THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No. 13153 of 2015

ORDER:

The Endorsement dated 17.04.2015 issued by the 3rd respondent-Tahsildar is challenged before this Court on the ground that the Tahsildar, while considering the applications filed under Sections 4 and 5 read with Rule 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act') and the Rules made thereunder, discharges the functions of a quasi-judicial authority and is required to pass an order after considering the material placed before him, the objections raised and conducting enquiry. In the present case, the 3rd respondent, except stating that the report of the Mandal Revenue Inspector and the VRO revealed that the petitioners have not submitted relevant documents, has not furnished any material based on which the impugned Endorsement came to be passed; thereby, the petitioners are deprived of the opportunity to make submissions; and therefore, prays to set aside the Endorsement dated 17.04.2015.

2. Having considered the arguments of the learned counsel for the parties, in the light of the statutory scheme, the contentions raised by the petitioners' counsel are justified. The method and manner of making application and the procedure for consideration of such applications are set out in detail in the Act and the Rules, particularly Rules 6 and 9 deals with the method and manner of conducting enquiry and passing of orders. What kind of objections can be taken into consideration in the process of enquiry, are set out in detail and there is a specific methodology prescribed under the Act. The impugned Endorsement does not indicate any such aspects have been considered by the authority. The Tahsildar, being a quasi-judicial authority dealing with the rights of the parties, is required to deal with the cases before him in terms of the Act and the Rules prescribed and cannot deviate from the methodology in any manner, as such deviation is liable to be interfered with as *ultra vires*. Further, there is no provision in the Act or the Rules to issue proceedings terming them as

Endorsement. Sections 4 and 5 of the Act and Rules 6 and 9 of the Rules contemplate as below:

“**Section 4:** Acquisition of rights to be intimated:-

(1) Any person acquiring by succession, survivorship, inheritance, partition, Government patta, decree of a court or otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land and any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such right, to the Mandal Revenue Officer within ninety days from the date of such acquisition, and the said Mandal Revenue Officer shall give or send a written acknowledgment of the receipt of such intimation to the person making it:

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other persons having charge of his property shall intimate the fact of such acquisition to the Mandal Revenue Officer.

(2) Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908) every registering officer appointed under the Act and registering a document relating to a transaction in land, such as sale, mortgage, gift, lease or otherwise shall intimate the Mandal Revenue Officer of the Mandal in which the property is situate of such transaction.

Explanation I:- The right mentioned above shall include a mortgage without possession and a right determined by civil court.

Explanation II:- A person in whose favour a mortgage is discharged or extinguished, or a lease is determined, acquires a right within the meaning of this section.

Section 5: Amendment [and updating] of Record of Rights:-

(1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, the Mandal Revenue Officer shall determine as to whether, and if so in what manner, the record of rights may be amendment in consequence therefor and shall carryout the amendment in the record of rights in accordance with such determination;

Provided that no order refusing to make an amendment in accordance with the intimation shall be passed unless the person making such intimation has been given an opportunity of making his representation in that behalf.

(2) Where the Mandal Revenue Officer has reason to believe that an acquisition of any right of a description to which Section 4 applies has taken place and of which an intimation has not been made to him under that Section and where he considers that an amendment has to be effected in the record of rights, the Mandal Revenue Officer shall carry out the said amendment in the record of rights.

(3) The recording authority shall before carrying out any amendment in the record of rights under sub-section (1) or sub-section (2) issue a notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. A copy of the amendment and the notice aforesaid shall also be published in such manner as may be prescribed. The recording authority shall consider every objection made in that behalf and after making such enquiry as may be prescribed pass such order in relation thereto as he deems fit.

(4) Every order passed under this section shall be communicated to the person concerned.

(5) Against every order of the recording authority either making an amendment in the record of rights of 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 fo 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.

(6) The Mandal Revenue Officer shall have the power to correct clerical errors, if any, in the Pass Books.

Rule 6 (1): The Recording Authority shall arrange for the receipt of the statement of claims submitted in response to the notice referred to in Rule 5 and shall also arrange for acknowledging the statement of claim on the duplicate, triplicate copy of claims statement and shall, on the date specified in the notice in this behalf, proceed to and hold an inquiry in the village. A Register shall be maintained in the Form No.II-A for the claims received in response to the notice in the Form No.II.

(2) During the enquiry referred to in sub-rule (1) the Recording Authority:-

(a) receive further statements of claims in writing that may be submitted to him;

(b) hear any oral representation made in respect of any claim and make a summary record of such representation; and

(c) examine the relevant registers, records and accounts already maintained in respect of the lands in the village for the purpose of collection of land revenue or otherwise.

Rule 9(1)(a): After due completion of enquiry, referred to in Rule 6 of the Recording

Authority shall pass orders in respect of—

i. All cases requiring change of Registry necessitated by the death of registered holder i.e., succession by heirship, if succession is not disputed. With regard to the entry of the names of the heirs, the names of all the heirs entitled to shares in the property should be registered:

(ii) All cases requiring change of registry necessitated by sale, gift, etc., through registered documents, if there is no dispute. In all cases of absolute transfer of title the Registry of a holding should be altered to correspond with the transfer of its ownership. Where registered holder should be enquired. The Parties involved in a transfer should be connected by a complete chain of registered documents. Un registered documents are not admissible as evidence in this enquiry to prove the ownership or title of their property. Where the chain is not complete, no transfer of registry shall be done. Such cases shall be referred to the Mandal Revenue Officer, for disposal after confirmation of the Record of Rights for the Village.

Rule 9(1)(c)(ii): In respect of case falling under Rule 9(1)(a)(i), the Mandal Revenue Officer shall hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder, according to the principles of the Law of Succession which govern the case and give notice to all persons known or believed to be interested to the effect that the registry will be made in the name of the person found to be entitled, unless a declaration is filed, within three months from the date of the notice, by any person objecting to the registry, stating that he has instituted a suit in a Civil Court to establish his superior title and an authenticated copy of the plaint in the suit is produced. If no declaration is filed, the registry should be made as stated in the notice, at the expiration of three months. If a declaration is filed, the result of the suit should be awaited before taking further action.

Rule 9(1)(c)(iii): In respect of cases falling under Rule 9(1)(a)(ii) if the claim is not complete, the Mandal Revenue Officer can consider other evidence such as statements of respective ryots, kist receipts etc., and take a decision. One month's time shall be allowed for filing objections if any, and an enquiry be held in respect of the same. Thereupon, transfer of registry shall be ordered unless the objection is found to be valid."

3. In that view of the matter, the impugned Endorsement is set aside as not in

conformity with the Act and the Rules. The 3rd respondent is directed to consider the applications submitted by the petitioners and provide an opportunity of hearing, and pass orders on merits, in accordance with law.

4. With the above observations, the writ petition is disposed of. No costs. Pending miscellaneous petitions shall stand closed.

CHALLA KODANDA RAM, J

01st May, 2015

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