

**SUPREME COURT OF INDIA**

Sarvepalli Ramaiah

Vs.

District Collector, Chittoor District

C.A.No.7461 of 2009

(R.Banumathi and Indira Banerjee,JJ.,)

14.03.2019

**JUDGMENT**

**R.Banumathi,J.,**

1. This appeal arises out of the judgment dated 22.02.2006 passed by the High Court of Andhra Pradesh in Writ Petition No.1495 of 2004 in and by which the Division Bench upheld the order of the Single Judge thereby declining to interfere with the order of the District Collector in refusing to grant ryotwari patta in favour of the appellants.

2. Case of the appellants is that their predecessor-in-interest obtained a saswatha patta dated 31.12.1940 from Sri Hathiramjee Math for dry land admeasuring 6.00 acres T.D. No.464 and predecessors of the appellants and the appellants have been in possession ever since. It is the case of appellants that they have obtained ryotwari patta dated 29.09.1980 in respect of admeasuring 6.00 acres of land corresponding to Inam No.464 in Survey No.234. Similarly, the appellants also obtained another ryotwari patta on 14.12.1980 for an extent of admeasuring 5.00 acres corresponding to Inam No.464 in Survey No.234. Appellant Sri Sarvepalli Ramaiah has filed Writ Petition No.2759 of 1990 before the High Court seeking direction to the Tahsildar, Tirupati Rural for implementation of the patta granted to him by the Deputy Tahsildar vide order dated 29.09.1980 by making entries in the revenue. The said writ was disposed of by the High Court by order dated 19.03.1990 whereby the High Court directed the authorities to satisfy with reference to the relevant records whether the patta is genuine or not and if found to be genuine, they should be implemented.

3. The Mandal Revenue Officer, Tirupati Rural in his Ref. Roc.C.213/89 dated 20.06.1990 sought for clarification from the District Collector whether to implement the order of granting ryotwari patta to appellant Sarvepalli Ramaiah. The District Collector did not grant approval; rather issued a Paper Notification on 14.03.1991 in Andhra Jyothi daily Telugu Newspaper vide Roc. B9.00701/1990 dated 12.03.1991 stating that Sri Shaik Kasumaiah who worked as Inams Deputy Tahsildar Chandragiri, Chittoor District in the year 1980, issued Ryotwari pattas and the same are not valid and the subsequent sale deeds are also not valid.

4. Since, the District Collector did not accord the approval for issuance of ryotwari patta, the appellant filed Writ Petition Nos.29664-65 of 1995 and reiterated the prayer made in the earlier Writ Petition No.2759 of 1990. The said Writ Petitions were disposed of by order dated 28.11.2001 directing the District Collector to conduct enquiry after giving opportunity to the appellant and pass appropriate order. After holding enquiry and giving opportunity to the appellant, the District Collector by order dated January, 2003 held that a notification dated 03.09.1984 was issued under Section 2-A of the Act wherein the land in question was classified as “Peddacheruvu Tank” and rejected the prayer of the appellant for implementation of patta by holding that pattas issued to appellant Sarvepalli Ramaiah by the Deputy Tahsildar were fabricated.

5. Challenging the order of the District Collector, the appellant filed Writ Petition No.5807 of 2003 which was dismissed by the learned Single Judge holding that the findings recorded by the District Collector about the nature of pattas that they were fake was based on correct appreciation of evidence. The learned Single Judge further held that in view of the ban contained in Section 2-A of the Inams Abolition Act, the tank bed lands cannot be alienated or assigned. In appeal, the Division Bench affirmed the order of the learned Single Judge that the land is classified as “Peddacheruvu Tank” which vests in the government and in view of the bar contained in Section 2-A of the Inams Abolition Act and the same cannot be transferred. The Division Bench further held that the appellant did not challenge the notification dated 03.09.1984 issued under the Inams Abolition Act, despite the fact that the order passed by the Collector makes the specific reference to the entry recorded at Page No.20 of the Gazette Notification dated 03.09.1984 that the land comprised in Survey No.234 is Peddacheruvu Tank and without challenging the said Gazette Notification, the appellant cannot seek to quash the order passed by the Collector.

6. Mr. S. Gurukrishna Kumar, learned senior counsel for the appellants submitted that the orders dated 29.09.1980 and 04.12.1980 granting ryotwari patta in favour of the appellants were not challenged by the State or any other party in the manner known to law and no appeal was preferred against those orders and therefore, the order granting ryotwari patta has attained finality under Section 3(4) of the Act. It was further submitted that the respondents had taken inconsistent stand as to the order of Inams Deputy Tahsildar directing issuance of ryotwari patta. It was further submitted that while carrying out enquiry, pursuant to the orders of the High Court, the District Collector had not examined records relating to the case and the High Court erred in not quashing the order of the District Collector.

7. Per contra, the learned counsel appearing on behalf of the State has submitted that since the land in Survey No.234 total extent acres 113.67 % is classified as ‘Peddacheruvu’ - Tank Poramboke in the District Gazette, Chittoor dated 03.09.1984 and whatever the pattas possessed by any individual for any land prior to the above publication of the District Gazette would be considered as non-existing and invalid. Taking us through the order of District Collector, the learned counsel for the respondent submitted that upon consideration of the materials, the District Collector has rightly held that the land being classified as ‘ Tank Poramboke’ and the appellants cannot claim the right over the land; more so, they

have not challenged the Gazette Notification dated 03.09.1984.

8. Tiruchanur village in Tirupati Rural Mandal, Chittoor District is a minor Inam village and therefore, it attracts the provisions of the Andhra Pradesh Inams (Abolition & Conversion into Ryotwari) Act, 1956 (Inams Abolition Act). The entire land measuring acres 113.67 % comprised in Survey No.234 of Tiruchanur village, Tirupati Rural Mandal is classified as "Peddacheruvu Poramboke" (Tank Poramboke). All the communal government poramboke lands falls under Section 2-A of the Inams Abolition Act. These lands are not available for grant of ryotwari patta to any individual under the Act. Since the village is an Inam village, the then Inams Deputy Tahsildar, Collector's Office, Chittoor has declared entire land measuring acres 113.67 % as "Tank Poramboke" and brought under Section 2-A of Inams Abolition Act and the same was published in the District Gazette No.9 dated 03.09.1984 at Page No.20. The Inams Deputy Tahsildar, Chittoor bonafidely ignoring the above fact, has by mistake, mentioned the Survey No.234 acres 54-00 as "Inam Dry" at Page No.19 of the District Gazette, Chittoor No.9 dated 03.09.1984 which is stated to be invalid.

9. As noticed earlier, the appellants claimed on the basis of the orders dated 29.09.1980 and 14.12.1980 for granting issuance of ryotwari patta. When Mandal Revenue Officer by proceeding Roc.C.213/89 dated 20.06.1990 has sought for clarification, the District Collector issued a paper notification on 14.03.1991 in Andhra Jyothi daily Telugu Newspaper vide Roc B9.00701/1990 dated 12.03.1991 stating that Sri Shaik Kasumaiah who worked as Inams Deputy Tahsildar Chandragiri, Chittoor District issued ryotwari pattas and that the same are not valid and the sale deeds are also not valid. The then District Collector, Chittoor also issued another paper notification vide Roc.E2/.701/1990 dated 28.07.1994 published in Andhra Jyothi daily Telugu Newspaper dated 23.08.1994 stating that the then Inams Deputy Tahsildar Sri Shaik Kasumaiah has issued fake ryotwari pattas and that they are bogus and invalid. The purported pattas IE No.303/77 dated 29.09.1980 relied upon by the appellants in the present case, was also shown as Serial No.1 with the name of appellant Sarvepalle Ramaiah in the said paper publication dated 23.08.1984.

10. It is also to be pointed out that the very document upon which the appellant is claiming right over the land is a Takeed dated 31.12.1940 said to have been issued by Sri Swamy Hathiramji Math, Tirupati. According to the respondents, Sri Swamy Hathiramji Math, Tirupati has no right over the land for grant of Takeed or Saswatha patta for the land. In many cases, it was found that such Takeed or Saswatha patta was never issued by Sri Swamy Hathiramji Math and they were created or fabricated and the Saswatha patta relied upon by the appellant is not a valid and reliable document.

11. It is in this context, upon consideration of the documents and the report of the Inams Deputy Tahsildar, the District Collector held that the appellant is claiming the land in Survey No.234 on the basis of fabricated documents which are not found in the official records of the then Inams Deputy Tahsildar, Chandragiri. The District Collector rightly held that the entire land in Survey No.234 of Tiruchanur village that is 113.67% was classified as "Peddacheruvu Tank" under Section 2-A of the Inams Abolition Act

published in the official District Gazette No.9 dated 03.09.1984. The District Collector has also pointed out that a recent order was passed by the Inams Deputy Tahsildar in IDT Ref. No.1/83 dated 11.05.1993 declaring the total extent in Survey No.234 as Tank in pursuance of the order of the High Court dated 13.04.1992 in WA Nos.941/88 and 1070/88 which has thus attained finality so far as classification of land. As rightly held by the District Collector, when the entire extent of land in Survey No.234 was classified as Tank, no extent is available for grant of ryotwari patta under the provisions of Inams Abolition Act and the question of implementation of ryotwari patta does not arise. The learned Single Judge and the Division Bench rightly held that the land is classified as "Peddacheruvu Tank" vested with the government and there is no question of issuance of ryotwari patta in view of the bar contained in Section 2-A of the Inams Abolition Act.

12. On behalf of the appellants, much reliance was placed upon the Gazette Notification dated 03.09.1984 at Page No.19 where 54-00 acres in Survey No.234 has been classified as "Dry" in Form-II under sub-section (3) of the Inams Abolition Act. As per the provisions laid down in the Act, Inams Deputy Tahsildar has to issue notice in Form-I and decision in Form-II for the inam lands alone deciding whether "the lands are held by an institution" or "not held by institution". According to the respondent State, the Inams Deputy Tahsildar did not follow the procedure as laid down in Andhra Pradesh Inams (Abolition & Conversion into Ryotwari) Act, 1956 and without following the procedure, straightway published acre 54-00 in Survey No.234 as "Inam Dry" at Page No.19 of the District Gazette and that the same is unlawful and invalid. According to the respondent-State, based on the invalid notifications as 'Inam Dry', nobody can claim right over the communal poramboke government lands. All the lands are vested with the government free from encumbrances. When the entire extent of 113.67 % in Survey No.234 is classified as "Peddacheruvu Poramboke", according to the respondent, the notification of acres 54-00 as "Inam Dry" at Page No.19 of the Gazette was unlawful and invalid. Mere publication in the District Gazette, Chittoor cannot give any right to anybody over communal lands. Based on such invalid notification as "Inam Dry", nobody can claim right over the Communal Poramboke lands which are vested with the government.

13. The District Collector has referred to the Gazette Notification dated 03.09.1984 as per which the entire extent of 113.67 % in Survey No.234 is classified as "Peddacheruvu Tank" and held that no extent of land was available for issuance of ryotwari patta. As pointed out by the High Court, even though, in his order the District Collector has referred to the Gazette Notification dated 03.09.1984, the appellants have not challenged the said Gazette Notification. The Division Bench in its order dated 22.02.2006 elaborately has also referred to the conduct of the appellants as to how they have withheld the crucial part of the Gazette Notification viz. Page No.20 which contains the classification of the land as "Peddacheruvu - Tank Poramboke in Survey No.234. Upon consideration of the materials, the High Court rightly declined to quash the order of the District Collector. We do not find any infirmity in the impugned order warranting interference.

14. In the result, the appeal is dismissed.

## JUDGMENT

Indira Banerjee, J.

15. I have gone through the draft judgment prepared by my esteemed sister and I fully agree that this appeal is liable to be dismissed. Though I am in full agreement with the conclusion arrived at by my learned sister, I would like to give my own reasons for my concurrence.

16. It is the case of the appellants, that on 31st December 1940, the original writ petitioner late Sarvepalli Ramaiah's father late Sarvepalli Pottaiah had obtained 'Saswatha Patta' for two plots of land in Survey No.234 of Tiruchanoor village in Chittoor district in Andhra Pradesh, one plot measuring 6 acres and the other measuring 5 acres, from the Mahanth of Sri Hathi Ramji Mutt, upon payment of premium.

17. According to the appellants, as per the 'takeed' granting permanent patta to late Sarvepalli Pottaiah, the land being the subject matter of the 'takeed' was "Punja Manavari Garikala Mitta Chenu" that is agricultural dry land. The respondents have disputed the execution of the "takeed".

18. It is claimed that Sarvepalli Ramaiah and/or his predecessor in interest had enjoyed uninterrupted possession and had been cultivating the aforesaid 11 acres of land, comprised in two plots, since 1940. It is stated that rent was regularly paid to the Original Inamdar, that is, the Mutt prior to 1958, and thereafter, to the government.

19. The Andhra Pradesh (Andhra area) Inams (Abolition and Conversion into Ryotwari) Act 1956, hereinafter referred to as the "1956 Act" was enacted to abolish Inam lands and to convert certain Inam lands to ryotwari lands in the Andhra area of the State of Andhra Pradesh.

20. Inam lands has been defined in Section 2(c) of the 1956 Act, set out hereinbelow: "2. Definitions:- In this Act, unless the context otherwise requires- (c) "Inam land" means any land in respect of which the grant in inam has been made, confirmed or recognized by the Government, [and includes any land in the merged territory of Banaganapalle in respect of which the grant in inam has been made, confirmed or recognized by any former Ruler of the territory] but does not include an inam constituting an estate under the Madras Estates Land Act, 1908 (Madras Act 1 of 1908);"

Section 2(d) of the 1956 Act defines Inam village to mean a village designated as such in the revenue records of the Government. Tiruchanoor is designated an Inam village.

21. Section 2A of the 1956 Act inserted by amendment, by Act 20 of 1975 provides as follows:

"[2-A. Transfer to, and vesting in the Government of all communal lands, porambokes etc., in inam lands

Notwithstanding anything contained in this Act all communal lands and porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances."

By virtue of Section 2A of the 1956 Act, all forest lands, grazing lands, communal lands, river streams, porambokes, tanks, tank beds etc. vested in the government, free from encumbrances. No person can, therefore, have any claim to tenancy, occupancy or otherwise in respect of any land and/or water body which has vested in the government free from encumbrances under Section 2A of the 1956 Act.

22. Section 7(1) of the 1956 Act provides as follows:

"7. Grant of Ryotwari Pattas:- (1) As soon as may be after commencement of this Act and subject to the provisions of sub section (4), the Tahsildar may suo motu and shall, on application by a person or an institution, after serving a notice in the prescribed manner on all the persons or institutions interested in the grant of ryotwari pattas in respect of the inam lands concerned and after giving them a reasonable opportunity of being heard and examining all the relevant records, determine the persons or institutions entitled to ryotwari pattas in accordance with the provisions of Section 4 and grant them ryotwari patta in the prescribed form."

22. Even though the 1956 Act received the assent of the President of India on 10th December, 1956, was published in the official gazette on 14th December, 1956, and came into force at once, the appellants and/or their predecessors in interest did not apply for ryotwari patta soon thereafter. It was only in or around 1980 that Sarvepalli Ramaiah, since deceased, applied for grant of ryotwari patta for the two plots of land.

23. The appellants claim that by an order dated 29th September, 1980, the Inams Deputy Tehsildar, Chittoor granted ryotwari patta to Sarvepalli Ramaiah, since deceased, for the plot comprising 6 acres of land.

24. According to the appellants, by another order dated 4th December, 1980 the Inams Deputy Tehsildar, Chittoor granted Sarvepalli Ramaiah, since deceased, ryotwari patta for the other plot comprising 5 acres of land.

25. By a notification in the Chittoor District Gazette dated Monday, September 3, 1984 entire Survey No.234 at Tiruchanoor was notified as Peddacheruvu Poramboke (tank) pursuant to the order of the Inams Deputy Tehsildar under sub-section (3) and the final decision of the Revenue Court under sub-section (4) of Section 3 of the 1956 Act.

26. The appellants and/or their predecessor in interest late Sarvepalli Ramaiah did not challenge the notification. It appears that some others challenged the notification in the Andhra Pradesh High Court, but the High Court did not set it aside.

27. Almost ten years after the purported ryotwari pattas were issued Sarvepalli Ramaiah, since deceased filed Writ Petition No.2759 of 1990 for issuance of a Mandamus for implementation of the ryotwari pattas. By an order dated 19th March, 1990, the learned Single Bench of the High Court disposed of the writ petition by directing the respondents to implement the pattas, if they were found to be genuine.

28. Pursuant to the aforesaid order of the Single Bench, the Mandal Revenue Officer, Tirupati (Rural) sought the approval of the Collector to implement the pattas granted to Sarvepalli Ramaiah, since deceased, but approval was declined.

29. Thereafter, Sarvepalli Ramaiah, since deceased filed Writ Petition Nos.29664 and 29665 of 1995 in the Andhra Pradesh High Court seeking orders for implementation of the ryotwari pattas.

30. The respondents filed a counter affidavit to the writ petitions, disputing the genuineness of the ryotwari pattas and contending that there were no entries relating to the ryotwari pattas in the Register of Ryotwari Pattas issued from 1977 to 1980.

31. By an order dated 28th November, 2001, the learned Single Bench disposed of the writ petition directing the Collector, Chittoor to conduct an enquiry and pass appropriate orders within the time stipulated in the said order.

32. Thereafter the Collector, Chittoor conducted an enquiry and passed an order, relevant part whereof is extracted herein below:

"The case has been examined. The land claimed by the petitioner is situated in S.No.234 of Tiruchanur Village of Tirupathi Rural Mandal. The entire extent of 113-67V2 acres in the above S.No.234 of Tiruchanur was declared as Peddacheruvu Tank and this decision was published in District Gazette No.9 dated 3-9-1984. Thereafter, litigations came up and the Hon'ble High Court in its order dated 13-4-1992 in W.A. Nos.941/88 and 1070/88 has directed the IDT to pass a reasoned order. In pursuance of the above orders, the I.D.T. Chittoor has passed a reasoned order in I.D.T. No. 1/83 dated 11-5-1993 declaring the entire extent of Ac.113-67V2 in S.No.234 of Tiruchanur as Tank poramboke falling u/s 2-A of the L.A. Act, 1956. Thereafter, it is needless to mention that it is a fact that the land in S. No. 234 of Tiruchanur was declared as Tank poramboke and was brought u/s 2-A of the LA Act, 1956 and such communal lands are not available for grant of ryotwari patta. This fact was also confirmed by His Lordship Mr. Justice Ling a raj Rath, and Mr. Justice Y. Venkatachalam of the Hon'ble High Court in their orders dated 9-11-1994 in W.A. No.193/90. Moreover, the above ryotwari pattas purported to have been granted by the then IDT, Chandragiri during 1980 are not finding place in the official records of the IDT and the same fact was already deposited by the IDT before the Hon'ble High Court through the counter-affidavits. In view of the above, I am of the opinion that the documents produced by the petitioner upon which evidence sought for implementation are non-existing one in the official records and the land claimed by the petitioner in S.No.234 of Tiruchanur Village of

Tirupathi Rural Mandal is not available. Hence, question of implementation of the ryotwari pattas said to be granted on fictitious records does not arise. This order is issued in strict compliance of the common orders issued by the Hon'ble High Court on 28-11-2001 in W.P. No.29664/95 and in W.P. No.29665/95."

33. Sri Sarvapalli Ramaiah, since deceased, filed a writ petition No.5807 of 2003, challenging the said order of the Collector, which was summarily dismissed by the Single Bench of the High Court by an order dated 23rd April, 2003. The appeal filed by Late Sarvepalli Ramaiah before the Division Bench has been dismissed by the judgment and order dated 22nd February, 2006, impugned in the appeal.

34. There is no infirmity in the judgment and order dated 22nd February, 2006, of the Division Bench upholding the dismissal of the writ petition by the Single Bench, that calls for interference in this appeal.

35. In my view, the Single Bench rightly refused to entertain the writ petition as the Collector had questioned the genuineness of the purported ryotwari pattas on the ground that there were no entries with regard to the pattas in the relevant register. The grant of Saswatha Patta and execution of the takeed by the Mahanth of the Mutt in 1940 were also disputed. As noted by my esteemed sister, there were serious allegations of illegal grant of pattas against the Inams Deputy Tehsildar who had purportedly issued the two ryotwari pattas. Moreover, the pattas had purportedly been issued without any notice of enquiry in the prescribed form, as required under Section 7 of the 1956 Act read with the Andhra Pradesh (Andhra Area) Inam (Abolition and Conversion into Ryotwari) Rules 1957 framed under Section 17 of the 1956 Act. Moreover, the entire Survey No.234 had been declared Tank poramboke and brought under Section 2A and, therefore, inalienable.

36. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extra ordinary power of judicial review.

37. In this case, the impugned decision, taken pursuant to orders of Court, was based on some materials. It cannot be said to be perverse, to warrant interference in exercise of the High Court's extra ordinary power of judicial review. A decision is vitiated by irrationality if the decision is so outrageous, that it is in defiance of all logic; when no person acting reasonably could possibly have taken the decision, having regard to the materials on record. The decision in this case is not irrational.

38. A decision may sometimes be set aside and quashed under Article 226 on the ground of illegality. This is when there is an apparent error of law on the face of the decision, which goes to the root of the decision and/or in other words an apparent error, but for which the decision would have been otherwise.

39. Judicial review under Article 226 is directed, not against the decision, but the decision making process. Of course, a patent illegality and/or error apparent on the face of the

decision, which goes to the root of the decision, may vitiate the decision making process. In this case there is no such patent illegality or apparent error. In exercise of power under Article 226, the Court does not sit in appeal over the decision impugned, nor does it adjudicate hotly disputed questions of fact.

40. The decision of the Collector was based on materials and thus not liable to be interfered with. The High Court very rightly did not interfere with the decision. It was not for the High Court, exercising its extra ordinary power of judicial review, to reanalyse the evidence on record and adjudicate the disputed question of whether the Mahanth of the Mutt had at all granted Saswatha Patta to the predecessors in interest of the appellants, whether the takeed was duly executed by the Mahanth, whether the ryotwari pattas were genuine or otherwise valid or not. Nor was it for the High Court to adjudicate the disputed fact of whether the land in question was in fact a water body or the dried bed of a water body. Cultivation is often carried out on the dried bed of water bodies. That does not denude the land of its character as a water body.

41. The High Court rightly based its decision on the declaration of the entire survey area as water body and held, in effect, that the plots in question had vested in the government free from all encumbrances under Section 2-A of the 1956 Act. The respondents could not, therefore, be compelled to grant ryotwari pattas in respect of the said plots.

42. In this case relief under Article 226 was also liable to be refused on the grounds of delay, laches, acquiescence and/or omission of the appellants to assert their right, if any, within a reasonable time after the commencement of the 1956 Act.

43. At the cost of repetition, it is reiterated that the appellants and/or their predecessors were tardy and lethargic. The application for patta was made over two decades after the commencement of the 1956 Act, when the statute required that such an application be made soon after its commencement.

44. The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. The appellants and/or their predecessor in interest had not challenged the gazette notification of 3rd September, 1984 notifying the entire Survey No.234 at Tiruchanoor as "Peddacheruvu Poramboke" that is tank.

32. This Court has time and again emphasized the need to retain and restore water bodies and held that water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry. Reference may be made to the judgments of this Court in:

(1) *Susetha vs. State of Tamil Nadu* reported in<sup>1</sup>;

(2) *M.C. Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India*<sup>2</sup> reported in and

(3) *Intellectuals Forum v. State of Andhra Pradesh* reported in<sup>3</sup>

33. Both the Single Bench and the Division Bench having concurred in their well reasoned findings, interference of this Court is not warranted. For the reasons discussed above, I agree with my esteemed sister in dismissing the appeal.

Judgment Referred.

<sup>1</sup>(2006) 6 SCC 0543

<sup>2</sup>(1997) 3 SCC 0715

<sup>3</sup>(2006) 3 SCC 0549