

APHC010712272013

IN THE HIGH COURT OF ANDHRA PRADESH



AT AMARAVATI

[3311]

(Special Original Jurisdiction)

Tuesday, the second day of December Two Thousand and twenty five

Present

The Honourable Ms. Justice B. S. Bhanumathi

Writ Petition No.26450 of 2013

Between:

S.Macca Begum (died) per LRs P2 To P4 and others

...Petitioners

and

The Government of Andhra Pradesh and others

...Respondents

Counsel for the petitioners:

1.S. V. Muni Reddy

Counsel for the respondents:

1.G.P. for Revenue

2.Ms. Baliboyina Sravani, learned Assistant Government Pleader
for Forests

The Court made the following:

ORDER:

This writ petition under Article 226 of the Constitution of India was filed to quash the decree and judgment, dated 22.04.2013, in A.S.No.63 of 2009, on the file of the Court of the District Judge, Chittoor, and consequently restore the order, dated 29-06-2009, of the Forest Settlement Officer, Chittoor, (in short "F.S.O.") in Roc.CA No.17/65/64, holding that Smt. S. Macca Begum, the claimant / writ petitioner, was lawfully included to possession of the land to an extent of Ac.33.25 cents in Paimaish No.19-E of Ontimitta village H/o.170 Gollapalli and the same has to be eliminated from the proposed forest block of Peddakonda under Section 10 of the Andhra Pradesh Forest Act, 1967 (in short "the A.P.F. Act") as per the rough location sketch enclosed to the order.

2. The case pleaded by the writ petitioner / claimant, briefly stated, is as follows:

- a. The subject land is originally Zamindari estate of Bangarupalem, given on patta to Smt. Gali Ademma w/o. Gali Chengama Naidu on 28.12.1940 by the erstwhile Zamindar of Bangarupalem (Ex.P1) and was enjoyed by her by paying cist to the Zamindar under receipt (Ex.P2).
- b. Smt. Macca Begum w/o. S.A. Hafeez, the petitioner, purchased this land from Smt. Gali Ademma under an unregistered sale deed, dated 28.02.1982 (Ex.P3) for Rs.3,600/- and has been enjoying the same raising crops thereon.

c. The Settlement Officer, Nellore, after due enquiry and on consideration of the oral and documentary evidence, granted ryotwari patta to the petitioner for the subject land vide order, dated 10.01.1983, in S.R.No.140/11(a)/82 under Section 11(a) of the Andhra Pradesh (Andhra Area) Estates (Abolition & Conversion into Ryotwari) Act, 1948. The order has become final.

3. The facts leading to the filing of the writ petition, briefly stated, are as follows:

a. An area of 4,050 acres of land was notified as Peddakonda forest block under Section 4 of the A.P.F. Act, vide G.O.Ms.No. 1327, Food and Agricultural (For-III) Department, dated 04.07.1961. The notification was published in Andhra Pradesh Gazette dated 27.07.1961 and in the Chittoor District Gazette dated 13.03.1967. The proclamation under Section 6 of the A.P.F. Act was published in the A.P. Gazette on 15.04.1964 and in Chittoor District Gazette, dated 30.06.1964.

b. On 28.10.1983, the petitioner filed a claim before the F.S.O., under Section 10 of the A.P.F. Act for exclusion of the patta land of Ac.33.25 cents (13.45 hectares) from the proposed forest block, vide C.A.No.17/65/64, as the subject land was included in the forest block. A petition to condone delay was filed along with the claim. The then F.S.O., satisfied with the reasons, admitted the claim for enquiry.

c. Divisional Forest Officer, Chittoor (West), Chittoor, Forest Range Officer, Chittoor, and Tahsildar, Bangarupalem are the respondents. The F.S.O. issued notice to the D.F.O., Chittoor (W), to file counter. In spite of notice, the D.F.O. (W), Chittoor did not file counter.

d. The then F.S.O. inspected the land on 11.09.1984, conducted an enquiry and opined that the land claimed by the petitioner had to be eliminated from the proposed forest block; however, with further opinion that permission from the Government of India under Section 2 of the Forest (Conservation) Act, 1980 was required, without passing award, recommended to the Government for obtaining the permission.

e. The petitioner submitted a representation to the Government that she had spent huge amount for reclaiming the land, sinking a well etc., and that she had been granted patta, dated 10.01.1983, by the Settlement Officer. She requested to either eliminate the land from the proposed forest block or to grant alternate Government land suitable for cultivation.

f. The petitioner also filed W.P. No. 3779 of 1988 before this High Court to direct the D.F.O. not to dispossess her from the subject land. It was dismissed as premature with a direction to the petitioner to approach concerned authorities for redressal of her grievance. She again filed W.P. No. 8380 of 1989 before the same Court and vide W.P.M.P.No.10928 of 1989 got an order of interim injunction not to dispossess her. Later, the writ petition was dismissed for default and the interim injunction was vacated.

g. The Government, vide Memo No.7176 Forests (C2) 2004-1, dated 03.12.2004 instructed the Chief Conservator of Forests, A.P., Hyderabad to consider the recommendation of the F.S.O. in consultation with the District Collector, Chittoor, opining that as the land notified under Section 4 of the A.P.F. Act cannot be dereserved without the prior approval of the Government of India and the same involves

long process. No action was taken by the revenue department to provide alternative land.

h. On 10.10.2007, the land was also inspected by the successor F.S.O. (who passed the final award dated 29.06.2009.)

i. The D.F.O., Chittoor (W) Division, in his letter No.1204/84/A2, dated 08.11.2007, filed objections for elimination of the land from the forest block, stating about (i) the inspection of the subject land by the previous F.S.O. and his observation of the location and nature of the land which was the same as in the later inspection; and also about (ii) the recommendation for the permission, CMP/A.S. in 1985 filed by the D.F.O. before the District Court, Chittoor and (iii) the earlier writ petitions filed by the petitioner. (iv) It was also mentioned that the interim order of stay was vacated with an observation that the sale deed is a compulsory registerable document under Section 17 read with 49 of the Registration Act and the petitioner does not acquire any title to the property and that the writ petition was subsequently dismissed for default. (v) It was further stated therein that the Government, vide Memo No.1730/For-I/98-3, dated 12.08.1998, had given a clarification that no order can be passed by any authority under the A.P.F. Act, 1967 involving de-reservation without approval of the Government of India under Section 2 of the Forest (Conservation) Act, 1980 and therefore, the Government instructed to allot Government revenue land suitable for agriculture near her village or elsewhere in Bangarupalem(M) for the livelihood of her family members. (vi) It was importantly stated that as per Section 7 (1)(a) of the A.P.F. Act, during the interval between the publication of a notification in the Andhra Pradesh Gazette under Section 4 and the date fixed by the notification under Section 15, no

right shall be acquired by any person in or over the land included in the notification under Section 4, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or any person in whom such right was vested before the publication of the notification under Section 4. The D.F.O. requested to reject the claim.

j. The F.S.O., in the final award, dated 29.06.2009, recorded that the Tahsildar, Bangarupalem, in his letter vide Roc.A/620/90, dated 27.02.2009, reported that the subject land under enjoyment of the claimant has not been registered in the Fair Adangal or in 170 Gollapalli village accounts and that the same, surrounded by private patta lands, lies in the gap between the boundaries of the patta lands of B.Munemma and Venkatadri Naidu on the southern side; Gourappa, Govindu and ViswanathaAchari on the northern side, Karanam Krishna Pillaiah on the western side and, Bangarupalem to Ragimanipenta bus road on the eastern side, and that the same is not required for the communal purposes of the village.

k. The advocate for the petitioner filed written arguments before the F.S.O. reiterating the case and further stating that when the petitioner requested the District Collector to implement the order of the Settlement Officer dated 10.01.1983 granting ryotwari patta, by making entry in the revenue accounts, the District Collector issued an endorsement in Roc.B10/4681/90, dated 09.07.1990 that she may renew her application only after this land is excluded from the forest and after disposal of the writ petition in W.P. No.8380 of 1989 filed by her. It was further argued that D.F.O. (W), Chittoor had not filed any objections against Exs. P1 & P2 and the only objection against Ex.P3 is that, being an unregistered

document, it is not admissible in evidence, but in view of the above endorsement of District Collector and as no appeal was filed against the order dt.10.01.1983 of Settlement Officer, Nellore, (granting ryotwari patta) it is clear that the Government has no doubt about the genuineness of the documents such as patta, cist receipts and the sale-deed produced by the claimant. It was further argued that grant of patta by the erstwhile Zamindar of Bangarupalem is corroborated by the entries available in the estates accounts pertaining to the pre-estate abolition period i.e., for fasli 1350 and that for all these reasons it was established that she was lawfully inducted into possession of the subject land in 1940, i.e., long prior to the notification under Section 4 of the A.P.F. Act.

l. Regarding the enjoyment, it was argued before the F.S.O. that the cist receipt, Ex.P2, shows the enjoyment of the petitioner and that till she had been forcefully restrained by the forest officials by filing false cases against her vide C.C.No.60 of 1988 and S.T.C.No.193 of 1990 of the District Court, Chittoor, she had cultivated the land and the same is further evident from the order of the High Court in a writ appeal, W.A.No.1210 of 1989, dated 07.09.1989 directing the D.F.O., Chittoor (W) Division should not damage the crop, nor should the petitioner harvest the crop, if ripe, without the officials of the forest department and accordingly the department auctioned the crop and deposited the bid amount of Rs.800/- in the treasury vide receipt No.993870, dated 04.12.1989.

m. On 29.06.2009, a final award was passed by the F.S.O., Chittoor. The F.S.O. noted that the land is situated between Kairans 31 to 33 of Peddakonda forest block; that by 10.10.2007 when he visited the land,

there was no cultivation and the area was partly plain and partly undulating covered with stones, pebbles and jungle growth and; that the area was demarcated with boundary trench by the forest department. Considering the recommendation by the previous F.S.O. for elimination of the subject land by obtaining the above said permission and the instruction of the Government to provide an alternative land vide the Memo dated 03.12.2004, the F.S.O. opined that the Government also recognized the claim to be genuine and that the documents clearly proved that the petitioner had been lawfully inducted into possession of the subject land and was in possession of the same. The objection regarding the inadmissibility of the unregistered sale deed was answered stating that it can be looked into to prove the character or nature of the possession of the person who holds it and therefore, the possession of the petitioner could not be treated as unlawful, but it was lawful. Therefore, it was concluded that the land is to be eliminated from the proposed forest block. Accordingly, the final award was passed.

4. Aggrieved by the award, D.F.O., Chittoor (W), Forest Range Officer, Chittoor, and Tahsildar, Bangarupalem, who are the respondents in the claim, preferred an appeal under Section 13(2) of the A.P.F. Act vide A.S.No.63 of 2009 before the District Judge, Chittoor, on the grounds that no sufficient opportunity to file objections had been given; that the claim was barred by limitation and delay ought not to have been condoned; that it is erroneous to allow the claim basing on Exs.P1 to P3, which don't support it; that F.S.O. failed to consider the decision of the High Court in W.P.M.P. No.10928 of 1989 regarding the unregistered sale deed and also the Government Memo No.1730 / For-I / 98-3, dated 12.08.1998 (regarding prior permission of the Central Government to dereserve forest land); that the observation of the F.S.O.

that the petitioner was in possession and enjoyment of the land to an extent of Ac. 33.25 cents is erroneous; and that the F.S.O. ought to have considered Section 7(1)(a) of the A.P.F. Act (which stipulates that no right shall be acquired by any person in or over the land included in the notification under Section 4 after its publication, whereas the petitioner stated to have purchased the property from the pattadar in the year 1983, i.e., long after the notification under Section 4 was issued and published during 1960s).

5. The appellate Court framed the following main points for consideration:

- (1) Whether the claim under Section 10 of the A.P.F. Act, 1967 in respect of the subject land is barred by limitation?
- (2) Whether Section 2 of A.P. Forest (Conservation) Act, 1980 is a bar to eliminate or exclude the subject land from the proposed forest block? (sic the Forest (Conservation) Act, 1980)
- (3) Whether the respondent / claimant has any right, title or possession over the subject land and therefore, entitled for elimination / exclusion of the subject land from the proposed forest block?

6. With regard to the objection as to limitation, it was held, basing on the decision of the High Court of Allahabad in **Hardayal Vs. District Judge, Jhansi and others**¹ that the period for making a claim fixed under the proclamation under Section 6 of the A.P.F. Act cannot be equated with the period of limitation and no formal application for

¹ AIR 1972 All 471

condonation of delay is necessary. It was further observed that by virtue of Section 16 of the A.P.F. Act, the F.S.O. can condone the delay. Section 16 reads as under:

“16. Extinction of rights not claimed - Rights in respect of which no claim was preferred under section 6 within the period fixed under that section shall stand extinguished on the publication of the notification under section 15 unless, before the publication of such notification the person claiming them has convinced the Forest Settlement Officer that he had sufficient cause for not preferring such claim within that period in which case the Forest Settlement Officer shall proceed to dispose of the claim in the manner herein before provided.”

But, the objection is that there was no sufficient cause shown. Without examining the cause stated, the appellate Court merely observed that the F.S.O. was convinced about the sufficient cause. Anyhow, since there is no appeal against this finding, it is not necessary to discuss this point now, as rightly submitted by the learned counsel for the writ petitioner.

7. With regard to the prior permission from the Central Government under Section 2 of the Forest (Conservation) Act, 1980, agreeing with the F.S.O., it was observed that it has no application to the case on hand as the subject land is neither reserve forest nor protected forest or even forest by virtue of notification under Sections 15 and 22 of the A.P.F. Act. The learned counsel for the writ petitioners referred to a decision of the High Court of Andhra Pradesh at Hyderabad in the case

of **N. Rajagopal Reddy Vs. Chittoor and others**² wherein rejecting the contention that the forest department could not implement the award of the Forest Settlement Officer excluding the property claimed therein on the similar ground that without prior permission of the central government under Section 2 of the Act, 1980, it was held that the said provision comes into play when the land is used for non- forest purposes enumerated in the explanation to the same section, whereas the land in that case was eliminated on the ground that it is a patta land. It goes with the findings of both the forums. Since there is no appeal against this finding, it is not necessary to discuss any further on this point also.

8. With regard to the ownership and possession, the appellate Court noted that the F.S.O., a statutory Tribunal, has to decide the claim independently basing on the material produced on record before the F.S.O., but not elsewhere. It was held that except filing Exs.P1 to P3, no oral or documentary evidence was recorded before the F.S.O. in the manner provided by C.P.C. in appealable cases as contemplated under Section 8(2) of the A.P.F. Act; that genuineness of Exs.P1 to P3 was not proved; that Gali Ademma / vendor had not filed claim from the date of Section 6 notification till the year 1982; that, except filing Exs.P1 to P3, no revenue record had been filed to prove possession of Gali Ademma; that no oral or documentary evidence, such as, revenue record, had been filed to prove possession of the petitioner by virtue of the sale (Ex.P3); that the patta, dated 10.01.1983, issued in favour of the petitioner by the Settlement Officer basing on Ex.P3, was not implemented in the revenue records and if really there was survey and

² 1999(5) ALD 586

settlement operation pertaining to the land in paimaish No.19-E and ryotwari patta was granted, there should be correlation; that the sale deed (Ex.P3) is inadmissible in evidence being unregistered and cannot be considered for claim under Section 10 of the A.P.F. Act or even for collateral purpose as not proved; that in view of the bar under Section 7(1)(a) of the A.P.F. Act (noted above), the petitioner cannot acquire any right over the subject land which was notified under Section 4 of the A.P.F. Act in the early 1960s whereas the alleged purchase under Ex.P3 was on 28.02.1982 (as notification under Section 15 of the A.P.F. Act is yet to be made, the alleged acquisition of right is during the period covered by Section 7 of the A.P.F. Act); that grant of patta by the Settlement Officer, Chittoor, under the A. P. Estates (Abolition and Conversion into Ryotwari) Act, 1948 is illegal in view of the bar of grant of patta as per Section 7(2) of the A.P.F. Act which states that no patta in such land shall be granted by or on behalf of the Government during the interval between the publication of a notification in the Andhra Pradesh Gazette under Section 4 and the date fixed by the notification under Section 15; and that the impugned order is liable to be set aside because the F.S.O. very casually passed the order without appreciating the rival contentions in right perspective and in accordance with law. Accordingly, the award of the F.S.O. was set aside on 22.04.2013.

9. Aggrieved by the judgment in the appeal, this writ petition was filed reiterating the pleaded case before the F.S.O. and further stating as follows:

a. As the claimant and her predecessor-in-title were not aware of the fact that the said patta land was included in the proposed Peddakonda forest block and since no copy of proclamation under Section 6(2) of the

A.P.F. Act was served on the claimant or his vendor, the claimant filed an application for condonation of delay in preferring the claim. There is no evidence that the procedure for publication under Section 6(1) and (2) of the A.P.F. Act has been followed.

b. The Tahsildar filed a counter before the F.S.O. vide letter Roc. A/620/90, dated 27.02.2009 (as noted above).

c. In spite of notices dated 14.12.1983, 18.02.1984 and 07.04.1984 duly enclosing the claim petition to file counter, if any, on the claim, no counter had been filed by the D.F.O. The F.S.O. personally inspected the land on 11.09.1984 along with the Range Officer, Bangarupalem, Forest Guard and Forest Watch and came to the conclusion that the claimed land is surrounded by patta lands and ordered condonation of delay on 27.05.1985. It has not been challenged by the respondents. Finally, following the procedure, on consideration of the oral and documentary evidence under Exs.P1 to P3 and the patta granted by the Settlement Officer, Nellore, dated 10.01.1983, the F.S.O. allowed the claim on 29.06.2009 vide RoC.C.A. No.17/65/64. There is no illegality or irregularity in the order. The petitioner filed writ petitions, referred by the F.S.O. in the order, to protect the property and not to dispossess the petitioner therefrom. Challenging the order of the F.S.O., the respondents Nos.3 to 5 preferred an appeal in A.S.No.63 of 2009. The District Court, without proper appreciation of the factual and legal position, erroneously allowed the appeal.

d. This writ petition was filed raising the following grounds :-

- (i) The decree and judgment of the appellate authority are illegal, unjust, perverse and contrary to law;

- (ii) The appellate authority erroneously reversed the well-considered and well reasoned order of the F.S.O.
- (iii) The F.S.O., after giving sufficient opportunity to the respondents Nos. 3 to 5 to file their objections, passed the order eliminating the subject land from the proposed block;
- (iv) The observations of the appellate authority with regard to the unregistered sale deed, dated 28.02.1982, is erroneous. It is well settled law that an unregistered sale deed is admissible for collateral purpose of proving the possession;
- (v) The possession of the petitioner over the subject land is lawful since 28.12.1940 when the patta was granted to her vendor;
- (vi) The observation of the appellate authority that the ryotwari patta in favour of the claimant is illegal and invalid is perverse and patently illegal since the order of the Settlement Officer, Nellore, has become final having not been challenged. The appellate authority failed to appreciate the scope of Section 11(a) of the A. P. (A. A.) Estates (A & C R) Act, 1948 and;
- (viii) The decree and judgment in the appeal are liable to be quashed as the appellate authority failed to properly appreciate the provisions of the law.

10. The D.F.O., Chittoor (W) / the respondent No.3 filed a counter affidavit, supporting the impugned decree and judgment in the appeal and requesting to dismiss the writ petition briefly stated as follows:

- a. The claim petition was filed on 28.10.1983 with abnormal delay of 19 years 3 months from publication of proclamation on 30.06.1964 under Section 6 of the A.P.F. Act in Chittoor District Gazette calling for objections to be filed within 6 months therefrom. The F.S.O. erred in condoning the delay in filing the claim made by the petitioner who is not the real owner of the land.
- b. There is no evidence that the subject property was originally Zamindari estate of Bangarupalem and regarding the genuineness of the patta said to have been granted on 28.12.1940 by the Zamindar to Gali Ademma and that she enjoyed the land by paying cist to the Zamindar.
- c. The joint inspection, dated 11.09.1984, revealed growth of several types of trees over some area and some patches of land indicating cultivation in the past and the same was confirmed in the joint inspection dated 10.10.2007 held in the presence of the husband of the petitioner and therefore, it is incorrect that the subject land is ryoti; that Gali Ademma was lawfully inducted into its possession long before the crucial date; that the petitioner was inducted into possession on 28.02.1982 under the unregistered sale deed and that the petitioner spent huge amount to level the land and dig a bore well (not present). It is only the D.F.O., Chittoor(W) who has been managing it.
- d. The contention that the Ryotwari patta dated 10.01.1983 granted by the Settlement Officer, Nellore (under the Estate Abolition Act) has become final as has not been challenged is invalid. The alleged Ryotwari patta dated 10.01.1983 based on the unregistered sale deed is illegal and invalid as hit by Section 7(2) of the A.P.F.Act. The Settlement Officer, Nellore neither issued any notice before granting the

patta nor was its copy communicated to the forest department, due to which the department could not challenge it being totally unaware of it. It is not binding on the forest department.

e. The petitioner is not absolute owner as an unregistered sale deed does not convey any right, title or possession. The petitioner's name has not been entered in the revenue records.

f. The description of the boundaries of the subject land is incorrect as it is bounded by the land of Viswanathachary on north and on all three sides by the forest land.

g. The subject land is in between cairns 31 and 33 of Peddakonda forest block which was duly notified under Section 4 and proclaimed under Section 6 of the A.P.F. Act (as stated supra). The contention that the procedure under Section 6(2) of the A.P.F. Act was not followed is not supported by any evidence. Neither Gali Ademma was in possession nor did the petitioner even purchase the land by the date of the proclamation under Section 6.

h. It is incorrect that the D.F.O. did not file counter. It was filed through letter dated 08.11.2007 stating about the inspection of the land by the F.S.O. on 11.09.1984, location of the land between the cairns 31 and 33, and the recommendation sent to the government for obtaining the permission of the central government under Section 2 of the Forest (Conservation) Act, 1980.

i. The award passed by the F.S.O. is erroneous as it was based on the unregistered sale deed in contravention of Sections 17 and 49 of the Registration Act. The contention that it can be used for collateral purpose and of possession of the purchaser can be treated as lawful is

invalid in view of the observation of this High Court, vide order dated 25.09.1996, while dismissing W.P.No.8380 of 1989, that the petitioner does not acquire any title in view of Sections 17 and 49 of the Registration Act. The judgment in the appeal in A.S.No.63 of 2009 was passed appraising all the factual and legal positions after hearing both the parties and considering the material on record.

j. Each case is to be considered basing on merits. The petitioner cannot seek identical order citing a similar case filed claiming Ac.39.90 cents in Paimaish No.19-B of Ontimitta / Gollapalle village. The petition is liable to be dismissed.

11. Since pending the writ petition, the sole petitioner died, her legal representatives were brought on record as the petitioners Nos. 2 to 4 as per the order dated 23.07.2025 in W.P.M.P. No.4496 of 2014 (I.A. No. 1 of 2014).

12. A reply affidavit of the petitioner No.2 on behalf of all the petitioners Nos.2 to 4 was filed reiterating the same facts already stated and further stating that the procedure under section 6(1) and (2) of the A.P.F. Act has not been followed.

13. The learned counsels for both the parties argued on the same lines of all the aspects noted above raised in the pleadings, arguments and the reasons stated in the orders. In addition to them, the learned counsel for the writ petitioner vehemently contended that the appellate Court erred in negating the settlement patta dated 10.01.1983 issued by the Settlement Officer, Nellore which has become final as was not challenged and the appeal was not against the same. He further

submitted that as the settlement patta is valid, the claim allowed by the F.S.O. ought not to be interfered.

14. Though it is not shown that any concerned officer of the forest department was aware of the proceedings of issuance of the settlement patta, dated 10.01.1983, either being a party to the proceedings or due to communication, it is claimed by the petitioner that it was not challenged and binding on the respondents. Such contention is unsustainable. Moreover, despite heavy reliance was placed on the settlement patta dated 10.01.1983, it is not in the evidence. So, no amount of reliance placed or arguments advanced on it have no bearing on the case of the petitioner.

15. As the order of the F.S.O., dated 29-06-2009, and not the previous one is the subject matter and the copy of the previous order of the F.S.O. is not in the record, the discussion is limited to the order dated 29-06-2009.

16. The claim before the F.S.O. shall be decided as per the evidence placed before the F.S.O. The only evidence placed is Exs.P1 to P3, viz., patta to Gali Ademma dt. 28.12.1940 said to be issued by the erstwhile Zamindar of Bangarupalem (Ex.P1); receipt of cist said to be paid by Gali Ademma to the Zamindar (Ex.P2); the unregistered sale deed dated 28.02.1982 under which the petitioner is said to have purchased the subject land from Smt. Gali Ademma (Ex.P3). The reasons given by the appellate Court are adequate to reject the evidence proposed under Exs.P1 to P3.

17. Ex.P3 which is an unregistered sale deed is inadmissible in evidence for evidence of the main transaction as per Section 49 of the

Registration Act, 1908 because a sale deed in respect of immovable property of the value of one hundred rupees or upwards requires registration as per Section 54 of the Transfer of Property Act, 1882 and Section 17(1)(b) of the Registration Act, 1908. Of course, Section 49 of the Registration Act, 1908 permits a document which requires registration, but not registered be received as evidence of a collateral transaction which does not require registration. But, Section 35 of the Stamp Act, 1899 does not allow a document which is chargeable with stamp duty, but not duly charged, to be received in evidence unless the adequate duty with penalty is paid as per Section 33 of the said Act. Therefore, Ex.P1 cannot be used as evidence of transfer of title by way of sale as it the main transaction thereunder. Even for the purpose of evidencing any collateral transaction which does not require registration, such as character or nature of possession, as no stamp duty was paid, Ex.P1 cannot be used. To buttress this view it is beneficial to refer a decision of the Supreme Court in **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra**³ in which the following ratio in the decision in the case of **T. Bhaskar Rao Vs. T. Gabriel**⁴ at paragraphs Nos.5 and 7 were referred:

"5. Section 35 of the Stamp Act mandates that an instrument chargeable with duty should be stamped so as to make it admissible in evidence. Proviso A to Section 35 of the Stamp Act enables a document to be received in evidence on payment of stamp duty and penalty if the document is chargeable, but not stamped

³ AIR 2009 SC 1489 = 2009(1) ALD 109 (SC)

⁴ AIR 1981 AP 175

or on payment of deficit duty and penalty, if it is insufficiently stamped. The bar against the admissibility of an instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of the purpose, be it for main or collateral purpose, unless the requirements of proviso (A) to Section 35 are complied with. It follows that if the requirements of proviso (A) to Section 35 are satisfied, then the document which is chargeable with duty, but not stamped, can be received in evidence.

... ..

7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

18. Therefore, the F.S.O. committed serious error in relying on Ex.P1 as evidence. Even if Exs.P1 and P2, for assumption sake are considered in evidence, they are inadequate to allow the claim which is based on the title said to be acquired on sale of the subject property.

19. Moreover, Section 7(1)(a) of the A.P.F. Act does not permit acquisition of any right, except under those grounds mentioned therein, after publication of a notification in the Andhra Pradesh Gazette under

Section 4 of that Act and the date fixed by the notification under Section 15 of that Act. The notification under Section 4 was published in the A.P. Gazette on 27.07.1961, whereas the alleged sale under Ex.P3 is dated 28.02.1982, long after such publication. So far as the notification under Section 15 of the A.P.F. Act has not been published. Therefore, the alleged sale is invalid even if it is duly made under a registered sale deed.

20. On any count, the petitioner failed to establish her right to property which was sought to be eliminated from the land proposed for reserve forest.

21. The fact that a claim was made under Section 10 of the A.P.F. Act is an indication of calling for claims in or objections against the land proposed to be reserved for forest. It is futile to contend that the respondents have not proved that the procedure under Section 6 of the A.P.F. Act was followed as the question of limitation in making claim is not the question to be decided as already noted above.

22. Since there is no merit in the writ petition, it is liable to be dismissed.

23. In the result, the writ petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B.S. BHANUMATHI, J

Dt.02.12.2025
RAR