
(2001) 07 AP CK 0019
In the Andhra Pradesh High Court
Case No : WA No. 857 of 2001

Veerappa

APPELLANT

Vs

Revenue Divisional Officer, Chittoor and Another

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 — Section 3, 7(2)

Citation : (2002) 5 ALD 121 : (2002) 2 APLJ 420

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : T. Amarnath Goud, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This writ appeal is directed against the judgment and order of the learned single Judge dated 26-4-2001 in Review WPMP No.5573 of 2000 and the order dated 14-12-2000 made in WP No. 11598 of 1994.

2. The appellant is the writ petitioner. The appellant filed the above writ petition for a writ of certiorari to quash the proceedings No.Roc.C/8096/91 of the Revenue Divisional Officer, Tirupathi, Chittoor District, dated 7-6-1994.

3. The background facts leading to the filing of the writ petition be noted briefly as under

4. The petitioner purchased Ac. 1.90 cents of agricultural land in Survey No.241/3 situated at Tiruchanoor village in Chittoor District from one Sri Kodanda Ramaiah under a registered sale deed dated 1-5-1970. The Inam Deputy Tahsildar, Tirupathi, on the application of the petitioner u/s 3 of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, (for short "the Act") caused enquiry and by order dated 1-5-1984 held that the land admeasuring Ac.1.90 cents in Sy.No. 241/3 situated at Tiruchanoor,

(hereinafter referred to as "the schedule land") is Inam land situated in Inam village and it is not held by any institution and a gazette notification in that regard was published in Chittoor District Gazette dated 3-9-1984. On 14-6-1985, the Inam Deputy Tahsildar, Tirupathi, in pursuance of the determination of the land as Inam land u/s 3 of the Act, granted ryotwari patta in respect of the schedule land u/s 7(1) of the Act to the petitioner. Pursuant to the above two orders passed by the Inam Deputy Tahsildar under Sections 3 and 7(1) of the Act, in the month of March, 1986, the petitioner submitted an application to the Tahsildar, Tirupathi seeking for mutation of the schedule land in his name in the revenue records and accordingly, his name was mutated by the Revenue Officials in the year 1986 itself. On 13-4-1986, the Sub-Registrar sought clarification from the Revenue Divisional Officer, Tirupathi as to whether the schedule land is a government land or a private land and whether it could be registered. In response to the letter of the Sub-Registrar seeking clarification, the Revenue Divisional Officer, Tirupathi issued a Memo dated 13-4-1986 clearly stating that the Ryotwari patta was given over the schedule land and the same was given to the appellant-writ petitioner and he has been in lawful possession and enjoyment and there is no objection for getting the land registered since no communal interest is involved in it. When matter stood thus, on 24-5-1994, the Collector, Chittoor filed an appeal u/s 7(2) of the Act assailing the validity of Ryotwari patta granted in favour of the appellant writ petitioner on 7-6-1994. The Revenue Divisional Officer (Revenue Court) passed the impugned order, which reads as follows:

"Roc.C/8096/91, dated 7-6-1994

Office of the Revenue Divisional Officer, Tirupati.

PROCEEDINGS

Sub :--LA. Act, 1956 - Chittoor District -Tirupati Division - Tirupati Rural Mandal - Tiruchanur village - S.No.241-3 Extent 1-90 acs - Ryotwari patta granted in favour of Sri V. Veerappa - Appeal petition filed by Sri M. Satyanarayana Chetty - petition filed by the Collector, Chittoor for grant of stay orders against the grant of Ryotwari patta in SR Nos. 77/85 dated 14-6-1985 and 49/86 dated 7-3-1986 - Stay granted - Orders issued-Reg.

Read: 1. Petition filed by the MRO Tirupati Rural Mandal, dated 24-5-1994.

2. Petition affidavit filed by the Collector, Chittoor, dated 24-5-1994.

ORDER: -

The Collector, Chittoor filed a petition affidavit against the Orders of the Inam Deputy Tahsildar, Chittoor passed in SR No.77/85 dated 14-6-1985 and 49/86 dated 7-3-1986 granting Ryotwari patta for an extent of 1-60 Acs and 0.30 cents respectively (1.90 Acs) comprised in S.No.241-3 of Tiruchanur village of Tirupati Rural Mandal in favour of Sri V. Veerappa.

I have perused the affidavit and grounds of appeal set out by the Appellant and prima facie noticed that the land in question is a communal land notified u/s 2-A of the A.P. LA. Act, 1956 and thus vests with the Government free from all encumbrances. Pursuance to the dictum of the Hon"ble Justice M.N.Rao, in connection with W.P.Nos.2661 and 7677 of 1987 and Contempt Case No. 243 of 1987, the appeal preferred by the Appellant is taken on file and the circumstances explained in the affidavit, stay of the operation of the Orders of the Inam Deputy Tahsildar, Chittoor passed in SR No.49/86 dated 7-3-1986 is hereby granted pending disposal of the appeal.

The case is posted for hearing on 11-6-1994 at 11-00 AM. At the Office of the Revenue Divisional Officer, Tirupati."

The petitioner-appellant being aggrieved by the above order of the Revenue Divisional Officer preferred Writ Petition No. 11598 of 1985 on several grounds. Paragraphs 4 and 6 of the writ affidavit read as follows:

"4. The Revenue Divisional Officer not being a regular Court has no jurisdiction to execute the delay as Section 5 of the Limitation Act applies only to Courts and not to Tribunals. Section 5 of the Limitation Act has not been applied to the Revenue Divisional Officer while hearing appeals u/s 7 of Limitation Act. Therefore, he has no jurisdiction to condone the delay in filing the appeal.

6. In view of the fact that the Collector is the petitioner, there is reasonable likelihood of departmental bias on the part of the Revenue Divisional Officer has no jurisdiction to entertain an appeal after a period of 60 days and the appeal is without jurisdiction. Further, the delay cannot be excused in any event without notice to the respondent. After the order is implemented in Revenue Records, there is no point of granting stay. Under the guise of the stay orders, the Collector has instructed the Mandal Revenue Officer to take forcible possession of the property inspite of the implementation in the Revenue Records and collection of cist. The Act contemplates settlement proceedings and settles the rights of the parties. These officers who discharge these functions should not be under influence under the Revenue Authorities. Valuable rights of property have to be decided by the officer implementing the Act and they should not be subjected to the control of the Revenue Officers. That is why when Joint Collectors are entrusted with the powers of a settlement officer, this Hon"ble Court granted stay."

Thus, it is quite clear that in the writ affidavit, the petitioner assailed the validity of the impugned order of the Revenue Divisional Officer on the ground of lack of jurisdiction as well as on the ground of non-issuance of notice. The learned Judge, by order dated: 14-12-2000 impugned in this writ appeal, disposed of the writ petition with a direction to the Revenue Divisional Officer to dispose of the appeal after giving notice to all the parties, to put-forth their case and keeping open all the contentions raised by the parties in the writ petition. The order of the learned Judge reads as follows:

"It is not in dispute that the petitioner was granted ryotwari patta u/s 7 of the Inams Abolition Act way back in 1984. Subsequently, on information that several fictitious documents were created by the individuals and obtained ryotwari pattas for the entire poramboku land which have vested in the Government u/s 2(a) of the Act. The Collector seemed to have directed the officials to conduct raids on the premises of several individuals who in turn collected several fictitious documents from the individuals.

In these circumstances, the Collector seemed to have filed a statutory appeal before the Revenue Divisional Officer against the orders of the Deputy Tahsildar granting ryotwari patta in favour of the petitioner.

Counsel for the petitioner tries to convince me that the proceedings initiated by the Collector are highly illegal as the very gazette notification states that these are ryotwari lands and the Deputy Tahsildar issued patta after conducting a regular enquiry.

In view of the facts and circumstances that came to the notice of the Court, I feel that without expressing any opinion on the issue, the RDO may be directed to dispose of the appeal filed by the Collector in the year 1994. Accordingly, the RDO is directed to dispose of the appeal after giving notice to all the parties to put forth their case and the RDO shall record findings while passing the orders on all the contentions raised by the petitioner with supporting reasons including the application filed by the Collector for condonation of the delay, without being obsessed with the fact that his superior filed the appeal before him and he is bound to pass orders in favour of the Government, in accordance with law. As the appeal is pending since more than 6 years, the RDO shall dispose of the appeal positively within two months from the date of receipt of a copy of this order.

Writ petition is accordingly disposed of. No costs."

The above order of the learned single Judge was sought to be reviewed in Rev. WPMP No.5573 of 2000. It appears that the above Review WPMP as well as Contempt Case No.447 of 2001, wherein the wilful disobedience of the order of the learned single Judge dated: 14-12-2000 was complained, were listed before the learned Judge on 26-4-2001. From the record, it is seen that in the order made in CC No.447/ 2001, the learned Judge has observed that the Review application filed by the petitioner is dismissed. The Office has put up a note stating that the order made in Review WPMP No.5573/2000 is also found in the order made in the Contempt Case and there is no separate order. Therefore, it means that the Review WPMP was dismissed by the learned Judge by stating that there are no grounds to review the order. Hence, this writ appeal by the aggrieved petitioner both against the main order made in Writ Petition No. 11598/1994 and the order made in Review WPMP No.5573 of 2000.

5. We have heard Sri P.Gangaiah Naidn, learned Senior Counsel for the appellant and learned Government Pleader for Revenue.

6. Sri Naidu contended that the order of the Revenue Divisional Officer impugned in the writ petition is *ex facie* without jurisdiction because under Sub-section (2) of Section 7 of the Act, an aggrieved party could prefer an appeal to the Revenue Court within 60 days from the date of the order, whereas, admittedly, the appeal was presented by the District Collector with a delay of 2555 days and since the Act does not empower the Revenue Court to condone the delay filed after expiry of 60 days from the date of the order made under Sub-section (1) of Section 7 of the Act, the Revenue Court ought not to have entertained the appeal at all by condoning the delay. In support of his contention, he relied on a decision of this Court in *R. Balasubramanyam Reddy v. District Collector*, 1990 (1) An. WR 95. Secondly, the learned senior Counsel contended that the impugned order is otherwise void for infraction of Principles of Natural Justice because the order was made without notice to the writ petitioner-appellant.

7. The learned Government Pleader for Revenue, on the other hand, contended that no prejudice would be caused by the order of the learned single Judge inasmuch as the learned single Judge has left open all the issues raised by the parties to be agitated before the Revenue Court and, therefore, it is not a fit case where the Division Bench should interfere with the discretionary order made by the learned single Judge.

8. We would have perhaps fallen in line as suggested by the learned Government Pleader if we did not find the jurisdictional flaw in the impugned order. As already pointed out *supra*, under Sub-section (2) of Section 7 of the Act, an appeal could be preferred by an aggrieved party within 60 days from the date of the order. It is not brought to our notice by the learned Government Pleader for Revenue that the Act empowers the Revenue Divisional Officer who constitutes the Revenue Court to entertain an appeal by condoning the delay after expiry of 60 days. The Revenue Divisional Officer is a creature of statute and whatever power he exercises under the statute should be strictly within the parameters of power granted to him. Since the statute does not confer any power on him to condone the delay, the Revenue Divisional Officer condoning delay of 2555 days would not arise. On this aspect, we are in complete agreement with the view taken by the learned Judge in *Balasubramanyam Reddy's* case (*supra*). Secondly, it is quite startling to notice that the Revenue Divisional Officer straight away, without notice to the writ petitioner and completely ignoring natural justice and fair-play in action, *ex parte* condoned the enormous delay of 2555 days. This particular action of the Revenue Divisional Officer speaks volumes, particularly, in the context of Republican Constitution and Rule of Law and after 52 years of Republic coming into existence. It is for the appropriate authority in the Government to view this matter seriously and to see that such a thing does not happen in future at least. In that view of the matter, we are of the considered opinion that the very appeal preferred by the District Collector is not maintainable. Therefore, directing the Revenue Court to dispose of the appeal on merit as directed by the learned single Judge would not arise. No mandamus will go to an authority, statutory or otherwise, to exercise a power which is not granted by the statute

and the law. Since the Act does not grant the power to the District Collector to entertain an appeal beyond 60 days of the date of the order, directing him to decide the appeal on merit is not justified. Writ Appeal is, therefore, allowed and the orders of the learned single Judge in W.P.No. 11598 of 2001, dated 14-12-2000 and Review WPMP No.5573/2000 dated 26-4-2001 are set aside. The writ petition is allowed and the impugned order of the first respondent - Revenue Divisional Officer - is quashed with costs quantified at Rs.2,000/- payable within two weeks from today.