
(1990) 08 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 75 and 113 of 1990

Sri Kotagiri Seetharamayya and Others

APPELLANT

Vs

The Divisional Forest Officer and Another

RESPONDENT

Date of Decision : 06-08-1990

Acts Referred:

Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act,
1948 — Section 11, 63, 63A

Andhra Pradesh Forest Act, 1967 — Section 10, 11, 15

Citation : (1991) 1 ALT 630

Hon'ble Judges : P. Venkatarama Reddi, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : T. Veerabhadrayya, for P. Raja Rao, for the Appellant; The Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Rao, J.—These two writ appeals are preferred against the common judgment rendered by the learned single Judge in two writ petitions. Writ Appeal Mo. 75/90 is preferred against the judgment in W.P.No. 4201/85 while Writ Appeal No. 113/90 is preferred against the judgment in W.P.No. 7312/ 1985. The points arising in these two writ petitions so filed are the same in all respects and the writ petitioner in each of the cases is the Divisional Forest Officer, Eluru, West Godavari District. The only difference is that in W.P.No. 4201/1985 the claimants are impleaded as respondents 1 to 3 while in W.P.No. 7312/1985 the claimants are impleaded as respondents 1 to 12. The claimants i.e., respondents 1 to 3 in W.P.No. 4201/85 and the respondents 1 to 12 in W.P.No. 7312/85 have respectively preferred these two appeals W.A.Nos. 75 and 113 of 1990. These persons will be referred to as the "claimants" in the rest of this judgment.

2. The property in question in the two writ petitions was originally in the Vuyyuru Estate owned by the Zamindar thereof. He is stated to have granted this land on patta on 24 4-1942 to one S. Ramaiah on payment of Nazrana in a sum of Rs.

6,875/-. The Nazrana itself is said to have been paid on 4-4-1942. After commencement of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 (hereinafter called the Abolition Act 1948), the Vuyyuru Estate was taken over by the Government under a notification some time after 1948. Thereby the entire estate vested in the Government subject to the right of the persons in occupation of the land for claiming patta as provided in the Abolition Act 1948. As provided in the said Act, the said S. Ramaiah applied for patta before the Settlement Officer, Visakhapatnam in R.P.No. 133/62. By an order dated 14-7-1963, the Settlement Officer granted patta u/s 11 of the Abolition Act 1948 in an extent of 275 acres in old Survey No. 2/1 of Simgamgudem village, Chintalapudi Taluk, West Godavari District, in favour of the said S. Ramaiah. The Tahsildar, Chintalapudi was the respondent therein and he contested the case. The Director, Settlements while exercising suo motu powers, however, set aside, by order dated 6-6-1964, the grant of the said patta. Thereafter, the said S. Ramaiah preferred a further revision before the Board of Revenue, Hyderabad which by order dated 3-3-1965 set aside the order of the Director and restored the order of the Settlement Officer. It is stated by the appellants in the counter-affidavits filed in the writ petitions that the Divisional Forest Officer, Eluru sought the opinion of the Government Pleader, Hyderabad on 15-11-1965 regarding the feasibility of questioning the above said order of the Board of Revenue and that the Government by order dated 5-10-1966 rejected the proposal to notify the land under the A.P. Private Forest Act and the Divisional Forest Officer, Eluru communicated on 23-7-1967 the above proceedings dated 5-10-1966 to his subordinates. On 11-12-1967 the Board of Revenue requested the Collector, West Godavari to verify whether the land in question is within the boundaries of the sketch produced before the Settlement Officer, Visakhapatnam. The verification report was sent on 23-12-1967 by the Inspector, Survey and Land Records, Eluru. Thereafter the Collector, Eluru wrote to the Tahsildar, Chintalapudi on 15-2-1968 for dropping further action against Ramaiah in regard to the land in question.

3. Thereafter on 1-11-1973 the Manager, Chintalapudi issued a notice to S. Venkateswara Rao, the son of S. Ramaiah questioning his right to be in possession of the property. Questioning the said notice, the latter filed W.P.No. 1636/1974 and the said writ petition was allowed by Chinnappa Reddy, J. (as he then was) on 28-10-1975 quashing the notice, after referring to the grant of patta to S. Ramaiah and the subsequent orders referred to above.

4. We shall now refer to the proceedings taken under the A.P. Forest Act out of which the present writ proceedings arise. A notification was issued under the A.P. Forest Act 1967 (published in the Gazette on 1.1.70) after obtaining the approval of the Government in G.O. No. 2107 (Forest III) dated 24-11-1967. 11. was also published in the West Godavari District Gazette on 7-8-76. This notification states that it is proposed to constitute this land as a reserved forest. It appointed the Forest Settlement Officer to consider the objections, if any, for declaring the land as such, and for enquiring into and for mining the existence, nature and extent

of any rights claimed by or alleged to exist in favour of any person in the land. It fixed a timing of six months for receipt of claims. No claims were made by the appellants or anybody-else during the said period. The area was inspected on 19-11-1980 by the Forest Settlement Officer for purposes of reservation u/s 15 of the A.P. Forest Act and at that time it was found that the land in S No. 268/2 measuring ac. 387-25 cents (including the land now in question) was under the enjoyment of some persons. There was mango garden which was 9 years old over an extent of about 250 acres. There was a small tank in S.No 266/2 constructed three years earlier. The Forest Settlement Officer examined the Truine Officer and the latter stated that the land was part of an estate and was taken over by the Government after 1948 and was surveyed in 1956 and that patta was granted to S. Ramanah in 275 acres in S.No. 266/2 that the said S. Ramaiah died in 1975 and his son Venkateswara Rao was in enjoyment along with 12 of his vendees. Thereafter the Forest Settlement Officer issued notices on 6-12-1980 to the persons in occupation, and condoned the delay in filing the said objections as permitted by Section 16 of the A.P. Forest Act. The said Venkateswara Rao and others filed objections and were examined. The Forest Settlement Officer then held that S. Ramaiah's son did not produce any evidence to show payment of land revenue and cultivation by his father prior to abolition, that the land was poramboke land as per the re-settlement of 1956, and that in fact the land was notified u/s 26 of the Madras (A.P.) Forest Act, 1882 under the notification dated 6.3.1957 published in the West Godavari District gazette as a protected forest. He held that the Settlement Officer, Visakhapatnam while granting patta on 14-7-1963 to late S. Ramaiah did not give any opportunity to the Forest Department and that therefore the said patta proceedings are invalid and the sales made by the pattadar to the present appellants on the basis of the said patta were also bad. It is further stated that the land was taken over by the Forest Department along with the other land in the forest block on 1-10-1951, 1-12-52. While so holding, he rejected the claims of the present appellants by his order dated 4-11-1981 and directed further steps under the A.P. Forest Act.

5. Against this order, the claimants filed appeals before the District Judge, Eluru who is the appellate authority u/s 10 (1) of the A.P. Forest Act. By judgment dated 9-5-1984 in C.M.A. Nos. 1 and 12 of 1982 the learned District Judge allowed the appeals. Before the learned District Judge the claimants filed Exs. A-1 to A-14 as evidence of their possession and cultivation of the land from 1942 to 1946 by their predecessor-in-interest-the said S. Ramaiah. The learned District Judge held, on a reference to the relevant provisions of the Abolition Act 1948, viz., Sections 11, 63 and 63-A, that the patta granted to S. Ramaiah on 14-7-1963 u/s 11 prevailed over any other decision of any Tribunal or authority including the Forest Settlement Officer appointed under the A.P. Forest Act 1967. As admittedly the Forest Settlement Officer has not chosen to file any objection before the Settlement Officer, Visakhapatnam before whom the said S. Ramaiah applied for patta and inasmuch as the order of the said Settlement Officer dated 14-7-1963 was not challenged by the Forest Settlement Officer, the Forest

Department could not be permitted to claim any rights in the disputed land, once the patta was granted to the said S. Ramaiah. It was also held on merits after going through the evidence produced before him that there was enough factual evidence to prove that the disputed land was ryoti land for which a patta could be granted to S. Ramaiah as he was in possession and enjoyment right from 1942. He held that it was not possible to accept the contention of the Forest Department that the land was taken possession by them and that they have been in effective possession and control thereof. The claimants had raised mango trees. There was, according to the District Judge, no explanation for the long inaction of the Forest Department. He therefore set aside the order of the Forest Settlement Officer dated 4-11-1981 and allowed the appeals and directed exclusion of the lands in R.S. No. 266/2 from the proposed "reserve forest" in so far as they were covered by the patta.

6. It is against the said order of the learned District Judge dated 9-5-1984 that the Divisional Forest Officer Eluru filed the writ petitions W.P. Nos. 4201 and 7312 of 1985.

7. The learned single Judge after referring to the above facts and the legal provisions held that as no notice was given to the Forest Department before grant of patta u/s 11 to S. Ramaiah by the Settlement Officer, Visakhapatnam by the order dated 14-7-1963, the patta was not binding on the Forest Department. The learned Judge also held that on the basis of documents not before him but referred to in the order of Settlement Officer, the District Judge should not have given a finding in favour of the appellant. The learned single Judge stated that the Forest Department came to know about the grant of patta only on 30-12-1980 and thought that it would be more satisfactory if the Forest Settlement Officer is now allowed to file a petition u/s 63 of the Abolition Act before the Settlement Officer to reopen the patta proceedings u/s 11. He granted three months time for the said purpose. He, therefore, set aside the order of the learned District Judge and directed him to dispose of the appeals in the light of such fresh decision as may be given by the Settlement Officer u/s 63 of the Abolition Act. Against this judgment dated 24-11-1989, the claimants have preferred the present writ appeals.

8. It is contended by Sri T. Veerabhadrayya, the learned counsel for the appellants that the patta proceedings have become final and that the said proceedings are binding on the Forest Department, the same cannot be allowed to be reopened at this distance of time particularly when they were confirmed by the Board of Revenue on 3-3-1965 and accepted in W.P. No. 1636/74 on 28-10-1975 by Chinnappa Reddi, J. (as he then was). He also pointed out that the learned single Judge was factually wrong in thinking that the forest-officials came to know about the patta granted to S. Ramaiah only on 30-12-1980 whereas the material on record shows that the Divisional Forest Officer, Eluru came to know about the patta before 15-11-1965 when the latter actually wrote to the Government Pleader, Hyderabad for questioning the order of the Board of

Revenue. The Government negated the said request on 5-10-1966 and the said order was communicated by the Divisional Forest Officer on 23-7-1967 to his subordinates. Twenty five years thereafter the Forest Department should not be permitted to reopen the proceedings.

9. On the other hand, the learned Government Pleader has contended that in view of the provisions of Section 63-A of the Abolition Act and inasmuch as the Forest Department had taken possession in 1951, 1952 and had issued a notification on 6-3-1957 as stated earlier u/s 26 of the Madras Forest Act, 1882, the Settlement Officer, Visakhapatnam ought to have given notice to the Forest Department and the said patta is not binding on the department. According to him, the learned single Judge was right in permitting the Forest Department to now reopen the patta proceedings earlier granted u/s 11. He also stated that pursuant to the orders of the learned single Judge the Forest Department has now filed a petition u/s 63 of the Abolition Act 1948 before the Settlement Officer dealing with the question u/s 11 of the Abolition Act, 1948, within the period limited by the learned single Judge.

10. Before discussing the points so raised it is necessary to refer to the scheme of the Abolition Act, 1948 and the scheme of the A.P. Forest Act, 1967 in so far as these are material in respect of forest lands.

11. The Madras Estates (Abolition & Conversion into Ryotwari) Act, 1948 was an Act which provided for the repeal of the Permanent Settlement and for the acquisition by the government of the rights of the land holders in permanently settled and other estates and for the introduction of the ryotwari settlement in such estates. Estates notified u/s 1 (4) would, u/s 3, vest in the government (inclusive of forests), free from all encumbrances and then all rights against the government would cease subject, however, to the Government granting patta u/s 3 (d). Possession of the persons in occupation is however protected under the proviso to Section 3 (d) for the period before the patta proceedings conclude. Before deciding the question of grant of patta to ryots u/s 11 or to landholders under Sections 12 to 15, they cannot be evicted, even under the A.P. Land Encroachment Act, as decided in several cases. u/s 11, the Settlement Officer is to decide about the entitlement of ryoti in respect of "ryoti" land. Ryoti land is defined u/s 3 (16) of the Madras Estates Land Act, 1908 (which definition is attracted under the Abolition Act, 1948) as "cultivable land in an estate other than Private land and does not include lands belonging to the categories mentioned in Clauses (a), (b), (c) of Section 3 (10). Again Section 3 (1) of the Estates Land Act, 1908 defines "agriculture". As to what is "ryoti land" and what is "agriculture", there are several rulings of the Supreme Court and the Madras and Andhra Pradesh High Courts. u/s 11, proviso, persons inducted into possession before 1-7-1945 could normally claim patta, if the land is not lanka land. Sections 19, 20 refer to sale and lease of rights in ryoti (and non-ryoti) land before 1-7-1945, including rights in forest lands. Section 21 to Section 23 deal with survey and fresh ryotwari settlement to enable grant of pattas later. We

are here specially concerned with Sections. 63, 63-A.

12. Section 63 of the Abolition Act, 1948 deals with the decision on questions regarding forests. It says :

"Section 63 : If any question arises whether any land in an estate is a forest or is situated in a forest, or as to the limits of a forest, it shall be determined by the Settlement Officer, subject to an appeal to the Director within such time as may be prescribed and also to revision by the Board of Revenue."

Section 63-A gives overriding effect to the decision u/s 63. Section 63-A reads:

Section 63-A : Notwithstanding any judgment, decree or order of a Court, tribunal or other authority,-

(a) the decision of-

(i) the Settlement Officer u/s 63, if no appeal or revision is preferred ;

(ii) the Director, if no revision is filed,

(iii) the Board of Revenue, in revision, shall be final and binding on all authorities and parties in relation to the claim for grant of a ryotwari patta in respect of any land u/s 11 or Section 15 ;

(b) Where a final decision as aforesaid is given u/s 63 either before or after an order is passed, or a decision is given by any tribunal or other authority u/s 11 or Section 15, the said decision shall prevail over such order or decision of the tribunal or other authority."

It is not in dispute that the rules made u/s 67 of the Abolition Act, 1948 do not provide for any particular period, before which any person or authority should move the Settlement Officer u/s 63 as to whether any land is forest land or not. (see Rules at p. 231 of Tenancy Law of A. P. by Justice P. Kodandaramayya) (3rd Ed. 1989). Even so, one of the questions however, is whether an application can be allowed to be filed "at any time", after the grant of patta under Sections 11 or 15. It is necessary (see Rules in same book at p. 252) that for purposes of Section 63, an application has to be filed as provided in Form I and notice is to be issued under Rule 7 to the persons referred to therein. The Settlement Officer is to decide the question under Rule 8.

13. The A. P. Forest Act, 1967, repealed the A. P. (Andhra Area) Forest Act, 1882 and the Telangana Act of 1355 Fasli. The present proceedings, in fact, arise out of notification u/s 4 dated 24-11-1969 (published in A. P. Gazette on 1-1-1970) under this new Act. Section 4 permits the Government to notify "any land" as a "reserved forest", by notification in the State & District Gazettes for constituting such land as a reserved forest and for appointing a Forest Settlement Officer to consider the objections and inquire into them. u/s 4 (1), the Forest Settlement Officer will be an Officer of the Revenue Department and u/s 4 (2) any forest officer may represent the Forest Department in such an inquiry. Thereafter, a

proclamation u/s 6 is to be published in the Gazettes etc. explaining the consequences of such reservation and fixing six months time or more (but less than one year) for filing objections. Section 7 deals with accrual of rights between the notification u/s 4 and the notification u/s 15. Section 7 (2) says that no patta shall be granted by or on behalf of the government. Section 8 provides for inquiry by the Forest Settlement Officer in respect of claims made u/s 6 and for the recording of the statement of the officer of the Forest Department. Section 10 (1) refers to decision on specific rights in or over land (other than rights enumerated in Clauses (a) to (d) and Section 10 (2) provides either for take over and payment of compensation or for excluding the land claimed, from the limits of the proposed forest. If taken over, the Land Acquisition Act is to be applied. Section 13 provides for appeals to the District Court. (The present case is at this stage).

14. After the decision of the District Court, there will be a final notification in the gazette u/s 15 declaring the forest as "reserved." This is after some more formalities are completed. Section 16 permits claims to be filed even before the actual final gazette publication provided sufficient cause is shown for the delay in filing objections. (In fact, in the present case, the Forest Settlement Officer himself condoned the delay in filing the objections.) Section 17 provides that no right can be acquired over reserved forest except to the extent provided. Thus, if the claimant's patta u/s 11 is to stand, their lands could be released or alternatively acquired by paying compensation under the Land Acquisition Act.

15. In the present case, as already noted, there was a decision by the Settlement Officer u/s 11 of the Abolition Act, 1948 on 14-7-1963 and the same was confirmed by the Board of Revenue on 3-3-1965. The Tahsildar alone was a party thereto and it was held that the land was ryoti (or cultivable land) and not forest land. The first question is whether the decision that the land was not forest land could be treated as a decision u/s 63 of the Estates Abolition Act, 1948 or whether any further decision is necessary.

16. In our view, the decision of the Settlement Officer dated 14-7-1963-while deciding that the land is ryoti land but not forest land, is a decision incidentally arrived at and cannot be treated as a specific decision u/s 63. This is because the Rules (see p. 252 of the book referred to above) provide for an application to be specifically filed in Form I for this purpose and for a notice under Form II. It is not the case of the claimants that they had made any such specific application u/s 63. The controversy at that stage did not primarily centre round the question whether the land in question is a forest land in the estate. Therefore, any incidental decision while dealing with the Section 11 application cannot be treated as an adjudication falling u/s 63. The view to the contrary of the learned District Judge, in the present case, is not correct.

17. If therefore, there is an order granting patta u/s 11 without there being any prior specific decision u/s 63, then it is clear, in view of Section 63-A, that the patta granted u/s 11 cannot have any over-riding effect upon the subsequent

decision, if any, that may be given u/s 63 of the Abolition Act by the Settlement Officer. This is clear from the use of the words "before or after" in Section 63 (b) of the Act. If a final decision is given u/s 63, either before or after an order is passed or a decision is given by any tribunal or authority u/s 11 or Section 15, the said final decision u/s 63, the section says, shall prevail over such order or decision of the tribunal or other authority. In the present case, so far, there is no decision given by the Settlement Officer u/s 63 subsequent to the order granting patta u/s 11 on 14-7-1963 to the claimants' predecessor. The District Court was therefore not again right in holding that the decision u/s 11 was binding in the present proceedings under Forest Act, 1967.

18. The next question is whether the learned single Judge was right at this distance of time-in granting three months time from 24-11-1989, to the Forest Department to file an application u/s 63 of the Abolition Act, 1948. No doubt, Section 63 or Section 63-A or the rules does not prescribe any period of limitation for the filing of an application u/s 63 but it is, however, argued for the claimants that even if the statute did not prescribe any such period, the learned Judge should not have granted time - in the year 1989 to the Forest Department and thereby create a situation for giving a decision u/s 63 which could over-ride the patta granted in 1963. It is argued that in the last 26 years, third party rights have accrued and they have improved the land by raising a mango garden and that the Forest Department is obviously guilty of laches. It became aware of the patta even by 15-11-1965 as stated above, and it is argued that the learned single Judge erred in thinking that it became aware of the patta only on 30-12-1980. This mistake of fact on the part of the learned single Judge, according to the counsel, is very crucial.

19. Be that as it may, it is now an accepted fact that, subsequent to the judgment on 24-11-1989 of the learned single Judge, the Forest Department has actually filed a petition u/s 63 before the Settlement Officer, within 3 months as permitted. We have already pointed out that such an application is not barred by any provisions of the Estates Abolition Act. That application has necessarily to be decided by the Settlement Officer u/s 63 of the Abolition Act.

20. However, we would like to clarify that the direction given by the learned single Judge shall not have the effect of a positive mandate to the Settlement Officer to go into the merits of the issue. Even though there is no period of limitation for filing a petition u/s 63, it is open to the Settlement Officer to consider whether it is just and reasonable to permit the Forest Department to raise a question u/s 63 having regard to all the relevant factors such as laches, if any, and equities. In case the Settlement Officer decides to entertain the petition filed by the Forest Department u/s 63 and decides to deal with the merits of the controversy, he shall permit the claimants to adduce oral and documentary evidence.

21. At this juncture it is necessary to point out that the learned counsel for the claimants-purchasers expressed an apprehension that if the above question is

allowed to be raised at this long distance of time, the claimants will be handicapped from producing the necessary documentary evidence as it is difficult to secure such evidence. The learned Counsel submits that the relevant documents have already been filed before the Settlement Officer at the time of enquiry u/s 11 and if for any reason the said documents are not available, the claimants-purchasers will be very much prejudiced. We have no doubt, this apprehension has been voiced with certain amount of justification. In our view, the Settlement Officer-if he decides to consider the matter on merits-can prima facie rely on the contents of the order of the Settlement Officer dated 14-7-1963 and it will be for the Forest Department to rebut the material contained in the said order dated 14-7-1963. Depending upon the decision of the Settlement Officer, subject to such appeal or revision as may be availed of under the provisions of the Act, the Settlement Officer shall take further course of action. In case the decision u/s 63 is in favour of the claimants, it shall be open to the Settlement Officer to still act u/s 10 of the A.P. Forest Act, 1967 either to release the land from the category of reserve forest land or to acquire the same u/s 10 (2) (a) (iii) read with the provisions of the Land Acquisition Act by paying the compensation. In the latter event, the land can be notified as reserve forest u/s 15 (1) (c). If, on the other hand, the Forest Department finally succeeds in Section 63 petition (subject, of course to any proceedings under Article 226 of the Constitution) and it is decided by the Settlement Officer that the land in question is forest land, the patta granted u/s 11 on 14-7-1963 must be held to be superseded and the Settlement Officer has to consider the claimants' objections on that basis for the purposes of Section 10 of the A.P. Forest Act, 1967. The above procedure, in our view, will meet the ends of justice.

22. The learned single Judge has set aside the order of the District Court dated 9-5-1984 as the District Judge has proceeded on an erroneous approach to the problem with which direction we agree. We are of the view that the order of the Forest Settlement Officer dated 4-11-1981 should also be set aside leaving the matter at large for the Settlement Officer to deal with the application u/s 63 in the manner aforesaid, so that the matter will be decided by him afresh in the light of the decision to be taken by the Settlement Officer. We therefore set aside the order of the Forest Settlement Officer dated 4-11-1981 as well. In case the Settlement Officer considers that the application now filed u/s 63 is liable to be rejected on the ground of unreasonable delay, irreparable prejudice to the parties, etc., he can reject the same in limine. In case he decides otherwise, he shall deal with it on merits as stated earlier. Depending upon the result of the same, the Forest Settlement Officer shall proceed further in the matter. Till then, further proceedings under the Forest Act will naturally remain in abeyance.

23. The writ appeals are disposed of in the light of the above directions. There will be no order as to costs. Advocate's fee Rs. 250/- in each.