

**(2009) 09 AP CK 0003**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No's. 21487 and 21493 of 2000**

Rani Kamala Devi

APPELLANT

Vs

Commissioner of Survey, Settlements and Land Records and  
Others

RESPONDENT

**Date of Decision : 11-09-2009**

**Acts Referred:**

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,  
1948 — Section 11, 18, 18(4), 19, 21  
Constitution of India, 1950 — Article 226

**Citation : (2009) 6 ALD 788 : (2009) 6 ALT 533**

**Hon'ble Judges : T. Meena Kumari, J;P.V. Sanjay Kumar, J**

**Bench : Division Bench**

**Advocate :** P. Bhanumathi and V. Venkata Ramana, for the Appellant; G.P., for Revenue for Respondent Nos. 1 and 2, Mavidi Rama Rao, for Respondent Nos. 3 and 4 in W.P. No. 21487 of 2008 and Respondents 6 and 7 in W.P. No. 21493 of 2000, K.A. Narasimham, for Respondent Nos. 3 and 4 in W.P. No. 21493 of 2000 and K. Satyanarayana Murthy, in W.P. No. 21493 of 2000, for the Respondent

**Final Decision : Allowed**

## Judgement

T. Meena Kumari, J.—Heard both the counsel.

2. As the parties are common and the subject matter is related, both the writ petitions are being disposed of by this common order.

3. The petitioner in both the writ petitions is one Smt. Rani Kamala Devi.

4. W.P. No. 21487 of 2000 is filed aggrieved by the common order passed by the Commissioner, Survey, Settlements and Land Records, Andhra Pradesh (for short "the Commissioner") in the revision filed by the Tahsildar, Visakhapatnam in CSS & LR's Case Nos (1) P1/855/90 and P1/880/90 dated 31.1.1998. The dispute in this writ petition pertains to grant of Ground Rent Patta in the year 1958 in favour of the petitioner by the Assistant settlement Officer, Anakapalli, relating to

Acs.2-97 cents in T.S. No. 971/1, Acs.9.77 in T.S. No. 971/2 and Acs.38.89 in T.S. No. 11/97 of Waltair Ward (Dibbapalem Village) of Visakhapatnam Municipality.

5. W.P. No. 21493 of 2000 is filed aggrieved by the order dated 31.01.1998 in Case No. P1/896/86 passed by the Commissioner in the review petition filed by the Mandal Revenue Officer against the orders passed by the earlier Commissioner in proceedings V3/449/80 dated 24.10.1981. By the impugned order in review, the Commissioner has cancelled the ground rent patta, which was confirmed by the Commissioner in the earlier proceedings dated 24.10.1981.

6. Before noting the averments of the respective parties, it is necessary to note the brief history of the case, as per the submissions of both the counsel and as per the material available on record. The lands in question in T.S. Nos. 971, 1196, 1197, 1027 and 1028 are forming part of Acs. 93 Vz in Waltair Estate of Visakhapatnam. One Sri Mosalaganti Venkaji, purchased the said property in the public auction on 25.1.1905. He leased out the land to one Mr. Robert Alexander, the then Collector of Visakhapatnam, on condition of paying 10 arcot rupees. Mr. Robert Alexander, got constructed buildings and out houses in the said land. When Mr. Robert Alexander left India, this land along with all buildings, was purchased by Sri Gode Surya Prakasa Rao and thus he became entitled for the lease hold rights of Mr. Robert Alexander. After the death of Sri Gode Surya Prakasa Rao, the property devolved upon Sri Gode Narayana Gajapathi Raju's family and later, the property devolved upon the father of the petitioner and under a registered will executed by him, she became the owner and possessor of the property. The claim of the petitioner is that she and her predecessors-in-title were in possession of the lands in question from the time of Robert Alexander till date and she has leasehold interest in the property as per the Municipal and Town Survey records.

7. The case of the petitioner, as stated in the affidavit filed in support of the writ petition in W.P. No. 21487 of 2000, is that during the course of settlement proceedings in the year 1958, the then Assistant Settlement Officer, Anakapalli issued ground rent patta in her favour in respect of Acs.2-97 cents in T.S. No. 971/1, Acs.9-77 cents in T.S. No. 971/2 and Acs.38-89 in T.S. No. 11/97 of Dibbapalem village, Waltair ward of Visakhapatnam. After two decades, the Tahsildar, Visakhapatnam filed revision before the Commissioner against the granting of ground rent pattas in favour of the petitioner. By order dated 21.12.1979 the Commissioner has set aside the pattas. Challenging the same, the petitioner has filed writ petitions before this Court in W.P. Nos. 2453 and 2454 of 1980 and by order dated 3.3.1987 this Court has set aside the order of the Commissioner dated 21.12.1979 and directed to dispose of the matters in accordance with law, after giving opportunity to both the parties. Pursuant to the remand orders by the High Court, the Commissioner allowed the revision filed by the Mandal Revenue Officer, Visakhapatnam and held that the Assistant Settlement Officer has no jurisdiction to grant ground rent pattas and under

Sections 18 and 19 of the Andhra Pradesh (AA) Estates Abolition and Conversion into Ryotwari Act, 1948 (for short "the Act") the competent authority is the Commissioner and as the land in dispute is vacant at the crucial point of time, the entitlement of the petitioner for reliefs under Sections 18 and 19, have to be gone into under appropriate enquiry to be taken up after cancellation of pattas and accordingly cancelled the ground rent pattas. Challenging the same, the present writ petition in W.P. No. 21487 of 2000 is filed.

8. In W.P. No. 21493 of 2000 the writ averments and material filed along with writ petition reveals that the Assistant Settlement Officer granted ryotwari patta in respect of Acs. 14-95 cents in T.S. No. 1027, Acs. 10-54 cents in T.S. No. 1028 in Chinna Waltair village, Acs.7-77 cents in T.S. No. 1187 of Dibbapalem village of Waltair Ward of Visakhapatnam during 1958. Against the grant of patta, the Tahsildar filed revision petition before the Commissioner in Case No. V3/449/80 and by order dated 24.10.1981, the Commissioner dismissed the revision. The Mandal Revenue Officer, Visakhapatnam filed a review petition before the Commissioner to review the order dated 24.10.1981. By the impugned order, the review petition was allowed and the ground rent pattas granted to the petitioner as confirmed by the earlier Commissioner by order dated 24.10.1981, were cancelled. Challenging the same, the writ petition in W.P. No. 21493 of 2000 is filed.

9. The grievance of the petitioner is that the Commissioner has not properly considered the material evidence available on record. It is stated that her title was confirmed by the High Court in A.S. No. 1260/ 1982 dated 3.10.1994. It is stated that by virtue of the judgments of the Commissioner in V3/2024/75, V3/2450/75, V3/2449/75 and V3/2451/75, the tenure was decided and the title of the petitioner was upheld. The petitioner also filed the order in the revision filed by the Government, which was dismissed by G.O.Rt. No. 91 dated 21.5.1994. It is stated that when the Tahsildar filed writ petition in W.P. No. 5417/1985 before this Court challenging the grant of ground rent patta by the Settlement Officer, Visakhapatnam in R.P. No. 280 of 1962 dated 18.12.1964, this Court dismissed the writ petition by order dated 4.11.1992 holding that after a long lapse of nearly 28 years, this Court is not inclined to admit the writ petition and start a de novo enquiry at this belated stage. The further grievance of the petitioner is that without any sufficient cause, the Commissioner is not justified in entertaining the revision after a period of about 18 years. With these averments, the orders passed in the revision and in the review were sought to be set aside.

10. The Mandal Revenue Officer, Visakhapatnam (Urban) Mandal, filed counter affidavit stating that the lands covered by T.S. Nos. 971/1 and 971/2 and T.S. No. 1197 of Waltair Ward of Dibbapalem village are classified as vacant poramboke land and recorded as such in pre and post abolition records. The lands are vacant at the time of taking over of the estates and they are situated within the municipal limits of Visakhapatnam and hence all the vacant lands

stand transferred to the Government. The Assistant Settlement Officer granted ground rent pattas to the petitioner in the year 1958. The Assistant Settlement Officer has no jurisdiction to grant the said ground rent patta and the question whether any building or land falls or does not fall within the scope of Section 18, shall be referred to the Government and its decision shall be final. The Tahsildar filed revision and as per the orders of this Court in W.P. Nos. 2453 ad 2454 of 1980 dated 3.3.1987, after hearing the petitioner and after giving due opportunity, the grant of ground rent patta, was set aside. The tenor of the counter affidavit is that the Assistant Settlement Officer has no jurisdiction to grant ground rent patta and as the lands are vacant poromboke lands at the time of taking over of the estates under the Act, they vest with the Government and, therefore, the impugned orders were passed and that there are no merits in the writ petition and hence they were sought to be dismissed.

11. The learned Counsel appearing for the petitioner referring the above noted brief history of the case, further contended that the petitioner is in possession of the building along with the land appurtenant thereto and it vests with the owner and as per Section 18(4) of the Act, no ground rent patta is necessary and Government is only entitled to appropriate assessment or ground rent. He contended that the respondent -Commissioner is not justified in entertaining the revision after a period of more than two decades. He contended that the Act does not prohibit the Assistant Settlement Officer from issuing of the ground rent pattas and ryotwari pattas and, therefore, exercising the powers under Sections 21 and 22 of the Act, by virtue of G.O.Ms. No. 2229 dated 4.8.1952 and G.O.Ms. No. 1732 dated 16.10.1978, the then Assistant Settlement Officer granted pattas. He contended that the exercising of the revision after a period of more than two decades is arbitrary and violative of the principles of natural justice. With regard to allowing of the review, he submitted that the Commissioner by orders dated 24.10.1981 confirmed the ground rent patta issued in favour of the petitioner by the Assistant Settlement Officer, Anakapali in respect of lands in T.S. No. 1027 admeasuring Acs.14-95 cents, T.S. No. 1028 measuring As. 10-54 cents of Waltair Ward of Chinnawaltair village and T.S. No. 1187 measuring Acs.7-77 cents of Dibbalapalem village of Waltair Ward. This order is erroneously set aside in the review petition. He contended that there is no provision for review under the Statute, but the said power can be exercised, if fraud, misrepresentation or any other ground is made out. But no such ground is proved before the Commissioner and in the absence of any such findings, exercise of power under review, is wholly arbitrary. He contended that the Government issued notification for acquisition of the land and the possession was taken and the award was also passed. As the award was not passed within two years from the date of Section 4(1) notification, it was quashed by the learned single Judge in W.P. No. 2151/1998 dated 6.8.1998. And the same is subject matter in connected writ appeals in W.A. Nos. 1947/2008 and 1796/2008. With these averments, he sought to set aside the impugned orders.

12. On the other hand, the learned Counsel appearing for the respondent -

Government contended that the Assistant Settlement Officer, who issued the ground rent pattas, has no jurisdiction and the jurisdiction is vested with the Government u/s 18 of the Act. He contended that there is no evidence to show that the petitioner was inducted into possession by the landholder prior to 1.7.1945 or prior to the date of taking over the estate. As the land is vacant poramboke land, as per Section 3, it shall vest in the Government free from encumbrances. As the Assistant Settlement Officer issued the pattas, without jurisdiction, the same were rightly set aside by the Commissioner and ordered for further enquiry with regard to the entitlement of the petitioner for the ground rent pattas. He submitted that the Tahsildar was not given notice, prior to issuance of the ground rent pattas and as soon as the irregularity was noticed, a revision was filed in the year 1978 and after the orders of the High Court in W.P. Nos. 2453 and 2454 of 1980 dated 3.3.1987, after giving full opportunity to the petitioner, the impugned orders were passed. With regard to orders in the review petition he submitted that as the Assistant Settlement Officer has no jurisdiction to issue ground rent pattas and as this is a mistake of fact, the review petitions were allowed. With these averments the writ petitions were sought to be dismissed.

13. In view of the above rival contentions and material placed before this Court, the main controversy that falls for consideration is (1) whether the Commissioner is not justified in entertaining the revision after a period of more than twenty years and (2) Whether the Commissioner is not justified in allowing the review petition in the absence of any enabling provision under the statute and in the absence of any finding with regard to fraud, misrepresentation or any other ground of such nature?

14. In the present case, there is no dispute with regard to the ownership of the property. The case of the petitioner is that in the year 1958 during the survey settlement, the then Assistant Settlement Officer granted ground rent pattas and the ryotwari pattas under the Act with respect to the lands referred to above. These pattas were sought to be set aside by the Tahsildar in the year 1978 i.e., after two decades and however, by order dated 21.12.1979 in File No. V3/1795/78, the Commissioner cancelled the pattas. Challenging the same, the petitioner filed writ petitions before this Court in W.P. No. 2453 and 2454 of 1980. As the delay in filing the revision was condoned without giving notice of the petitioner, the impugned order was set aside and the matter was remitted back to the Commissioner for fresh disposal after giving opportunity to the petitioner. Pursuant to the orders of the High Court, the impugned common order was passed.

15. The claim of the petitioner is that the Assistant Settlement Officer in the year 1958 during survey settlement granted ground rent patta certificates. Her claim is that it is her private property. Her further claim is that the Government treating the property as her own, had initiated land acquisition proceedings. In the written statement submitted before the Commissioner, she has stated in

detail with regard to the awards in the land acquisition proceedings and the compensation paid to her. Further her case is that when there is a dispute with regard to ownership in respect of the land in T.S. No. 1027 over an extent of Acs.1.89 cents, the matter was referred to the civil court u/s 31(2) of the Act, to the court of II Additional Subordinate Judge, Visakhapatnam in O.P. No. 21/1976. By judgment and decree dated 19.1.1976 the trial court held that the predecessors of the petitioner have been in possession and enjoyment of the property from more than a century, as absolute owners and therefore, the Government cannot claim the property simply on the ground that it is described as poramboke. Accordingly, confirming the title of the petitioner, the compensation was directed to be paid to her. The said order of the trial court was confirmed by the High Court in first appeal in A.S. No. 1260/1982 dated 3.10.1994. She also contended that the predecessor Commissioner vide proceedings in Case No. V3/1410/76 dated 24.10.1981, has confirmed the order of the Assistant Settlement Officer, Anikapalle, granting ground rent patta u/s 19 of Estate Abolition Act, 1948 in favour of the petitioner to an extent of Acs.30.28 cents in T.S. No. 125 of Waltair Ward of Visakhapatnam Municipality. The said order has been confirmed by the Government in G.O.Rt. No. 91 Revenue (JA) Department dated 25.1.1994.

16. From the above proceedings it is clear that the title of the petitioner was confirmed by the civil court and the granting of ground rent patta by the Assistant Settlement Officer, Anakapalli was confirmed by the Commissioner in Case No. V3/1410/76 dated 24.10.1981. The same was further confirmed even by the Government in G.O.Rt. No. 91 dated 25.1.1994. From a perusal of the impugned order, it could be seen that the Commissioner has not considered these facts and noting that the Assistant Settlement Officer has no jurisdiction to grant pattas, cancelled the ground rent pattas. The impugned order of the Commissioner without considering the contentions raised by the petitioner and the material facts available on record, is in utter violation of the principles of natural justice. Further, it is to be noticed that the ground rent patta was granted in the year 1958 and the same is set aside in the year 1979 i.e., after more than two decades. The case of the petitioner is that the then Assistant Settlement Officer issued the pattas on his own as per the G.Os. in vogue. It is not the case of the Government that the said orders were obtained by fraud or misrepresentation or on any other grounds of such nature and there is also no finding with regard to fraud or misrepresentation in obtaining the ground pattas by the petitioner, in the impugned order. Therefore, in these circumstances, the exercise of revisional power by the Commissioner at this length of time, is totally unwarranted and it would amount to unsettling the things without any justifiable cause.

17. The Apex Court in the decision reported in *The State of Gujarat Vs. Patil Raghav Natha and Others*, while considering the power of the Commissioner to revise order made u/s 65 of the Bombay Land Revenue Code (5 of 1879) held that the power must be exercised within few months and that he shall give

reasons for his conclusions and that the Commissioner is not empowered to decide in these proceedings, question of title against occupant. The relevant discussion at paragraphs 11,12 13 and 14 reads as follows:

11. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

12. It seems to us that Section 65 itself indicates the length of reasonable time within which the Commissioner must act u/s 211. u/s 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money in starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12,1961, i.e., more than a year after the order, and it seems to us that this order was passed too late.

13. We are also of the opinion that the order of the Commission should be quashed on the ground that he did not give any reasons for his conclusions. We have already extracted the passage above which shows that after reciting the various contentions he baldly started his conclusions without discussing his reasons. In a matter of this kind the Commissioner should indicate his reasons, however briefly, so that an aggrieved party may carry the matter further if so advised.

14. We are also of the opinion that the Commissioner should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent court and not to decide the question of title himself against the occupant.

18. A Division Bench of this Court in the decision reported in Kodanda Rao v. Govt of A.P. 1982 (2) ALT 280 (D.B.) held that the exercise of revisional jurisdiction u/s 5(2) of the Act, suo motu beyond the reasonable time cannot be sustained. The reasoning given in the judgment is that such a power is to be exercised only to advance the cause of justice and not to upset settled rights and if it is found that on the facts of any case that the time lag intervening in the

matter between the grant of pattas and the exercise of revisional jurisdiction is unduly long, then it cannot be said to be a valid exercise of power u/s 5(2) of the said Act.

19. Another Division Bench of this Court in the decision reported in Koyya Veeraju and others Vs. Mandal Revenue Officer, Gollaprolu, E.G. Dist. and Others, considering the exercise of powers of revision u/s 5(2) of the Act, held that the suo motu powers of revision of the Director of Settlements and interfering with the grant of patta by the Settlement Officer in exercise of suo motu powers by the Director of Settlement after a lapse of 28 years is illegal and arbitrary and suo motu power has to be exercised within reasonable time. The relevant portion of the judgment at paragraph Nos. 16 and 17 is extracted as under for better appreciation:

16. The above discussion including the legal position makes it clear that the powers which the authorities sought to exercise are neither just nor reasonable. By the present proceedings, they started to unsettle the things which were settled long ago. Keeping silent for several decades and then to come up with an explanation that lands in question (were) prohibited for alienation and the alienators (sic alienees) are not entitled for mutation is not tenable. The powers to revise are quasi-judicial in nature. The same shall be exercised within a reasonable period and while exercising shall give valid and acceptable reasons....

17. The submission of the Government pleader is that the authorities exercised suo motu powers as they came to know that alienations were made due to fraud and misrepresentation. But in none of the orders referred to earlier, there was a finding as to fraud or misrepresentation. The facts narrated by the petitioners disclose that after purchase of the land they were put in possession of the land, they improved it and they have been enjoying the same. If the authority felt that the land in question was required for some public purpose then they had to resort to invoke the provisions contained in some other law to take over the land and not by unsettling the things. In our view exercise of suo motu revisions is unwarranted, mala fide, unreasonable and illegal. When the Court comes to know that manifest illegality has been crept in or proceedings without jurisdiction, to render justice and to avoid multiplicity of proceedings, this Court can exercise powers under Article 226 of the Constitution of India instead of driving the parties to exhaust alternative remedy. After all alternative remedy is not a rule of law, but it is a matter of convenience for Judges to dispose of the cases. The duty of the Court is to see justice is not only done, but seemed to be done.

20. A learned single Judge of this Court in L. Ramakrishna Reddy v. Director of Settlements 1997 (2) ALD 459 while considering the exercise of power u/s 5(2) of the Act for cancelling the patta granted in favour of the petitioners after a period of 37 years held that such a power cannot be exercised after a period of thirty seven years after granting of patta. The relevant portion of the judgment at paragraphs Nos. 22, 23, 27 and 28 is extracted as under for ready reference:

22. The proceedings proposing to hold suo motu enquiry does not say that the pattas were obtained by the petitioners by playing fraud or misrepresentation. On the other hand, the counter filed by the respondents states that it is open to the Revisional Authority to invoke suo motu Revisional jurisdiction in case where it is apprehended that the fraud was committed while grant of rough patta. In other words, the case of the respondents in the counter is that fraud was played while obtaining pattas u/s 11 of the Act. This is not a ground mentioned in the show cause notice. It is well settled that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. Refer Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . Therefore, the respondents cannot be permitted to substantiate the show cause notice by substituting fresh reasons in the counter-affidavit.

23. This Court in S.B. Dharma Reddy v. Director of Settlements 1989 (1) APLJ 598 held that keeping in view the nature of the rights and the nature of the proceedings sought to be revised more particularly in the absence of any allegation of fraud or mis-representation on the part of the petitioner-appellant that the proposal to revise the order dated 31.1.1961 after a lapse of about 27 years is unreasonable and oppressive exercise of power. The facts of the present case are on all fours with the judgment referred to above.

27. K. Venkata Reddy v. Director of Survey 1975 (1) APLJ 111 is a case where claim for patta was rejected in 1959 and 1961. Thereafter, in respect of the very same lands pattas were granted to the petitioners which was sought to be revised pursuant to a show cause notice dated 1.2.1972. It was held that since no period of limitation is fixed under the Act, the suo motu proceedings is not barred by limitation. As pointed out earlier, the question is not the exercise of suo motu power within the period of limitation, but the oppressive or unreasonable nature of exercise of power...

28. Further the petitioners are in possession of the land for over a period of more than thirty seven years after the abolition and they have perfected their title by adverse possession even as against the Government. Therefore, the respondents cannot initiate suo motu enquiry under Act, as even if suit is to be filed by the respondents in a Civil Court it would be barred by limitation.

21. In view of the above judgments of this Court and the Apex Court and the considering the facts and circumstances of the case, it is held that the exercise of the revisional power by the Commissioner in the year 1979 in canceling the pattas granted by the Assistant Settlement Officer during the year 1958, in the absence of any fraud or misrepresentation on the part of the petitioners in obtaining such pattas and also non-considering of the material evidence placed by the petitioners, is wholly unwarranted and it is a time barred exercise.

22. Coming to the order passed by the Commissioner in the review petition, it is to be noticed that the earlier Commissioner by order dated 24.10.1981 in case No. V3/449/ 80 in exercise of the powers conferred u/s 7(c)(d) read with Sections 18 and 19 of the Act, dismissed the revision filed by the Tahsildar Visakhapatnam against the grant of ground rent patta issued to the petitioner in respect of lands in T.S. No. 1027 measuring Acs. 14-95 cents, T.S. No. 1028 measuring Acs. 10-54 of Waltair Ward of China Waltair Village and T.S. No. 1187 measuring Acs.7-77 cents of Dibbalapalem village of Waltair Ward. As noted above, the case of the Tahsildar is that the lands were classified as vacant poramboke in the settlement records and they are non-ryoti in character and hence no patta can be granted. The Commissioner by a detailed order dismissed the revision.

23. At this juncture it is necessary to note few facts, referred to in the earlier paragraphs. The claim of the petitioner is that the ground rent patta No. 221 of T.S. No. 1028 measuring Acs.10-34082 was given to Smt. Kamala Devi of Dasapalla and Rukmini Devi of Gangapur by the then Assistant Settlement Officer, Anakapalli in 1958. Pursuant to the orders of the High Court in W.P. Nos. 3394/1972 and 852/73, the Director of Settlements issued show cause notice to the petitioner for revision of the patta granted by the Assistant Settlement Officer. The said case in R.P. No. 398/76 was posted for admissibility of the revision. By the interim order dated 3.2.1979 the Director held that the revision is maintainable. Challenging the same, the petitioner filed a revision before the Commissioner in file No. P4/V3/1709/80. The Commissioner by order dated 24.10.1981 held that the revision is not maintainable. The operative portion of the order dated 24.10.1981 is extracted as under for better appreciation:

As such the Bench decision of the High Court applies on all fours to the circumstances of the present case and hence it has to be held that the ground rent patta issued in 1958 cannot be sought to be upset by exercise of suo-motu jurisdiction after twenty yeas by Director of Settlements. In effect the director of the settlements's order is set aside and the revision petition is allowed.

24. Challenging the above order of the Commissioner dated 24.10.1981 in file No. P4A/3/1709/80, the Tahsildar filed writ petition before this Court in W.P. No. 5417/1985. By order dated 4.11.1992, a learned single Judge of this Court dismissed the writ petition. The judgment is extracted as under for better appreciation:

From the narration of the facts in the affidavit it is clear that the Settlement Officer, Visakhapatnam in his suo motu enquiry ordered in R.P. No. 280 of 1962 dated 18.12.1964 a ground rent patta to an extent of 1000 sq. yards covered by a dilapidated building. The contention of the Government is that, that order was bad and that the land is Government Poramboke and non-ryoti and therefore, the respondents 2 and 3 are not entitled for the same.

Having regard to the time that has elapsed after the grant of the ground rent

patta on 18.12.1964, I am not inclined to admit this writ petition after a long lapse of nearly 28 years and start a denovo enquiry now at this belated stage. Simply on this ground alone I am not inclined to admit the writ petition. It is accordingly dismissed. No costs.

25. It is to be further noticed that the lands in review pertains to T.S. Nos. 1027, 1028 and 1187. The lands involved in the writ petition are in T.S. No. 1028. Another factor to be noticed is that the Government initiated land acquisition proceedings for acquiring Acs. 1.89 cents in T.S. No. 1027 along with buildings. When there was dispute with regard to ownership between the Government and the present petitioner, the Land Acquisition Officer referred to the civil court u/s 31(2), to the Court of II Additional Subordinate Judge, Visakhapatnam in O.P. No. 21/1976. By judgment and decree dated 22.7.1981, the title and possession of the petitioner was confirmed and the compensation was directed to be paid to her. In the appeal filed before this Court in A.S. No. 1260/1982, by judgment and decree dated 3.10.1994, this Court while confirming the judgment and decree of the trial court held that the predecessors of the petitioner have been in possession and enjoyment of the property for more than a century as absolute owners and therefore, the Government cannot claim the property simply on the ground that it is described as poramboke. It was further held that the Government failed to establish the title to the property. The order in A.S. No. 1260/1982 also has attained finality.

26. From the above it is clear that the order of the learned single Judge in W.P. No. 5417/1985 and the judgment and decree in A.S. No. 1260/1982 have attained finality, as no appeals were preferred. After the above proceedings, the Mandal Revenue Officer, Visakhapatnam filed review petition before the Commissioner in Case No. P1/896/86 for reviewing the order passed by the earlier Commissioner in file No. V3/ 449/80 dated 24.10.1981, whereunder the Commissioner had dismissed the revision filed by the Tahsildar and confirmed the ground rent patta granted by the Assistant Settlement Officer in the year 1958.

27. The entertainment of the review after a period of five years for cancellation of the pattas granted in the year 1958, is wholly unjustified. The Act does not specifically provide for any review. But however, the review can be entertained provided any fraud or misrepresentation or any grounds of such nature, were proved. In the present case as already noted above, no allegations of fraud or mis-representation, were proved by the Government and in such a case after the futile exercise by the Government in the writ petition in W.P. No. 5417 of 1985 and in the first appeal, entertaining the review petition, pertaining to the land in the very same survey numbers, is not maintainable.

28. From a perusal of the impugned orders under review, it could be seen that the Mandal Revenue Officer raised the grounds of misrepresentation and mistake of fact. But he did not produce any material in support of his allegations and without there being any discussion and findings, simply based on the said averments, the Commissioner concluded that the case involves

misrepresentation and mistake of fact. This conclusion of the Commissioner without adhering to the principles of natural justice, is unsustainable and is liable to be set aside. Further, above facts pleaded by the petitioner, were not at all referred to and discussed in the impugned order. Therefore, the order of the Commissioner in revising the earlier orders of the Commissioner, is liable to be set aside. At this juncture it is worth to note the operative portion of the earlier orders of the Commissioner dated 24.10.1981:

The prayer in the written statement of the Tahsildar, Visakhapatnam that the Government interest would suffer if the pattas granted to the respondent was not cancelled is in the view of the Court a highly reprehensible and fallacious argument to serve as basis for the prayer. The District Officials who are charged with safeguarding the public property should be alert to the assertion by private parties on Government property and repel them at the time when they are being set up. After a lapse of time during which time the rights were allowed to be established and consolidated, it till become the public authority that the Government interests would be in jeopardy if the rights of the private parties acquiesced by it over a long period are not set at naught.

The fallacy in this argument consists in the fact that the soundness of the case of either the Government or the private party depends on the law and its applicability to the circumstances. Simply to assert that the Government interests would be adversely affected cannot be a valid plea for sustaining Government's case. This has to be borne in mind by the District Officials entrusted with safeguarding Government property.

A detailed examination of the arguments advanced by the Advocate for respondents is unnecessary because he quoted only from the written arguments filed by the Tahsildar before this Court. The Bench decision of the High Court dated 1.7.1981 clearly applicable to the circumstances of this case also. On this ground as well as on the merits of the case the Revision Petition filed by the Tahsildar must fail and hence the Revision petition is dismissed.

29. In the present case, the ground rent pattas were granted in the year 1958 and the same was sought to be disturbed after a period of two decades and further under many orders referred to above, the rights of the petitioner were recognized and confirmed. Further it is also not the case of the Government that the pattas were obtained by fraud or misrepresentation or any ground of similar nature. When this is the position, based on the circumstances, the Commissioner is not justified in reviewing the orders of the earlier Commissioner after a period of about five years, in the absence of any justifiable grounds, more so when the Act does not contain any power of review. The issues framed are answered in the affirmative.

30. For the foregoing reasons, the impugned orders of the Commissioner in CSS & LR's Case Nos. (1) P1/855/90 and P1/880/90 dated 31.1.1998 and in Case No. P1/896/86 dated 31.1.1998 are liable to be set aside and accordingly set aside

and the writ petitions are allowed. No costs.