IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

FRIDAY, THE FIRST DAY OF MAY TWO THOUSAND AND FIFTEEN

Present
HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4734 of 2005

Between:

Kadem Yadaiah,
S/o. Late K. Mankaiah,
Aged 63 years, Occ: Agriculture,
R/o. Kondamadugu (V),
Bibinagar Mandal,
Nalgonda District & 4 others

.. Petitioners

AND

The Mandal Revenue Officer,
Bibinagar Mandal,
Nalgonda District & 31 others

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4734 of 2005

ORDER:

Late Sri Lingala Sathaiah was claimed to be the owner of large extent of land in various villages in the State of Telangana. He was also owner of land to an extent of Ac. 42.33 guntas in Survey Nos.566 to 569 of Kondamadugu Village, Bibinagar Mandal. The petitioners claim that they purchased the above extent of land on 15.04.1956 and the entire sale consideration of Rs.3,142/- was paid. The petitioners applied to the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) on 28.06.1989 for validation of the sale, dated 15.04.1956. On 08.07.1995, the Mandal Revenue Officer, Bibinagar Mandal, issued 13-B certificate under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act 1971'). The successors in interest to the original owner filed representation to the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent) to cancel the Section 13-B Validation Certificate and pattadar pass books and title deeds issued in favour of Kadem Yadaiah and four brothers. By orders, dated 25.06.1999, the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent) directed cancellation of the Validation Certificate. Aggrieved thereby, revision was filed under

Section 9 of the Act 1971 on 07.07.1999. By orders, dated 04.07.2000, the Joint Collector, Nalgonda District (3rd respondent) confirmed the order of the Revenue Divisional Officer. Challenging the said decision, W.P.No.13777 of 2000 was instituted in this Court. This Court, by order, dated 13.01.2001, disposed of the W.P.No.13777 of 2000 remanding the matter to the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) for fresh consideration. On 30.09.2002, the Mandal Revenue Officer, Bibinagar Mandal, passed orders rejecting the request of the petitioners and ordered to restore the names of the original pattadars in the revenue records in respect of Survey Nos.566, 567, 568 and 569 of Kondamadugu Village, Bibinagar Mandal, with different extents. Aggrieved thereby, the petitioners filed appeal before the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent). The Revenue Divisional Officer accepted the stand of the petitioners and set aside the order of the Mandal Revenue Officer, Bibinagar Mandal, dated 30.09.2002, and confirmed the orders of the Mandal Revenue Officer, dated 06.05.1995, and issuance of Validation Certificate in terms of the order, dated 06.05.1995. The Mandal Revenue Officer was directed to implement the Form No.13-B in favour of the appellants in the revenue records while restoring the entries in Form No.1 of the Record of Rights and also directed to issue pattadar pass books and title deeds as per rules. Aggrieved thereby, the successor in interest of the original pattadar (4th respondent herein) preferred revision before the Joint Collector, Nalgonda District (3rd respondent). By the orders, dated 15.02.2005, the Joint Collector set aside the order of the Revenue Divisional Officer, dated 17.01.2004, and issued further directions. Aggrieved thereby, the petitioners instituted this writ petition.

2. Late Lingala Sathaiah was a defaulter of excise arrears due to the State. He was due of huge amount of money. Lingala Sathaiah issued Solvency Certificate by showing the subject lands. As the dues payable to the State were not paid, resort to the provisions of the A.P. Revenue Recovery Act, 1864, was made. The properties were attached and steps were taken to recover the money by conducting auction. Several times auction was conducted, but either there was no response or even though there was response, but people have dropped out from the purchase of the properties in issue. However, two auctions resulted in identifying the purchaser. First of such auctions was held on 27.05.1985 wherein the auction was knocked down in favour of Solipuram Suneelamma (5th respondent herein). However, this auction was subsequently cancelled on the ground that there was non-compliance of the minimum required time. The second auction was conducted on 25.11.1988. In the second auction, the entire extent of land i.e., Ac. 42.33 guntas in Survey Nos.566 to 569 of Kondamadugu Village was put for auction. The 6th respondent herein was the successful auction purchaser. Immediately after the auction was completed, Kadem Yadaiah and his brothers represented to the District Collector to defer the confirmation of auction held on 25.11.1988. The petitioners have also cleared all the dues payable to the Excise Department. The competent authority submitted report on 16.01.1989 informing the District Collector that the arrears due were paid. A further representation was submitted by Sri Kadem Yadaiah and others on 18.01.1989 to the District Collector to cancel the auction

conducted on 25.11.1988. The District Collector made an endorsement not to confirm the sale.

3. On remand, when the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) considered the matter on merits with reference to the claim of the petitioners for grant of Validation Certificate, the Mandal Revenue Officer dwelt into the issue and held that the subject lands are under Government attachment for recovery of excise arrears due by Lingala Sathaiah and, therefore, the question of validating the so-called Sale Deed by the Mandal Revenue Officer on earlier occasion was illegal. He further held that as per the Death Certificate which was placed before him, Lingala Bagaiah expired on 04.05.1955, whereas the Sale Deed contains the name of the deceased person executed on 15.04.1956. He, therefore, doubted the genuineness of the Sada Sale Deed relied upon by the petitioners. He ordered for restoration of names of the original pattadars in the revenue records. This was the subject of appeal before the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent). At the appellate stage, the auction purchaser (6th respondent) also participated. One of the issues formulated was whether M/s. Narne Estates Private Limited (6th respondent) is having any interest or right to claim the suit properties. Issue Nos.5 and 6 are on the validity of the decision taken by the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent). The Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent) held that since the sale is not confirmed and sixth respondent is only an auction purchaser, he has no manner of right to claim the suit properties. Having held so, the Revenue Divisional Officer held in favour of the petitioners herein

on Issue Nos.5 and 6.

4. This decision of the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent) was challenged by way of revision by Lingala Tulasidas (4th respondent herein) and M/s. Narne Estates Private Limited (6th respondent) herein in two separate revisions. Insofar as the second auction conducted on 25.11.1988 is concerned, the revisional authority held that the auction was conducted in contravention of the decree passed by the III Assistant Judge, City Civil Court, Hyderabad, in O.S.No.195 of 1958 and, therefore, the auction was vitiated.

5. The revisional authority recorded the following conclusions:

> "In view of the foregoing facts the court concluded that
>
> 1. The Excise arrears are not cleared and as such the land is continue to be under attachment for realization of arrears.
>
> 2. Due procedure as prescribed under rule 22 of AP Rights in Land and PPB rules 1989 is not followed in validating the sada sale deed for the suit lands in favour of the respondents herein by the Mandal Revenue Officer Bibinagar.
>
> 3. The suit land which was under attachment for realization of excise arrears is not liable for transfer under section 16 of APRR Act.
>
> 4. The genuiness of the sale deed in favour of respondent No.1 has to be decided by the Civil Court.
>
> In view of the above the order of the lower court under revision is set aside with the following directions.

1. The Mandal Revenue Officer Bibinagar should restore
the patta in the name of revision petitioners and cancel the PPB/TD issued in favour of respondent 1 to 5.

2. The Mandal Revenue Officer Bibinagar should workout
the arrears amount in consultation with Excise Superintendent Nalgonda, Hyderabad and Rangareddy together with interest thereon and decide how much amount is yet to be paid. He should continue the auction of suit land for realization of balance amount from the 1/8th share of defaulter.

3. The 2nd auction purchaser does not have any right to
demand for confirmation of sale. The Mandal Revenue Officer should return the deposits of 1st auction and 2nd auction bidders immediately, if not done already.

4. The parties have to settle the genuiness of the sale document in the civil court only as the Revenue Court is not competent to decide such issues.

5. Action shall be initiated against the Mandal Revenue Officer Bibinagar who issued 13-B certificate in favour of the respondent herein ignoring the fact of attachment of the land without following the procedure."

6. The 6th respondent herein filed W.P.No.10391 of 2005 challenging the said decision of the revisional authority insofar as nullifying the sale conducted on 25.11.1988.

7. Having regard to the decree passed by III Assistant Judge, City Civil Court, Hyderabad, in O.S.No.195 of 1958 wherein he has directed to conduct auction only to 1/18th of the share of the properties held by Lingala Kishtaiah, whereas the entire extent of land in Survey Nos.566 to 569 i.e., Ac. 42.33 guntas was put for

auction, the auction conducted on the said date was in violation of the decree passed and, therefore, the auction was not valid. This Court concurred with the decision by the revisional authority and upheld the said decision to that extent and W.P.No.10391 of 2005 is dismissed vide judgment, dated 30.04.2015.

8. Heard Sri P. Vishnuvardhan Reddy, learned counsel for the petitioners, the learned Government Pleader for Revenue (Telangana) for Respondents 1 to 3, Sri J. Prabhakar, learned counsel for Respondents 7 to 13, Sri M.V. Durga Prasad, learned counsel for Respondents 15, 17 to 19, 31 and 32, Sri K.R. Koteswara Rao, learned counsel for the 6th respondent, Sri Koduru Rama Chandra Reddy, learned counsel for Respondents 14 to 16 and Sri M.V. Raja Ram, learned counsel representing on behalf of Sri Ramakrishna Akurathi, learned counsel for the 4th respondent.

9. The learned counsel for the petitioners placed heavy reliance on the document entered into between the successors in interest of the property and the petitioners on 15.04.1956. The original document is in Urdu and translated copy is filed. The translated copy describes the document as Agreement of Sale. The original owners accept receipt of part sale consideration and give an undertaking to transfer the said lands on payment of the entire remaining amount of sale consideration. It also says that the possession has been delivered to the purchaser. Learned counsel for the petitioners placed reliance on subsequent endorsement made by one of the owners of the property evidencing the receipt of the balance sale consideration. Though there is no date mentioned in the translated document, learned counsel for the petitioners submits that the said document was

made on the same day on which the original agreement was entered.

10. Relying on these documents and the subsequent endorsement and the various averments made by the respondents, who are the successors in interest, learned counsel for the petitioners submits that they have accepted that it was a Sale Deed made by the original owners and by virtue of the said Sada Sale Deed, the property is vested in the petitioners. He, therefore, submits that the original decision of the Mandal Revenue Officer in exercising power under Section 5-A of the Act 1971 and validating the sale was valid and the subsequent decision of the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) and the revisional authority was erroneous.

11. Learned counsel for the petitioners has extensively referred to the averments made by the 4th respondent, who was the person who seriously contested in the first round of litigation upto this Court and in the second round of litigation which resulted in the impugned order. The other respondents, except Respondent Nos.15, 17 to 19, 31 and 32, also supported the version of the 4th respondent that what was entered into on 15.04.1956 was a Sale Deed and not an Agreement of Sale and that they stand by their commitment that the property was already sold. Learned counsel for the petitioners' forcible submission is that whether a sale was validly conducted by the competent authority under the Revenue Recovery Act, 1890, on 25.11.1988 was the only issue to be considered and the other issue whether it was a valid sale and whether the transaction was concluded and the petitioners are

deemed to be the valid purchasers and entitled to validation of the said sale in exercise of power under Section 5-A of the Act 1971 cannot be gone into.

12. In support of his contentions, the learned counsel for the petitioners relied on the following decisions:

1. K. Seetharama Reddy and another Vs. Hassan Ali Khan and others
[2003 (1) ALT 276 (D.B.)]

2. V. Goutham Rao Vs. Revenue Divisional Officer, Jagtial, Karimnagar District and another
[2003 (1) ALT 615]

3. M.B. Ratnam and others Vs. Revenue Divisional Officer, R.R. District, East Division at Hyderabad and others
[2003 (1) ALT 688 (D.B.)]

4. V. Krishnaiah and others Vs. Joint Collector, Mahabubnagar and others
[2007 (3) ALT 720]

5. Shaik Bikkam Ali @ Gulam Mohd. Sarvar Vs. Wali Pasha and others
[2012 (5) ALT 480]

13. Placing reliance on several decisions referred to above, learned counsel for the petitioners contends that on cumulative reading of various provisions of the Act, 1971, the document presented by petitioners is liable to be validated. If the terms of the agreement, dated 15.04.1956, and subsequent conduct of the successors in interest of the original owner is clear that said document is nothing but a Sada Sale Deed and, therefore, it can be validated in exercise of power under Section 5-

A of the Act 1971.

14. Sri M.V. Raja Ram, learned counsel representing the 4th respondent support the submissions of the learned counsel for the petitioners. He submits that it was illegal on the part of the revisional authority in reversing the order of the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent). The successors in interest of the original owner have sold the property and on more than one occasion it was stated that the property was already sold. Learned counsel also contends that the entire arrears of Excise Department were paid by the purchaser. After the passing of orders by the revisional authority also more than Rs.21,00,000/- was paid to clear all the arrears of late Lingala Sathaiah. He submits that though he has contested the earlier decision of the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) as well as the decision of the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent), which resulted in the impugned order by the revisional authority, he has later realized that it was erroneous on his part to contest when the sale was already finalized and property was given to the petitioners on receipt of the full sale consideration. Other counsels also contend that it was a Sale Deed and not an Agreement of Sale.

15. These submissions are vehemently opposed by the learned counsel representing Respondent Nos.15, 17 to 19, 31 and 32. Learned counsel contends that what was relied upon is only an Agreement of Sale and in view of the principle of law laid down by the Divisional Bench of this Court in ***Konkana Ravinder Goud (1 supra)***, such an Agreement of Sale cannot be validated and,

therefore, the action of the Revenue Divisional Officer, Bhongir, Nalgonda District (2nd respondent) in seeking to validate the Agreement of Sale was illegal.

16. Learned counsel further submits that they are also the legal heirs of the original pattadar and they have vital interest in the property. Without notice or opportunity given to them, the proceedings were passed. They ought to have been put on notice. Learned counsel referred to Rule 22 of the Rules 1989 in support of his contention that even the persons interested are entitled to notice before passing orders under Section 5-A of the Act 1971. The term 'used' in Sub-rule 3 of Rule 22 of the Rules 1989 is in mandatory terms. No notice was issued to them and no opportunity was afforded before decision was taken to validate a sale. On this ground alone, the proceedings vitiated. The revisional authority, having considered this aspect, has come to correct conclusion. Learned counsel further submits that the sale was validated in the year 1995 for the first time and the value assessed was only Rs.315/-, whereas the market value of the property in 1995 was far higher. Therefore, what was directed to be paid was not the correct amount and, therefore, the decision of the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) on 08.07.1995 is also not valid on this ground. Placing reliance on the Division Bench judgment, the learned counsel, therefore, submits that the revisional authority has come to a correct conclusion and there is no error warranting interference by this Court.

17. Sri M.V. Durga Prasad, learned counsel for the respondents relied on the following decisions:

1. Sri Bhavanarishi Co-operative House Building Society, Hyderabad Vs. Joint Collector, R.R. District, Hyderabad and others
[2002 (5) ALD 398]

2. Konkana Ravinder Goud and others Vs. Bhavanarishi Co-operative House Building Society, Hyderabad and others
[2003 (5) ALD 654 (DB)]

3. V. Manjula and others Vs. Mandal Revenue Officer, Maklur Mandal, Nizamabad District and others
[2012 (6) ALD 610]

18. In response to these two contentions referred to above, learned counsel for the petitioners submits that amount determined was the amount of difference payable if the Sale Deed was registered on the day when it was entered into and after ascertaining the value from the Registration Department, the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) has fixed the amount and the amount fixed was correct and there is no deficiency in payment of the amount. He further submits that Rule 22 of the Rules 1989 cannot be relied upon by these respondents as they were never in picture. They are not family members of original pattadar. They never contested the matters all alone. They never disputed the existence of an agreement to sell and, therefore, they have no valid claim. More particularly, when successors in interest have accepted that what was entered into on 15.04.1956 was nothing but a Sale Deed and, therefore, it can be validated.

19. In this writ petition, the issue for consideration is whether the decision of the revisional authority in setting aside the order of the Revenue Divisional Officer, Bhongir, Nalgonda District

(2nd respondent) holding that the petitioners are entitled for issuance of Validation Certificate under Section 5-A of the Act 1971 is valid?

19a. To appreciate the rival contentions, it is necessary to scan the provisions of Section 5-A of the Act 1971 and Rule 22 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for short, 'the Rules 1989) made thereunder. The said provisions read as under:

Section 5-A of the Act 1971:

"**5-A. Regularisation of certain alienations or other transfers of lands:-**

(1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or affected otherwise than by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.

(2) On receipt of such application, the Mandal Revenue Officer shall after making such enquiry as may be prescribed require the alienee or the transferee to deposit in the office of the Mandal Revenue Officer an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the registering officer on a reference made to him by the Mandal Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed :

Provided that the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under this sub-section unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation

Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(3) Nothing contained in sub-section (1) and sub-section (2) shall be deemed to validate any alienation where such alienation is in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(4) The Mandal Revenue Officer on deposit of an amount specified in sub-section (2), shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of certificate and such certificate shall, notwithstanding anything in the Registration Act, 1908 be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him.

(5) The recording authority, shall on the production of the certificate issued under sub-section (2) make any entry in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property."

Rule 22 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989:

"**22. Regularisation of certain alienations or transfers of land :-**

(1) The Mandal Revenue Officer shall issue a general Notification in Form No.IX, calling for applications from the persons who are recorded as occupants in Adangal/Pahani Patrika or in Record of Rights prepared earlier by virtue of an alienation or transfer made or effected otherwise than by registered document for declaring such alienation as valid. Such notification shall be published in the District Gazette in which the village is situated and also in the following manner, namely –

(i) by affixture in the chavadi or if there is no chavadi, in any other conspicuous place of the village ;

(ii) by affixture on the notice boards of the Gram Panchayat office, Primary Agricultural Co-operative Society and school if any ;

(iii) by beat of tom tom in the village ;

(iv) by affixture on the notice board of the Mandal Revenue Officer having jurisdiction over the village ; and

(v) by affixture on the notice board of office of the Mandal Praja Parishad in which the village is situated.

(2) The alienee or transferee shall file an application in Form 'X' on or before 31-3-2006 on the notification issued under sub-rule (1) to the Mandal Revenue Officer, if the alienation or as the case may be, the transfer took place before 31-12-2000: Provided that it shall not apply to the alienations or transfers made in contravention of the provisions of the Acts specified in the proviso to sub-section (2) of Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971.

(3) On receipt of the application under sub-section (2) of Section 5-A of the Act, the Mandal Revenue Officer shall issue notice to the alienor or transferor in Form No. XI specifying therein the date on which and the time at which he proposes to enquire into the application. He shall also cause to issue a notice in Form No.XII to all other persons believed to be interested in the land specifying therein, date, time and place at which he proposes to enquire into the application. Only unregistered documents shall be considered under Section 5-A of the Act.

(4) On the day so appointed or any other day to which enquiry may be adjourned by him, the Mandal Revenue Officer shall after hearing the parties and on examining their documents and witnesses, if any, and after taking such further evidence as he may consider necessary to satisfy himself that the alienation or transfer is not in contravention of any of the provisions of the Acts referred to in Rule 9(i)(a)(iv) complete the enquiry.

(5) (i) After completion of the enquiry under sub-rule (4) above, the Mandal Revenue Officer shall require the alienee or the transferee under Section 5(A) of the Act, to deposit through a challan in the treasury an

amount equal to the registration fees and stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Indian Registration Act, 1908 as fixed by the registered officer on a reference made to him by the Mandal Revenue Officer in Form No.XIII-A, on the basis of the value of the property arrived, within the time fixed by the Mandal Revenue Officer, not exceeding one month from the date of the communication and receipt of the order :

Provided that in case the Mandal Revenue Officer considers it expedient he may grant further extension of time.

(ii) On the deposit of the amounts through a challan in the treasury as under Cl.(i), the Mandal Revenue Officer shall issue a certificate in Form No.XIII-B as required under sub-sec. (4) of Sec.5-A of the Act to the alienee or the transferee declaring that alienation or transfer is valid from the date of issue of certificate.

(iii) A copy of every such certificate shall be communicated in Form XIII-C by the Mandal Revenue Officer to the Sub-Registrar having jurisdiction over the area in which the land in respect of which the Certificate has been granted is situate and the Sub-Registrar shall file the certificate in the relevant registration records and index them after ensuring collection of registration fee and stamp duty from the party under Clause (i).

(6) The Recording Authority shall on production of the certificate issue under sub-section (4) of Section 5-A of the Act make an entry in the Record of Rights in Forms 1 and 1B to the effect that the person whose name has been recorded as an occupant is the owner of the property from the date of the issue of the said certificate. The Recording Authority and the Mandal Revenue Officer shall make necessary entries in the Record of Rights in land in Forms 1 and 1B under proper attestation and referencing to files of the Mandal Revenue Officer.

(7) Thereafter a title deed and pass book shall be issue to the occupant in the category of owner-pattadar."

20. The scope and application of exercise of power under

Section 5-A of the Act 1971 is no more *res integra*. The Division Bench of this Court has considered the relevant provisions of the Act 1971 in the case of ***Konkana Ravinder Goud and others Vs. Bhavanarishi Co-operative House Building Society, Hyderabad and others***[1]. This Court held that in terms of the provisions contained in Section 5-A of the Act 1971, only a Sale Deed which was not registered can be validated and an Agreement of Sale cannot be validated. This Court held that Agreement to sell does not convey any right, title or interest in the property. Agreement of Sale only gives a right to seek specific performance of agreement to sell and does not vest any right, title or interest in the land. The Court further held that even in the cases pursuant to Agreement of Sale, the transferee takes possession of the land in part performance of the Agreement of Sale, such an act also does not confer any title in the land in favour of the transferee. This Court held as under:

> "The intent and purpose of the Act is very much clear that what was sought to be validated was only a completed contract of sale, which for want of registration, in view of the provisions of the Registration Act had not the effect, of conveying rights, title or interest in favour of the purchaser. The learned Single Judge proceeded to hold that the transfer or alienation made by agreement of sale can be regularized by placing reliance upon few decisions of the Supreme Court and of the High Courts for which we need to go into the details since the very approach of the learned Judge to the answer is erroneous. Such decisions could not have been made the basis in holding so. Instead of taking the definition of word "transfer" as contained in the Transfer of Property Act, the learned Single Judge proceeded to make use of the dictionary meaning of the word "transfer" and placed reliance upon the decision of the Supreme Court in *Pandey v. Ramchandra,* AIR 1992 SC 195 = (1992) 1 SCC 77. The Supreme Court in that case, proceeded to interpret the word "transfer" as contained in Section 71-A of Chotanagpur Tenancy Act. In the absence of definition of the word

> "transfer" under the provisions of the said Act, the Supreme Court held that considering the objects and reasons of Chotanagpur Tenancy Act more particularly Section 71-A of the said Act it was not proper to confine the meaning of the term "transfer" under the Transfer of Property Act or a statutory transfer. The Supreme Court proceeded to hold that even passing of possession from one person to the other as per scheme of the Act would amount to transfer. In our view, the ratio of the said decision could not have been made applicable while interpreting the word "transfer" as contained in Section 5-A of the Act, the scheme of which is different as noticed by us. The learned Single Judge also relied upon the decisions of the Apex Court in *Commissioner of Income Tax v. T.N. Aravinda Reddy,* (1979) 120 ITR 46, *Commissioner of Indicome Tax v. Podar Cement Private Limited,* (1997) 226 ITR 625, and *Balraj v. Commissioner of Income Tax,* (2002) 254 ITR 22, wherein in a different context the words "owner" and "transfer" were construed."

21. In ***M.B. Ratnam and others Vs. Revenue Divisional Officer, R.R. District, East Division at Hyderabad and others*** [2], the issue fallen for consideration was regarding maintainability of an appeal under Section 5-B of the Act 1971 to the Revenue Divisional Officer on an order passed by the Mandal Revenue Officer, Bibinagar Mandal, Nalgonda District (1st respondent) concerning an issue which arose prior to amendment of Section 5-B of the Act 1971. The Division Bench held that appeal provision was not available on such issue. However, the Division Bench also held that even if an order of the Mandal Revenue Officer is not communicated, an appeal has to be preferred within a reasonable time from the date of communication. Inordinate delay in filing appeals and condonation thereof after long lapse of time is not legal.

22. In ***Shaik Bikkam Ali @ Gulam Mohd. Sarvar Vs. Wali Pasha and others*** [3]***,*** learned Single Judge of this Court held

that the provisions of Section 5-A of the Act 1971 would operate notwithstanding the non-compliance of provisions of Sections 47 and 50-B of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The said principle has no application to the facts of this case.

23. In the case of ***V. Goutham Rao Vs. Revenue Divisional Officer, Jagtial, Karimnagar District and another*** [4], learned Single Judge of this Court held that the dispute of rival title can be decided by the Civil Court and not by the authorities under the Act 1971. The same view was taken by another learned Single Judge in ***V. Krishnaiah and others Vs. Joint Collector, Mahabubnagar and others*** [5]***.*** The learned Single Judge held that the scope of enquiry under Section 5-A of the Act 1971 is very limited and restricted. The Jurisdiction of the recording authority under the Act 1971 is confined to cases where no dispute exists as to the execution of document. The dispute, if raised, be adjudicated by a Civil Court. The same view was taken in ***V. Manjula and others Vs. Mandal Revenue Officer, Maklur Mandal, Nizamabad District and others*** [6]***.***

24. In the case of ***K. Seetharama Reddy and another Vs. Hassan Ali Khan and others*** [7]***,*** the Division Bench of this Court held that an Agreement of Sale simpliciter is not enough for regularization of the document under Section 5-A of the Act 1971.

25. In the instant case, plain reading of the document, dated 15.04.1956 would show that it is an Agreement of Sale. Only part sale consideration was paid on that day and they have clearly stated that the lands would be transferred on payment of

the entire remaining amount of sale consideration as promised by the purchaser. Whether the balance sale consideration was paid on the same day or subsequently has no relevance for consideration of this document *per se.* It may be true that the petitioners have paid the balance sale consideration and that the possession was also vested in them. It may be true that the original vendors have accepted that the sale is concluded. But these are not relevant facts for consideration by the recording authority. What was that intendment of parties to an agreement and their subsequent conduct is not relevant for him. He cannot dwell into these aspects. The facts in issue in this case are identical to the facts in ***Konkana Ravinder Goud's Case (1 supra),*** as can be deducible from paras 60 and 61 of the said judgment, which reads as under:

> "In the instant case, learned Counsel for the petitioners submitted that the agreements of sale executed by the vendors recite delivery of possession to them and such delivery of possession in favour of the vendees amounts to transfer within the meaning of Section 5-A of the Act and subsequent to entering into the agreement of sale and before filing of the applications, the vendees had paid full consideration to the vendors and this fact was admitted by holder of General Power of Attorney who raised no objection before the Mandal Revenue Officer. As such, it was contended that the transaction being a transfer it was within the competence of the Mandal Revenue Officer to have proceeded to pass an order in the matter.
>
> The Society had sought issuance of a certificate in their favour by filing applications under Section 5-A of the Act on the ground that having executed the agreements, the vendors had transferred the property in its favour and it was on the basis of such document, the society had sought issuance of certificate in its favour. We have already noticed the terms of the agreement of sale, which in turn are relied upon by the learned Counsel for the Society as document of transfer. The documents specifically stipulated in Clause (2) thereof that the transaction of sale covered by the

> agreement of sale has to be completed within a period of six months from the date of agreement to sell. Clause (3) stipulated for payment of the balance sale consideration in three instalments. The last instalment was payable at the time of registration of the sale deed. Certain obligations were to be performed by the vendors i.e., obtaining of Patta Certificate etc., requisite permissions from the concerned authorities for completing the sale transaction covered by the agreements and it further stipulated that if for any reason the sale transaction is not competed within the time, the time for cancellation of sale can be extended with the mutual consent by a further period of three months and in case the vendors would commit any default the society would be at liberty to proceed in a Court of law for the reliefs available to it including specific performance of agreement of sale. Such a document by no stretch of imagination can be termed as a complete contract of sale but has to be termed and treated only as an agreement to sell."

26. Thus, whether the sale was concluded and whether there were no rival claims cannot be gone into by the recording authority while exercising power under Section 5-A of the Act 1971. Thus, as held by the Division Bench in the above case, only in case of Sada Sale Deed, which was not registered earlier, the Mandal Revenue Officer can exercise power under Section 5-A of the Act 1971 and validate the sale. In view of the statutory mandate and the proposition of law laid down by the Division Bench of this Court in ***Konkana Ravinder Goud's Case (1 supra)*** and ***K. Seetharama Reddy's Case (7 supra),*** the decision arrived at by the revisional authority in directing restoration of pattadar pass books and title deeds in favour of original owners cannot be faulted.

27. In the facts of this case, it cannot be said that there was error in exercising jurisdiction by the revisional authority and the revisional authority erred in not considering the relevant facts in coming to the decision and was biased or it was

mala fide exercise of power. None of these parameters are fulfilled in this case to invalidate the order under challenge. The scope of judicial review in matters of this nature are very limited. Thus, it cannot be said that the order is palpably erroneous warranting exercise of extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. Thus, there is no merit in the writ petition.

28. Accordingly, the Writ Petition is dismissed. The order in this writ petition is on issues other than the claim of 6th respondent for confirmation of sale which is the subject matter in W.P.No.10391 of 2005. The said W.P. is dismissed by judgment, dated 30.04.2015. However, with reference to the entitlement of the petitioners to the property in issue vis-à-vis., the original vendors and their successors in interest, it is always open to the petitioners to work out their remedies as available in law and any observations made herein do not come in the way of working out such legal remedies as available to them. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 1st May, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.4734 of 2005

Date: 1st May, 2015

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[1] 2003 (5) ALD 654 (DB)

[2] 2003 (1) ALT 688 (D.B.)

[3] 2012 (5) ALT 480

[4] 2003 (1) ALT 615

[5] 2007 (3) ALT 720

[6] 2012 (6) ALD 610

[7] 2003 (1) ALT 276 (D.B.)