HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 26792 of 2003

Date :23.2.2015

Between :

Pothini Subba Rao S/o Subbaiah
R/o Karamchadu village and mandal
Prakasam district

… Petitioner

and

The Joint Collector,
Prakasam district and others

… Respondents

The Court made the following:

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ORDER:

Smt Pothina Hanumayamma W/o Raghavaiah acquired land to an extent of Ac.2.59 cents in Survey No. 652/5, Upputuru village, parchur mandal through will executed by her husband. Since she was not blessed with children, in-turn, she gifted the same to her three sisters viz., Smt.Pothina Lakshmma,

Smt Gottipati Rathamma and Smt Pattipati Suramma. Subsequently,

Smt G Rathamma died, therefore Smt Pothina Hanumayamma executed another document conveying the land gifted to late G Rathamma to her remaining two sisters. Thus, Smt Pothina Lakshmma and Smt Pattipati Suramma got

Ac.1.29 ½ cents each after the demise of executant Smt Hanumayamma on 27.6.1982. Later Smt Lakshmma died on 4.9.1984 leaving behind two sons viz., Subba Rao and Raghavaiah. During her life time, Smt Lakshmma apportioned her share of Ac.1.29 ½ cents between her two sons equally through registered document No.968/1968. Her second son Raghavaiah died issueless and his wife remarried. Thus the entire extent of Ac.1.29 ½ cents has fallen to the share Sri Subba Rao. However, pattedar passbooks for the entire extent of Ac.2.59 cents was issued in the name of Pattipati Ankamma by the Mandal Revenue Officer. Aggrieved thereby, Sri Subba Rao filed appeal before the Revenue Divisional Officer, Ongole. Said appeal was allowed and Mandal Revenue Officer, Parchur was directed to restrict pattedar passbook to Ac.1.29 ½ cents only and to issue pattedar passbook to the other person for the remaining extent of Ac.1.29 ½ cents. Aggrieved thereby, Smt Pattipati Suramma Alias Anasuyamma wife of late Sri Ankamma filed revision before the Joint Collector. By the order dated 12.12.2003 impugned in the writ petition, the Joint Collector allowed the revision petition. The orders of Revenue Divisional Officer were modified directing him for deletion of name of Subba Rao/writ petitioner from the pattedar passbook and title deeds holding that he would be entitled to issuance of pattedar passbook and title deeds only when he would be able to recover possession through competent court. Further direction was issued to incorporate name of Pattipati Suramma/revision petitioner-4th respondent herein as tenant in the relevant column 1 and 1B of Record of Rights. Consequential directions are issued to Mandal Revenue Officer.

2. Learned counsel for petitioner contended that the said action of the Joint Collector is illegal. Joint Collector is wholly incompetent to entertain revision petition and to set aside the order passed by the Revenue Divisional Officer. He further contended that Joint Collector having recognized the fact that writ petitioner is the owner of property, petitioner alone is entitled to issuance of pattedar passbooks and title deeds and direction for deletion of the name of the petitioner from the pattedar passbooks and title deeds only on the ground that 4th respondent is tenant and is in possession, therefore not entitled to issuance of pattedar passbook, is illegal. He vehemently contended that order passed by this Court in W.P. No. 6747 of 1984 has no application to the facts of the case.

3. Sri Rajendra Babu, learned counsel appearing for 4th respondent-revision petitioner submitted that order passed by the Joint Collector is perfectly legal and valid. Against the order passed by quasi judicial authority in exercise of power of judicial review writ of certiorari would lie only if such order is palpably illegal or inherent lack of jurisdiction and competence of the concerned authority or suffers from vice of discrimination or vitiated on account of denial of reasonable opportunity. None of these parameters are satisfied in this case. No material is brought on record to show that the order is palpably wrong. Detailed procedure was followed by the Joint Collector. Opportunity of hearing was afforded to petitioner and having considered the factual position on the subject and the orders of this Court, impugned decision was taken. There is no illegality or irregularity in the impugned decision. He further contended that in accordance with the provision contained in Rule 26 (vi) of A.P. Rights in Land and Pattedar Pass Books Rules, 1989 (for short, 'the Rules'), the owner of the property is entitled to title deeds and pattedar passbook only, if he in actual possession. Admittedly petitioner is not in possession. Lease was granted in favour of 4th respondent, which lease subsists and she is in possession and enjoyment. Therefore, essential condition for issuance of the pattedar passbook was not fulfilled when the same was granted in favour of writ petitioner by the Revenue Divisional Officer. Learned counsel further contended that 4th

respondent instituted O.S.No.155 of 2002 on the file of the Principal Junior Civil Judge, Parachur seeking permanent injunction restraining the respondents/ defendants therein from interfering with plaintiff's possession and enjoyment of schedule property. Said suit was decreed on 27.12.2006 in favour of 4th respondent and decree and judgment has become final, as no challenge was made. Learned counsel further contended that erroneously petitioner is relying upon orders passed in C.M.A.No.3 of 2002 which were passed during the pendency of the suit and when once suit was decreed said order merges into final order and, therefore, no reliance can be placed on the orders passed in C.M.A.

4. The facts are not in dispute. Petitioner is owner of land to an extent of Ac.1.29 ½ cents. It is also not in dispute that in view of the decree passed by the Principal Civil Judge in O.S. No. 155 of 2002 dated 27.12.2006,

4th respondent is declared to be in possession and enjoyment of the said property. Thus, when revision was filed by 4th respondent against grant of pattedar passbook in favour of writ petitioner, the Joint Collector has considered the arguments elaborately on both sides; examined the rule position; considered orders passed by this Court in W P No.6747 of 1984 and having found that 4th respondent is in possession and enjoyment of subject property and lease subsists, in view of provision contained in Rule 26 (6) of the Rules, held that the order of Revenue Divisional Officer to grant pattedar passbook and title deeds

in favour of petitioner as erroneous. In W.P.No.6747 of 1984, this Court held that in accordance with the provisions contained in the Andhra Pradesh (Andhra Area) Tenancy Act, 1956, petition instituted before the Tenancy Court Under Section 12 of the Act is not maintainable. It is further held that petitioner has no right to seek resumption of land in possession of lessee. Thus, petitioner was not successful in his efforts made on more than one occasion for resumption of the land in issue. Thus, in view of the provision contained in Rule 26 (6) of the Rules, the order of granting title deeds and pattedar passbook in favour of petitioner by the Revenue Divisional Officer is wholly illegal. Thus, there is no error much less patent error in the decision of Joint Collector impugned in this writ petition warranting interference by this court.

5. The writ petition fails and accordingly dismissed. No costs. Having regard to the same, all old miscellaneous petitions are closed.

P NAVEEN RAO,J

DATE: 23.2.2015
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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