
(1977) 01 AP CK 0007
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3745 of 1975

Rama Naidu

APPELLANT

Vs

Ramadas Naidu and Others

RESPONDENT

Date of Decision : 25-01-1977

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 56, 56(1)

Citation : AIR 1977 AP 283

Hon'ble Judges : Sambasiva Rao, J; Madhusudan Rao, J

Bench : Division Bench

Advocate : J. Chamanthi, for the Appellant; Government Pleader for Excise, for the Respondent

Judgement

Sambasiva Rao, J.—This case demonstrates in a very telling manner how a decision changes the course of law as it had obtained, which affects the course of litigation and the rights and liabilities of the parties. The difficulty in this case which we shall presently refer to, arises on account of the decision of the Full Bench of this Court in Cherukuru Muthayya Vs. Gadde Gopalakrishnayya and Others, .

2. The matter arose in the following manner. An extent of about 15 acres of land is in R. S. No. 160 in Edavanivaripalli, hamlet of Nelakuntla Village. It formed part of the erstwhile Zamindari of Bangarupalayam. The writ petitioner filed an application before the Assistant Settlement Officer for ryotwari patta in respect of this land of 15 acres. He purported to file it u/s 56(1) of the Estates Abolition Act. In the petition he alleged that the land was his ancestral property for which the erstwhile Zamindar granted a patta in favour of his father in the year 1942. But at the time of survey and settlement, the Village Officer fabricated the Village Accounts and made fraudulent entries in the Village Accounts and obtained pattas in favour of the respondents. It may be noted that the original respondents in the petition were the vendors of the present respondents. The

claim for Ryotwari Patta was dealt with by the Asst. Settlement Officer who rejected the claim of the petitioner by his order dated 10-2-1965. The petitioner preferred an appeal to the Estates Abolition Tribunal, Chittoor in A. S. 2/66. By order dated 27-8-1966, the Tribunal remanded the case for fresh enquiry and disposal. The case was enquired into afresh and another Asst. Settlement Officer in his proceeding D/- 21-1-1967 granted Patta in favour of the petitioner. This time the vendors of the present respondents took it on appeal to the Appellate Tribunal and after further enquiries, the Tribunal remanded the matter for further enquiry by order dated 21-9-1967. The Tribunal gave a specific direction while remanding the matter, that proper correlation between the Faimash number and Survey number should be made and also the actual extent of the old Patta should be fixed. The Tribunal also directed that the present respondents who purchased the land from the then respondents, should be impleaded as parties. Thereupon the matter went back to the Settlement Officer, Nellore. A regular enquiry was held before him. All the persons were impleaded as parties and they figured as respondents 1 to 7. Witnesses were recalled and examined, and the respondents themselves adduced oral as well as documentary evidence. Thus, a full-fledged enquiry went on before the Settlement Officer. After full enquiry and consideration of the matter that Officer by his order dated 14-6-1970 directed that a Ryotwari Patta be granted in favour of the petitioner for R. S. 160/2, which was correlated to Faimash No. 212/1 and 2, measuring 15 acres. The Settlement Officer also purported to give his direction u/s 56(1) of the Estates Abolition Act (hereinafter referred to as the Act). He also mentioned that an appeal against that order lay before the Estate Abolition Tribunal, Chittoor, within 60 days from the date of that order. It is manifest from what we have said that the claim for Ryotwari Patta was in substance one u/s 11 of the Act. Since there was a dispute between the petitioner and the respondents as to the question in whose holding the land should be included, they were also impleaded and an enquiry was held as to in whose holding the land in question was. Evidently, there was no dispute whether the land was ryoti or not. The question centered round the correlation of the old Faimash Number with the present R. S. Number, the actual extent of the land and in whose holding the land ought to be included. Because there was a patent provision u/s 56(1) providing for a decision as to the lawful ryot in respect of a holding, the petitioner purported to file his petition u/s 56(1) and the Settlement Officer also allowed the petition and gave a direction to grant patta to the petitioner, under that provision. That is why the Settlement Officer mentioned in his order that an appeal lay to the appellate Tribunal within 60 days.

3. Accordingly the respondents in the present writ petition filed an appeal before the Tribunal. Subsequently, it was reported that it became infructuous and so, the Tribunal dismissed it. At that stage a decision was rendered on 11-10-1972 by a Full Bench of this Court holding that Section 56(1)(c) has no relation whatsoever with the determination of any question u/s 11 and that the two provisions are independent and mutually exclusive; that they do not supplement each other, their scope and operation and their effect are entirely different and

that Section 56(1)(c) can, therefore, have no relation to Section 11 but is closely related to the other clauses of Section 56(1) read with Section 55. While doing so, the Full Bench dissented from the view which was in vogue till then as laid down in *Chigurupati Venkata Subbaiah v. Ravi Punnayya* (1957) 2 An WR 204. Thereupon, the respondents filed before the Appellate Tribunal a petition to review the earlier order of dismissal. They also filed an application for condonation of the delay in seeking review. The Tribunal granted both the applications by condoning the delay and also by reviewing the earlier decision by dismissing the appeal. It held that in view of the Full Bench decision which is reported in *Cherukuru Muthayya Vs. Gadde Gopalakrishnayya and Others*, , the Settlement Officer was not competent to order u/s 56(1) of the Act that Ryotwari Patta be issued to the first respondent and that the Settlements Officer's order was without jurisdiction. Hence, the appeal was allowed and the order of the Settlement Officer directing Patta to be granted to the petitioner was set aside. It is this order of the Appellate Tribunal which is challenged in this writ petition.

4. Mrs. J. Chamanthi, appearing for the petitioner does not dispute the competence of the Tribunal to condone the delay or its actual power to review its order. However, she challenges the correctness of the review by pointing out that the Tribunal has missed the true nature and scope of the application made before the Settlement Officer for Ryotwari Patta and also the order passed by the Settlement Officer. She points out that the invocation of Section 56 in the petitioner's application for patta and in the order of the Settlement Officer is by error or inadvertence. In effect and in substance, the application was one u/s 11 for grant of a Ryotwari Patta in respect of Ryoti land and the order also was really u/s 11. Reference to Section 56(1) is by inadvertence or on account of the then existing law. The scope of the enquiry, according to the learned counsel, comes within the ambit of Section 11 and, therefore, the Tribunal, according to her, must have treated the decision of the Settlement Officer as one u/s 11(a) and not u/s 56. The learned counsel maintained that the substance of the petition and the order must be looked into and not the mere form. She emphasises that particularly in view of the Full Bench decision, the Appellate Tribunal should not have set aside the rights of the petitioner which accrued to him by virtue of the decision of the Settlement Officer when the matter really comes under a different provision of the Act other than Section 56(1).

5. We see considerable force in the contention of Smt. Chamanthi. It is not now necessary for us to go into the reasoning of the Full Bench. We have already noted the precise nature of the relief sought in the petition filed before the Settlement Officer by the petitioner. It was for a Ryotwari Patta on the ground that the land in question ought to have been properly included in the holding of the petitioner and it was wrongly included in the holding of the respondent. Since that is the nature of the claim, it is patent that it comes squarely within Clause (a) of Section 11 which reads thus under the caption "Lands in which ryot is entitled to ryotwari patta":-

"11. Every ryot in an estate shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of -

(a) all ryoti lands which, immediately before the notified date were properly included or ought to have been properly included in his holding and which are not either lanka lands or lands in respect of which a land-holder or some other person is entitled to a ryotwari patta under any other provision of this Act."

The contention of the petitioner is that the land in question is Ryoti land and ought to have been properly included in his holding, while wrongly or fraudulently it was included in the holding of the present respondents' vendors. When such a petition for grant of ryotwari patta was made before the Settlement Officer, it was the duty of that Officer to find out whether all the requirements of the provision were satisfied. In this case, there was evidently no dispute whether this particular land was ryoti land. The only point in dispute appears to have been whether the land ought to have been properly included in the petitioner's holding or whether it was properly included in the holding of the respondents. This question is certainly incidental to the decision on the petition. Otherwise the Settlement Officer cannot render any decision on the petition for grant of a ryotwari patta. For this, one need not travel to Section 56. The dispute, therefore, certainly falls within the amplitude of Section 11(a) and the reference to Section 56(1) was either by inadvertence or by virtue of the then prevailing law. In our opinion, the party should not be allowed to suffer simply because, by virtue of a latter decision, the reference to Section 56 is found to be wrong, when in truth and effect the petition was u/s 11(a).

6. This aspect the Tribunal ignored. It merely followed the Full Bench decision saying that Section 11 and Section 56 are independent of each other and do not supplement one another. That does not necessarily mean that the appeal should straightway be allowed when the petition and the decision of the Settlement Officer were in substance u/s 11. The Tribunal missed the true nature of the proceeding. Therefore, we set aside the order of the Tribunal, dated 22nd Apr., 1975 reviewing its earlier order and allowing the appeal.

7. But then the interests of the respondents should also be safeguarded. For no fault of theirs, the matter was travelling between the Settlement Officer and the Tribunal, all the parties being under the impression that appeal lay to the Tribunal, because there was a formal reference to Section 56 in the petition and in the order. Because the Settlement Officer himself stated in his order that appeal lay to the Tribunal only, the respondents preferred an appeal to the Tribunal. But when it is an order u/s 11, a revision alone lies; if it is the order of the Asst. Settlement Officer it lies to the Settlement Officer and if it is that of the Settlement Officer, it lies to the Director of Settlements. Had it been made clear earlier, the respondents would have preferred a revision to the proper authority instead of preferring an appeal to the Appellate Tribunal as indicated in the order in question. So, for no fault of theirs, the appeal was preferred to the Tribunal and consequently, in the interests of justice, their rights must be safeguarded. As

we have pointed out, a revision lies. There would be considerable delay if a revision is now presented against the order of the Settlement Officer dated 14-6-1970. But, to this delay the respondents have been in no way responsible. It is the inadvertence or mistaken reference to Section 56 that has been responsible. Therefore, if and when the respondents prefer a revision to the proper authority, the delay that has been caused should be condoned in the interests of justice.

8. At this juncture, we may also take note of another statement made by Sri Subrahmanya Reddy. He contends that the petitioner himself might be left to file an independent application u/s 11 instead of driving the parties to prefer a belated revision to the revisional authority. We are not persuaded to accept the submission, because there was a full-dressed enquiry, debate and consideration by the Settlement Officer. There is no point in once again asking the petitioner to file a fresh petition u/s 11. Instead, it would serve the interests of justice and also safeguard the rights of both the parties if we direct that the delay in filing the revision petition should be condoned in the circumstances. If the revision petition is presented before proper authority by the respondents within 30 days from the date of the receipt of the certified copy of this order, then the revisional authority shall receive the petition and dispose it of in accordance with law.

9. For the foregoing reasons and in the foregoing manner, we allow the writ petition. In the circumstances of the case, we direct the parties to bear their own costs. Advocate's fee Rs. 100.00.

10. Petition allowed.