HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 12618 of 2011

ORDER:

Heard the learned counsel appearing for the petitioners and learned Government Pleader appearing for the respondents. With the consent of both the parties, this Writ Petition is disposed of at the stage of admission.

The present Writ Petition is filed seeking issuance of a writ of mandamus declaring the action of the respondents in unilaterally altering the nature, character and ownership of lands situated in Sy.No.212 and 217/1 admeasuring of Ac.9-17 guntas and Ac.9.38 gts., of Lemur village of Ponnaram Gram Panchayat of Mandhamarri Mandal, Adilabad District by making fraudulent entries in revenue records and also not taking action against trespassers in pursuance of notices issued in RC.No.B/10/109/2010 and Rc.No.B/1446/2010 dated 18.01.2010 and 10.02.2010 respectively as arbitrary, illegal and contrary to the provisions of the A.P. Escheats and Bona Vacantia Act, 1974 and also violative of the Constitution of India; and consequently direct the respondents 1 to 3 to enter the names of the petitioners as lawful owners in the revenue records in respect of the said lands.

The averments made in the writ petition are as under :

Both the petitioners claim themselves to be the owners of land referred to above. Pahanies were said to have been issued in the year 1982-83 showing the name of the grandfather of the second petitioner as Pattadar. While so, in the Pahani issued for the year 2009-10 the extent of land was mentioned as Ac.1.18 ¾ gts. The family of the petitioners is said to have owned a land to the extent of Ac.9.17 guntas in Sy.No.212 but on sub division only an extent of Ac.1.06 guntas is shown as the extent of land belonging to the father of the first petitioner and the remaining extent of Ac.8.11 guntas was shown as Khareej Khata. The first petitioner who is working in Singareni Collieries stayed away from the village from the year 1992 and taking advantage of his absence, the respondents 4 and 5 are alleged to have entered on the lands of first and second petitioner by getting the same transferred in their names in collusion with the Revenue Authorities. It is stated that the petitioners submitted representation to the 3rd respondent i.e., Tahasildar, requesting him to conduct survey and enquire as to how lands belonging to the petitioners were treated as Khareej Khata and how pattas were granted to private persons in respect of private lands. Pursuant thereto the 3rd respondent is said to have issued notices under A.P. Revenue Summonses Act No.III of 1869 for conducting enquiry on 23.01.2010. Notices were issued on 10.02.2010 informing about the schedule of the enquiry from 01.03.2010. However, it is stated that there is no progress in the enquiries and the matter is pending with the 3rd respondent. The averments in the affidavit further shows that the petitioners filed PLC.No.19 of 2010 and PLC No.20 of 2010 before the Mandal Legal Services Authority, Asifabad, seeking redressal of their grievance. The same came to be rejected on 18.09.2010 on the ground that the petitioners were absent on the date of hearing. Relying upon the provisions of A.P. Escheats and Bona Vacantia Act, 1974, the learned counsel for the petitioners submits that the action of the

Authorities in treating the lands of the petitioners as Khareej Khata is contrary to law and hence the present Writ Petition.

Learned Government Pleader for Revenue filed his counter stating that as per Pahanies for the year 1972-73 an extent of Ac.9.17 guntas in Survey No.212 of Lemur village of Ponnaram Gram Panchayat of Mandhamarri Mandal, Adilabad District has been recorded in the name of Sudamalla Mallaiah instead of Ac.1.06 guntas. As such an extent of Ac.8.07 guntas which is excess was declared as Khareej Khata. The averments in the counter further disclose that on filing of the representation by the petitioners Form-I notice was issued to the petitioners and other parties to attend the office for hearing along with documentary evidence for knowing the details, but none of the parties appeared on the date of hearing. The averments in the counter further shows that in the year 1982-83 names of six persons i.e., 1)Suddula Mallaiah, 2) Kamal Hussain, 3) Anwar Hussain, 4) Abdul Khadar, 5) Abdul Khadar and 6) Eqbal Basha, were recorded in Pattadar column in respect of lands in Sy.No.212 admeasuring Ac.9.32 guntas. It is further stated in the counter that the purchasers are in physical possession of land from the date of purchase. Basing on the sale deeds, the pattas were transferred in favour of purchasers. The counter further states that no alterations were made in the survey No.212 and 217 as alleged by the petitioners. In view of the above, it is stated that the allegations of making false entries in the Revenue records is incorrect.

Learned counsel for the petitioners mainly submits that the entries made in the records are not reliable for the reasons that no notice was given to the petitioners before changing the entries in the revenue records.

On the other hand, the learned Government Pleader for Revenue submits that notice was given to them, but the petitioners did not participate in the Enquiry. It is further stated that if really the petitioners were aggrieved by any of the entries made, the Statute provides for an appeal and hence the question of filing a writ petition would not arise.

The learned counsel appearing for respondents 4 and 5 submits that since the issue involves disputed questions of fact and as the Statute provides for an alternative remedy, this Court under Article 226 of the Constitution of India cannot entertain the same.

The main grievance of the petitioners appears to be that without hearing the petitioners the authorities have made corrections in the revenue records. On the other hand, the learned Government Pleader submits that a notice was issued to the petitioners asking them to appear with all the documents and in spite of that the petitioners did not appear before the authorities. In Para No.4 of the affidavit, it is admitted that the notices were issued fixing the schedule of the enquiry on 01.03.2010. It is to be noted that pursuant to the notice issued none of the parties appeared before the authorities and hence necessary corrections were made in the revenue records. It is to be noted that as per the provisions of A.P. Revenue Summonses Act, 1869, summons are to be issued to the concerned to be present for verification of the record and a detailed enquiry would not arise in proceedings in respect of notice issued under Andhra Pradesh Revenue Summons Act, 1869. In view of the above, the argument of the learned counsel for the petitioners that no opportunity was given to the petitioners may not be correct as the record reveals that none of the parties participated in the enquiry though they knew about the initiation of the proceedings. Be that as it may, the remedy available to the petitioners, if they are aggrieved by the entries made in the revenue records, is by way of an appeal before the R.D.O. under Section 5 (v) of A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short "the R.O.R.Act").

When an alternative remedy is available to the petitioners and when the issue involves disputed questions of fact the question of invoking the writ jurisdiction would not arise. 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."*

Since the petitioners are having a remedy available under the Act, wherein they can question the entries made in the revenue records, it is always open to the petitioners to prefer an appeal before the concerned under Section 5 (5) of the R.O.R.Act, in which event the same shall be dealt with in accordance with law at the earliest.

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

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date:05.08.2015

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[1] (2014) 1 SCC 603