IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE THIRTY FIRST DAY OF MARCH TWO THOUSAND AND FIFTEEN

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.12510 of 2002

Between:

Kamati Peddaiah, S/o. Late Shivaiah,

Aged about 55 years, Agriculturist,

R/o. Brahmanpally Village,

Hayathnagar Mandal,

Ranga Reddy District & 7 others

.. Petitioners

AND

The Joint Collector,

Ranga Reddy District,

Khairatabad, Hyderabad & 5 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.12510 of 2002

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ORDER:

The writ petition is instituted challenging the orders passed by the Joint Collector, Ranga Reddy District (1st respondent), dated 20.05.2002 setting aside the orders passed by the Mandal Revenue Officer dated 17.07.1998, as affirmed by the Revenue Divisional Officer, dated 30.05.2000, under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, 'the Act 1971').

2. The facts giving rise to the institution of this writ petition are as under:

Claiming that the petitioners herein entered into an agreement of sale dated 04.01.1960, to an extent of Ac. 6.39 guntas in Survey No.216 of Mangalapalli Village, Ibrahimpatnam Mandal, after paying the sale consideration and after taking possession of the said land, an application was filed under Section 5-A of the Act 1971 before the Mandal Revenue Officer to validate the sale and to grant certificate. The Mandal Revenue Officer passed orders on 30.08.1990 in favour of petitioners. The party respondents herein filed application before the Mandal Revenue Officer for issuance of certificate under Section 5-A of the Act 1971 concerning the same property, relying on agreement of sale dated 22.07.1965. The said application was rejected by order dated 10.12.1993 on the ground that already a certificate on the same property was issued in favour of the petitioners. Aggrieved thereby, the party respondents herein filed appeal before the Revenue Divisional Officer. The Revenue Divisional Officer by his orders dated 05.07.1997 remitted the matter for re-consideration by the Mandal Revenue Officer. On such remission, the Mandal Revenue Officer passed orders on 17.07.1998 holding that the document dated 22.6.1965 relied by party respondents is forged and therefore no relief can be granted and that the petitioners are entitled to declaration sought by them and issuance of the certificate under the Act 1971.

3. Aggrieved thereby, the respondents herein preferred appeal before the Revenue Divisional Officer. The Revenue Divisional Officer by his orders, dated 30.05.2000, confirmed the orders passed by the Mandal Revenue Officer. Aggrieved thereby, the respondents herein filed revision before the Joint Collector, Ranga Reddy District (1st respondent). The Joint Collector, by the impugned orders, dated 20.05.2002, set aside the orders passed by the Mandal Revenue Officer and the Revenue Divisional Officer and holds that there being disputed claims on the issue, the Mandal Revenue Officer ought not to have

exercised powers under Section 5-A of the Act 1971 and the parties should work out their grievances before appropriate civil Court. When there are disputed questions of fact, Mandal Revenue Officer, ought not to have entertained application under Section 5 A of Act, 1971. The Revisional Authority observed that the agreements of sale cannot be validated.

4. Heard Sri M. Rama Rao, learned counsel for the petitioner, the learned Assistant Government Pleader for Revenue for the 1st respondent and Sri V. Ravi Kumar, learned counsel for respondents 2 to 6.

5. Learned counsel for the petitioners contends that the order of the Joint Collector, Ranga Reddy District (1st respondent), dated 20.05.2002, is erroneous and is unsustainable in law. The Mandal Revenue Officer has validly exercised powers vested under Section 5-A of the Act 1971 holding in favour of the petitioners and to issue a certificate as mandated by the said provision. The Joint Collector having held that the reliance placed by the respondents on the alleged agreement of sale, dated 22.06.1965, is not valid, and ought not to have gone into other issues concerning the petitioners and ought to have dismissed the revision filed by the party respondents herein. The Mandal Revenue Officer considered all the contentions of the petitioners and the respondents herein and after recording the evidence, he has come to a clear conclusion that the petitioners are in possession and enjoyment and they are entitled to claim a certificate in accordance with the Agreement of Sale, dated 04.01.1960. The same issue was considered by the appellate authority and affirmed the decision of the Mandal Revenue Officer. The Joint Collector failed to appreciate the same and erred in setting aside the said orders.

6. Learned counsel for the petitioners further submits that the Joint Collector erred in holding that the property described as belonging to Ranga Reddy District, whereas in 1973 there was no Ranga Reddy District and this itself throws doubts on the correctness of the documents relied upon by the petitioners, without appreciating the fact that in the English translation there was typographical error, where as original document did not contain the name

of Ranga Reddy District. The Joint Collector also erred in holding that there is contradiction in the Agreement of Sale, dated 01.04.1960, and the Sale Deed, dated 20.10.1973. On account of the difference in time frame from the original Agreement of Sale and subsequent Sale Deed, there is variation in the amounts and merely because there is some variation in the amounts cannot be a ground to ignore the subsequent Sale Deed.

7. Learned counsel for the petitioners further contends that the description of the property was wrongly made and merely because there was a wrong description, when the survey number and other boundaries are tallying it could not have been the basis for the Joint Collector to hold that the document, dated 20.10.1973, is not valid.

8. Learned counsel for the petitioners further contends that the finding recorded by the Joint Collector that the document, dated 20.10.1973, is fabricated is erroneous and by recording such a finding, he has denied the right of the petitioners to apply before the Mandal Revenue Officer under Section 5-A of the Act 1971 by relying upon the document, dated 20.10.1973.

9. The respondents having suffered the orders before the Mandal Revenue Officer and the Revenue Divisional Officer, with reference to the validity of the document relied upon by them, dated 22.07.1965, have no manner of right to challenge the certificate granted by the Mandal Revenue Officer and, therefore, having no *locus standi* to contest this writ petition. They are no way concerned with the issue. Assuming that they have a grievance with reference to the Agreement of Sale, dated 04.01.1960, and subsequent Sale Deed, dated 20.10.1973, they ought to invoke the jurisdiction of the civil Court claiming appropriate relief.

10. Learned counsel for the petitioners further contends that the declaration given by the civil Court in O.S.No.371 of 1996 as affirmed by the first appellate Court in A.S.No.82 of 2008 is only with reference to the

possession and is not concerning the title of the property. Therefore, the findings recorded therein cannot be the basis for the claim of the respondents. Be that as it may, the said judgments are under challenge and the Second Appeal No.949 of 2012 is pending consideration of this Court.

11. Ground 'E' of the writ petition is amended vide order dated 19.2..2014 in W.P.M.P. No. 4290 of 2014. The learned counsel contends that the Joint Collector relied upon wrong translation copy, in which by mistake the district was mentioned as Ranga Reddy District, whereas in the original no district name was mentioned. Thus, the decision of Revisional Authority was erroneous and is liable to be set aside and matter may be remitted for re-consideration.

12. Sri V. Ravi Kumar, learned counsel representing respondents 2 to 6 contend that the order of the Joint Collector is not solely based on the wrong description of the District in the translated copy of the document, dated 20.10.1973, filed before the Joint Collector. He has considered all the contentions of the rival parties. He has not agreed to give the benefit of doubt in favour of the petitioners by relying upon the document, dated 20.10.1973, on the grounds mentioned in Page 11 of the order of the Joint Collector. The Joint Collector not only referred to the wrong description of the district as Ranga Reddy District, but he has also noticed the inconsistencies in the said two documents to hold that the subsequent agreement is brought into picture for the first time.

13. Learned counsel for the party respondents contends that in terms of the provision contained in Section 5-A of the Act 1971, the Mandal Revenue Officer has no competence to validate the sale and issue certificate, if it is not a Sale Deed. The document dated 04.01.1960 was only Agreement of Sale.

14. Learned counsel for the party respondents further contends that one of the important criteria for passing orders under Section 5-A of the Act 1971 is possession. As now established before the civil Court the petitioners were not in possession by the time application was filed before the Mandal Revenue Officer under Section 5-A of the Act 1971. Even the Joint Collector has also considered the aspect of possession by looking into the relevant records and

found that the petitioners are not in possession. Thus, unless the criterion of possession is satisfied, no certificate can be issued by the Mandal Revenue Officer. Even though specific objection was raised by the respondents before the Mandal Revenue Officer as well as the before the Revenue Divisional Officer, this aspect was not considered and without looking into the revenue records, both authorities have proceeded as if the petitioners are in possession and passed orders. As held by the trial Court as well as the first appellate Court, the petitioners are not in possession and enjoyment and the respondents are in possession and enjoyment by the time such application was filed. The very basis for the orders passed by the Mandal Revenue Officer on 17.07.1998 is on vitiated on those two grounds. Therefore, the order suffers from incurable infirmity and the same was rightly set aside by the Joint Collector.

15. Learned counsel for the party respondents further contends that in the case of ***V. Krishnaiah and others Vs. Joint Collector, Mahabubnagar and others***, this Court held that the Mandal Revenue Officer cannot go into the disputed questions of fact while exercising power under Section 5-A of the Act 1971. He can pass orders in favour of a person only when there are no disputes on the claim, and request made was for validation of Sale Deed, which was not registered. In the instant case, there has been serious dispute on the execution of Agreement of Sale, dated 04.01.1960, as well as the subsequent so-called Sale Deed, dated 20.10.1973, and when there are serious disputes, the Mandal Revenue Officer ought not to have considered and entertained. Having considered the rival claims, various findings recorded by the Mandal Revenue Officer, amounts to adjudication of the matter which is not within the purview of the Mandal Revenue Officer. The Joint Collector rightly sets aside the order by giving liberty to the parties to work out their remedies before the civil Court. Thus, there is no error in the decision of the Joint Collector in coming to such conclusion.

16. To counter the stand of counsel of the party respondents, learned counsel for the petitioners submits that the alleged document, dated

20.10.1973, was not brought on record before the Mandal Revenue Officer and the Revenue Divisional Officer and the claim for grant of orders under Section 5-A of the Act 1971 was based on the Agreement of Sale, dated 01.04.1960, but the fat that there is a subsequent sale deed lends support to the said claim.

17. Shorn of details, it is seen that petitioners filed application before the Mandal Revenue Officer under Section 5-A of the Act 1971, to validate Agreement of Sale, dated 04.01.1960, and to issue a certificate in their favour. They claimed that full sale consideration was paid and possession was handed over to them. This claim of the petitioners was resisted by the party respondents herein. The party respondents claimed that they also have entered into agreement with the original property owners on 22.07.1965 and they have already instituted suit before the civil Court and an injunction order was granted and, therefore, the Mandal Revenue Officer is not entitled to deal with the matter when there is a dispute pending before the civil Court.

18. As seen from the orders of the Revenue Divisional Officer, dated 05.07.1997, even at the initial point of time a specific objection was raised by the party respondents herein that no certificate can be issued under Section 5-A of the Act 1971 by relying upon an agreement of sale. Party respondents disputed the claim of the petitioners regarding possession. There is no finding recorded by the Mandal Revenue Officer with reference to the maintainability of proceedings under Section 5-A of the Act 1971. The appellate authority has also failed to consider this aspect.

19. As per the provision contained in Section 5-A of the Act 1971, an extraordinary power is vested in the Mandal Revenue Officer to validate alienation or transfer made or affected otherwise than by the registered document declaring such alienation or transfer by way of issuance of certificate after collecting the deficit stamp duty. The important elements required to exercise power under Section 5-A of the Act 1971 are:

1. There must be an alienation or transfer ; and

2. The person should be in possession of the property on the date of receipt of such application.

20. In the case on hand, it is not in dispute that when the application was submitted by the petitioners, they were relying on only on agreement of sale dated 04.01.1960. The so-called sale deed, dated 20.10.1973, was brought on record for the first time when the revision petition was pending before the Joint Collector. Even before the Revenue Divisional Officer the same document was not relied. In the grounds raised in support of this writ petition specific plea raised in ground 'E' before amendment was that the petitioners are not relying upon the document, dated 20.10.1973, and that they are relying upon only on the document, dated 04.01.1960, for validation of sale under Section 5-A of the Act 1971.

21. Plain reading of Section 5-A of the Act 1971 makes it clear that there cannot be validation of agreement of sale. The principle of law on this aspect is well settled and needs no reiteration. Therefore, on that ground itself, the entire exercise undertaken by the Revenue Divisional Officer falls to the ground. Only to overcome this legal position, ground 'E' of writ eptition was amended. As per the amended ground 'E', the petitioners contend that the Joint Collector erred in relying upon the wrong translation made in document, dated 20.10.1973, when originally the pleading of the petitioners was that they are not relying on the document, dated 20.10.1973. Thus, whether the translation was wrongly made has no relevance. Further more, as seen from the order passed by the Joint Collector, dated 20.05.2002, his decision was not based only on the wrong description of Ranga Reddy District in the translated version of the document, dated 20.10.1973, but he has considered various other aspects to point out that the document, dated 20.10.1973, is not reliable. Having considered the matter on merits, the Joint Collector found that as there was no document of alienation of transfer made or affected otherwise than an unregistered document for consideration under the provisions of Section 5-A of the Act 1971, the orders passed by the Mandal Revenue Officer are not valid. Such decision cannot be

faulted.

22. Thus, the essential component of exercising power under Section 5-A of the Act 1971 was not specified on the day when such an application was filed before the Mandal Revenue Officer. Even assuming that sale deed was validly made on 20.10.1973 and the infirmities noticed by the Joint Collector are not valid, the issue cannot be put back to the date when application was flied under Section 5-A of the Act 1971 to validate the orders of the Mandal Revenue Officer. Further more, for the reasons best known, even though the said document was available with the petitioners by the time an application was filed for issuance of certificate under Section 5-A of the Act 1971, the same was not brought on record.

23. As noticed above, a specific objection has been raised from the beginning that an agreement of sale cannot be validated and there has to be a sale deed. In spite of such specific objection raised, the petitioners never bothered to bring on record the
so-called document of 20.10.1973.

24. The matter does not rest hear. The party respondents filed O.S.No.371 of 1996 praying to grant perpetual injunction in the Court of Principal Senior Civil Judge, Ranga Reddy District. In the judgment and decree, dated 09.04.2008, the trial Court found that the party respondents herein were in possession and enjoyment. The trial Court relied upon the pahanies filed by the party respondents herein to show that they are in possession since the year 1993. On the contrary, the pahanies filed by the petitioners did not show the names of the petitioners in the possession column. Additionally, the payment of cess was also considered by the trial Court. Against the judgment and decree passed by the trial Court, the petitioners herein filed A.S.No.82 of 2008 in the Court of I Additional District Judge, Ranga Reddy District. The issue of possession was also considered in addition to the validity of the document, dated 20.10.1973. The first appellate Court found that the party respondents were in possession in 1993.

25. To exercise power under Section 5-A of the Act 1971, as noticed above, the person applying for issuance of certificate should also be in possession of the said property. On detailed consideration of the revenue records, the Joint Collector has recorded the finding that the petitioners were not in possession, but the party respondents were in possession by the time the application was made before the Mandal Revenue Officer. The Joint Collector has tabulated the entries in the revenue records of appearing parties. As seen from the tabulated statement, the party respondents are in possession from the year 1992-93 and the names of the petitioners were reflected in the possession column only from the year 1996-97. By then, the party respondents' names were reflected as pattadars. Learned counsel for the petitioners also does not dispute the fact that the petitioners' possession was not reflected by 1992-93. Though the learned counsel for the petitioners pointed out that in the operative portion of the order, the party respondents were credited with possession from 1960, whereas actually even the possession claimed by the party respondents was only in the year 1993.

26. Thus two primary ingredients for invoking the provisions of Section 5-A of the Act 1971 i.e., unregistered sale deed and possession were not satisfied when the orders were passed by the Mandal Revenue Officer in favour of the petitioners.

27. When there are rival claims with reference to the property in issue and when there are serious disputed questions of fact, the Mandal Revenue Officer can not enter into such disputes while exercising power under Section 5-A of the Act 1971 and pass orders. The very same issue has fallen for consideration before this Court in ***V. Krishnaiah's case (1 supra)***. This Court held that once the execution of the document is disputed, its validity can be decided only after a trial and by applying the principles enunciated in the Evidence Act. This Court further held that the revenue authorities cannot adjudicate the disputes involving complicated questions, such as capacity to contract, succession, testamentary, or otherwise, limitation, etc. Therefore, jurisdiction of the authority under the Act in relation to the regularization of sale

under Section 5-A of the Act 1971 is confined to cases where no dispute as to the execution of the document.

28. Learned counsel for the petitioners lastly contended that on account of the observations made by the Joint Collector that the document, dated 20.10.1973, is purported to be fabricated one, even though the petitioners are entitled to apply before the Mandal Revenue Officer under Section 5-A of the Act 1971 afresh, but they are denuded of that right and unless that particular finding is deleted, grave prejudice would be caused. As noticed above, in Ground 'E' of writ petition as original stood and before the Mandal Revenue Officer the stand of petitioners was that they were not relying upon the document, dated 20.10.1973. The Mandal Revenue Officer was to consider validating the document of 04.01.1960. This being so, petitioners cannot be permitted to go before the Mandal Revenue Officer at this stage seeking to validate the document of 20.10.1973, more so when the same was available when they filed application under Section 5 A of Act, 1971.

29. Having regard to the peculiar facts of the case and having regard to the time line involved in the issue, only to enable the petitioners to approach the Mandal Revenue Officer under Section 5-A of Act, 1971, the finding recorded by the Joint Collector on the purported fabrication of document dated 20.10.1973 cannot be set aside.

30. The certiorari jurisdiction of the writ Court is limited to the question of jurisdiction and competence of quasi-judicial authority and patent illegality in passing an order. In this case, it is not in dispute that the Joint Collector is competent to entertain the revision petition and to consider the same.

31. A Revisional authority is entitled to go into the merits and record findings and pass orders. The possession aspect as well as the veracity of the document of 20.10.1973, vis-à-vis, the document dated 04.01.1960 was considered by the competent civil Court and held in favour of the party

respondents. Admittedly the document that was presented before the Mandal Revenue Officer for issuance of certificate in exercise of power under Section 5-A of the Act 1971 was only an agreement of sale. Thus, all issues were considered and the findings were recorded by the Joint Collector on merits and this Court in exercise of certiorari jurisdiction cannot act as an appellate authority and come to different conclusion. Thus, I see no error, much less patent error, in the order passed by the Joint Collector warranting interference by this Court.

32. Having regard to the findings recorded by the trial Court as well as the first appellate Court in the civil litigation, since the party respondents are in possession and enjoyment all along, the petitioners are not entitled to declaration sought and the writ petition is liable to be dismissed.

33. Accordingly, the Writ Petition is dismissed. 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: 31st March, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.12510 of 2002

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Date: 31^{st} March, 2015

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