***THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+WRIT PETITION No.12945 OF 2015

%Dated 29-04-2015

T. Rajeswari

PETITIONER

VERSUS

1. The Joint Collector, Sri Potti Sri Ramulu Nellore District, Nellore, and others.

RESPONDENTS

! Counsel for petitioner : M/s.W.B.Srinivas

^ Counsel for respondents : G.P for Revenue

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? Cases referred :

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.12945 of 2015

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Between:

T. Rajeswari

PETITIONER

AND

1. The Joint Collector, Sri Potti Sri Ramulu Nellore District, Nellore, and others.

RESPONDENTS

ORDER:

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Revenue (A.P.) for respondents. Considering the nature of relief sought for by the petitioner, with the consent of both the counsel, the writ petition itself is taken up for disposal at the stage of admission.

The petitioner challenges the order dated 10.03.2015 passed by the 1st respondent-Joint Collector, SPSR Nellore District, as arbitrary and illegal.

Brief facts of the case are that the petitioner claims to be the successor in interest of the property in different survey numbers situated in Pudur Village, Naidupeta Mandal, SPSR Nellore District, having succeeded the same through her grand mother, paternal uncle and thereafter her father. The petitioner's grandmother as well as her paternal uncle were granted pattadar pass books in respect of the schedule property. After the demise of petitioner's her parents, she being the only successor in interest, made an application to the 3rd respondent-Tahsildar seeking certain information. As the said information was not furnished, the petitioner was forced to approach this Court by filing W.P.No.12803 of 2012, which was disposed of vide order dated 31.07.2012 leaving it open to the petitioner to pursue the remedy of appeal under Section 5(5) of the Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') before the 2nd respondent-Revenue Divisional Officer, Nellore. On appeal being filed before the Revenue Divisional Officer, the same was dismissed vide order dated 07.07.2014 observing that the subject lands in appeal are patta lands and as stated by the respondents, civil dispute is pending before the Civil Court and hence the prayer of the petitioner can be considered after disposal of the civil disputes. As against the said order the petitioner approached the 1st respondent-revisional authority and the revisional authority passed the impugned order dated 10.03.2015, which reads as under.

> "Hence, this case is remanded to the Revenue Divisional Officer, Naidupet, to pursue the matter/re-enquire the case and dispose of the same with an appropriate order after the out come of the Civil Suit Judgment, which is pending in the Civil Court. If the petitioner succeeds in the Suit for property claim, she may approach the Revenue Divisional Officer or Revenue Authorities and the relevant authority will take up the correction of entry in the record of rights.
>
> Hence this case is closed with the above direction."

Learned counsel for the petitioner submits that there is total non-application of mind right from the order of Revenue Divisional Officer to the Joint Collector. Though the Revenue Divisional Officer had stated that there are civil cases pending at any point of time there was no mention about the cases pending or the parties at whose instance the cases are pending. According to the petitioner no cases are pending with respect to the property in question, and neither the petitioner nor his predecessors in interest, at any point of time, had received notice with regard to the alleged cases. The learned counsel further submits that in spite of the petitioner making repeated requests, the details in relation to the pending cases were not furnished. Therefore, left with no alternative, the petitioner approached this Court by filing the present writ petition.

Considering the pleadings as well as the submissions made by the learned counsel for the petitioner and learned Assistant Government Pleader for Revenue, I am constrained to observe that right from the beginning the petitioner has not approached the appropriate authority for redressal of her grievance. It is the case of the petitioner that she has acquired the property in question by way of succession. It is also the case of the petitioner, as evidenced in the material placed before this Court that her grandmother, paternal uncle and her father were granted pattadar passbooks with respect to properties in question, and with respect to some of other properties their names were not recorded. In such circumstances, the proper course for the petitioner would be to approach the 3rd respondent-Tahsildar or the recording authority as defined under the act and Rules, seeking information about the entries in the revenue record, and after obtaining such information, she would have approached the authorities for correction of entries to reflect the correct factual situation. Though the petitioner approached the 2nd respondent seeking information, she had not pursued further and did not make any effort to get any information as such. However, without approaching the Tahsildar, she approached this Court and this Court directed to approach the Revenue Divisional Officer by way of appeal. Though the learned counsel for the petitioner submits that the petitioner approached the Revenue Divisional Officer by filing an appeal, it is not discernible from the record or from the arguments of the learned Counsel that there was primary order against which the petitioner has approached the Revenue Divisional Officer by filing appeal.

As per the scheme of the Act, it is only the order, which was passed under Section 5(3) of the Act is appealable under Section 5(5) of the Act. In the absence of any order having been passed in the present case, there could not have been any appeal. The Revenue Divisional Officer, who is the appellate authority, while passing the order pursuant to the order of this Court, also did not verify as to what are the pending cases, and likewise the Joint Collector also did not make any efforts to set out the details. In other words, in the present case, there is no primary order and the appellate as well as the revisional orders are also bereft of any details. In such circumstances, both the orders i.e., appellate as well as revisional order cannot be sustained and required to be set aside and accordingly set aside.

This court once again cannot solve the problem of the petitioner. The proper course for the petitioner is to approach the Tahsildar, who is primary or the recording authority under the Act, seeking information in relation to each survey number and thereafter have to take necessary steps depending upon the information that may be furnished. So far as the petitioner's right to succession to the lands which are already recorded in the revenue records in the name of grandmother, paternal uncle and father of the petitioner, she is required to make an application in the prescribed format invoking Section 4(1) of the Act read with relevant Rules and seek mutation of her name in the revenue records for issuance of pattadar passbooks and title deeds. So far as the lands, with which the petitioner claims right but someone else's name in the records, petitioner is required to seek correction of those entries by approaching the Tahsildar or the Revisional Authority i.e., the Collector, depending on the entries whether they are made long back or of the recent one. If the entries are made within one year the remedy would lie to the Tahsildar under Section 3(3) of the Act, and beyond one year it is only to the revisional authority who is authorised to consider the record and make necessary corrections. In the light of the statutory provisions, mere making of representations before the authorities would not bring in any relief for the petitioner and the like, who are required to invoke statutory power vested in the authority. Since it is a statutory remedy for the affected parties to seek redressal in terms of the Act and the Rules, the prescribed procedure is required to be followed by an aggrieved party by invoking statutory provision. Only then the statutory authorities are under an obligation to act and dispose of the cases in accordance with Rules.

In facts of the present case liberty is given to the petitioner to approach Tahsildar by filing a petition in prescribed form along with necessary documents. As and when such application/petition is filed the 3rd respondent-Tahsildar shall consider and pass necessary speaking orders in accordance with law.

With the above directions the writ petition is disposed of. No costs. As a sequel, miscellaneous petitions, if any, shall stand closed.

CHALLA KODANDA RAM, J.

29th April, 2015

Js.

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