to conclusions in death sentence involved matters. It is however been a matter of debate again as to what constitutes "rarest of rare cases". It has been published in Times of India, English Daily dated 21.11.2012 that two Hon'ble Judges, Justice Mr. *K.S. Radhakrishnan* and Justice Mr. *Madan B. Lokur* opined that there is no uniformity in the application of the principle of "rarest of rare cases" and further that there is need to rethink the uniform norms for determining the aspect of "rarest of rare cases" too.

While the Judiciary is playing its active role, the Executive through exercise of powers by the President has diluted the execution and implementation of death sentence. A study of past record indicates that in June 2012 itself, the then President of India has commuted the death sentence of as many as 35 convicts to life. The discretionary powers of the President of India are all pervasive and are above the judicial process as per our Constitution. The various facts indicate that death sentence, though not banned in our country on record, practically in the course of its implementation, death sentence is slowly drifting towards abolition.

It is my considered opinion that in keeping with the constitutional trends through the Judiciary with its pronouncements, exercise of powers by the President of our Nation, growing demand for abolition of death penalty for various reasons as studied hereinabove and the spiritual values attached to human beings are paving a steady progress in our country towards the need for abolition of death penalty. It may not be a surprise news when in the near future, we hear that even our Nation has abolished the Death Penalty/Capital punishment and has joined in the list of other Nations of the World which have abolished Death Sentence as means of criminal punishment.

MOTHER OF ALL JUDGMENTS —
G. Satyanarayana v. Government of Andhra Pradesh, 2014 (4) ALD 358

By

—WASIM AHMED KHAN

B.Sc., M.A. Eng. (Litt), M.A. (PPM), L.L.B (Spl.)

Advocate

(High Court of A.P. and Telangana)

Secunderabad

Honourable Justice *C.V. Nagarjuna Reddy* has indeed done a remarkable work in making an in-depth study of all the Revenue Laws with their origin and concept, for delivering the above landmark judgment. Rather it will not sound strange to say, that the above judgment is the mother of all the judgments which are delivered till now by our High Court relating to the comprehensive Revenue Laws. In other words, the above judgment is an encyclopedia of all the Revenue Laws with golden interpretation of the terms, mentioned therein besides highlighting their aims and objectives. This judgment will not only be helpful and useful to all the Advocates who practice mostly on Revenue side, and the legal community but also can be used as a handbook or manual for the Revenue Officers, who perform the Quasi Judicial functions under original, appellate and revisional jurisdictions, *etc.*,

Though, there are several judgments on hand till now, under the above subject, they

mostly related to specific topics or independent Revenue Laws. However, the present judgment has dealt with all the consolidated revenue and other related laws under one umbrella. Needless to say, extensive research of several Revenue Laws have been made and carried out in detail. The Revenue Laws which are dealt with in the above judgment are as follows:

(a) A.P. Survey and Boundaries Act, 1923
(b) Land Acquisition Act
(c) A.P. Land Encroachment Act
(d) Registration Acts 1908
(e) A.P. Assigns Lands (Prohibition of Transfers) Act, 1977
(f) A.P. T.A. Land Revenue Act
(g) A.P. Rights in Lands and Pattedar Passbooks Act
(h) A.P. Board Standing Orders
(i) A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948
(j) A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956
(k) Land Revenue Rules, 1951
(l) The Hyderabad Abolition of Inams Act, 1955
(m) The Hyderabad Abolition of Jagirs Regulation 1358 Fasli
(n) Hyderabad Tenancy and Agriculture Land Acts
(o) The Telangana Area Land Sences Rules 1954
(p) Laoni Rules issued *vide* Gashthi No.19/ 1347 Fasli
(q) Loani Rules, 1950

In addition to referring to the above laws, a total number of 43 judgments were also referred to, considered and cited in the above judgment.

That apart, the manner in which the above judgment is classified into various bits and subjects and the corresponding findings and conclusions arrived thereupon is really laudable. Lot of pain, patience and hard-work must have gone into the making of the above judgment, which I can easily comprehend. Very few Judges, have the tendency and patience to display their art of understanding and interpretation of laws, in their judgments, which often becomes invaluable asset and binding precedent to the legal fraternity and others. Needless to say, the hallow gap and uncertainty which was existing on the real interpretation of Revenue Laws and their applicability and implementation, *etc.*, has now been bridged up and cleared by the above judgment. Indeed, hats off to the Honourable Judge who has really displayed sharp ability, skill, expertise and knowledge in delivering the above landmark judgment, which will go a long way in helping the litigant public who till now were illegally deprived of their valuable right to properties by the statutory authorities under the guise of the above summary Laws and contrary to Article 300-A of the Constitution of India. That apart, the Advocates practising on the Revenue side always felt handicapped for want of appropriate and comprehensive judgment on the vast subject of Revenue Laws. However by the passing of the above judgment myself and other Advocates have now felt a sigh of relief and feel proud to include the above judgment as an important asset to our Libraries.

Likewise, the 4 main issues framed in the above judgment for consideration were really important and appropriate since they were the common subject-matter in most of the cases and disputes. The said issues are reproduced below :—

(a) What documents constitute title for lands

(b) Whether the entries in the Revenue Records constitute conclusive proof of title and if not, whether they have evidentiary value in determination of title.

(c) Whether the entries in Resurvey and Resettlement Register (RSR) and Town Survey Land Register (TSLR) are conclusive in determining title.

(d) Whether eviction proceedings under the 1905 Act can be initiated when there is a *bona fide* title dispute.

For deciding above issues, the Honourable Judge narrated the origin and history of the relevant Acts, relating to the period of Moghal Kings, Bahamani Kings, Tipu Sultan and British, besides referring to several books of renowned authors, both during pre and post independence period.

Be that as it may, till now, the aspect of TSLR entries and its repercussions played havoc with the rights of innocent citizens, who had to part away with their valuable properties, unable to resist the summary eviction laws like A.P. Land Encroachment Act, 1905 and Public Premises Act, 1971 and also the A.P. Survey and Boundaries Act, 1923 *etc.* In fact, the provisions of the above summary Acts, were illegally and high-handedly applied by the statutory authorities for recovering possession of properties from the citizens, even though the relevant law for recovery of possession by way of summary procedure was well settled long back in *Government of A.P. v. Tummalla Krishna Rao*, AIR 1982 SC 1081. Now the above judgment, which has also taken into consideration, the above Supreme Court judgment, has categorically made it clear that the Government and Statutory Authorities have no right to recover the properties by invoking the summary proceedings under the above Acts, on the basis of wrong entries made in the Resurvey and Resettlement Register (RSR) or Town Survey Land Register (TSLR). In other words, the citizens can now protect their valuable properties, even if they are illegally and highhandedly shown under RSR or TSLR records, unless and until the Government files a suit for recovery of the said properties if it has any title to it. The above judgment has once again set the said controversy at rest by upholding that entries in TSLR do not constitute a conclusive proof of title, which proposition of law was declared and confirmed from time to time in various other judgments. In any case while arriving upon at the above conclusion, the Honourable Court has rightly relied upon, the unreported judgment in WA Nos.115 and 116 of 2000 which also held that TSLR Entries cannot be regarded as the sole guiding factor, while dealing with applications for building permissions and the same have to be considered in conjunction with other documents, which the applicant would like to place reliance upon. That apart Reference to the judgment reported in 2001 (3) ALD 600, was also made in the above judgment, wherein it was held that the survey made under the said Act is mainly intended for the purposes of identification of lands and fixation of boundaries and there is no provision there under to make any detailed enquires with regard to the rights, title and interest of persons in the land. Similarly, regarding the entries in Town Survey Land Registers (TSLR) the Honourable Judge referred to important decisions on this subject including the judgment namely *Hyderabad Potteries Pvt. Ltd. v. Collector, Hyderabad District and another*, 2001 (3) ALD 600 and ultimately concluded that the entry in TSLR does not constitute conclusive proof of one's title.

Referring to the initiation of summary proceedings for evicting the persons on the pretext of Government land, the Honourable Judge by relying upon the above judgment of Supreme Court in *Government of A.P. v. Tummala Krishna Rao*, reported in AIR 1982 SC 1081, has clearly held that when there is a serious *bona fide* dispute of title of a person over the lands, other than public roads, streets, bridges, or the bed of the sea or the like, is involved, summary proceedings under the A.P. Land Encroachment Act, 1905 cannot be initiated and that in all such cases, the Government which claims title, shall approach the competent civil Court for declaring its title and for recovery of possession.

In addition to the above, several important revenue terms whose definitions and meanings, very few of us, were acquainted with so far, have been elaborately

explained in the above judgment. For instance, the term "Estate", "Land Holder", "Ryoti Lands and Private Lands", "Ryot", "Kulwar Settlement", "Diglot or "A" Register" "Ledger/Chitta" "Memoir and Village Maps" "Field Measurement Book", "Pesh-kash" "Inams Proper" "Mohammadan Jagirs" "Shrotriyams and Agraharams", "Potkharab" "Jamabandi" "Khalsa" "Non-Khalsa" "Jagir" "Paiga" "Samsthan part of Jagir" "Village Mukhtha" "Agrahar" "Umli" "Mukasa" "Setwar" "Diwani" "Shikmidar" "Pattedar" have been meticulously explained.

Likewise the definition of the following important revenue terms which are often used were also explained in detail:

a. **Potkharab Lands** - "Potkharab Lands" means Foot paths, cart tracks, wells, outcropped rocks, gokattes or other small kuntas, which are not treated as separate survey numbers. In other words, Potkharab Lands were either uncultivable or should not be allowed to be cultivated in the interest of public and for which no assessment was levied and the said Potkharab area was to be excluded from the total area of each survey number.

b. **Topes** - Topes were defined as places where trees are found together and which are intended to be retained for being used, as such and where it is usual to hold annual jatras, weekly markets or such other functions *etc.*,

c. **Pahani patrika** – As per Rule 3 of Hyderabad Records of Rights Rules 1957, Pahani Patrika contains besides columns 1 to 19 of Form No.1, several other columns pertaining to agricultural statistics and they are deemed to be record of rights.

d. **Setwar Register** - This is equivalent to A Register/Diglot in Andhra Area and after disposing of all the representations/ appeals filed by the Khatedars for the correction of survey errors a final Survey Register is prepared called Setwar Register. This register is regarded as kind of all registars and it contains survey number, patta grant, gairan/inam, name of khatedar, total area, potkharab area, balance area, rate of assessment (dhar), final assessment in case of wet lands, source of irrigation, *etc.*,

e. **Wasool Baqi Register** - This resister shows old survey numbers, extentions and assessment of the khatedraar on one page and on the opposite page, the details of corresponding new survey numbers, extents and assessments

f. **Kancha Parambok** - Waste Lands

Apart from the above, the Honourable Judge also extracted some of the 40 important registers to be maintained by patwaris, in the above judgment which are as follows :—

(a)	Pahani Patrik	Register No.3
(b)	Choufasla	Register No.4
(c)	Faisal Patti	Register Nos.5, 6 and 7
(d)	Qabile wasool	Register No.8
(e)	Jamabandi Goshwara	Register No.9
(f)	Araziyath sarkari	Register No.10
(g)	Araziyath-e-Inam	Register No.11
(h)	Zarai Ab Pashi	Register No.19
(i)	Kist Bandi	Register No.20
(j)	Asam Wari Wasool Baqui	Register No.21
(k)	Irsal Nama	Register No.23
(l)	Kirdi	Register No.27
(m)	Khata	Register No.28
(n)	Kharti war rainfall	Register No.33
(o)	Paidawar Register	Register No.34

With regard to the cases of those parties, who do not have proof of Patta, except possession supported by multiple registered sale transaction, the Hon'ble Judge has also elaborately dealt with the same by drawing the source of legal jurisprudence from the ancient Hindu and Mohammedan Laws. Similarly the concept of possession, was also well explained, which hither to existed under the Hindu System and also from the Legal

theory enunciated by *Salmond*. Ultimately, it was held that the absence of document, such as Patta or a grant, a person in possession of land for 12 years or more, without title can claim transfer of registry in his favour as envisaged by Para No.7 of Boards Standing Order (BSO No.31) and in such a case, the burden will shift to the rival claimant, be it a private citizen or the Government to prove that land belongs to them.

Regarding the description as Government lands in RSR, the Court found fault with the false notion that if the name of the Government appears in the Revenue records, in column Nos.4 and 5 in RSR Register, it becomes the Government land. The Court went to the extent of dealing with Section 3(1) of the A.P. Survey and Boundaries (Extension and Amendment) Act, 1958, which defines Government land as any land not forming any estate or any portion thereof and the above definition of estate would include, certain lands of whatever name like Zamindari, Jagir, Mitta, Palaiyam and all Inam villages of which grant was made or was confirmed by the British Government. Hence, the Court came to the conclusion if the literal meaning of the phrase "Government Land" or "Sarkari" is to be ascribed to the said Column No.4 or 5, then the column pertaining to name of Pattedar or Inamdar would be rendered nugatory. Ultimately, the Court held, irrespective of the name of the Government in Column Nos.4 and 5, if the name of the Pattedar is shown in pattedar column, then the said lands are private lands, belonging to the persons named therein or their successors.

The Honourable Judge also condemned unexplainable practice of putting dots in RSR Registers and ultimately opined that entries in RSR cannot be taken as conclusive proof in determining the ownership of land and finally held that

(a) RSR is not a stand alone document and entries therein cannot be taken as conclusive proof to determine title. It constitutes one of the many Revenue records which have to be considered in determination of title.

(b) Entries in RSR showing the land as belonging to Government do not necessarily mean what the same is not a patta land, but they only mean that it is not an Inam land.

(c) The pattadar column in RSR left blank or containing "dots" cannot be understood to mean what the land is vested in the Government. A private person can still claim ownership over the land based on the patta and/or entries in the Revenue records prepared both prior to and after the commencement of the 1971 Act, besides registered sale transactions. If the Government disputes such entries, it needs to get its right declared by instituting proceedings before the competent Court of law.

While summing up the conclusions, the Honourable Judge has held as follows:

(1) A patta granted under BSO-27 confers absolute title.

(2) An assignment made under BSO-15 prior to 18.6.1954 in Andhra Area and a patta granted under Laoni Rules before 25.7.1958 in Telangana Area confer absolute title with right to transfer the land. Unless the Revenue functionaries are first satisfied that the land is an assigned land within the meaning of sub-section (1) of Section 2 of Act 9 of 1977, no proceeding for cancellation of assignment can be initiated.

(3) In case of Laoni pattas granted on collection of market value, the pattadar is entitled to sell the land without any restrictions.

(4) In respect of estate and inam lands, ryotwari pattas/occupancy rights

certificates constitute title. In case of protected tenants under the Hyderabad Tenancy and Agricultural Act 1950, the protected tenants having ownership certificates hold absolute title.

(5) In the absence of patta, revenue records form basis for determining title. A-Register/Diglot, Ledger/Chitta in Andhra Area and Sethwar, Supplementary Sethwar and Wasool Baqui in Telangana Area are the basic settlement record which provide basis for subsequent entries in the Village Accounts. Before integration of Revenue Record, No.1 and No.2 Accounts (old), No.3 Account, No.10 Account and Register of Holdings in Andhra Area and Pahani Patrika, Chowfasla, Faisal Patti and Khasra Pahani in Telangana Area are relevant Village Accounts for determination of title. After integration of the Village Accounts under the 1971 Act, (I) Printed Diglot or A-Register, (ii) Village Account No.1, (iii) Village Account No.2, (iv) No.3 Register and (v) Village Account No.4 Register of Holdings constitute relevant record.

(6) Between two rival claimants relying upon the entries in Revenue record, the person whose name is recorded in the basic records such as A-Register and Record of Holdings and their successors-in-interest will be considered as the rightful owners. In deciding such disputes, the Revenue authorities and the Courts need to carefully weigh the evidence relied upon by the rival parties with reference to the record referred to hereinbefore. Even in cases of disputes between the Government and private persons, the above referred record constitute material evidence in determination of title.

(7) While there is a presumption that all porambokes and lands reserved for communal purposes vest in the Government, no such presumption arises in respect of wastelands, assessed or unassessed.

(8) A person in possession of land for 12 years or more without title can claim transfer of registry in his favour as envisaged by Para 7 of BSO-31.

(9) Long possession supported by multiple registered sale transactions give rise to presumption of title. Such presumption is however rebuttable.

(10) RSR is not a stand alone document. It is one of the relevant records in determination of ownership.

(11) Description of Government land in RSR only means that it is not an inam land. It can include patta lands also.

(12) Dots or blank in pattadar column does not necessarily mean that the land is vested in or it belongs to the Government. Despite such blanks or dots, a private person can claim ownership based on entries in Revenue record prepared both prior to and after the commencement of the 1971 Act, besides registered sale transactions. If the Government disputes such entries, it needs to get its right declared by instituting proceedings before the competent Court of law.

(13) The entries in TSLR do not constitute conclusive proof of title.

(14) Where there is a *bona fide* dispute regarding title of a person in possession of the lands other than public roads, streets, bridges or the bed of the sea or the like, summary proceedings under the 1905 Act cannot be initiated. In all such cases, the Government which claims title shall approach the competent Civil Court for declaration of its title.

In view of the findings given in the above judgment, many facts and controversies, which hitherto existed and clouded with mysteries and misconceptions, now stands cleared and settled. In fact, there was a complete

overhaul of the important provisions and terms of various Revenue Laws and Rules which has to be appreciated. In other words, the above judgment has provided complete solace and relief to many persons, who were unable to resist the much frequent invocation of summary proceedings by the Government, on the pretext of erroneous RSR and TSLR entries. Finally the Government is now directed to file Civil Suits for recovery of properties if they have title to it. In fact the above judgment have done substantial justice to a larger extent of society and litigant public.

Needless to say, the above judgment will always be a guiding principle and sort of motivation and inspiration to all the law students, lawyers, Revenue officials, Judges and also to the common man. May God bless the Honourable Justice *C.V.N. Reddy* with good health so that we can expect similar judgments on other important aspects, which would ultimately help in espousing the public cause and justice.

DOES ORDER 1 RULE 13 OF CPC APPLIES EVEN IF OBJECTION REGARDING NON-JOINDER OF NECESSARY PARTY IS NOT TAKEN BEFORE SETTLEMENT OF ISSUES?

By
—MANDAVA VENKATESWARA RAO
Advocate
Panchavati, Avanigadda-521121

1. Order 1, Rule 13 reads "All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived".

Section 99 of C.P.C. reads "No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder (or non-joinder) of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

Provided that nothing in this section shall apply to non-joinder of a necessary party."

Order 1 Rule 9 reads "No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Provided that nothing in this rule shall apply to non-joinder of a necessary party".

2. The words "or non-joinder" in the main Section of 99 and Proviso to that section were inserted by Section 34 of C.P.C. Amendment Act, 1976 which came into effect from 1.2.1977.

Proviso to Order 1, Rule 9 was also inserted by Section 52 of C.P.C. Amendment Act, 1976, which came into effect from 1.2.1977.

3. But, similar proviso to the effect that "nothing in this rule shall apply to non-joinder of a necessary party" is not inserted in Order 1 Rule 13 of C.P.C.

4. So, what is the effect of those provisos inserted to Section 99 and Order 1 Rule 9 of C.P.C. on Order 1 Rule 13 of C.P.C? There appears to be a contradiction between Order 1 Rule 13 on one side and Section 99 and Order 1 Rule 9 on the other.