer, could not be deemed to be one u/s 56 of the Act. as at no stage of the proceedings before the Tribunals, below, the matter was regarded as one falling u/s 56, and further the elaborate procedure prescribed by the statutory rules in conducting enquiries u/s 56 (1) of the Act, was not followed."

this decision shows that there is clear-cut distinction between the enquiries under each of the Section 11,15 and 56 of the Act. This view of the learned Judge received approval of a Bench of this Court consisting of Satyanarayana Raju, J., as he then was and Justice Anantanarayana Ayyar, in *Subba Rao v. E.A. Tribunal* 1964 2 AWR 276. In that case the Assistant Settlement Officer, held a suo motu enquiry u/s 15 (1) of the Act, and the land-holder claimed those lands as pre-settlement minor inam lands, while the tenants claimed the lands as Darmilla Inam lands, and the Settlement Officer decided that the lands were Darmilla lands; and that the tenants were entitled to a patta u/s 11(a) of the Act and that was confirmed by the Tribunal on appeal. The land-holder challenged the order of the Tribunal and the Assistant Settlement Officer, by way of a writ petition and their Lordships observed at page 278 as follows:

"Section 15 (1) does not contemplate an enquiry as to whether any one other than the land-holder is entitled to a patta."

Again after referring with approval, to the decision in 1963 2 AWR 19, the

learned Judges observed as follows:-

"In this case, the proceedings in so far as they related to the enquiry into the claim of the respondents and the grant of patta to them in effect amounted to one u/s 11(a). In view of that enquiry being dovetailed into the suo motu enquiry which the Assistant Settlement Officer made u/s 15 read with Rule 2 (c), the appeal, was in fact filed before the Tribunal against the order which had in effect granted a patta to the respondent u/s 11(a). We hold, agreeing with the view expressed, by our learned brother Basi Reddy, J., that in holding Settlement Officer was in error in converting an enquiry u/s 15 (1) into an enquiry u/s 11 and that therefore the entire enquiry and the order passed therein by him are vitiated and illegal and that the order of the Tribunal is also vitiated and illegal."

In this view, Lordships allowed the writ petition and quashed the orders of the Assistant Settlement Officer and the Tribunal in so far as ryotwari pattas were purported to be granted under S. 11 of the Act. The decision was followed in a subsequent case by Narasimham. J., in *G. Suryakantamma v. L.Sanyasi* 1967 1 AWR 154. From these decisions it is clear that in an enquiry u/s 15 of the Act, any decision given with regard to the ryotwari patta u/s 11 or with regard to a dispute falling u/s 56 would be clearly outside the scope of the enquiry u/s 15 and such a determination or finding on such question would not have a binding effect so as to preclude an enquiry into the said dispute when it is properly raised under the appropriate section. I am therefore unable to agree with the view taken by the Tribunal that the finding given by the Assistant Settlement Officer and the Tribunal on the earlier occasion that the petitioner was not a tenant and that Venkatanarasamma was entitled to occupancy right, would operate as *res judicata* and would bar the petitioner from claiming, that he is the lawful ryot.

12. Further, in the previous enquiry u/s 15 of the Act, there was no decision at all with regard to the question as to who the lawful ryot was. That question did not arise nor was any decision necessary in that case for the purpose of deciding the claim of the land-holder u/s 15 of the Act. The decision given by the Settlement Officer and the Tribunal, fell really u/s 11 and was not properly within the scope of an enquiry u/s 15 and at any rate it cannot be said that there was any decision of a dispute falling u/s 56 of the Act. the previous decision therefore cannot have the effect of a *res judicata*.

13. In applying the principles of *res judicata* it is not permissible to invoke the provisions of Section 11, C.P. C. or the principles underlying therein inasmuch as a specific provision has been made in that behalf in the Estates Abolition Act, Section 64-A of the Act lays down in what cases the principle of *res judicata* should be applied and it reads as follows:-

"64-A (1). The decision of a Tribunal or Special Tribunal in any proceedings under this Act or of a Judge of the High Court hearing a case u/s 51 (2) on any matter falling within its or his jurisdiction shall be binding on the parties thereto and

persons claiming in a Civil Court in so far as such matter is in issue between the parties or persons aforesaid in such suit or proceedings.

(2) The decisions of a Civil Court (not being the court of District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction shall be binding on the parties thereto and persons claiming under them in any proceedings under this Act before a Tribunal or Special Tribunal, or a Judge of the High Court u/s 51(2) in so far as such matter is in issue between the parties or persons aforesaid in such proceedings."

It is only the sub-section (1) of S. 64-A, that can, it at all, apply to the facts of case. It will be seen that it is the decision of the Tribunal in any matter falling within its jurisdiction, that is made binding on the parties thereto or persons claiming under them, in any suit or proceedings in a Civil Court in so far as such matter is in issue between the parties or persons aforesaid in such suit or proceedings. But this provision has no application to the facts of the present case. Here the question is whether the Settlement Officer was properly seized of the matter u/s 56 of the Act in the earlier proceedings. On a reading of the order of the Assistant Settlement Officer and the Tribunal in the proceedings u/s 15, it is clear that at no stage they purported to decide any dispute falling u/s 56 of the Act. The present dispute is therefore not barred by res judicata by reason of the provisions of Sec. 64-A of the Act.

14. Shri G. Balaparameswari Rao, the learned counsel for the first respondent states that in the three decisions of this court cited above, the orders of the tribunals were quashed directly by the issue of appropriate writs and that in the instant case, the previous decision was upheld by this court, and that the decisions of the Assistant Settlement Officer and the Tribunal had become final and had not been quashed and therefore the said decisions should be treated as binding between the parties. I am unable to agree with this submission. When once it is found that in the previous proceedings the enquiry was limited to the matters falling under Section 15, any decision or determination of the question falling u/s 11 or 56, cannot be treated as having become final as the subject-matter of the enquiry was not then properly within the jurisdiction of the Settlement Officer or the Tribunal. The fact that the Settlement Officer could hold an enquiry either u/s 11 or Section 15 or Section 56 of the Act is beside the point. The question is whether the Settlement Officer was properly seized of the subject-matter of the enquiry in the manner prescribed u/s 11 or 56 of the Act. In view of the three decisions mentioned above, it is clear that an enquiry u/s 11 or 56 could not be dovetailed into an enquiry u/s 15, and such an enquiry and the order passed therein, would be wholly illegal and invalid. Therefore the decision given by the Settlement Officer and the Tribunal in the previous enquiry under S. 15 of the Act, that Venkatanarasamma and after her death, her adoptive son the first respondent was entitled to a ryotwari patta, really fell u/s 11 and was outside the scope of enquiry u/s 15 of the Act. Even otherwise there was admittedly no decision u/s 56 with regard to who the lawful ryot of the

holding was and therefore the decision of the Settlement Officer and the Tribunal in the provisos enquiry u/s 15 would not have the effect of res judicata so as to preclude the present enquiry u/s 56.

15. Sri G. Balaparameswari Rao, the learned counsel for the first respondent cited various decisions in support of his submission that the petitioner could have challenged the decision of the Settlement Officer and the Tribunal on the earlier occasion and that not having been done, the previous decision had become final and was binding between the parties. He relied upon the decisions *Bava Mohideen Rowther Vs. Pathuma Gani Ammal and Others*, ; *Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others*, , *Itavira Mathai Vs. Varkey Varkey and Another*, , *R. Krishnamurthy Vs. S. Parthasarathy and Another*, and *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, . All these decisions were based on the provisions of S.11, Civil P.C. or on the application of the principle of constructive res judicata. In view of the express provisions made in the Estates Abolition Act with regard to res judicata, I do not think, it is permissible to apply the provisions of S.11, Civil P.C. or the general principles of res judicata or constructive res judicata to the present proceedings. It is well established that any decision or finding given without jurisdiction is void and would not have the effect of res judicata. Even assuming that for the purpose of determining the claim of the landholder for a ryotwari patta, the Settlement Officer had to incidentally go into the question as to whether there were any ryots in possession of the lands, such a decision which was rendered in respect of the incidental matter, would not have a binding effect, Further, in determining the claim of the land-holder for a ryotwari patta it was unnecessary to record any finding with regard to the rival claims for a pata of the petitioner and Venkatanarasamma. The finding in the previous proceedings is a finding which is neither relevant nor necessary for the purpose of an enquiry u/s 15 of the Act I do not think such a finding can be treated as final or having the effect of res judicata. For the foregoing reasons, I am unable to agree with the view taken by the Tribunal that the present dispute raised by the petitioner u/s 56, is barred by res judicata.

16. Alternatively Sri G. Balaparameswari Rao, the learned counsel for the respondent No.1 submits that the finding of the Assistants Settlement Officer and the Tribunal having been confirmed in a Writ petition and further, in a Writ Appeal by the Court, the decision of the High Court, the decision of the High Court in the aforesaid W.P. 709/60 and W.A. No.73/61 would have the effect of res judicata. I am unable to agree with this submission. It is well settled that in applying the principle of res judicata the competency of the original court or the Tribunal out of which the proceedings arose, should be considered. The fact that the matter was carried in appeal or that it was confirmed in a Writ Petition, does not render the decision valid or binding if the decision was not within the jurisdiction of the Tribunal. Even assuming that there was a decision under S.11, still, it cannot be said that there was any decision with regard to the mares falling u/s 56 of the Act. Therefore the presented dispute which falls u/s 56 of the Act, cannot be said

to be barred by reasons of the earlier decision of the Settlement Officer or the Tribunal as confirmed by the High Court in the writ proceedings.

17. For all the aforesaid reasons, the finding of the Estates abolition Tribunal, in T. A. No. 1/66, that the previous decisions of the Assistant Settlement Officer, in S.R. 15/249/58 dated 23-5-1959 as confirmed by the Estates Abolition Tribunal in A.S. No. 44/59, operates as res judicata is quashed and the order of the Assistant Settlement Officer in S.R. 56 (1) 57/61 E. G. dated 21-11-1965, declaring the petitioner as the lawful ryot granting a ryotwari patta to him is restored.

18. The writ petition is accordingly allowed with costs Advocate's fee Rs. 100/-.

19. Writ petition allowed.