

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT**

W.P.No.21689 OF 1999

ORDER: *:(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Addepalli Suryanarayana learned counsel for the petitioner, learned Government Pleader for Revenue for respondents 1 and 2 and Mr. O. Manohar Reddy, learned counsel for respondent No.3.

In **N. Bal Reddy v. Revenue Divisional Officer, Hyderabad East**^[1], a learned Single Judge has taken the view that against the issuance of Pattadar Passbooks (PPB)/Title Deeds (TD) under Section 6-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'), an appeal under Section 5 sub-section (5) of the Act is maintainable before the Revenue Divisional Officer.

Through the reference order dated 25.06.2007, the correctness of view taken in **N. Bal Reddy's case** (1 supra) is doubted by another learned Judge and the writ petition is referred to a Division Bench for decision on the maintainability of appeal under Section 5(5) of the Act against order or issuance of PPB/TD under Section 6-A of the Act.

The order of reference reads thus:

"The law settled on this aspect is that when the statute is silent about the right of appeal, the Courts cannot interpret and say that consequently an appeal is also maintainable. When the cases on hand are looked at in that angle, as stated supra it is only against the orders passed under sub-section (1) of Section 5 of the Act and an order passed under sub-section (4) of Section 5-A of the Act, appeals are provided for under sub-section(5) of Section 5 and Section 5-B of the Act respectively and for others the Act is silent. Of course, it is the contention of learned counsel Sri V.Rama Krishna Reddy, appearing for respondents that the impugned order passed in W.P.No.13096 of 1998 is only an order passed under Section 5 of the Act, but not an order passed under Section 6-A of the Act, as contended by learned counsel Sri K.Mahipathi Rao, appearing for petitioner.

Having heard the matter at length, this Court is of the view that

the contention of Sri K.Mahipathi Rao and Sri Addepalli Suryanarayana, learned counsel appearing for petitioners appears to be correct and it is only an order passed under Section 6-A of the Act, but not an order passed under Section 5(1) of the Act. When once it is considered to be an order passed under Section 6-A of the Act, whether the appeal, as preferred by respondents is maintainable or not, is the question. Of course, if the judgment of the learned Single Judge of this Court is accepted, definitely an appeal is maintainable. But as stated supra, the Courts cannot interpret and give a right of appeal to the parties when the statute itself is silent, and as such, this Court is of the view that the matter requires re-consideration. Hence, for appreciation and determination of law on the subject, these matters have to be referred to a Division bench of this Court.”

The issue for consideration in the writ petition or in the reference order relates to maintainability of an appeal against issuance of PPB/TD under Section 6-A of the Act.

The case of the contesting parties is briefly referred.

The subject matter of the writ petition is agricultural land in an extent of Ac.3-48 cents and Ac.2-58 cents in Survey Nos.171/2 and 172/4 of Basapuram Village, Kundurpi Mandal, Anantapur District (for short ‘the petition land’).

The petitioner prays for writ of Prohibition restraining the 2nd respondent from entertaining and deciding the appeal filed by 3rd respondent in Case No.(B)154/99 under Section 5-B of the Act. At the outset, it is made clear that this Court is not considering the claims of parties on merits, much less pronouncing any view on merits except pronouncing on the maintainability of appeal under Section 5(5) of the Act against the orders or issuance of PPB/TD under Section 6-A of the Act.

The case of petitioner is that through registered sale deed dated 27.8.1954 the father-in-law of petitioner (Reddy Mallaiah) purchased petition land from 3rd respondent. The father- in- law of petitioner was in possession and enjoyed the petition land till his death. Upon the demise

of Reddy Mallaiah, the petition land and other properties were divided by his three sons and the petition land fell to the share of petitioner's husband late Jayarami Reddy. Late Jayarami Reddy filed declarations under the Andhra Pradesh Ceiling on Agricultural Holdings Act in C.C. No.2795 of 75 it is alleged the petition land was included in the holding of Jayarami Reddy. After the demise of Jayarami Reddy, the petitioner applied for recording the right of succession in her favour for the petition land and the Tahsildar on being satisfied with the claim of petitioner, under Section 6-A of the Act issued PPB to petitioner.

The 3rd respondent filed appeal under Section 5-B of the Act against issuance of PPB to petitioner. The legal objection against the appeal pending in R.C. No.(B)154/99 is that the 3rd respondent is not challenging the entry in record of rights, the names of Jayarami Reddy or the petitioner herein, but is questioning the issuance of PPB/TD under Section 6-A of the Act to petitioner. According to the petitioner, against such consequential step of issuing PPB, no appeal before the RDO under the Act is maintainable.

Learned counsel appearing for the respondents admit that the appeal pending in Case No.(B)154/99 is filed against the issuance of PPB/TD in favour of petitioner and not against any entry made in record of rights. The reply of 1st respondent amplifies this aspect of the matter and reads thus:

“In reply to Para No.5 of the affidavit, it is submitted that Kataru Hanumanthappa s/o,Guttanna of Basapuram village of Kundurpi Mandal, 3rd respondent herein, was filed an appeal before the Revenue Divisional Officer, Dharmavaram against the issue of PPB/Tds in favour of Smt.Ratnamma w/o.B.Jayarami Reddy, herein petitioner, and five others of the same village. The Revenue Divisional Officer, Dharmavaram in proceedings in R.C.No.154/99 Dt.27.02.99 has ordered to kept in abeyance the orders of the MRO, Kundurpi.”

I n **N.Bal Reddy's** case (1 supra), our learned brother Justice L.Narasimha Reddy, as he then was, has taken the view

that issuance of PPB or making entries in PPB is a step consequential to the amendments or updating of record of rights under Section 5 of the Act. The acts of entering name in record of rights and/or issuance of PPBs are interrelated. A PPB is a copy of entries prepared and maintained under the record of rights. Regarding preparation and maintenance of record of rights, issuance of PPB under Section 6-A of the Act are interconnected and the issuance of PPB being a step ancillary and consequential to steps taken under Section 5 of the Act, the learned Judge ruled that an appeal under Section 5(5) of the Act is maintainable against issuance of PPB/TD by the Mandal Revenue Officer.

Learned Senior Counsel Sri Addepalli Suryanarayana contends that the PPB/TD merely contains entries of 1-B register maintained under the Act and Section 6-A provides for obtaining PPB by a person whose name is already entered in the record of rights. Therefore, he submits that issuing PPB under Section 6-A of the Act by itself does not decide any dispute between parties. The issuance of PPB by itself either under the scheme of the Act or otherwise does not provide for an appeal before the Revenue Divisional Officer. The learned counsel in support of his submission that no appeal is maintainable contends that the right of appeal is not a natural or inherent right to a party and a right of appeal does not exist or cannot be assumed unless expressly provided by a statute or by rules having the force of statute. A right of appeal is a substantive right and not a procedural matter. Further, the ratio in **N.Bal Reddy's** case (1 supra) that making of entry under Section 5 of the Act and issuance of PPB is interdependent and inseparable and consequently appeal under Section 5(5) of the Act is maintainable suffers from patent infirmity inasmuch as under the scheme of the Act, a party is said to be aggrieved either at the stage of preparation, updating record of rights under Section 3 of the Act or effecting changes to an existing record of rights on the acquisition of right in one or the other way stipulated under Section 4 of the Act or upon regularization of transactions under Section 5-A of the Act and consequent changes to the

record of rights. But, appeal is not provided by the Act against mere issuance of PPB evidencing entries borne out by record of rights. According to the learned counsel, an appeal against an order or issuance of PPB under Section 6-A of the Act is not provided under the Act and consequently the appeal pending in Case No.(B)154/1999 is patently illegal and liable to be set aside.

Sri O.Manohar Reddy, learned counsel appearing for 3rd respondent while conceding that the filing of appeal by respondent No.3 under Section 5-B of the Act is not maintainable, contends that wrong quoting of provision by itself is not a ground to issue a writ of Prohibition against the pending appeal in case No(B) 154/99 and according to the learned counsel appearing for the 3rd respondent, an appeal against the issuance of PPB/TD is maintainable under Section 5 (5) the Act. Learned counsel relies upon the decision reported in **N. Bal Reddy's** case (1supra) to contend that appeal is maintainable against the order under Section 6-A of the Act.

From the case set up by the parties and the rival submissions of learned counsel appearing for them, the following point is framed for decision.

Whether an appeal to Revenue Divisional Officer under Section 5(5) of the Act is maintainable against issuance of PPB/TD under Section 6-A of the Act?

POINT:

The Act provides for the manner, method of preparation of record of rights and maintenance of record of rights. Section 3 of the Act deals with preparation and updating of record of rights of agriculture lands. Section 4 of the Act provides for intimation of acquisition of rights by succession, survivorship, any right accrued as owner etc., by a person for entering the name in the record of rights to the recording authority. Section 5 of the Act enables the Mandal Revenue Officer to consider the request received under Section 4 of the Act and carryout the amendment in the record of rights in accordance with such

determination. Section 5-A of the Act provides for regularization of certain alienations or other transfer of lands, issue of certification of regularization under Form 13-B and consequently incorporating the names of such persons in the record of rights. Section 3(3) provides for a remedy before the recording authority to an aggrieved party against notification issued under Section 3(2). The grievance, if any, in the preparation of record of rights under Section 3 is addressed by the recording authority himself. The remedy of appeal under Section 5(5) of the Act is provided against the decision to incorporate changes in the record of rights under Sections 4 and 5 of the Act to the Revenue Divisional Officer. The remedy of appeal at that stage fits into the scope of intimation under Section 4 of the Act and consequence of accepting the intimation. Similarly, appeal is provided under Section 5-B of the Act to the Revenue Divisional Officer against the regularization orders passed under Section 5-A of the Act. The PPB/TD is not defined under the Act or the Rules made thereunder. Section 6-A is introduced through Act 9 of 1994. It is pertinent to note that through Act 9 of 1994, Section 5-B was introduced providing for the remedy of appeal against regularization orders under Section 5-A of the Act. Thus, it is evident that while introducing Section 6-A through Amendment Act 9 of 1994 along with Section 5-B, the Legislature did not think it necessary to provide for appeal against the issuance of PPB/TD under Section 6-A of the Act. At this stage, it is relevant to extract Sections 5(5) and 6-A of the Act.

“Section 5(5): Against every order of the recording authority either **making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed,** within a period of sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall subject to the provisions of Section 9, be final.” (emphasis added)

“Section 6-A: Pass Book holder to have entries of alienation etc. recorded in Pass Book:- (1) Every owner, Pattadar, mortgag5gee, or tenant of any land shall apply for the issue of a pass book and title deed to the Mandal Revenue Officer on payment of such fee as may be prescribed. The owner-pattadar shall apply for the issue of

a title deed in addition to a pass book.

Provided that an occupant of an inam land is also eligible to apply for the issue of a pass book and title deed as an occupant:

Provided further that where no application is made under this sub-section, the Mandal Revenue Officer may *suo motu* issue a Pass Book after following the procedure prescribed under sub-section (2) and collect the fee prescribed therefor.

(2) On making such application, the Mandal Revenue Officer shall cause an enquiry to be made in such manner as may be prescribed and shall issue a title deed and pass book in accordance with the Record of Rights with such particulars and in such form as may be prescribed:

Provided that no such title deed and pass book shall be issued by the Mandal Revenue Officer unless the Record of Rights have been brought upto date.

(3) **The entries in the title deed and pass book may be corrected either suo motu or on an application made to the Mandal Revenue Officer in the manner prescribed.** (emphasis applied)

(4) The Government may prescribe by rules the manner in which the title deed and pass book may be issued to all owners, pattadars, mortgagees or tenants and to such other person in accordance with the record of rights.

(5) The title deed issued under sub-section (1) and duly certified by the mandal Revenue Officer, or such other authority as may be prescribed, shall be the title deed in respect of an owner-pattadar and it shall have the same evidentiary value with regard to the title for the purpose of creation of equitable mortgage under the provisions of the Transfer of Property Act, 1882 as a document registered in accordance with the provisions of the Registration Act, 1908 under the law.”

The scope and object, the preparation and maintenance of record of rights and statutory appeals provided against preparation, and rectification or regularization under the Act have been the subject matter of reported cases. This Court in **M.B.Ratnam v. Revenue Divisional Officer, Ranga Reddy District East Division**^[2], considered the maintainability of appeals/revisions against the orders of regularization passed under Section 5-A prior to 31.10.1993 i.e., before Amendment Act No.9 of 1994 and held that right of appeal is a statutory right and is created through Amendment Act 9 of 1994. Therefore, no appeal against an order of regularization under Section 5(5) passed prior to

31.10.1993 is maintainable. However, it is held that against such order of regularization, a revision to the District Collector under Section 9 of the Act is maintainable. In **Konkana Ravinder Goud And Ors. vs Bhavanarishi Co-Operative House Building Society**,^[3] a Division Bench of this Court considered the maintainability of revision against order of regularization under Section 5-A of the Act prior to Amendment Act 9 of 1994 and held that a revision is maintainable. The views expressed by two Division Benches i.e., in the cases of **M.B.Ratnam** (2 supra) and **Konkana Ravinder Goud** (3 supra) were considered by a Full bench in **Santhosh Verma v. Joint Collector, Ranga Reddy District**.^[4]

In **Santhosh Verma's** case (4 supra), our learned sister Justice Ms. G. Rohini, as she then was, has considered the statement of objects and reasons of the Act, the working the Act and the statutory remedies of appeal/revision provided against the orders passed under the Act. Therefore, we deem it convenient to rely upon the following paragraphs in **Santhosh Verma's** case (4 supra) to re-state the contours of the Act and the statutory remedies available to an aggrieved party.

“As per Section 3 of ROR Act, 1971 the recording authority shall maintain a record of rights in all lands in every village in that area containing particulars specified therein. The fact of completion of record of rights in respect of the village shall be notified in A.P. Gazette and thereafter any person affected by an entry in such record of rights may apply for rectification of the entry in which event after making necessary enquiry, a decision will be given on such application directing rectification of the record of rights which shall subject to the provisions of Section 9, be final. That apart, as per Section 4 of the ROR Act any person acquiring by succession, survivorship etc. any right as owner, pattadar/mortgagee shall intimate in writing his acquisition of such right to the Recording Authority. On receipt of such intimation, the recording authority shall determine as provided under Section 5 and shall carry out the amendment in the record of rights in accordance with such determination. *Against such order passed by the recording authority either making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie under Section 5(5) of the ROR Act to the Revenue Divisional officer and the decision of*

the appellate authority shall be final subject to the provisions of Section 9 providing for a remedy of Revision to the Collector. As per Section 6 of the ROR Act, every entry in the Record of Rights shall be presumed to be true until the contrary is proved or until it is otherwise amended in accordance with the provisions of the Act. Section 7 declared that the record of rights shall be open for inspection of the public and that they are also entitled to obtain certified copies of the record of rights or extracts therefrom. Section 8 of the ROR Act bars suits against the Government or their officers in respect of a claim to have an entry made in any record of rights. Section 9 provided for a remedy of revision. As per Section 9 the Collector was empowered either suo motu or on an application made to him to call for and examine the record of rights prepared or maintained under Section 3 or any order passed or proceedings taken by any recording authority or an appellate authority to satisfy himself as to the correctness, legality or propriety of any such decision.

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However no provision was made by Amendment Act 1 of 1989 providing for an appeal or revision against the regularization ordered by the Mandal Revenue Officer under Section 5-A. Such remedies came to be inserted into ROR Act after about 4 years by A.P. Act No.9 of 1994 w.e.f. 31.10.1993. By Act 9 of 1994 Section 5-B has been added providing for an appeal to the Revenue Divisional officer against the orders passed under Section 5-A(4) by the Mandal Revenue officer. Simultaneously Section 9 was also substituted expressly conferring the power of Revision on the Collector against the orders passed under Section 5-A as well as Section 5-B of the ROR Act.

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There can be no dispute about the fact that the entries in the pass book are based on the entries in the record of rights prepared under the provisions of the ROR Act and every entry in the pass book must be a true reflection of entries in the record of rights. The issuance of pattadar pass book or making entries therein is always a step consequential to the record of rights prepared, brought up to date and maintained under Section 3 of the ROR Act.”

The Full Bench was not considering the maintainability of appeal against issuance of PPB under Section 6-A of the Act. But it is noted that the appeal under Section 5(5) is maintainable against the orders under Section 4 of the Act. It is also held that the issuance of PPB making entries in the PPB is a step consequential to the updation of the record of

rights prepared and maintained under the Act.

Now, we construe the scope of Section 5 (5) and Section 6-A of the Act and whether an appeal against the order under Section 6-A is provided or the remedy of appeal under Section 5(5) can be inferred as held in **N.Bal Reddy's** case (1 supra).

From a bare reading of Section 5(5) of the Act, it can be held that against every order of recording authority either making an amendment in the record of rights or refusing to make such an amendment, an appeal to the RDO, is provided within the time stipulated in the Section. Under the Act, making an amendment in the record of rights or refusing to make amendment in record of rights is a crucial stage and a substantive decision rendered by the recording authority. Therefore, right of appeal is provided against such decisions. Likewise, from the reading of Section 5(5) of the Act, it cannot be construed that Section 5(5) provides remedy of appeal against orders under Section 6-A of the Act. Issuance of PPB/TD or making entries therein is always a step consequential to the record of rights prepared. Therefore the plain reading of Section 5(5) makes it clear that appeal against order under Section 6-A is not maintainable.

For the above view, we are supported by the decision reported in **M.B.Ratnam's** case (2 supra). The relevant para reads as follows:

"It is thus clear that Section 5-A of the R.O.R. Act is a special and composite provision, which provides for regularisation of alienation or other transfers of land under unregistered instruments. Its area of operation is totally different from that of the area of operation of Section 5 of the R.O.R. Act, which essentially deals with amendment and updating of record of rights on the strength of acquisition of any right referred to in Section 4 of the R.O.R. Act. Making of an entry in the pass book on the strength of the certificate issued under [Section 5-A](#) (4) cannot be equated to that of amendment and updating of Record of Rights as provided for under Section 5(1) of the R.O.R. Act. An appeal under [Section 5](#) (5) is provided only as against making amendment or refusing to make amendment in the record of rights under [Section 5\(1\)](#) of the Act. Therefore, no appeal as

against a consequential decision of the recording authority under Sub-section (5) of [Section 5-A](#) is provided for under Sub-section (5) of [Section 5](#), which in turn provides for an appeal against the act of amending and updating of record of rights.”

(emphasis added)

Next, we examine the scope of Section 6-A of the Act and availability of remedy of appeal under the Act.

Sections 5-B and 6-A are introduced through Amendment Act 9 of 1994. Through the amendment, remedy of appeal against regularization order under Section 5-A of the Act and provision for issuance of PPB/TD under Section 6-A of the Act is enacted. Sub-section (3) of Section 6-A provides for correction of entries in the PPB/TD by the Mandal Revenue Officer either *suo motu* or on an application. As already noticed, the record- of- rights is prepared under Section 3 of the Act, updated/ maintained under Sections 4, 5 and also as a consequence of regularization under Section 5-A of the Act. Issuance of PPB is covered by Section 6-A of the Act. The PPB is nothing but a copy or reflection of entries in the record of rights prepared or maintained at one or the other stages under the Act as stated above. The PPB/TD is maintained and issued in Form No.14-C of the Rules. PPB/TD contains the entries as borne out by 1-B Register. With the issue of pass book to any person whose name in the applicable column is recorded in record of rights, it cannot be said such issuance adversely affects any person. A person is certainly aggrieved by illegal preparation of record of rights and against such illegal preparation the remedy is provided under Section 3(3) of the Act. Likewise, against illegal or erroneous updation of record of rights under Sections 4 and 5 or regularization under Section 5-A of the Act, the remedy of appeal under Section 5(5) or Section 5-B respectively is available to an aggrieved party. On the other hand, Section 6-A(3) provides for correction of erroneous entries in PPB/TD issued by the Mandal Revenue Officer. The reason for not providing any appeal against the issuance of PPB/TD is manifest from the Scheme of the Act viz., that the issuance of TD/PPB does not by itself adversely affect the

substantive right of a person, who claims or has a right in the property for which PPB is issued. In other words, the issuance of PPB/TD is a consequential act and entries in PPB/TD are mere reflection of entries of 1-B Register. Mere filing of appeal against issuance of pattadar pass book which is only a copy of 1-B register is not an efficacious remedy under the scheme of the Act.

It is well settled that the right of appeal must find its source in legislative authority. The right of appeal accrues to the litigant when it is expressly provided for in the statute and axiomatic that the right of appeal is a substantive right and must be conferred by a statute. As already held, appeal is provided for against the original proceedings or substantive determination under Sections 4, 5 and 5-A of the Act. The Legislature in its wisdom and noticing the purpose of issuing PPB/TD did not provide right of appeal against mere issuance of PPB/TD under Section 6-A of the Act. Therefore, on the literal construction of Sections 3 to 6-A of the Act, it can be held that the remedy of appeal under Section 5(5) of the Act is not provided against the issuance of PPB/TD under Section 6-A of the Act. By treating the action under Sections 5 and 6-A of the Act as single or mutually dependent, in our considered view, the remedy of appeal against mere issuance of PPB/TD under Section 6-A of the Act is not available.

For the above reasons, we are not in agreement with the view expressed in **N.Bal Reddy's** case and is overruled. The point is answered accordingly.

In the fact situation of the present case the appeal filed in Rc.No. (B)154/1999 is not maintainable against the issuance of PPB/TD to petitioner and accordingly held as not maintainable. As already observed, this Court has not examined the rival claims of parties on merits and the findings are limited to the extent of deciding the maintainability of appeal under Section 6-A of the Act in Rc.No. (B)154/1999. The 3rd respondent is at liberty to pursue other available remedies under the Act or common law remedy, if the circumstances so

warrant.

Writ petition is allowed. No order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of. No costs.

DILIP B.BHOSALE, ACJ

S.V.BHATT, J

Date: 24.07.2015

Note:

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[\[1\]](#) 2004 (2) ALT 457

[\[2\]](#) 2003 (1) ALT 688 (DB)

[\[3\]](#) 2003 (5) ALD 654 (DB)

[\[4\]](#) 2011 (3) ALT 683 (FB)