
(2005) 07 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22517 of 1999, SA No"s. 346 of 2000 and 642 of 2001

Sanapala Narasamma

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 — Section 11, 5, 5(2), 51(2), 64A
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : (2006) 1 ALD 297

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D. Prakash Reddy, for Nooka Jagannadham, in SA No. 346 of 2000, - General and Government Pleader, for Arbitration in SA No. 642 of 2001 and D.V. Sitaramamurthy, in WP No. 22517 of 1999, for the Appellant; D. Prakash Reddy, for Nooka Jagannadham, for the Respondent Nos. 12 and 4 in SA No. 642 of 2001 and WP No. 22517 of 1999, D.V. Sitaramamurthy, for the Respondent Nos. 3 to 13 and 1 to 11 in SA Nos. 346 of 2000 and 642 of 2001, General and Government Pleader, for Revenue and Assigning, Government Pleader, for Arbitration, A. Satya Prasad, for the Respondent Nos. 1 and 2 in SA No. 346 of 2000, General, Government Pleader, for Revenue and Assignments for the Respondent Nos. 1 to 3 in WP No. 22517 of 1999 and P. Ramabrahman, for the Respondent No. 5 in WP No. 22517 of 1999, for the Respondent

Judgement

L. Narasimha Reddy, J.—The subject-matter of Second Appeal Nos. 346 of 2000; 642 of 2001 and W.P. No. 22517 of 1999 is the same landed property. Hence, they are disposed of through a common judgment.

2. For the sake of convenience, the parties are referred to, as arrayed in the writ petition.

3. The circumstances under which the second appeals and the writ petition came to be filed may briefly be stated as under :

The mother of the petitioners, viz., Kancharana Visakamma, is said to have been granted lease, over an extent of Ac.7.08 cents of land in Sy.No. 42 (old), of Madhavadhara Village, Vishakapatnam Taluk and District, in or around the year 1937, by the erstwhile Zamindar of Vizianagaram Estate. She is said to have raised mango and cashew nut groves over the land. She died on 7-1-1975. The Estate was abolished under The Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (for short "the Act").

4. Petitioners pleaded that they succeeded to the rights of their mother and continued to be in possession of the land, by paying land revenue etc. They stated that no notices were received by their mother or themselves, when survey and settlement operations were undertaken in respect of the land and the land was assigned new Survey No. 13. They filed W.P. No. 1672 of 1992 before this Court, alleging that their application for grant of ryotwari patta, in respect of the land, before the Settlement Officer, the 2nd respondent, under the Act, was not being considered. The writ petition was disposed of, on 4-2-1992, leaving it open to the petitioners to make fresh application, duly enclosing the relevant documents before the 2nd respondent, who in turn, was directed to pass appropriate orders, in accordance with law. It was further directed that until the application filed by the petitioners is disposed of, they shall not be evicted from the land in question.

5. Petitioners filed an application before the 2nd respondent u/s 11 of the Act. Simultaneously, they filed O.S. No. 310 of 1992 in the Court of III Additional Subordinate Judge, Visakhapatnam, for the relief of declaration that the classification of the said Ac.7.08 cents of land as poramboke (Gayalu); is erroneous and for a consequential direction to the revenue authorities, to change its classification to zero-yiti land, in the revenue records and that the petitioners are entitled for patta in respect of the same. The relief of perpetual injunction was also prayed for. The justification for filing of this suit, is stated to be that the petitioners came to know that as long as the land stood classified as poramboke in the revenue records, no patta can be granted in their favour.

6. The 4th respondent herein, viz., Sanapala Narasamma, sought to get herself impleaded in the suit, alleging that she has already been granted patta over an extent of 3 acres of land in Sy.No. 13. The application was dismissed by the trial Court. She filed a C.R.P. before this Court. However, the suit was decreed by the trial Court on 7-6-1996, even while the CRP was pending. Thereupon, she filed A.S. No. 162 of 1998 in the Court of II Additional District Judge, Visakhapatnam, by obtaining leave of the appellate Court. The 1st respondent in the writ petition and other authorities of the State, who figured as defendants in the suit, filed A.S.No. 365 of 1996.

7. Through a common judgment, dated 21-1-2000, the lower appellate Court partly allowed A.S.No. 365 of 1996, setting aside the decree of the trial Court, insofar as it declared that the petitioners are entitled to be granted patta and upheld the decree of the trial Court, as to the declaration that the classification of

the land, as poramboke is illegal. They filed S.A.No. 346 of 2000. A.S.No. 162 of 1998 filed by the 4th respondent herein was dismissed, on the ground that the leave accorded to her for preferring the appeal was defective. Therefore she filed S.A.No. 642 of 2001.

8. The application submitted by the petitioners u/s 11 of the Act was processed by the 2nd respondent and through order dated 24-6-1996, he rejected it, on various grounds. Aggrieved thereby, petitioners filed a revision u/s 5(2) of the Act before the Director of Settlements. He rejected the revision through order dated 4-11-1997. Therefore, petitioners filed a further revision u/s 7(d) of the Act, before the 3rd respondent, the Commissioner of Survey and Settlements. It was also dismissed on 26-12-1998. W.P. No. 22517 of 1999 is filed assailing those proceedings.

9. Sri D. V. Sitarama Murthy, learned Counsel for the petitioners submits that the mother of his clients viz., Visakamma has been in the possession of the land, ever since 1938 and after her death, the petitioners are continuing in possession. He contends that on account of lack of knowledge and awareness, Visakamma could not pursue the matter for grant of patta u/s 11 of the Act, till she died in 1975 and that it took sometime for the petitioners to acquaint with or know the relevant procedure. He submits that they have filed W.P.No. 1672 of 1992 before this Court seeking appropriate directions and in pursuance of the orders passed therein, they filed an application before the 2nd respondent, for grant of patta u/s 11 of the Act. He urges that the necessity arose for the petitioners to file the suit, since their verification revealed that the land was classified as gayalu, meaning thereby, "poramboke" and that the change of classification was necessary. Learned Counsel points out that the trial Court framed necessary issues and found that the classification of the land as poramboke was untenable and the further directions issued by it, as to the entitlement of the petitioners for grant of patta, are ancillary in nature.

10. He submits that the authorities under Sections 5 and 7 of the Act, before whom revision and further revision was filed against the order of the 3rd respondent, did not appreciate the material defects pointed out, in relation to the order passed by the 2nd respondent, Settlement Officer. He contends that the petitioners are entitled to be granted patta u/s 11 of the Act, since the record discloses that the classification of the land as poramboke, was incorrect, that the petitioners have established their possession of the property and that they have fulfilled the conditions stipulated under the Act.

11. Learned Counsel submits that even while the suit was pending, the 2nd respondent proceeded to adjudicate the application filed u/s 11 and rejected it, on certain grounds, which are untenable in law. He points out that the various observations made by the 2nd respondent as regards the delay in submission of the application, the classification of the land, the validity of patta, granted in favour of the 4th respondent, are factually incorrect and legally untenable. According to him, no patta could have been granted in favour of the 4th

respondent over any part of the land in R.S.No. 13 (old Sy.No. 42), since the origin of her claim was for a different piece of land, altogether. He submits that the 4th respondent was neither a necessary nor a proper party to the suit and as such, no exception can be taken for the dismissal of A.S.No. 162 of 1998 filed by her.

12. As regards the second appeals, learned Counsel submits that the Courts below have undertaken extensive discussion and offered cogent reasons, in support of the conclusions, as to the classification of the land and that the concurrent findings do not call for any interference.

13. Sri A. Satya Prasad, learned Senior Counsel appearing for the State Government submits that the suit filed by the petitioners is not maintainable in law. He contends that the Act is a self-contained Code and every dispute arising under it, is capable of being resolved by the authorities stipulated under that Act. He submits that the petitioners were not entitled to prosecute the remedies of suit, on the one hand and application u/s 11, on the other hand, simultaneously. It is also his case that the jurisdiction of the Civil Court is barred for the adjudication of any disputes arising directly or indirectly under the Act.

14. He submits that the 2nd respondent has assigned cogent reasons, while rejecting the application filed by the petitioners u/s 11 of the Act. He urges that the findings of fact, which were recorded therein, as well as in the revision filed u/s 5 and further revision u/s 7, of the Act, cannot be disturbed in a writ petition.

15. Sri D. Prakash Reddy, learned Senior Counsel appearing for the 4th respondent submits that a valid patta was granted to her by the 2nd respondent in the year 1975 and that it has assumed finality. He contends that it is not open to the petitioners to assail the validity of the said patta in any manner. Learned Senior Counsel submits that the 4th respondent sought to get herself impleaded in the suit, since the land in respect of which, patta was granted and that the trial Court disposed of the suit, even while the stay granted by this Court was operative. He takes exception to the dismissal of the appeal filed by the 4th respondent. According to him, once the leave was granted through an elaborate order, there was absolutely no justification on the part of the lower appellate Court in dismissing the appeal at the final stage, on the ground that there was defect in granting leave, that too after recording clear findings of fact in favour of the 4th respondent.

16. While the two second appeals arise out of the judgment and decree in O.S.No. 310 of 1992, dated 7-6-1996, the writ petition is directed against the order dated 24-6-1996, passed by the second respondent, on an application filed u/s 11 of the Act, in relation to the same lines. The relief claimed by the petitioners in their suit, was for:

(a) declaration that the classification of the land in R.S.No. 13 (old Sy.No. 42) of Madhavadara Village, admeasuring Ac.7-08 cents, as poramboke, is erroneous and for a consequential direction to the first respondent herein to change the

classification of the land as zero tyti land of the petitioners in the relevant revenue records; and

(b) declaration that the petitioners are entitled to be granted patta under the Act, in respect of the suit schedule land; and

(c) a permanent injunction, restraining the first respondent, from interfering with the possession of the petitioners over the land.

The first respondent, who Figured as defendant No. 2 in that suit, raised objection as to the maintainability of the suit and disputed the assertion of the petitioners on various factual aspects. The trial Court framed the following issues :

- (1) Whether the plaintiffs are entitled for the declaration prayed for?
- (2) Whether the plaintiffs are entitled for the mandatory direction prayed for?
- (3) Whether the plaintiffs are entitled for the permanent injunction prayed for?
- (4) To what relief?

17. On behalf of the petitioners, PWs.1 to 3 were examined and Exs.A-1 to A-11 were marked. The first respondent did not lead any oral or documentary evidence. Obviously, the trial Court was left with no alternative, except to decree the suit as prayed for.

18. The first respondent filed A.S.No. 365 of 1996. The 4th respondent who made a futile attempt to get herself impleaded in the suit, filed A.S.No. 162 of 1998, by obtaining leave of the Court. Both the appeals were disposed of, through a common judgment dated 21-1-2000. A.S.No. 365 of 1996 was allowed in part, by reversing the decree of the trial Court, to the extent that the petitioners were declared to be entitled for grant of patta over the land. On this aspect, the trial Court took the view that the petitioners have to abide by the decision of the 2nd respondent, in the proceedings initiated under the Act. The grievance of the respondents 2 and 3, for the decree passed by the lower appellate Court, is mainly about the rejection of their plea, as to the maintainability of the suit, as regards the change of classification. A.S.No. 162 of 1998 was dismissed, on the ground that the leave granted to the 4th respondent, for filing this appeal, was defective. The challenge by the writ petitioners, to the order passed by the second respondent u/s 11 of the Act, is manifold.

19. In view of the facts referred to above and the submissions made by the learned Counsel for the parties, the following questions arise for consideration, in this batch of cases :

- (1) Whether O.S. No. 310 of 1992 was maintainable in law?
- (2) Whether the decree granted by the trial Court, as modified by the lower appellate Court in A.S. No. 365 of 1996, suffers from any factual or legal infirmity?

(3) Whether the rights of the 4th respondent are in any way impaired on account of the decree referred to above?

(4) Whether the order dated 24-6-1996 passed by the second respondent u/s 11 of the Act, as affirmed in the revision and further revision under that Act, is legal and valid?

Question No. 1:

20. Sri A. Satyaprasad, learned Senior Counsel for the Government, made extensive submissions, touching on the very maintainability of the suit and placed reliance upon several judgments rendered by the Supreme Court and High Courts. Sri D.V. Sitharam Murthy, learned Counsel for the petitioners, on the other hand, opposed this contention and submits that change of classification is not a matter, within the scope of the Act and the inherent jurisdiction of the trial Court cannot be said to have been ousted.

21. The basis for filing of the suit was to make the way clear, for consideration of the application of the petitioners, u/s 11 of the Act. It is not in dispute that the suit schedule property was part of an estate. It stood abolished through the Act. Several consequences followed out of it. Section 11 of the Act, inter alia, provided for grant of ryotwari pattas, in favour of the persons who are in possession of the land, as on the notified date. Classification of the land assumes significance in this regard. It is only in respect of ryotwari lands that it becomes feasible for the Settlement Officer, constituted under the Act, to entertain the application for grant of ryotwari patta. Petitioners pleaded that land was classified as "Zerayti" throughout and somehow, the classification was changed into "Gayalu" or "Poramboke", without following the procedure prescribed for this purpose. Section 11 of the Act enables grant of ryotwari pattas, only as regards ryoti lands and lanka lands. On noticing that the land was classified other than the ryoti land, the petitioners sought the relief of declaration, in this regard. The bar of jurisdiction of Courts, specified in Section 65 of the Act, is mostly in the form of according protection to the officers, who discharged their functions while implementing the Act in good faith. It reads as under:

65. Jurisdiction of Courts barred in certain cases :--(1) No suit or other proceeding shall lie against the Government for any act done or purporting to be done under this Act or any rule made thereunder.

(2) (a) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purporting to be done under this Act or any rule made thereunder, without the previous sanction of the Government.

(b) No officer or servant of the Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the Court of the execution of the duties, or the discharge of the functions imposed by or under this Act.

(3) No suit, prosecution, or other proceeding shall be instituted against any officer or servant of the Government for any act done or purporting to be done under this Act or any rule made thereunder, after the expiry of six months from the date of the act complained of."

22. The provision does not bar jurisdiction of a civil Court to adjudicate upon the classification of the land, which in turn may become relevant for enforcing the provisions of that Act. In *State of Tamil Nadu Vs. Ramalinga Samigal Madam*, , the Supreme Court dealt with the jurisdiction of the civil Courts, vis-a-vis, the provisions of this very Act. After referring to the judgment of the Privy Council in AIR 1940 105 (Privy Council) and the judgment of the Supreme Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, and the provisions of the Act, their Lordships held as under :

It is clear that even where the statute has given finality to the orders of the special Tribunal the civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special Tribunal one will have to see whether such special Tribunal has powers to grant reliefs which civil Court would normally grant in a suit and if the answer is in the negative it would be difficult to imply or infer exclusion of civil Court's jurisdiction. In other words since the Settlement Officer has no power to do what civil Court would normally do in a suit it is difficult to imply ouster of civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order u/s 64-C of the Act.

The Supreme Court distinguished certain judgments, which were rendered by it, interpreting altogether different provisions. The scope of the entire enactment, was summarized by the Supreme Court, in the following terms:

The enactment and its several provisions are thus intended to serve the revenue purposes of the Government, by way of securing to the Government its sovereign right to collect all the revenues from all the lands and to facilitate the recovery thereof by the Government and in that process, if necessary, to deal with claims of occupants of lands, nature of the lands, etc. only incidentally in a summary manner and that too for identifying and registering persons in the revenue records from whom such recovery of revenue is to be made. The object of granting a ryotwari patta is also to enable holder thereof to cultivate the land specified therein directly under the Government on payment to it of such assessment or cess that may be lawfully imposed on the land.

In *Nallipattu Ramakrishna Reddy v. Kasala Balaiah* 1987 (1) ALT 120, his Lordship Justice Jagannadha Rao, as he then was, held that the civil Court has jurisdiction to decide the questions arising u/s 11 of the Act, even as to the persons entitled for grant of patta. A Division Bench of this Court in *Kosuru Venkata Krishnaiah v. Molakala Sidda Reddy* 1990 (1) ALT 163 , held that even an order passed by the Settlement Officer u/s 11 of the Act, is amenable to the

jurisdiction of the civil Court, in the context of nature and classification of the land. After referring to the judgment of this Court in *K. Ranga Reddy v. M. Venkatrami Reddi* 1980 (2) An.W.R. 332, the Bench followed the view expressed by his Lordship Justice Jeevan Reddy, as he then was, in that case and held that the effect of patta granted u/s 11 of the Act, by the Settlement Officer, is limited to the conversion of tenure and does not impair the substantive rights or title of the parties, over the land in question. Authorities can be multiplied on this aspect.

23. Further, Section 64-A of the Act gives an indication that it is permissible for a party, to seek adjudication in civil Court and that the judgment therein will operate as *res judicata* and binding on the proceedings under the Act and vice versa. It reads as under:

64-A. *Res judicata*:--(1) The decision of a Tribunal or Special Tribunal in any proceeding 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 under them, in any suit or proceeding in a Civil Court insofar as such matter is in issue between the parties or persons aforesaid in such suit or proceeding.

(2) The decision of a Civil Court (not being the Court of a 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 proceeding under this Act before a Tribunal or Special Tribunal, or a Judge of the High Court u/s 51(2), insofar as such matter is in issue between the parties or persons aforesaid in such proceeding.

When the Act itself recognizes such type of adjudication of the disputes and other related matters, it cannot be said that the suit filed by the petitioners is barred in law.

24. As regards the second question, it needs to be seen that the petitioner made a specific complaint about the change of classification of the land and violation of relevant provisions of law. Though the second respondent filed written statement, it did not choose to adduce any evidence. On the other hand, the petitioners placed voluminous record before the trial Court, in support of their contention. In Ex.A-3, an *adangal* for the year 1378 *fasli*, the classification of the land was shown as "banjaru" and the mother of the petitioners, was shown as possessor and enjoyer of that land. It is not in dispute that it is permissible to grant *ryotwari* pattas in respect of lands classified as "banjaru". However, for the subsequent years, the classification was shown as "gayalu", almost equivalent to "poramboke". The first respondent failed to satisfy the trial Court, as to how the change was brought about and whether the procedure prescribed in law was followed for this purpose. The trial Court had, therefore, declared that the change of classification of the land, from *zerayti* to *gayalu*, is illegal. The lower appellate Court upheld this finding. The learned Senior Counsel for the Government is not able to satisfy this Court, as to any legal or factual infirmity in

it. Therefore, this Court does not find any basis to interfere with the same.

25. Apart from granting the relief of declaration, as to classification, the trial Court held that the petitioners are entitled to be granted pattas. The lower appellate Court had set aside the same and took the view that the petitioners have to abide by the adjudication u/s 11 of the Act on this aspect. It needs to be observed that the grant of patta under the Act is specifically provided for, u/s 11 and the second respondent is conferred with the power and jurisdiction to deal with such matters. In fact, the application filed by the petitioners, for this purpose, was under consideration before the second respondent, while the suit was pending. The trial Court was not justified in granting the declaratory relief, as to the entitlement of the petitioners for patta. Such a course would virtually preempt the discretion of the second respondent under the Act. At any rate, the petitioners did not prefer any second appeal, against the judgment of the lower appellate Court, insofar as it had set aside the declaration granted by the trial Court, as to the entitlement of the petitioners for patta.

26. Adverting to the 3rd question, it may be noted that the challenge to the judgment and decree in the suit came from the 4th respondent also. She claims that she has been granted patta over the part of the suit schedule property, in the year 1975, u/s 11 of the Act. She made an attempt to get herself impleaded in the suit. The judgment in the suit is said to have been rendered, even while the stay granted by this Court in a CRP, filed by the 4th respondent, was pending. When the same was brought to the notice of this Court, an order was passed, enabling her to prefer an appeal against the decree, for obtaining leave. The record discloses that the 4th respondent filed I.A.No. 32 of 1998, before lower appellate Court, seeking leave to file appeal. After hearing the parties, leave was granted, through an elaborate order dated 2-1-1998. 4th respondent accordingly filed A.S.No. 162 of 1998, on the basis of the leave so granted and it was heard extensively.

27. The findings recorded and observations made by the lower appellate Court, in relation to the appeal preferred by the 4th respondent, while disposing it finally are curious and present a typical case of perversion. Paras 33 and 34 of its judgment read as under :

"33. Thus, it has to be seen that the decree impugned herein directly and substantially nullify her (4th respondent's) patta."

34. But at the same time, as appellant is not added as a party, the question of nullity of the said patta does not arise. At the same time, if really the patta is in existence, definitely, the appellant is an affected party as such, she is necessary party, but the genuinity of the patta is not pleaded and proved, as such, unless the appellant is entitled to prefer an appeal, this does not arise."

After making these observations, the lower appellate Court took the view that non-impleading of the 4th respondent in the suit, is a curable mistake. Thereafter, in Para 39, it observed as under :

As no notice is given for leave to prefer appeal, the said order is not binding and it will not operate as res judicata.

The fact remains that leave was granted to the 4th respondent, not only after notice thereof, was served on the petitioners, but also hearing them elaborately. Therefore, the observations made, findings recorded and the conclusions arrived at, by the lower appellate Court, in relation to A.S.No. 162 of 1998, are perverse and cannot be sustained in law.

28. This Court would certainly have allowed the second appeal filed by the 4th respondent, had the judgment in the suit, which stood modified through the judgment in A.S.No. 365 of 1996; resulted in any detriment to the 4th respondent. As of now, the decree is only to the effect that the classification of the suit schedule land, as "gayalu", was not legal. The 4th respondent cannot be said to have any grievance on that account. The portion of the decree in the suit, as to the entitlement of the petitioners, was set aside and the petitioners were required to canvass that remedy, before the Settlement Officer, the second respondent.

29. The very fact that the 4th respondent was granted patta over part of the suit schedule property, discloses that the Government was not clear as to the classification of the land and proceeded as though there is not impediment for consideration of application u/s 11 of the Act, in respect of that land. That exactly was the relief claimed by the petitioners, in their suit. The 4th respondent can feel any grievance, if only the patta granted in her favour is unsettled, either in any statutory or other proceedings. She can certainly put forward her contentions, as and when her rights are sought to be assailed by the petitioners, or for that matter, any other person. As on today, the patta granted in her favour is not in challenge.

30. It was urged by the learned Senior Counsel, appearing for the 4th respondent, that the petitioners have, in fact, filed an independent petition, challenging the order passed by the second respondent, granting patta in favour of the 4th respondent, but have withdrawn it later and in that view of the matter, it needs to be declared that the patta granted in favour of the 4th respondent has become final. Learned Counsel for the petitioners, on the other hand, submits that his clients have withdrawn the writ petition, so filed in view of the fact that a comprehensive order passed by the second respondent, while rejecting the application of the petitioners, is in challenge before this Court, in the present writ petition.

31. This Court does not find any basis to grant a declaration, as to the finality of the patta in favour of 4th respondent, since no such declaratory relief is prayed for in these proceedings. So far as the rights of the petitioners, vis-a-vis, the 4th respondent, are concerned, much would depend on the respective stands taken by the parties in their proceedings, before the second respondent, u/s 11 of the Act. If it becomes compatible for the second respondent, to deal with such

contentions, in the event of there being overlapping of interest, necessary finding in that regard need to be given. If the controversy is beyond the scope of the proceedings u/s 11, the parties have to work out their remedies before the other fora.

32. Now remains the last question, viz. the validity of the order passed by the second respondent, rejecting the application filed by the petitioners, u/s 11 of the Act.

33. Before filing the application u/s 11, the petitioners approached this Court and filed W.P.No. 1672 of 1992. The writ petition was disposed of on 14-2-1992, leaving it open to the two petitioners, to file a detailed petition, before the second respondent, together with the documents available with them and the second respondent, in turn, was directed to consider the same, if necessary, be reconstructing the file, in relation to the land. A further direction was issued, not to disturb the possession of the petitioners over the land. The second respondent dealt with the application filed by the petitioners, as well as the one filed by Sanapala Ramanujulu @ Ramanujayya and others, which was in relation to an extent of Ac.3-00 in Sy.No. 13(p) and Sy.No. 19/13 admeasuring Ac.0-54 cents. While the application of the petitioners was u/s 11 of the Act, the one filed by the others was complaining about interference with their possession over 54 cents, by the Mandal Revenue Officer. The record does not disclose the basis for considering these two dissimilar and different applications, together.

34. Be that as it may, the second respondent took note of the fact that by the time he was dealing with the matter, patta was granted in favour of respondents 4 and 5, over part of the land. However, neither any notice appears to have been issued to them, nor they were made parties to the proceedings.

35. The second respondent made certain uncalled for observations, as to the conduct of the petitioners in their filing O.S. No. 310 of 1992 and I.A.No. 471 of 1992. After referring to the I.A.No. 471 of 1992, filed under Order 39 Rule 1 C.P.C. by the petitioners, the second respondent observed as under :

In fact the petitioners having filed a claim petition under the provisions of the E.A. Act, 1948, for obtaining the ryotwari patta, cannot seek an injunction against the state. The claim petition filed before the Settlement Officer clearly speaks that the petitioner admitted himself that he has no right over the land. Therefore, the petitioner misrepresented the facts before the Hon''ble Court of the I Additional Subordinate Judge, Visakhapatnam.

If at all anything, these observations disclose lack of basic knowledge, or comprehension about the matter, scope of the proceedings under the Act, vis-a-vis, right of the parties, on the part of the incumbent, who passed the order. It needs to be observed that the possession of the petitioners was protected through the orders of the High Court. The second respondent was required to address mainly to the question, as to who was in possession of the land, as on the notified date.

36. The prejudice of the second respondent, against the petitioners, was manifest at more places in the order, than one. In the elaborate order, which runs to about 38 typed pages, major portion was devoted to criticize the conduct of the petitioners. The observations are full of inconsistencies. On the one hand, it was observed that the application is belated and on the other hand, it was treated as valid, in view of the orders passed by this Court in the writ petition. While the revenue records disclosed that the land was classified as gayalu and not available for grant of patta, the second respondent proceeded, as though the classification remains as banjaru. The second respondent has also mixed up the claims of one T. Ashoka Kumari, for incorporation of changes in the revenue records, in these proceedings. While discussing the aspect of possession over the land, the second respondent had infused his knowledge, on the basis of a personal inspection said to have been conducted on 24-6-1996. Here again, he mixed up the claims of several persons, with that of the petitioners. The petitioners were made to face rivals, who are not parties to the proceedings and whose contentions were not known to them. Still, the second respondent had rejected the claim of the petitioners, on the basis of such claims. There was hardly any pointed discussion, on the issues relating to the eligibility of the petitioners, for grant of patta u/s 11 of the Act.

37. The effort by the petitioners to correct these anomalies, in the revision and further revision, under Sections 5 and 7 of the Act, were equally futile. While the orders of the second respondent and the Director of Settlement are too verbose, without any pointed discussion on the relevant issues, the Commissioner of Survey and Settlement in the further revision u/s 7 of the Act, had simply summarized the finding without any discussion worth its name. Discussion on the merits of the matter is purposely avoided, lest it may have its impact on the matter, because this Court feels that the matter needs reconsideration.

38. For the foregoing reasons:

(a) Second Appeal Nos. 346 of 2000 and 642 of 2001 are dismissed. It is, however, made clear that the decree in O.S.No. 310 of 1992, which now is restricted to the one for declaration about the classification of the suit schedule property and grant of injunction against the defendants therein, does not bind the 4th respondent herein, on those aspects.

(b) Writ Petition No. 22517 of 1999 is allowed and the order date 24-6-1996, passed by the second respondent, on the application submitted by the petitioners u/s 11 of the Act and those passed in the revisions filed under Sections 5 and 7 of the Act, are set aside. The matter is remanded to the second respondent, for fresh consideration, in accordance with law.

(c) The second respondent shall not club or mix up the claims of any other individuals, with the application of the petitioners. It shall be dealt with, on its own merits. If it becomes necessary to examine the impact of patta granted in favour of the respondents 4 and 5, it shall be open to the petitioners to implead

them in the proceedings before the second respondent.

(d) Inasmuch as the application u/s 11 of the Act was filed, by the petitioners, on the strength of an order passed by this Court in W.P.No. 1672 of 1992, the application shall be treated, as having been filed within the period of limitation.

39. The second respondent shall dispose of the proceedings, within a period of six months, from the date of receipt of a copy of this order. The record, if any, received by this Court, from the second respondent, shall be transmitted forthwith. There shall be no order as to costs.