

(2009) 04 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10099 of 2008

Sri Venugopala Swamy Vari Devasthanam

APPELLANT

Vs

Assistant Commissioner of Endowments and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 43, 87

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 6A

Citation : (2009) 4 ALD 788 : (2009) 15 ALT 574

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.T.M. Prasad, for the Appellant; G.P Endowments for Respondent No. 1, G.P for Revenue for Respondent No. 2, V.L.N.G.K. Murthy and A.S.C. Bose, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner challenges the proceedings, dated 29.04.2004, issued by the Mandal Revenue Officer, Kothavalasa, the 2nd respondent herein.

2. The facts, that gave rise to the filing of the writ petition, are as under:

The petitioner-Temple held various extents of land in different survey numbers of Kothavalasa. One such item is, the land in survey No. 7, admeasuring Acs.15.04 cents. The Government initiated action for acquisition of the said land to provide house sites to the flood victims of Veerasagaram Tank of Kothavalasa Village. The Commissioner of Endowments gave consent for acquisition. When the proposals were in progress, the 3rd respondent filed W.P. No. 35480 of 1998, before this Court, claiming that he is entitled to be paid the compensation. The writ petition was dismissed on 16.04.2003, leaving it open to the 3rd respondent to file a suit.

3. Thereafter, the 3rd respondent filed Rev.W.P.M.P. No. 9610 of 2003. An order,

dated 06.01.2004, was passed by this Court, directing that the revenue authorities, i.e. the District Collector, Vizianagaram, and the Mandal Revenue Officer, shall conduct enquiry, based upon the entries made in the registers, maintained by the Endowments Department, u/s 43 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Endowments Act"), and come to a conclusion, with regard to the claim of the petitioner therein. It is in this context, that the 2nd respondent conducted enquiry and passed the impugned order. He held that the land in survey No. 7/1 admeasuring Acs. 15.04 cents of Kothavalasa was not gifted or endowed to the petitioner-Temple and that the 3rd respondent is the rightful owner and possessor of the land. After the impugned order was passed, the 3rd respondent executed two sale deeds in favour of respondents 4 and 5, in respect of the land, on 15.07.2004. In addition to challenging the impugned order, relief is also sought, vis-a-vis those sale deeds.

4. The petitioner contends that the impugned order is totally without jurisdiction and is not referable to any provision of law. It is urged that, by no stretch of imagination, this Court can be said to have conferred such a power to the 2nd respondent, and the only forum to decide such question is the one, constituted u/s 87 of the Endowments Act, or a civil Court, in the event of the land being acquired under the Land Acquisition Act.

5. Respondents 3, 4 and 5 have filed separate counter-affidavits supporting the impugned proceedings. It is stated that the order passed by this Court in Rev.W.P.M.P., has become final, and that the impugned proceedings are issued in accordance with the same.

6. Heard Sri V.T.M. Prasad, learned Counsel for the petitioner, learned Government Pleader for Endowments, learned Government Pleader for Revenue, Sri V.L.N.G.K. Murthy, learned Counsel for the 3rd respondent, and Sri A.S.C. Bose, learned Counsel for respondents 4 and 5.

7. It is a matter of record that the petitioner was granted ryotwari patta, bearing No. 489, in respect of Acs. 15.04 cents of land, in survey No. 7/1 of Kothavalasa Village, under the A.P. (AA) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short "the Inams Act"). The revenue authorities of the District approached the petitioner with a request to part with the land, on payment of compensation, for the purpose of providing house sites for the flood victims. The Commissioner of Endowments accorded permission, and steps were in progress, for determination of compensation, and payment thereof. At that stage, the 3rd respondent approached this Court by filing W.P. No. 35480 of 1998. The writ petition was dismissed on 16.04.2003, leaving it open to him to file a suit for declaration of his title. In a review petition filed by the 3rd respondent, this Court observed that the entries made by the Endowments Department u/s 43 of the Endowments Act, are at variance with those in the adangals, and in that view of the matter, the revenue authorities would be in a position to come to a right conclusion with regard to the claim of the petitioner therein i.e. the 3rd

respondent herein. The relevant portion of the order in the review petition reads as under:

However, as expressed by this Court in the order, dated 16.04.2003, which is now sought to be reviewed, no doubt suit is one of the remedies. But how effective the said remedy, is another question. At this stage if the parties are directed to approach the civil court, to settle their claims, it would take long time, which may ultimately defeat the very purpose and object of G.O.Ms. No. 444 Revenue (E.II) Department dated 19.09.1995. Therefore, having regard to the palpable revelations from the entries in the statutorily maintained register by the Endowments Department u/s 43 of the Act and also in view of the entries made in the Adangals and conflicting versions made by the Endowments Department in their counter, I feel it a fit case where the revenue authorities could come to a right conclusion as regards the claim of the petitioner by conducting an enquiry basing on the statutory register and other related documents of the year 1949. Hence, I am of the view that the order dated 16.04.2003 is required to be recalled.

The ultimate direction was as under:

For the foregoing reasons, the earlier observation made in order dated 16.04.2003 passed in W.P. No. 35480 of 1998 is hereby recalled and the review petition is disposed of with the following direction:

The revenue authorities i.e., the respondents 1 and 3 shall conduct an enquiry basing on the statutorily maintained register by the respondent No. 4-Endowments Department u/s 43 of the Act and also basing on adangals and other related document of the year 1949 and after identification of the same, shall come to a conclusion with regard to the claim of the petitioner.

It is made clear that in the enquiry if it is found that the disputed land belongs to the petitioner, the case of the impleaded respondents 5 to 75 for assignment of the land, shall be considered from out of the land belonging to the temple.

8. A perusal of the observations made by this Court, in the order under review, makes it clear that, by no stretch of imagination, the power to decide the title, much less the validity of the patta issued in favour of the petitioner under the Inams Act, was conferred upon the 2nd respondent. The only observation was to the effect that the District Collector and the Mandal Revenue Officer may arrive at a conclusion, as regards the claim of the 3rd respondent herein. Whatever may have been the purport of the said observation, it cannot be concluded that this Court conferred upon the 2nd respondent to decide such serious questions, which even a civil Court could not have done.

9. Taking advantage of a general, if not enormous, observation, the 2nd respondent swung into action and assumed to himself the powers of,

(a) a Deputy Commissioner of Endowments to decide the purport and correctness of the entries made u/s 43 of the Act;

- (b) an appellate authority under the Inams Act to pronounce upon the correctness of the ryotwari patta issued in favour of the petitioner-Temple; and
- (c) a civil Court to decide the title of the 3rd respondent vis-a-vis the land.

10. The 2nd respondent initiated action, on the strength of those observations and proceeded to decide the matter. The operative portion of the impugned order reads as under:

In view of the recorded evidence, mentioned above, produced by both parties it is evident that S. No. 7/1 measuring an extent of Acs. 15.04 cents of Kothavalasa Village was not gifted/endowed to the deity and Sri N. Srirangachari, S/o Bhaskaracharyulu who is in possession of the land is the rightful owner of the land and he has got title over the land measuring Acs. 15.04 cents covered by S. No. 7/1 of Kothavalasa village. Necessary entries are to be effected in the Village/Mandal land Records.

It is relevant to mention that the 2nd respondent took note of the fact that the petitioner was granted ryotwari patta under the Inams Act. The observation reads as under:

As per V.A. No. 10-1, a Ryotwari Patta bearing No. 489 was issued in favour of Sri Venugopalaswamy vari Devasthanam for S. No. 7 measuring an extent of Acs. 15.04 cents. As this land was shown in favour of deity, the said land was proposed for provision of house sites to flood victims of Veerasagaram Tank of Kothavalasa village duly obtaining the consent of the Commissioner, Endowment Department, Andhra Pradesh, Hyderabad.

He based his conclusions on the findings recorded in the following paragraphs:

It is noticed from the sketch of F.M.B. for S. No. 7 of Kothavalasa Village, the topographical details shows it as a Tank. But in the permanent A Register i.e., the pre-settlement record and the Settlement Fair Adangal shows that it is an Inam Dry land. But in the Fair Adangal of F.C.O., it is clearly mentioned that the land covered S. No. 7 measuring an extent of Acs. 15.04 cents is a Ryotwari Dry Land, but in the remarks column it is mentioned as Bhaskaracharyulu Tank. The old entries in Pre-settlement and Settlement records show the particulars of nature of land of S. No. 7 as Inam Dry. Even though the topographical details shows in the F.M.B. as Tank, it is presumed that the tank is an Inam Tank because no recorded details showing the tank i.e., Bhaskaracharyulu Tank is a Sarcar Poramboke. Hence the entry made in the remarks column of F.C.O Fair Adangal might not be correct.

In V.A. No. 10(1), there is an entry showing that S. No. 7-1, was granted P. No. 389 to the deity. As per rules framed under F.C.O., the change of ownership varies in settlement Fair Adangal and F.C.O., Fair Adangal records should be supported by an order. There is no such order as to the change of ownership mentioned in V.A. No. 10(1). The V.A. No. 3 Adangal of F.1107 reveals that the land is in possession and enjoyment of the Review petition. The settlement

record and the local enquiry at village level during inspection of the land reveals that the Review petitioner and his predecession in title are in possession of the land since a long time. Further, the Assistant Commissioner has reported that S. No. 7 correcting to O.S. No. 251-B is not mentioned in the Section 38 Register.

11. The conduct of the Mandal Revenue Officer, who passed the impugned order, is despicable, and deserves to be condemned. He has exhibited his anxiety to cause harm to the petitioner by availing every possible opportunity. The order, dated 22.12.2006, passed by him in exercise of power u/s 6-A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, in respect of the land of the petitioner, was subject-matter of W.P. No. 3786 of 2008. For all practical purposes, he has become the front office of the 3rd respondent, and accommodated him in every possible way, to knock away the landed property of the petitioner-Temple, or to deny it the other benefit.

12. When the direction issued by this Court was that the District Collector and MRO shall conduct enquiry, the 2nd respondent did not choose even to consult, much less seek approval of the District Collector.

13. Further, it is just unimaginable even for a District Collector, or for a Civil Court to pronounce upon the correctness of the proceedings under the Inams Act. Any sensible and sincere Officer, in the place of the 2nd respondent, would not have dared to declare that the 3rd respondent is "the rightful owner of the land" or to declare that, "survey No. 7/1 measuring an extent of Acs. 15.04 cents of Kothavalasa was not gifted/endowed to the deity (petitioner)". As though this is not sufficient, he proceeded to record a finding to the effect that the 3rd respondent is in possession of the property.

14. There is no way, a ryotwari patta granted under the Inams Act can be interfered with, except by availing the remedies under the Act. Neither the District Collector, nor the Tahsildar are conferred with powers under the Act. This Court did not and in fact could not have conferred powers upon the 2nd respondent to pronounce upon the legality or correctness of the ryotwari patta granted in favour of the petitioner. Where, law prescribes that a thing must be done in a particular manner, it must be done in that manner or not at all. Reference, in this context may be made to a judgment of the Supreme Court in Gujarat Electricity Board Vs. Girdharlal Motilal and Another, .

15. The mala fide intention on the part of the 3rd respondent was evident from the fact that, knowing fully well that the land is under acquisition, he has executed two sale deeds in favour of respondents 4 and 5. The comment made by the learned Counsel for the petitioner, that the 3rd respondent is a notorious land grabber, gains strength. It is rather unfortunate that the 3rd respondent hails from a family, which was generous and magnanimous in endowing the properties to the Temple. He has resorted to every possible means, to cause hindrance to the functioning of the Temple, and to grab its properties.

16. Hence, the Writ Petition is allowed, and the impugned proceedings, dated

29.04.2004, are set aside. Consequently, it is held that the sale deeds, dated 15.07.2004, executed in favour of respondents 4 and 5, are of no legal consequence.

17. It is directed that, in case the land is to be acquired by the Government, the compensation representing the market value thereof, shall be kept in a fixed deposit in the name of the petitioner-Temple, and the interest that accrues thereon, shall be utilized for the developmental activities. On the other hand, if it is not acquired, the leasehold rights shall be put to auction every year, and the proceeds thereof, shall be kept in a fixed deposit. The accrued interest shall be utilized for developmental activities.

18. The 3rd respondent shall pay costs of Rs. 10,000/- (Ten Thousand) to the petitioner.