

*** THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR**

+ WRIT PETITION No. 26402 of 2015

% Dated : 26.08.2015

Syed Raheemuddin

...PETITIONER

AND

\$ The State of Telangana and others

...RESPONDENTS

! Counsel for Petitioner : Mr. Srinivas Emani

^Counsel for Respondents : GP for Home

<GIST :

>HEAD NOTE:

? Cases referred:

- 1) (1982) 2 Supreme Court Cases 463
- 2) (2003) 6 Supreme Court Cases 595
- 3) 2007 (6) ALT 134 (FB)

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.26402 of 2015

BETWEEN

Syed Raheemuddin.

... PETITIONER

AND

The State of Telangana, Rep. by its Principal Secretary, Revenue Department, Secretariat, Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 26.08.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | yes |
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ORDER:

Petitioner seeks to question the order of the third respondent in proceedings No.B/1589/2014 dated 29.05.2015 wherein the mutation relating to Ac.5.00 guntas in Sy.No.586 of Nadergul village, Saroornagar Mandal, Ranga Reddy District was ordered in favour the fourth respondent under the A.P. Rights in Land and Pattadar Passbooks Act (for short 'the Act').

2. Though the said order on the face of it is appealable under the Act, in

view of the contention of the petitioner that he had not notice of passing the said order, I had heard the learned counsel for the petitioner on 24.08.2015 and after hearing the matter, the learned Government Pleader was required to get instructions.

Petitioner counsel also sought time to verify, hence, the writ petition is posted to today.

3. Though the learned counsel for the petitioner reiterates that the petitioner had no notice of passing of the aforesaid order by the Tahsildar, he points out that the petitioner had filed implead petition opposing the request of the fourth respondent and since the Tahsildar had hurriedly reserved the matter without giving opportunity to the petitioner, he had approached the Collector by way of application dated 27.07.2015 on which the Collector had endorsed the Tahsildar to take appropriate action if found correct and reopen the hearing. Accordingly, the matter is stated to have been reopened. However, the petitioner counsel states that he was not aware of the same and came to know of the impugned order much later, as the order was also not marked to him.

4. I find difficult to accept the said contention in view of the specific para in the impugned order, which records about the presence of the petitioner, the said relevant para is extracted hereunder:

"The other Sr. Syed Raheemuddin who impleaded and attended the case in number of times, during the enquiry of the case which is under enquiry sine 1 ½ years has filed affidavit on 27-07-2014 requesting this authority to re open of the case as final chance for filing counter affidavit. Accordingly the case has been re open and fixed for final enquiry on 07-02-2015 issuing notices to all the concerned for filing counter affidavit and also arguments by both the parties. But the individual who requested for re open of the case has not attended the case on the said enquiry and also not filed counter affidavit in the case. For which it is clearly shows that the individual has not have any interest and voluntarily knowing all the issues in the matter avoiding to defend the case within an intention to prolong the Case and not to final the issue."

What is recorded in the order cannot be disputed by the petitioner

before a superior Court in view of the ratio of the Supreme Court in the following decisions. In **STATE OF MAHARASHTRA VS. RAMDAS**

SHRINIVAS NAYAK AND ANOTHER ^[1] the Supreme Court held in paras 4 to 8 as follows,

“4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". Per Lord Atkinson in *Somasundaran v. Subramanian* A.I.R. 1926 P.C. 136 We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is' incumbent, upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a

statement that had been made in error. Per Lord Buckmaster in *Madhusudan v. Chanderwati* A.I.R. 1917 P.C. 30 That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

5. In *Rev. Mellor v. Cox* 7 Cox. C.C. 454 Martin B was reported to have said "we must consider the statement of the learned judge as absolute verity and we ought to take his statement precisely as a record and act on it in the same manner as on a record of Court which of itself implies an absolute verity".

6. In *King Emperor v. Barendra Kumar Ghosh* 28 C.W.N. 170 said,

...these proceedings emphasise the importance of rigidly maintaining the rule that a statement by a learned judge as to what took place during the course of a trial before him is final and decisive; it is not to be criticised or circumvented; much less is it to be exposed to animadversion.

7. In *Sarat Chandra v. Bibhabati Debi* 34 C.L.J. 302. Sir Asutosh Mookerjee explained what had to be done

It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment.

8. So the judges, record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else."

In **ROOP KUMAR VS. MOHAN THEDANI**^[2] the Supreme Court held in para-11 as follows,

“11. It would be logical to first deal with the plea relating to absence of forum of appeal. It is to be noted that the parties agreed before the High Court that instead of remanding the matter of trial Court, it should consider materials on record and render a verdict. After having done so, it is not open to the appellant to turn round or take a plea that no concession was given. This is clearly a case of sitting on the fence, and is not to be encouraged. If really there was no concession, the only course open to the appellant was to move the High Court in line with what has been said in State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. MANU/SC/0117/1982: 1982CriLJ1581 . In a recent decision Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. and Ors. MANU/SC/1092/2002 : AIR2003SC511 the view in the said case was reiterated by observing that statements of fact as to what transpired at the hearing, recorded in the judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the contrary.”

In view of the above decisions, the said contention of the petitioner cannot be accepted.

5. Learned counsel for the petitioner also relied upon a Full Bench decision of this Court in **CHINNAM PANDURANGAM v. MANDAL REVENUE OFFICER, SERILINGAMPALLY**^[3] wherein this Court held that the requirement of issuance of notice in case of amendment of ROR must

be scrupulously followed by issuing notice to all affected parties and such requirement under Rule 19(2) of the A.P. Rights in Land and Pattadar Passbooks Rules, 1989 is mandatory.

6. I do not, however, see as to how the said decision is applicable to the facts of the present case inasmuch as the petitioner himself filed an implead petition, which was allowed and he is stated to have attended the case on a number of times during 1 ½ years. In view of what is recorded in the impugned order, therefore, the extraordinary jurisdiction of this Court against the said impugned order cannot be invoked, as the principles of natural justice cannot be said to have been breached while passing of the impugned order. Petitioner is at liberty to file an appeal against the said order, if he so desires and petitioner is also at liberty to make appropriate application for condonation of delay, if required, as the order copy having not been served on him and on the ground of subsequent knowledge of the impugned order.

The writ petition is dismissed with the liberty aforesaid.

As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

August 26, 2015
NB:
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/BO/
DSK

[\[1\]](#) (1982) 2 Supreme Court Cases 463

[\[2\]](#) (2003) 6 Supreme Court Cases 595

[\[3\]](#) 2007 (6) ALT 134 (FB)