

The Arya Vysya Sangam Vs The Settlement Officer and Others

Court: Andhra Pradesh High Court

Date of Decision: Feb. 14, 1996

Acts Referred: Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 " Section 13, 15(1), 3

Constitution of India, 1950 " Article 226

Citation: (1996) 2 ALT 346

Hon'ble Judges: Syed Saadatulla Hussain, J

Bench: Single Bench

Advocate: D. Sudhakara Rao, for the Appellant; G.P. for Revenue for Respondent Nos. 1 and 4 and Venkat Ramana, for the Respondent Nos. 5, 7 and 8, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Syed Saadatulla Hussain, J.

Mr. V. Rajagopal Reddy appearing for Mr. D. Sudhakar Rao submits that petitioner in W.P.No. 1383/90 is

an association under the name and style of ""Arya Vysya Sangham"", New Town, Anantapur, represented by its President , Sri D. Viswanatha

Gupta. The said association is dealing with the welfare of Vysya community is general and other communities. It is submitted that Acs. 2-79 cents

in S.No. 86/2 of Papampet village, Anantapur District was communal lands being used for the cremation and burial of dead bodies originally

belonging to Vysya and Brahmin community and later it became burial ground for the entire Hindu community. In G.O.Ms.No. 518, Revenue,

dated 28-5-1974, the above said land of Acs. 2-79 cents was transferred from assessed waste to the burial ground Poramboke. In pursuance of

the orders in the said G.O. the Tahsildar directed the Revenue Inspector to mutate the said lands in the name of the above said Association., and

also the petitioner in W.P. No. 4308/90. The fact is that the present S.No. 86/2 of Papampet village is used as common burial ground and the

dead bodies are being burried there.

2. Similar are the averments in W.P.No. 4308/90 but only the petitioner therein is Brahmana Sangham, Anantapur, represented by its Secretary P.

Subbarao.

3. The learned counsel Sri Venkat Ramana appearing for respondents 5 and 6 in W.P. 1383 /90 and for respondents in W.P.4308/90 stated that

respondents 6, 7 and 8 are the contesting respondents and claiming title to the said land on the plea that the Papampet village of Anantapur District

by virtue of A.P. (Andhra Areas) Estates Abolition Act 1958, Proceedings were initiated under the said Act and the pattas have been granted to

the land holders under the provisions of the said Act by the Settlement Officer and respondent Nos.6 and 7 are the transferees of respondent No.

5, the patta holder, and as such under the provisions of the Act they have been vested with the title and possession of the said land and further

submitted that the petitioners have no manner of right to claim this property for the above said land is cultivable land and the said land was never

part of any Poramboke or communal land. The said lands were never vested in the government. The claim of the petitioner Association is

untenable under the provisions of the A.P. (Andhra Area) Estates Abolition Act and proceedings of issuing pattas were initiated by the Settlement

Officer following the due procedure under the Rules. Notices were issued u/s 15 (1) Rule 3 of the A.P. (Andhra Area) Estates Abolition Act in the

village Chowdi and by beat of Tom-Tom. The copies of the notices were served on the Tahsildar as well as the Karnam of Anantapur. Enquiry

was held on 24-5-1975 at Revenue Divisional Officer's Office, Anantapur. In the entire proceedings covering the A.P. (Andhra Area) Estates

Abolition Act, the Government has not claimed the above said lands. Under the scheme of the Act, the orders passed by the Settlement Officer

are final subject only to the appellate provisions. Their right has been fructified as full title holders and in possession of the property at present.

4. Counter affidavit has been filed on behalf of the respondents 1 to 4 The District Revenue Officer, Ananthapur stated that "Papampet" is a

Shorriam village in Ananthapur Mandal. It was taken over by the Government as per the Provisions of Estate Abolition Act, 1948 and ryotwari

pattas were issued to the land holders after due process of law. The disputed land in S.No. 86/2 with an extent of Ac.2-79 cents was used as

cremation land by the Brahmin and Vysya communities since a long time. Originally, it was "Gayalu" (Assessed waste) land and it was transferred

to "burial ground poramboku" by the Tahsildar, Ananthapur in his office proceedings R. Dis.No. 5319/74(B) dt 2-7-1975 in accordance with the

instructions issued in G.O.Ms.No. 518, Revenue dated 28-5-1974. He has also directed the Revenue Inspector to carry out necessary changes in

village records. Further it is submitted that the Settlement Officer, Nellore without the knowledge of Revenue Officials and beyond the ground

realities, has issued a Roytwari patta to one Marathi Chowdoji Rao the respondent No. 5 herein in S.R.No. 109/15 (1)/75 dt 24-10-1975. It is

further submitted that it is to be noted here that the Revenue Authorities (Tahsildar, Ananthapur) have transferred this land from assessed waste to

burial ground Poramboke three months prior to this order to Settlement Officer. It is alleged that the facts were mis-represented before the

Settlement Officer. As per Sections 11 to 15 of Estates Abolition Act, the Settlement Officer has no jurisdiction in reserved waste lands, vanka

porambokes, irrigation channels, communal and pasture-lands etc. Further it is submitted that even now, the cremation activities are continued by

both Brahmin and Vysya Communities. The Mandal Revenue Officer, Ananthapur has personally visited the land on 28-8-1995 and found that

cremation activities are going on in the said land and there were no traces of cultivation at any time. He also reported that the features and

circumstances of the land in dispute confirm the same. It is further stated that the enquiries with Ananthapur Municipality revealed that one Kantha

Rao and Laxmi Narasimha who were the original shotriumdars have gifted away this land to Brahmin and Vysya communities through a

"Kharnama" 5565 dated 2-12-1972 for the purpose of using it as burial ground. It is further submitted that no doubt true that Settlement Officer,

Nellore directed to survey the disputed land. But the same could not be initiated in view of the pendency of litigation before the Estates Abolition

Tribunal and after that before the Hon"ble High Court and in view of the orders of the Tahsildar, Ananthapur in R.Dis. No. 5349 /74 dt. 2-7-1975

and this is the only land available for the purpose of cremation for the people of New Town, Ananthapur and prayed for dismissal of the writ

petition.

5. Taking into consideration the contention of petitioners and the rival contention of the respondents and the statement of the Collector in his

counter affidavit in this case, the main question is whether the Government is competent to transfer this land which is stated to be "Gayalu"

(assessed waste to the burial ground Poramboku by the Tahsildar. Ananthapur in his proceedings R. Dis.No. 5349 /74 dt. 2-7-1975 in

accordance with the instructions issued in G.O.Ms.No. 518, Revenue Dt.28-5-1974 under the A.P. Estates Abolition Act or whether the first

respondent/Settlement Officer was competent to issue patta in favour of respondents 4 and 5 in W.P. No. 1383/90 and respondent 6,7 and 8 in

W.P.No. 4308/90. In this writ petition, the petitioners are the claimants of the land in question i.e. Ac.2-79 cents in S.No. 86-2 situated at

Papampet village as transferred assignees for the burial ground of Brahmin and Vysya Communities. In W.P.No. 1383/90 and respondents Nos.

6,7 and 8 in W.P.No. 4308/90 are claiming through pattas granted by the first respondent/Settlement Officer in favour of their predecessor in title

shotriumdars as private lands under the A.P. (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948.

6. The Andhra Pradesh (Andhra Area) Estates Land Abolition Act is a self contained Act. Clause (b)/(c) and (d) of Section 3 of the Act reads as

follows:-

(b) "the entire state (including (minor inams (post-settlement or pre-settlement) included in the assets of the zamindari estate at the permanent

settlement of that estate; all communal lands and porambokes) other non-ryoti lands; waste lands, pasture lands; Lanka lands; forests mines and

minerals; quarries, rivers and streams; tanks and irrigation works; fisheries, and ferries), shall stand transferred to the Government and vest in

them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865 and all other enactments

applicable to ryotwari areas shall apply to the State;

(c) "all rights and interest created in or over the estate before the notified date by the principal or any other landholder, shall as against the

Government cease and determine;

(d) "the Government may, after removing any obstruction that may be offered, forthwith take possession of the estate, and all accounts, registers,

pattas, muchilikas, maps, plans and other documents relating to that estate which the Government may require for the administration thereof:

The petitioner claims the above said land on the basis of proceedings of the Tahsildar transferring the above land to burial ground on 2-7-1975 in

compliance with the Government Orders and it is the submission of the counsel for the petitioner that they still continue to be in possession and the

dead bodies are being cremated even to-day. Whereas, the contesting claimants in the above writ petition for whom Sri. Venkat Rama appears

denies the claim of the petitioners and states that their predecessors in-title Chowdoji Rao purchased the said lands from Shotriumdars and their

title rests u/s 13 (a) of the Act.

7. It is stated that Papampet village was notified u/s 3 of the Act. u/s 15 (1) of the Act, notices were published in the village Chawadi by beat of

Tom-Tom and the enquiry would be held at R.D.O.'s Office, Ananthapur. Mr. Venkat Rama stated that the notices were also served on the

Tahsildar and Karanam which is evidence from the material papers filed at pages 9 and 11.

8. It is dear that the Government did not set up claim to these lands as a result of which, the Settlement Officer passed orders in proceedings

S.R.No. 109/15 (I)/75/ATP dt 24-10-1975 granting patta to an extent of Ac. 2-57 cents in S.No. 86-2 to Chowdoji Rao. It is submitted by Sri.

Venkat Rama that in this order, the predecessor in title Chowdoji Rao is the claimant. The first respondent in his proceedings held as follows:-

that the lands in the said village are found to be private lands of the land owners falling within the meaning of Section 13-A of the Estate Abolition

Act. Therefore the claim of the successor in title also fall within the preview of Section 13-A of the Act. Since no documentary evidence prove the

title of the claimant for the areas shown against them, I grant them separate ryotwari patta for the schedule lands as indicated in the schedule.

The survey authorities will measures out the lands according to enjoyment on ground and with reference to the boundaries in the document and the

area as determined by the survey officer shall be deemed to have been granted patta through this order.

In the Schedule it is shown as follows:-

S.No. Extent Patta to whom granted

82/2 Ac.3-12 Marati Rama Swamy

86/2 Ac.2-57 Chowdoji Rao

9. It is submitted by the learned Counsel for the petitioners Mr. Venkat Ramana that subsequent to the order of this first respondent, the Mandal

Surveyor, Ananthapur has surveyed and issued statement of sub-division in the village of Papampet, Mandal, Ananthapur, District Ananthapur

sub-dividing the Survey No. 86-2 into 22 cents as Gayalu and Ac 2-57 cents in the name of respondents 6 and 7 and a plan is also annexed to it.

These are the two parellel proceedings given vesting the land in favour of the petitioners on 2-7-75 and the first respondent - Settlement Officer

granting pattas to respondents 6,7 and 8.

10. It is submitted by the learned Counsel for the petitioner that as the matter stood thus, the contesting respondents were trying to encroach upon

the land as such they preferred appeal challenging the orders of the Settlement Officer, Ananthapur dt 27-4-1989 in proceedings No. 109/15

(I)/75/ATP before the second respondent/Estates Abolition Tribunal (District Judge, Ananthapur). Two separate appeals were filed on behalf of

the two petitioners. The petitioners in W.P. No. 1383 of 1990 preferred Eas. No. 2/87 and the petitioners in W.P.No. 4308/90 preferred

Eas.No. 6/83. Though two appeals were filed one in the year 1983 and the other was in the year 1987, the same were disposed of by the second

respondent on 27-4-1989. The second respondent held that the Settlement Officer, Nellore finding that the Field Staff during settlement operations

built up case files pertaining to the grant of Ryotwari pattas for the schedule lands and other lands in Papampet village in favour of the claimants and

others, and who have not filed their claims started suo moto enquiry u/s 15 (1) of the Estate Abolition Act, 948. Notices of date of hearing were

issued to the claimants concerned. All the lands in the village of Papampet were held to be private land of original Shotriumdars within the meaning

of Section 13 (a) of the Estate Abolition Act, as per the findings in S.R.No. 181, 182/15 (I)/67/ ATP and 3 and 4/15 (1) ATI and the claim of the

purchasers of the lands from the original shotriumdars also fell within the purview of Section 13 (a) of the Estate Abolition Act. Having found the

lands in Papampet village as private lands of original shotriumdars the Settlement Officer, Nellore opined that the only thing he has to decide is

whether the claimants acquired title with regard to the schedule property. After taking documentary and oral evidence he held that R.5 Chowdoji

Rao purchased three plots of land measuring 47 cents from the Shotriumdars under Ex.P-10, he also purchased Ac.1-05 cents from Kunchepu

Hanumanthappa under Ex.P-11, that Kunchepu Hanumathappa purchased the said land under Ex.P-14 from the shotriumdars. He also purchased

another Ac.1-05 cents from Thimmoji Rayudu. Considering the subsequent sales, the first respondent held that the lands are private lands of the

land holders within the meaning of Section 13 (a) of the Estates Abolition Act, as such the claim of the successor in title also fell within the meaning

of Section 13 (a) of the Estates Abolition Act and the documentary evidence proving the title of the fifth respondent. Accordingly, the first

respondent granted separate ryotwari pattas for the schedule lands with a direction that the survey authorities will measure the lands according to

the enjoyment on the ground with reference to the boundaries in the documents and the area as determined by the survey officer shall be deemed

to have been granted patta.

11. The petitioners in these two writ petitions are third party claimants on the ground that the Tahsildar in his proceedings dt 2-7-1975 has

transferred the S.No. 86 /2 measuring Ac.2-57 cents of Papampet village of Ananthapur Taluq from the assessed waste to burial ground

Poramboke for cremation of dead bodies of Brahmin and Vysya communities of Ananthapur New Town in accordance with instructions issued in

G.O.Ms.No. 518, dt 28-5-1974. The Tahsildar directed the Revenue Inspector, Ananthapur to make necessary changes in the village accounts

within a week.

12. The original G.O.Ms.No. 518, dt. 28-5-1974 has not been produced by either of the partner but reliance is placed only on the proceedings of

the Tahsildar for transferring the land to the burial ground. The petitioners also submitted that no notice of the proceedings of the first respondents

/Settlement Officer was issued to them and on the other hand, the contesting respondents claiming title to the property under the Act and that they

are not parties to the proceedings of the Tahsildar and no notice of the said proceedings has been served on them though they are in possession of

the property.

13. It is significant to note here that neither the petitioners nor the contesting respondents/claimant owners of the above said property are parties to

the separate proceedings nor any notice has been individually served on them but the fact remains that under the Estates Abolition Act, the first

respondent initiated suo moto enquiry for allotment of pattas in respect of Papampet village which are the private lands of Shotriumdars and

subsequently they have alienated them. A notice was issued u/s 15 (1) read with Rule 3 of Estates Abolition Act to the public in the village chowdi

and by beat of tom-tom stating that the enquiry will be held on 25-5-1975 at R.D.O.'s office and that the copies of notices there also served on

the Tahsildar and Karanam of Anathapur. The copies of the notices evidence that the Settlement Officer has issued notice and they were served

and later pattas were issued by the first respondent in S.R.No. 109/15 (1)/75/ATP in an extent of Ac.2-57 cents in S.No. 86/2 to Chowdoji

Rao/respondents as purchaser of private land of Shotriumdar u/s 13A (3) of the Act on 24-10-1975. Subsequently, Chowdoji Rao sold to

respondents 6 and 7 and they also claimed title on par with Chowdoji Rao as they stepped into the shoe of their predecessor in title. These being

the facts urged before the second respondent/Estates Abolition Tribunal and that the Tribunal felt that the pattas granted by the first respondent are

only conditional subject to the survey to be conducted, as such it is not a final order and the petitioners being not parties to be proceedings before

the first respondent/ Settlement Officer, the appeal is not maintainable and apart from this, the petitioners have belatedly filed the appeal for over

12 years. It is also held that the petitioners as well as the contesting respondents claim possession over the property but none of them have filed

documents of their exclusive possession over the above said property and further it is observed that the petitioners/ appellants are not parties

before the Settlement Officer who passed the impugned order and their claim being on assignment of land by the Government whereas the claim of

the respondents 3 to 5 is based on their title deeds which were upheld by the Settlement Officer subject to the Survey to be conducted. The

petitioners/appellants can appear before the survey authorities and prove possession over the schedule property. With the above observation, the

appeal were dismissed.

In these writ petitions both the petitioners challenged the orders passed by the second respondent in the appeals preferred by them . By virtue of

Section 3 (b) of A.P. (A.A.) Estates Land Abolition Act the entire estate (including (minor inams (post -settlement or pre-settlement) included in

the assets of the Jamindari estate at the permanent settlement of that estate; all communal lands and porambokes) other non-ryotilands; waste

lands; pasture lands; Lanka lands; forests mines and minarls; quarries: rivers and streams; tanks and irrigation works; fisheries, and ferries), shall

stand transferred to the Government and vest in them, free of all encumbrances; and the Madras Revenue Recovery Act, 1864, the Madras

Irrigation Cess Act, 1865 and all other enactments applicable to ryotwari areas shall apply to the estate.

A significant point, is that on one hand there is specific finding that die lands of Papampet village are private lands and the first respondent granted

pattas holding that these were the private lands of Shotriumdars of the village which were sold to the contesting respondents 5,6 and 7. On the

other hand, the claim of the petitioners is that the said lands are communal lands being used for burial purposes and later the same was transferred

by the proceedings of the Tahsildar on 2-7-1975 for cremation of the dead bodies of Brahmin and Vysya Communities. Assessed waste is not

defined u/s 2 of the Act. Mr. Raja Gopal Reddy submits that the assessed waste is Poramboke land but no material is placed before me to support

his statement. Section 15 of the Act deals with the determination of lands in which the land holder is entitled to ryotwari patta. Section 15 (2) (a)

provides appeal against the order passed by the Settlement Officer, Section 15 (2) (a) of the Act reads as follows:-

15 (2) (a) Against a decision of the Settlement Officer under Sub-section (1), the Government may, within one year from the date of the decision

or if such decision was given before the commencement of the Madras Estates (Abolition and Conversion into Roytwari (Andhra Pradesh

Amendment) Act, 1957, within one year from such commencement, and any person aggrieved by such decision may, within two months from the

date of the decision or such further time as the Tribunal may in its discretion allow, appeal to the Tribunal; and its decision shall be final and not to

be liable to be questioned in any court of Law.

14. It is a admitted fact that notice u/s 15 (1) read with Rule 3 of the Act has been issued by the first respondent/Settlement Officer allotting pattas

to the respondents/claimants i.e. respondents 5 to 7. In this situation, it shall be assumed that the Government has notice of the Proceed ings of the

first respondent/ Settlement Officer and apart from that u/s 15 (2) (a) of the Act, the Government can prefer an appeal within one year from the

date of decision of the Settlement Officer under Sub-section (1) of Section 15 of the Act. In the instant case, though counter has been filed by the

third respondent/ District Collector, Ananthapur, it is not stated whether any appeal was preferred by the Government in this regard. The Assistant

Government Pleader was asked by me to state whether the Government has preferred any appeal. The learned Asst. Government Pleader stated

that there is no record to show that the Government has preferred an appeal. In these circumstances, ordinarily, the order passed by the Settlement

Officer shall become final. But in the instant case, only conditioned order has been passed by the Settlement Officer which is subject to actual

survey to be conducted by the Survey Authorities with regard to the boundaries. For this Mr. Venkat Ramana filed (in material papers) the xerox

copy of Statement of Sub-division in the village of (No. 60) Papampet, Mandal Ananthapur, District Ananthapur conducted as per TA dis. No. 62

/1393 Section 1 dt 26-4-84. By virtue of statement of sub-division, the claimants land has been separated i.e. Ac.2-57 cents and new number has

been given as 86-5. As could be seen, there is no violation of provisions of the Act in grant of patta to the respondents 5 to 7 and the Government

itself having notice of proceedings before the first respondent/Settlement Officer did not choose to base claim that the said land was assessed

waste or a communal land already transferred to the cremation of the dead bodies of two petitioners communities. Later, after grant of patta by the

Settlement Officer on 24-10-1975, the Government did not prefer any appeal. In the circumstances, the order passed by the first respondent

granting pattas to the land holders of the predecessor in title of respondents 5 to 7 cannot be interdicted for violation of any provisions of law nor

the proceedings are against the principles of natural justice. In the circumstances, there are no merits in both the writ petitions and they are

accordingly dismissed. No costs.

15. After the judgment is dictated, the Counsel for the petitioner Mr. Raja Gopal Reddy submitted that it may be clarified that after sub-division of

S.No. 86/2, after separating Ac.2-57 cents, the balance of Ac.0-22 cents is the burial ground. Mr. VenkatRamana also stated that the burial

ground is adjacent to Ac.2-57 cents. As such the same is clarified.