THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.16953 of 2011

ORDER:

Heard learned counsel for the petitioner and the learned counsel for the respondents. With the consent of both the parties, the writ petition is disposed of at the admission stage.

The present writ petition is filed questioning the inaction of the respondents in not including the lands in survey Nos.87/1 and 87/2 of Lotlapalli Village, Jami Mandal, Vizianagaram District in pattadar passbooks issued in favour of the petitioner, as illegal and arbitrary.

The averments in the writ petition are as under:

The petitioner is stated to be the owner of the property admeasuring Ac.04-04 cents in survey Nos.87/1 and 87/2 situated at Lotlapalli Village, Jami Mandal, Vizianagaram District, which is said to have been purchased by his father under a registered sale deed. After the death of his father, the petitioner inherited the above said property. It is stated that the petitioner submitted an application to the 2nd respondent for issuance of a pattadar passbook and title deeds. As there was no response from their side, the petitioner filed an application before the Revenue Divisional Officer (R.D.O.), Vizianagaram requesting him to pursue the said application. Pursuant to the said application, the R.D.O. issued a letter vide Dis.No.5079/98, dated 15-05-1993 directing the Mandal Revenue Officer (M.R.O.) to conduct an enquiry and issue pattadar passbook and title deeds. In pursuance of the directions of the R.D.O., the M.R.O. by his proceedings Dis.No.2044/93, dated 20-06-1994 conducted enquiry and passed an order which is as under:

> " In the circumstances, I hold that the respondents have failed to establish their case while the petitioner produced

adequate evidence. I therefore have no hesitation in ordering for inclusion of the name of the claimant for consideration after thorough further enquiry in for issuing pattadar passbook since the process under ROR in the village is in progress."

It is stated that inspite of the orders of Tahsildar, no steps were taken for inclusion of survey numbers in the pattadar passbooks. The inaction of the respondents was brought to the notice of Lokayukta, Hyderabad, who in turn directed the 2nd respondent to take appropriate action on the application of petitioner. Basing on the said orders, the M.R.O. Jami issued proceedings dated 23-01-1999 directing the petitioner to appear before him with relevant record. Though the petitioner is said to have appeared, they did not take any decision of entering the aforesaid survey numbers in passbooks. It is stated that the inaction of the 2nd respondent led to filing of W.P.No.29910 of 2010. By an order dated 31-01-2011, this Court disposed of the writ petition directing the 2nd respondent to consider the applications filed by the petitioner and pass appropriate orders in accordance with law expeditiously, preferably within a period of one month from the date of receipt of a certified copy of this order. Pursuant there to, the Tahsildar, Jami conducted detailed enquiry in which the petitioner also participated and passed an order on 07-05-2011, which is the subject-matter of challenge in the present writ petition.

Learned counsel for the petitioner mainly submits that earlier the Tahsildar conducted enquiry and gave a report on 20-06-1994 holding that the petitioner produced adequate evidence to show that he is the owner of the land, but surprisingly, the Tahsildar of the very same area, failed to make entries in the pattadar passbooks. In view of the above, the counsel submits that the order under challenge needs to be set aside.

On the other hand, the learned Government Pleader for Revenue submits that the statute provides an appeal before the

R.D.O., Vizianagaram and since the issue involves disputed questions of fact, he submits that it is proper for the petitioner to approach the R.D.O. by way of an appeal.

A perusal of the order under challenge itself shows that the petitioner has got statutory right of filing an appeal before the R.D.O., Vizianagaram. The Apex Court in **Commissioner of Income Tax v.Chhabil Dass Agarwal**[1] held that " *the High Court will not entertain a petition under Article 226 of Constitution, if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

A perusal of the order under challenge and the material placed before the Court would show that the issue involves disputed questions of fact as to the ownership of the land in survey No.87/1 admeasuring Ac.01-14 cents and land in survey No.87/2 admeasuring Ac.02-92 cents. The order under challenge further indicates that the land in survey Nos.87/1, 87/2 vests with number of other individuals as per the village records.

Since the issue involves disputed questions of fact and as an alternative remedy is available to the petitioner, the writ petition is disposed of giving liberty to the petitioner to file an appeal before the R.D.O., Vizianagaram, who shall dispose of the same within a period of eight weeks from the date of filing the appeal, in accordance with law.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

24-07-2015

Note:
Issue C.C. by 29-07-2015.
B/o.
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[1] (2014) 1 SCC 603