HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 29022 of 2012

ORDER:

The present writ petition is filed seeking issuance of writ of mandamus declaring the order dated 31.08.2012 passed by respondent No.1 in Rc.No.E5/1177/2011, confirming the order passed by respondent No.2 vide file No.A/2276/2008 dated 15.10.2008 as illegal, arbitrary and violative of principles of natural justice; and consequently to set-aside the same.

The averments in brief are as under:

The subject matter of the writ petition relates to land admeasuring Ac.3.27 gts., situated in Sy.No.374/A of Kadipikonda Village, Hanamkonda Mandal, Warangal District. The husband of the first petitioner by name late K.Adireddy had patta land in Sy.Nos.374 and 380 situated in the said Village. Originally the said land belongs to one Katta Mallaiah, S/o. Chennamallu, who had four sons by name Katta Seetharam Reddy, Sambha Reddy, Adi Reddy and Krishna Reddy. After the death of Katta Mallaiah, his elder son by name Katta Seetharam Reddy got his name mutated in revenue records as pattadar though all the legal heirs of Katta Mallaiah were in possession and enjoyment of the said land. Earlier, the Tahsildar, Hanamkonda issued pattadar pass books and title deeds in favour of the husband of petitioner No.1 by name Katta Adireddy and his name was also mutated in the revenue records as pattadar and possessor in respect of the land in Sy.No.374/A. It is to be noted that the husband of petitioner No.1 died on 11.06.1996 leaving behind petitioner Nos.1 and 2 as his legal heirs, who alienated the above property in favour of petitioner Nos.3 to 6 through registered sale deed vide document No.651/2001. Pursuant to the recommendation made by the Tahsildar, for cancellation of pattadar pass book and title deed issued in favour of K.Adireddy, respondent No.2 by his order dated 15.10.2008 cancelled the pattadar pass book and title deed issued in favour of Katta Adireddy in respect of land in Sy.No.374 to an extent of Ac.3.27 gts., of Kadipikonda Village, Hanamkonda Mandal during the year 1994-95 and directed the Tahsildar, Hamakonda, to take up the petition of Katta Jagan Mohan Reddy (respondent No.5) under the provisions of Section 5 (A) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 and after hearing all the parties concerned, directed him to pass orders for issuance of pattadar pass books within six weeks from the date of order. Aggrieved by the same, the petitioners herein preferred revision vide Rc.No.E5/1177/2011 before the Joint Collector, Warangal, who, by his order dated 31.08.2012 confirmed the order passed by the Revenue Divisional Officer, Warangal. Challenging the said revision, the present writ petition is filed.

Heard Sri P.S.P.Suresh Kumar, learned counsel appearing for the petitioners and Government Pleader for Revenue appearing for respondent Nos.1 to 3, Sri G.Venkat Reddy, learned counsel appearing for respondent No.4 and respondent No.5, who is represented by his G.P.A. Holder Sri M.Venkat Reddy, who appeared in-person. No representation on behalf of respondent No.6.

The main ground urged by the learned counsel for the petitioners is that the alleged appeal said to have been preferred by respondent No.5 before respondent No.2 is contrary to the dictum laid down by the Bench of this Court in W.P.No 21689 of 1999. He submits that though the order of respondent No.2 does not anywhere indicate that an application was filed pursuant to an order passed by respondent No.3, but a reading of the order show that the same was treated as an appeal and orders came to be passed canceling the pattadar pass book and title deed issued by the then Mandal Revenue Officer. He pleads that there is no provision under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 permitting the Revenue Divisional Officer to entertain an application directly without there being an order under challenge. He further submits that even if it is to be treated as an appeal, respondent No.2 erred in passing an order without hearing the petitioners and without there being an application to condone the delay in filing the appeal.

Per contra, learned counsel appearing for respondent No.4 would contend that the application for cancellation of pattadar pass book and title deed was filed before the Mandal Revenue Officer in the year 2005 and aggrieved by the inaction of the Mandal Revenue Officer, an application was filed before the Revenue Divisional Officer. Though the provision of law was not specifically mentioned in the application, latches, if any, will not go to the root of the matter. The application came to be filed only on coming to know about the issuance of pattadar pass book and title deed in favour of the petitioners in the year 2005. He further submits that the application has to be treated as an appeal since the same came to be filed against the issuance of pattadar pass book and title deed.

The G.P.A. holder of respondent No.5, who appeared in-person though argued the matter on merits, but could not meet the argument advanced by the learned counsel for the petitioners with regard to the maintainability of the case in the form of an appeal directly before respondent No.2. He relied upon the orders passed by this Court in W.P.No.16268 of 2012 to show that since a direction was given to the Joint Collector, Warangal to dispose of the appeal at the earliest, the petitioners cannot now raise the plea of maintainability.

The issue of maintainability of application before respondent No.2 never came up for consideration before this Court in W.P.No.16268 of 2012. The request which was made before this Court was for a direction to the Joint Collector to dispose of the matter and to grant stay with regard to change in the entries. Accepting the request made, the Joint Collector, Warangal, was directed to consider the revision filed by the petitioner therein and pass appropriate orders within four (04) weeks from the date of receipt of a copy of the said order. Therefore, the argument of the G.P.A. holder of respondent No.5 that the petitioners are barred from raising the plea of maintainability of the application before the R.D.O., cannot be accepted.

The Government Pleader for Revenue also opposed the same holding that there is no illegality in the order warranting interference.

The Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for Short "the Act") provides a procedure for mutation of name in the revenue records and for issuance of pattadar pass books and title deeds. Before proceeding further, it would be relevant to refer to Section 5 (5) of the Act, which reads as under:

> "Against every order of the Mandal Revenue Officer 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 of the Act, be final."

A reading of sub-section (5) of Section 5 of the Act shows that any person aggrieved by any decision of the primary authority with regard to making amendment in the record of rights or refusing to make any such change, has to prefer an appeal and such a decision of the appellate authority shall be subject to Section 9 of the Act.

Section 9 of the Act reads as under:

> "The Collector may either *suo motu* or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue Officer or Revenue Divisional Officer under Sections 3, 5, 5A or 5B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for reconsideration, he may pass orders accordingly.

It is also relevant to refer to Rule 21 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for Short "The Rules"), which reads as under:

> "21 (1). An appeal against every order of the Mandal Revenue Officer either making an amendment in the Record of Rights or refusing to make such amendment shall like under sub-Section (5) of Section 5 of the Act, to the Revenue Divisional Officer/Sub-Collector/Assistant Collector or such authority as may be notified by the Commissioner.
>
> (2) Every appeal referred to in sub-rule (1) shall be in writing and shall set forth concisely the grounds thereof within a period of sixty days from the date of communication of the order and shall be accompanied by a copy of the order appealed against.
>
> (3) Every appeal referred to in sub-rule (2) above, shall bear a Court-fee stamp of rupees five only."

From the above, it is clear that against every order of the recording authority in 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. The order passed in such appeal is final subject to the provisions of Section 9 of the Act. Rule 21 of the Rules read with Section 5 (5) of the Act deal with the manner in which an appeal has to be filed besides prescribing 60 days limitation for filing an appeal.

Thus, it is clear that respondent No.2 is constituted as an appellate authority, conferring with the powers of entertaining an appeal filed by the aggrieved parties by following the procedure prescribed under the Act and Rules.

In ***Thota Narasinga Rao v. State of Andhra Pradesh and others***[1] this Court after referring to all the provisions under the un-amended Act held that either at the stage of preparing record of rights under Section 3 (1) of the Act or at the stage of altering record of rights as contemplated under Section 4 read with Section 5 (1) (2) and (3) of the Act, it is the Mandal Revenue Officer, who has to conduct enquiry as contemplated under the Act and the Rules. It has been held that when a person is aggrieved by any order of the recording authority either making an amendment in the record of rights or refusing to make such amendment, an appeal shall lie to the Revenue Divisional Officer. Sub-section (6) of Section 5 of the Act further clarifies that the Mandal Revenue Officer shall have the power to correct clerical errors if any in the pattadar pass book. The order passed by the Revenue Divisional Officer under Section 5 (5) of the Act is explicitly made subject to the provisions of Section 9 of the Act, which confers the revisional powers on the Collector.

While dealing with the distinction between sub-section (5) of Section 5 and Section 9 of the Act, the Court held that under Section 9 of the Act, the Joint Collector can *suo moto take up* revision in relation to the record of rights or order, any recording authority/appellate authority to satisfy himself as to regularity, correctness, legality or propriety. But this power is conspicuously absent in sub-section (5) of Section 5 of the Act. A reading of Section 5 (5), Section 9 and sub-section (6) of Section 5 of the Act together, makes it clear that when once the pattadar pass book/title deed is issued to the person claiming to be the owner of the agricultural land, the same can be cancelled by an appellate authority on an appeal being presented to him or by revisional authority either *suo motu* or on an application. Therefore, the Revenue Divisional Officer has no power to cancel the pattadar pass book and title deed on an application without there being an appeal challenging the order passed by the Mandal Revenue Officer.

I n ***Thripuravaram Krishna Reddy v. Joint Collector, Cuddapah***[2] this Court held that the appellate authority under Section 5 (5) of the Act cannot entertain his appellate powers unless an appeal is filed within the period of limitation and by following the procedure prescribed by Rule 21 of the Rules.

Similar view was expressed by this Court in ***Peddi Sailaja and another v. State rep. by Principal Secretary to Government of Andhra Pradesh***[3]**,** i n ***Krishtappa and others v. Joint Collector***[4] and in ***Vutukuru Subba Rao v. State of Andhra***

***Pradesh and others*[5].**

Keeping in view the principles laid down in the judgments referred to above, it has to be seen whether the Revenue Divisional Officer (respondent No.2) has exercised the power as an appellate authority or has *suo motu* exercised the same on the basis of an application made by the aggrieved party.

The un-disputed facts which are culled out from the entire material is that respondent No.2 not only entertained an application made to him directly by respondent No.5 and another but also relied upon the recommendations made by the Tahsildar for cancellation of pattadar pass book and title deed issued infavour of Katta Adireddy and others. This action of respondent No.2 in canceling the pattadar pass book and title deed issued in favour of Katta Adi reddy basing on the recommendation of the Mandal Revenue Officer and by entertaining an application directly is *ex-facie* illegal and improper and as such the same warrants interference by this Court. The proceedings before respondent No.2 cannot be termed as an appeal since no order is challenged before him. He cannot act either as a primary authority or as a revisional authority unless an appeal is brought before him in the manner prescribed under Section 5 (5) of the Act and Rule 21 of the Rules. Therefore, it has to be held that *suo motu* exercise of powers and passing an order of canceling the pattadar pass book and title deeds or even assuming it to be an appeal, entertaining the same without there being an application to condone the delay is without jurisdiction and the same deserves to be set-aside.

In view of the above, the order dated 15.10.2008 passed by respondent No.2, which was confirmed by respondent No.1 is accordingly set-aside to the extent of cancellation of pattadar pass book and title deed issued in favour of Katta Adi Reddy etc. However, the Mandal Revenue Officer, to whom the matter has been remanded shall deal with the application filed by Katta Jagan Mohan Reddy (respondent No.5) and another and pass orders in accordance with law, un-influenced by the observations made in any of the orders, as expeditiously as possible, preferably, within a period of eight (08) weeks from the date of receipt of a copy of the order, after giving opportunity to all the necessary parties.

With the above direction, the writ petition is disposed of. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

24.11.2015
gkv

[1] (2007) 1 ALD 500

[2] (2009) 1 ALD 248

[3] (2014) 3 ALT 181

[4] (2014) 4 ALD 8

[5] (2014) 4 ALD 205