
(2013) 01 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1333 and 1354 of 2012

Md. Qhairunnisa Begum

APPELLANT

Vs

Shaik Kusheed Begum and Others

RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11(a), 5

Citation : AIR 2013 AP 51 : (2013) 3 ALD 254 : (2013) 2 ALT 540 : (2013) ALT(Rev) 172

Hon'ble Judges : Pinaki Chandra Ghose, C.J.; Vilas V. Afzulpurkar, J; Sri, J

Bench : Full Bench

Advocate : N. Subba Rao, for the Appellant; D.V. Seetharama Murthy, for Sri P. Krishna Reddy for Respondent No. 1 and G.P. for Revenue for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Sri Pinaki Chandra Ghose, C.J.—This case is a classic example where the Governmental Authorities right from the hierarchy of Commissioner and Director of Settlements to the lower rung of Mandal Revenue Officer has shown so much indifference and disobedience to the orders passed by this Court and settle the dispute pending for the last thirty years. Fourth respondent in WP.Nos. 5038 of 2009 and 11428 of 2008 has filed these two separate appeals against the common order in the aforesaid writ petitions dated 29.08.2012.

2. The writ petitioner in both the writ petitions claims to have been granted ryotwari patta by the Settlement Officer, Nellore in SR. 27/11(a)/82/ONG dated 10.01.1983 u/s 11(a) of the A.P. (Andhra Area) Estates (Abolition & Conversion into Ryotwari) Act, 1948 with respect to Sy. No. 228-P admeasuring Ac. 5.40 cents.

She was issued notice dated 20.03.1985 by the Settlement Officer seeking to conduct a de nova enquiry relating to the aforesaid ryotwari patta. Questioning

the jurisdiction of the Settlement Officer, the writ petitioner approached this Court by WP.No. 5886 of 1985. The said writ petition was allowed on 30.08.1988 holding that it is the Director of Settlements, who has power and not the Settlement Officer.

Since, thereafter, neither any enquiry was conducted nor any patta was implemented, writ petitioner filed WP.No. 11998 of 1991, for a Mandamus directing the respondent-Mandal Revenue Officer to implement the patta, which was allowed by order dated 07.08.2002. The Settlement Officer and the MRO filed W.A.No. 2075 of 2003 against the order in WP.No. 11998 of 1991. A Division Bench, by its judgment dated 03.03.2004, dismissed the appeal confirming the orders to implement the patta. Accordingly, MRO, Podili, under his proceedings Rc.No. A/129/85 dated 26.03.2005 ordered the Mandal Revenue Inspector and the Mandal Surveyor to implement the said patta in favour of the writ petitioner.

3. The appellant herein, who claims that she is landless poor and that she was assigned Ac. 2.40 cents in Podili village and mandal of Prakasam District in Sy. No. 228 and renumbered as 228/1, filed a revision before the Commissioner and Director of Settlements that the patta granted in favour of the writ petitioner to an extent of Ac. 5.40 cents in the same Sy. No. 228 was bogus and fraudulent and requested the Director of Settlements to initiate suo motu enquiry. The appellant also claims that she has been in possession under the DKT patta for Ac. 2.40 cents for over two decades and cannot be dispossessed on the basis of a bogus patta granted in favour of the writ petitioner.

4. The Director of Settlements under his proceedings No. B2/1726/08 dated 25.03.2008 initiated suo motu revision against the order dated 10.01.983 of the then Settlement Officer, Nellore, whereunder the patta was granted in favour of the writ petitioner and till the disposal thereof status quo as to possession was also ordered to be maintained. Aggrieved thereby, the writ petitioner filed WP.No. 11428 of 2008. The writ petitioner also filed WP.No. 5038 of 2009 seeking directions to implement the said patta irrespective of pendency of the suo motu proceedings. The said writ petitions were heard by a learned single Judge and were allowed by order dated 29.08.2012, which are impugned in these appeals.

5. In the counters filed in the Writ Petitions plea taken was that no original patta u/s 11(a) was granted at any time in favour of the petitioner in S.R. No. 27/11(a)/82 and the order produced by the petitioner is not genuine and bogus one. As already stated, it may be noted here that in W.P.No. 5886 of 1985, the order passed by the Settlement Officer was referred to as "1.12.1982" but in the Writ Petition Nos. 11998 of 1991 and in the present writ petitions out of which the writ appeal arose, it was mentioned as "10.1.1983". It is the case of the official respondents that the order signed by one Sri ADV Reddy the then Settlement Officer was a forged one as he issued numerous bogus pattas before and after his retirement for which the Government have initiated action against him. It is the specific case of the official respondents that the original SR does not contain the order passed by the then Settlement Officer.

6. We have heard the learned counsel appearing for the appellant and the learned senior counsel appearing for the respondent/writ petitioner.

7. Learned single Judge examined the question as to whether the Commissioner and Director of Settlements was empowered to entertain suo motu revision after 25 years of orders granting patta in favour of the petitioner. After considering the facts and circumstances and a Division Bench decision of this court in *K. Venkat Reddy v. Director of Settlements, Survey and Land Records* (1975 (1) APLJ 111), the learned single Judge came to the conclusion that though no period of limitation is prescribed under the Act for exercise of suo motu power of revision, the same must be exercised within a reasonable time. Learned single Judge, accordingly, came to the conclusion that in view of lapse of 25 years from the date of order of grant of patta, there is abnormal delay in exercise of suo motu power of revision, which cannot be sustained and accordingly, the order of Director of Settlements dated 25.03.2008 was quashed and directions were also issued to implement the patta in favour of the writ petitioner.

8. The file produced by the learned Government Pleader shows that the 4th respondent made a representation for grant of patta on 22.9.1985 i.e. subsequent to the interim order passed by this Court on 27.6.1985 and the MRO granted D. Form Patta on 8.11.1985 when the interim orders of this Court are subsisting and the W.P.No. 5886 of 1985 was pending. It is not understandable how when this Court has granted interim order on 27.6.1985 not to hold any enquiry in respect of the land in dispute, the MRO has taken up the matter and granted patta in favour of the 4th respondent. Further, the file contain only a photo copy of the order dated 1.12.1982 and no order dated 10.1.1983 was available. But the note file of the MRO relating to implementation of the order refers to "10.1.1983".

9. Be that as it may, when this Court has directed the Commissioner and Director of Settlements to conduct de novo enquiry by order dated 30.8.1985 on the ground of jurisdiction, the respondents at the district level ought to have submitted a report to the Commissioner to facilitate speedy enquiry. When the order in W.P.No. 5886 of 1995 was clear that it was the Director of Settlement who is empowered to conduct an enquiry into the irregular pattas granted, the authorities ought to have transmitted the file to the Commissioner to enable the Commissioner to take up the enquiry. But, they failed in their duty. Even the Office of the Commissioner and Director of Settlement failed to take steps to address the district authorities for transmission of the file to enable the Director to conduct de novo enquiry as per the directions of this Court. The authorities have also failed to examine whether the order said to have been passed by the then Settlement Officer is dated 1.12.1982 or 10.1.1983.

10. We have carefully considered the facts and circumstances as well as the decisions in the writ petitions and the writ appeal, referred to above. It is, no doubt, true that the liberty given to the Director of Settlements to conduct a de nova enquiry, while allowing W.P.No. 5886 of 1985 by this Court, was not availed

by the Director of Settlements for a long time. The impugned proceedings of the Director of Settlements invoking the said suo motu power dated 25.03.2008 is, therefore, questioned on the ground of inordinate delay.

It is, however, noteworthy that the power of Director of Settlements to entertain a revision on an application or suo motu is, however, not disputed by the writ petitioner. Apparently, Section 5 of the A.P. Estates Abolition Act provides for such power as is evident from the provision itself, which is extracted hereunder:

5-Appointment and functions of the Settlement Officers

(1) As soon as may be after the passing of this Act, the Government shall appoint one or more Settlement-Officers to carry out the functions and duties assigned to them under this Act.

(2) 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.

Secondly, this Court has already noted in WP.No. 5886 of 1985 dated 30.08.1988 (which was filed by the writ petitioner herself) and the following extract thereof may noted:

...Admittedly, now the power is conferred on the Director of Settlements to conduct an enquiry as regards the grant of irregular patta. Therefore, the Settlement Officer has no jurisdiction. The impugned order is set aside. This order does not preclude the Director of Settlements to conduct denovo enquiry as regards the patta granted to the petitioner and then pass appropriate orders after giving reasonable opportunity to the petitioner. It is made clear that this Court has not expressed any opinion on merits. The writ petition is allowed.

11. Another significant aspect, which escaped the attention of the learned single Judge, has also a bearing on the question involved.

The settlement patta was granted to the writ petitioner by one Mr. A.D.V. Reddy, the then Settlement Officer, Nellore under his order dated 10.01.1983. A copy of the said order, is produced, which refers to the record of enquiry. The order shows that the writ petitioner was examined as P.W. 1, who filed a registered sale deed and cist receipts in support of her claim that she was paying costs and premium to the State. The said order also states that P.Ws. 2 and 3, who were aged ryots, have deposed in support of P.W. 1/writ petitioner and by accepting the claim of the writ petitioner on the basis of the sale deed, patta was ordered to be issued in her favour. The appendix to the order, however, shows blanks against the names and details of P.Ws. 2 and 3. Further, the said officer is said to have issued several bogus pattas in similar manner to various persons and the same was taken note of by the Government of Andhra Pradesh and accordingly, Memo. No. 486/J2/84-6 dated 25.04.1984 was issued by the Government and it

is appropriate to reproduce the same hereunder:

GOVERNMENT OF ANDHRA PRADESH Revenue (j) Department Memorandum No. 486/J2?84-6

Dated: 25.4.1984

Sub:-Settlement Pattas-Issue of Bogus pattas by Sri A.D.V. Reddy, Retired Settlement Officer, Nellore-Regarding.

Ref:-Govt. D.O.Lr. No. 486/J2?84-5, dated 16.4.1984.

It has been brought to the notice of the Government by some of the Collectors and also by a number of Legislators that Sri A.D.V. Reddy, Retired Settlement Officer, Nellore has issued bogus Settlement Pattas both before and after his retirement. This has also been specifically brought to the notice of the Government by the Collectors, Chittoor and Prakasam. There is thus the danger of large extents of valuable land going into the hands of unauthorized persons. The Director of Settlements has also cancelled such of the bogus pattas which were brought to his notice in Prakasam district.

The Commissioner, Survey Settlements and Land Records is requested to bring to the notice of all the Collectors about the bogus pattas issued by Sri A.D.V. Reddy, Retired Settlement Officer, Nellore and issue necessary instructions to them not to implement the Settlement pattas in the village accounts. He may also issue necessary instructions to the Director of Settlements in this regard to get all bogus pattas cancelled at once and ensure that holders of such bogus patta do not derive illegal benefit out of it.

Sd/- H.R. Ramachander, Deputy Secretary to Government.

12. The impugned notice of the Director of Settlements dated 25.03.2008 specifically refers to the aforesaid memo and since the patta in favour of the writ petitioner was also issued by the very same officer, the Director of Settlements was justified in initiating enquiry by invoking suo motu power of revision.

13. It is well settled that fraud vitiates every proceeding and merely because of lapse of time since the date of grant of patta is no ground to reject the claim of authorities to revise such fraudulent orders.

The Supreme Court in United India Insurance Co. Ltd. v. Rajendra Singh 1 held at paras 14 and 15, as under:

14. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, the two Judges Bench of this Court held:

Fraud avoids all judicial acts, ecclesiastical or temporal-observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decreed-by the first court or by the highest court-has to be treated as a nullity by every court, whether superior

or inferior. It can be challenged in any court even in collateral proceedings...

15. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, another two Judges bench, after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus:

Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

14. Reliance of the learned senior counsel for the respondent/writ petitioner on the decisions of this Court in the earlier round when the writ petitioner's request for implementation of the patta was accepted by this Court in WP.No. 11998 of 1991 as confirmed in WA. No. 2075 of 2003, however, cannot be sustained, as the memo issued by the Government dated 25.04.1984 holding that all settlement pattas granted by the said officer are bogus, was not brought to the notice of this Court in the writ petitions and the writ appeal, referred to above. In the absence of any such circumstance being brought to the notice of their Lordships, directions were issued to implement the patta. It is, however, to be noted that in WP.No. 5886 of 1985, also earlier filed by the writ petitioner herself, the successor Settlement Officer intended to hold a de nova enquiry into the pattas granted by the previous Settlement Officer. Hence, notice of the successor Settlement Officer dated 29.03.1985 was challenged by the writ petitioner on the ground of jurisdiction and succeeded in quashing the same. It is, therefore, evident that even in 1985 itself the successor Settlement Officer intended to conduct a de nova enquiry. The memo of the Government dated 25.04.1984, which declares pattas granted by the said officer as bogus, includes and applies to the present settlement patta granted to the writ petitioner as well. We are, therefore, not prepared to accept the contentions of the learned senior counsel for the writ petitioner that the patta granted in favour of the writ petitioner in this case is not bogus in view of the general nature of Government memo referred to above. We are, therefore, of the view that the learned single Judge committed error in allowing the writ petitions under the impugned common order. We, therefore, set aside the impugned common order of the learned single Judge and direct the Commissioner and Director of Settlements, Hyderabad to take up suo motu revision in pursuance of his proceedings Np.B2/1726/08 dated 25.03.2008 by giving notice and opportunity of hearing to the writ petitioner as well as the appellant and after due examination of the records, shall hear and dispose of the said revision by appropriate reasoned order within a period of three (3) months from the date of receipt of a copy of this order. It is made clear that the implementation of the patta in favour of the writ petitioner, as prayed for in WP.No. 5038 of 2009, as well as entitlement of appellants, shall be subject to and shall abide by the result of the said suo motu revision, as directed above.

The writ appeals are accordingly allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.