THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.24532 of 2010

Dated : 06.04.2015

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Between:

Myakala Mallaiah S/o.Mallaiah,

Aged about 89 yrs, Occu: Agriculture,

R/o.Shameerpet Village and Mandal,

Rangareddy District & others

.. Petitioners

And

The Joint Collector,

Ranga Reddy District & others

.. Respondents

This Court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

The petitioners claim to have purchased Ac.3.10 guntas of land in Survey Nos.39, 40 and 41, Shameerpet Village and Mandal, Rangareddy District on 11.12.1976 by way of an agreement of sale executed by Sri Muthyala Sugriva. Sri M. Sugriva claimed that he purchased the same extent of land by way of an agreement of sale dated 10.04.1977 from the original pattedars. The petitioners filed application before the Mandal Revenue Officer, Shameerpet Mandal, Ranga Reddy District, for validation of the said agreement of sale under Section 5-A of A.P. Record of Rights in Land and Pattedar Pass Book Act, 1971 (for short 'the Act 1971'). The original pattedars also appeared before the Mandal Revenue Officer. On contest the Mandal Revenue Officer passed orders dated 04.03.1993 validating the sale in favor of petitioners under Section 5-A of the Act, 1971. The original pattedars preferred appeal under Section 5 (5) of the Act, 1971 on 28.10.1993 before the Revenue Divisional Officer, Ranga Reddy. After the demise of Mahboob Khan and Rahamath Khan, the legal heirs prosecuted the litigation. By order dated 15.12.2007, the Revenue Divisional Officer, dismissed the appeal. Aggrieved thereby they filed Revision before the Joint Collector, Ranga Reddy District in February, 2008. The said revision was allowed by the Joint Collector on 07.11.2009 and remitted the matter for consideration afresh by the Revenue Divisional Officer. Aggrieved by the said order of remittance, this writ petition is instituted.

2. Heard learned counsel for the petitioners and learned Assistant Government pleader appearing for respondents 1 and 2 and Sri M. Venkat Ram Reddy, learned counsel appearing for party respondents 3 to 9.

3. Learned counsel for the petitioner contends that the order of the Joint Collector is erroneous. He ought not to have passed an order remitting the matter back to the Revenue Divisional Officer. The provision conferring appellate jurisdiction on Revenue Divisional Officer was made for the first time on 31.10.1993 by way of amendment to Section 5-B of the Act, 1971 and as the subject matter in the writ petition was prior to the said date, the appeal was not maintainable. Thus, revision was also not maintainable. Therefore, the question of entertaining the revision against the said order and consideration of revision and remitting the matter to the Revenue Divisional Officer is *ex facie* illegal. In support of his contention learned counsel placed reliance on the decision of this Court in ***M.B.Ratnam and others Vs Revenue Divisional Officer, Ranga Reddy District and others***.

4. Learned counsel Sri M. Venkat Ram Reddy does not dispute the factum of amendment to Act, 1971 made on 31.10.1993 and having prospective effect. However learned counsel submits that having regard to the fact that the provision of appeal was not available till 31.10.1993, against the decision of Mandal Revenue Officer under Section 5-A of the Act, 1971, the aggrieved party can avail the remedy of revision before the Collector under the Act, 1971. Therefore, revision was maintainable and the Joint Collector ought to have decided the revision. In support of such contention learned counsel placed reliance on the decision of the Full Bench of this Court in ***Santosh Verma and others Vs Joint Collector, R.R. District and others***.

5. The short question that arises for consideration in this Writ Petition is if the

appeal filed by the respondents 3 to 9 before the Revenue Divisional Officer on 28.10.1993 aggrieved by the order of Mandal Revenue Officer under Section 5-A of the Act, 1971 dated 04.03.1993 was not maintainable is it permissible for the respondents 3 to 9 to file revision before the Collector under Section 9 of the Act, 1971?

6. The principle of law on the scope of appeal against the decision of Mandal Revenue Officer under Section 5-A of the Act, 1971 prior to amendment to Section 5-B and scope of revision under Section 9 of the Act, 1971 is no more res-integra.

7. In the two decisions relied upon by the learned counsel for the petitioners as well as respondents respectively these issues have been settled. In ***M.B.Ratnam's Case*** (1st supra) the Division Bench of this Court held that if by the time of institution of petition under Section 5-A of the Act, 1971, before the Mandal Revenue Officer, the amendment to Section 5-B of the Act, 1971 was not made, no appeal would lie and therefore, entertaining such an appeal is *ex-facie* illegal and it amounts to inherent lack of jurisdiction.

8. In the instant case, the order of the Mandal Revenue Officer was dated 04.03.1993 and appeal was filed before the Revenue Divisional Officer on 28.10.1993 i.e., both were prior to 31.10.1993. Thus, on the day when the Revenue Divisional Officer entertained the appeal, he had no jurisdiction and entertaining of appeal was *ex-facie* illegal. As a corollary no revision would lie against an order passed by the Revenue Divisional Officer. Thus, the direction of the Joint Collector in remitting the matter to Revenue Divisional Officer treating him as appellate authority is erroneous and is liable to be set aside on that ground alone.

9. However, if the matter is left there, an aggrieved person against the decision of the Mandal Revenue Officer would be remediless. Dealing with identical situation, the Full Bench of this Court held that prior to the amendment of Section 9 of the Act, 1971 the Collector was competent under the un-amended section to exercise power of revision against the orders passed by the Mandal Revenue Officer under Section 5-A(4) of the Act, 1971. The Full Bench of this Court upheld the view taken by the Division Bench wherein, it was held that Section 9 as substituted by Act 9 of 1994 only clarifies that the power of revision can be exercised by the Collector not only against the orders of the Revenue Divisional Officer made on an appeal under Section 5-B of the Act, 1971 but also against the orders of the Mandal

Revenue Officer under Section 5-A of the Act, 1971. Thus the aggrieved persons (respondents 3 to 9) are entitled to prefer revision under Section 9 of the Act, 1971 against the orders of Mandal Revenue Officer under Section 5-A of the Act, 1971.

10. Having regard to the above two decisions, the order of the Joint Collector dated 07-11-2009 impugned in this writ petition remitting the matter to the Revenue Divisional Officer for consideration of appeal afresh and the order of the Revenue Divisional Officer in entertaining the appeal and passing orders on 15.12.2007 are set aside. Respondents 3 to 9 are granted liberty to prefer revision under Section 9 of the Act, 1971 against the decision of the Mandal Revenue Officer dated 04.03.1993.

11. Section 9 of the Act, 1971, has not stipulated time limit to prefer the revision. However, well settled principle law by long line of cases is that even if no time limit is prescribed to prefer revision, it has to be preferred within reasonable time. What is reasonable time depends on fact of a given case.

12. It is seen from the facts on record that immediately after the orders passed by the Mandal Revenue Officer, respondents 3 to 9 filed appeal before the Revenue Divisional Officer. The said appeal was entertained and orders were passed in their favor. It has culminated in the order by the Joint Collector on 07.11.2009 which is now set aside on the ground that the original appeal before the Revenue Divisional Officer was not maintainable and therefore, the consequential proceedings are also liable to be set aside on that ground. As held by the Full Bench of this Court in ***Santosh Verma's case*** (2nd supra) respondets 3 to 9 are entitled to prefer revision against the order of Mandal Revenue Officer. Having regard to the peculiar facts of this case, it cannot be said that the respondents 3 to 9 were not diligent in prosecuting the litigation and there was unreasonable delay in preferring revision.

13. However, having regard to the long pendency of the issue, the respondents 3 to 9 are granted six (6) weeks time to file revision from the date of receipt of copy of this order. If such revision is not filed, within six weeks, the revision is not maintainable. On filing of revision, the Joint Collector shall consider the same on its merits after duly putting the petitioners herein on notice.

14. With the above observation the writ petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

__________________ **P.NAVEEN RAO,J**

6th April, 2015

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