(1996) 02 AP CK 0021

Andhra Pradesh High Court

Case No: Writ Petition No. 1383/90

The Arya Vysya Sangam		APPELLANT
	Vs	
The Settlement Officer and Others		RESPONDENT

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 Shorrium 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 burfal ground Poramboke three months prior to this order to Settlement Officer. If 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 "Khararnama" 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; fisheriries, 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 (l)/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 gr
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 (l)/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 (l)/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 7and 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.