THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17220 OF 2016

ORDER :

This writ petition is filed seeking writ of certiorari calling for records relating to the order in Rc.No.E5/3053/2015, dated 06.05.2016 passed by the 2nd respondent whereby the order dated 04.04.2015 in Proc.No.A/7300/2012 passed by the 3rd respondent is set aside and quash the same as illegal and arbitrary and consequently to direct the 4th respondent to incorporate the name of the petitioner in the revenue records in respect of land admeasuring Acs.3.16 guntas situated in Sy.No.8 of Battupally village, Hanamkonda Mandal, Warangal District.

2. Brief facts necessary for disposal of the writ petition are as follows:

It is the case of the petitioner that his maternal grandmother late Smt. Kotte Kousalya @ Padma was the original owner of the land admeasuring Acs.3.16 guntas situated in Sy.No.8 of Battupally Village, Hanamkonda Mandal, Warangal District. She died in the year 2014. The mother of the petitioner Smt. Krishna Kumari is the only daughter of the grandmother of the petitioner Smt. Kotte Kousalya @ Padma. That after death of late Smt. Kotte Kousalya @ Padma, the petitioner, being her grandson and son of Smt. Krishna Kumari, succeeded the property and has been in possession and enjoyment of the same.

3. Originally late Sri Gandrathi Narsaiah, who is the great grandfather of the petitioner, is the owner and possessor of the

land to an extent of Acs.13.27 guntas in Sy.No.8 of Battupally village, Hanamkonda Mandal, Warangal District. He had two sons namely G.Kishan Rao and G.Sankar Rao and three daughters. That the petitioner's maternal grandmother Smt. Kotte Kousalya @ Padma is one of his daughters, who became widow during her young age. As the grandmother of the petitioner looked after her mother Smt. G.Venkatamma, her father late Gandrathi Narsaiah, had gifted land to an extent of Acs.3.16 guntas in Sy.No.8 as Pasupu Kumkum in view of the fact that she lost her husband at young age. Subsequently, the name of the petitioner's grandmother was entered in the revenue records and accordingly said G.Narsaiah divided the extent of Acs.13.27 guntas in Sy.No.8 i.e., Acs.3.16 guntas for himself, an extent of Acs.3.17 guntas and Acs.3.16 guntas each to his two sons G.Shankar Rao and G.Kishan Rao and got mutated the land in the revenue records in the year 1981-82.

4. Name of the grandmother of the petitioner was discontinued in the revenue records after 1992. Taking advantage of the same, the father of the 5th respondent and 6th respondent approached 4th respondent-Tahsildar by making a false representation that they are the only legal heirs of late G.Narsaiah, by placing false legal heir certificate, obtained mutation proceedings dated .07.2002 without there being any number and without enquiry, by incorporating their names to an extent of Acs.5.00 guntas each out of entire extent of Acs.10.27 guntas, behind the back of the petitioner's grandmother. That out of total extent of Acs.13.27 guntas in Sy.No.8, an extent of Acs.3.00 was acquired under the

Land Acquisition Act. The Land Acquisition Officer in his enquiry report clearly stated that the land in Sy.No.8 admeasuring Acs.13.27 guntas of Bhatupalli Village has been registered in the names of Sri Gandrathi Narasaiah, S/o.Rajaiah as pattedar and Gandrathi Kishan, Gandrathi Shankar Rao, S/o.Narasaiah and Gandrathi Kousalya, D/o.Narasaiah as occupants in the village revenue records. The said award enquiry commenced on 18.04.1992 and concluded on 25.04.1992. No objections were filed before the Land Acquisition Officer-Tahsildar regarding the possession of Acs.3.16 guntas of land in Sy.No.8 during the award enquiry. In the year 2012, the grandmother of the petitioner came to know that her name was not shown in revenue records , preferred appeal under Section 5 of ROR Act before the 3^{rd} respondent-Revenue Divisional Officer, who after obtaining the report and verification of the records passed orders in Proc.No.A/7300/2012, dated 04.04.2015 by setting aside the mutation order dated .07.2012 issued in favour of the 6^{th} respondent and father of the 5^{th} respondent by the 4^{th} respondent holding that the same is contrary to law and no notice was issued to the persons affected including the grandmother of the petitioner. That against the order of the 3^{rd} respondent, the father of the 5^{th} respondent and 6^{th} respondents preferred revision under Section 9 of the RoR Act before the 2^{nd} respondent. The 2^{nd} respondent set aside the order of the 3^{rd} respondent vide order in Rc.No.E5/3053/2015, dated 06.05.2016, by referring to Section 8(2) of the ROR Act stating that records of rights are not documents of title. Aggrieved by the same, present writ petition is filed.

5. Counter affidavit is filed by the respondents 5 and 6 denying the averments in the affidavit filed in support of the petition stating that the father of the 6th respondent and grandfather of the 5th respondent Sri Gandrathi Narsaiah was the original owner and possessor of the land to an extent of Acs.13.27 guntas in Sy.No.8 of Batupally Village, Hanmakonda Village, Warangal District and same is reflected in the revenue records. These respondents along with G.Narasiah were in peaceful possession and enjoyment of the said property. That in the year 1981, due to an error committed by Revenue Department, the name of the grandmother of the petitioner was included in the pahanies and was shown as occupant of the subject property and same was continued till 1993. That the grandmother of the petitioner got married in the year 1940 and she was never been in occupation and cultivating the land as recorded in the pahanies. That an extent of Acs.3.00 out of Acs.13.27 guntas was acquired by the Government for the purpose of building houses for the backward societies. Accordingly, the Land Acquisition Officer, after following due process of law as envisaged under the Land Acquisition Act, 1894, passed an award vide P2/205/92/2/92, dated 16.11.1992 granting compensation of Rs.1,47,331/- only to Gandrathi Narsaiah and his two sons i.e., father of the 5th respondent and 6th respondent, but no compensation was awarded to the grandmother of the petitioner, though notices under Section 9(1) & 10 of the Act were also issued to her, which shows that she is not the rightful owner of the said

property and she was never been in possession of the same. The said aspect is not questioned by the grandmother of the petitioner before any court of law.

6. In the year 1993, the father of the 6th respondent made application to the MRO stating that the name of his daughter Kousalya was erroneously entered in the pahanies by mistake committed by the officials of the revenue department. Basing on the said representation, the name of the grandmother of the petitioner was rectified and ever since only the names of the father of the 6th respondent was reflected in the pahanies and after his demise, pattedar passbooks were issued to the sons in the year 2002, which is not challenged by the grandmother of the petitioner till 2012. That appeal was filed in the name of the grandmother of the petitioner by obtaining her thumb impression, when she was severely ill and not in conscious state of mind. That the grandmother of the petitioner is pensioner, received pension by inscribing her signature and she died in the year 2013. Mother of the petitioner had four children and the petitioner being the eldest of them is trying to take undue advantage and had been falsely claiming the entire property suppressing facts and deliberately misleading this Court. It is stated that the averment of gifting of land to an extent of Acs.3.16 guntas was only created by the petitioner taking advantage of the wrong entries of the name of the petitioner's grandmother in the pahanies due to the mistake committed by the Revenue Department. That the 2nd respondent-Joint Collector rightly observed in the impugned order dated 06.05.2016 that there was no agitation or any appeal from the

grandmother of the petitioner for restoration of her name in the revenue records for the last 24 years and the entries were unamended, as such, the Tahsildar taking into consideration of entries for ten preceding years, has not issued notice to the grandmother of the petitioner as her name was not recorded and thereafter, the names of the 6th respondent and father of the 5th respondent were mutated in the revenue records. As per the provisions of Hindu Succession Act, 2005, as regards equal rights to daughter in coparcenary property would only be applicable if both father and daughter are alive on the date of the commencement of the Act and nothing shall apply to a daughter married prior to the commencement of the Act, which is prospective in nature.

7. Learned counsel for the petitioner submits that without notice to the petitioner's grandmother, mutation was done in favour of the father of 5th respondent and 6th respondent vide proceedings Rc.No.B2/Spl/ /2000, dated .07.2002, without following the procedure, though the petitioner's grandmother is entitled for Acs.3.16 gts in Sy.No.8. He further submits that admittedly the name of the grandmother of the petitioner was entered in revenue records from 1981-82 to 1992-93, as such, the Revenue Divisional Officer has rightly set aside the mutation granted in favour of the father of the 5th respondent and 6th respondent. He would further contend that the Joint Collector-2nd respondent, without considering the aforesaid aspect, allowed the revision filed by the 5th and 6th respondents, which is erroneous. In support of his contention, he relied on the judgment reported in

Chinnam Pandurangam v. Mandal Revenue Officer, Serilingampally Mandal[1]. He further contends that the Revenue Divisional Officer-3rd respondent had only remanded the matter to the Tahsildar for conducting fresh enquiry, as such, no rights of the parties are decided and the remand order cannot be interfered in the revision. In support of his contention, he relied on the judgment reported in **Gondla Jangaiah v. Md. Abdul Khader**[2]. He further submits that since no notice of order of primary authority is issued to the petitioner, the date of knowledge is to be treated as the date of order for the purpose of computing limitation period. In support of his contention, he relied on the judgment reported in **Dara Singh v. State through Director of Enforcement, New Delhi**[3].

8. On the other hand, learned counsel appearing for the respondents 5 and 6 submits that a regular appeal was filed by the grandmother of the petitioner under Section 5-B of the Record of Rights Act. He also submits that mutation proceedings in favour of the father of the 5th respondent and 6th respondent was carried out in the year 2002, whereas the grandmother of the petitioner filed appeal in the year 2012, without filing any petition for condonation of the delay. As such, the appeal filed by the grandmother of the petitioner is not maintainable. In support of his contention, he relied on the judgment reported in **Sri Thripuravaram Krishna Reddy v. The Joint Collector**[4]. He would further contend that the grandmother of the petitioner was never in possession and enjoyment of the subject land. He would contend that the mother

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[1] AIR 2008 Andhra Pradesh 15 (FB)
[2] 1971 (2) ALT-NRC-10
[3] (1980) 4 Supreme Court Cases 586
[4] 2009 (1) ALD 248

of the petitioner has got four children including the petitioner and that without impleading the other legal heirs, the petitioner has filed the present writ petition, in order to deny the right of claim over the property. He would further contend that the Joint Collector-2nd respondent has rightly set aside the order of the Revenue Divisional Officer-3rd respondent by allowing the revision with an observation that the petitioner can approach the Civil Court by filing suit under Section 8(2) of the Andhra Pradesh Rights in Land and Pattedar Passbooks Act, 1971.

9. In this case, it is to be seen that admittedly, even according to the proceedings of the Revenue Divisional Officer-3rd respondent vide Proc.No.A/7300/2012, dated 04.04.2015, mutation in favour of the 5th and 6th respondent was carried out in file No.B2/Spl/ROR/173-2005, dated 11.04.2005 and mutation in favour of the father of the 5th respondent and 6th respondent was much prior to that. Admittedly, appeal is filed in the year 2012 vide proceedings A/7300/2012. There is no petition for condonation of the same and even there is no whisper about the condonation of delay in the order passed by the Revenue Divisional Officer-3rd respondent in his proceedings dated 04.04.2015. In the absence of any application for condonation of delay and when there is no finding with regard to the same, the 3rd respondent ought not to have entertained the appeal filed by the grandmother of the petitioner. In this context, it is necessary to refer to Rule 21 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (for short ‘the Rules, 1989), which reads as under:

"21. (1) An appeal against every order of the Mandal Revenue Officer either making an amendment in the Record of Rights or refusing to make such amendment shall lie under sub-section (5) of Section 5 of the Act, to the Revenue Divisional Officer/ Sub- Collector/Assistant Collector or such authority as may be notified by the Commissioner.
(2) Every appeal referred to in sub-rule (1) shall be in writing and shall set forth concisely the grounds thereof within a period of sixty days from the date of communication of the order and shall be accompanied by a copy of the order appealed against.
(3)Every appeal referred to in sub-rule (2) above, shall bear a Court fee stamp of rupees five only."

Sub Rule 2 of Rule 21 of the above Rules, 1989 shows every appeal before the Revenue Divisional Officer against the order of the Mandal Revenue Officer shall be in writing by stating the grounds thereof, within a period of sixty days from the date of communication of the order and also shall be accompanied by a copy of the order appealed against. In the instant case on hand, admittedly, the mutation was done in favour of the father of the 5th respondent and 6th respondent was done in the year 2002 by the Mandal Revenue Officer-4th respondent. Moreover, the 3rd respondent-Revenue Divisional Officer, while setting aside the mutation order in favour of the father of the 5th respondent and 6th respondent, has not discussed anything about the delay in filing the appeal thereof.

In **Sri Thripuravaram Krishna Reddy vs. The Joint Collector(supra),** learned Single Judge of this Court held as follows:

"Admittedly, neither the so-called petition is in the form of appeal affixed with the required stamp nor was filed in time. No application for condonation of delay was claimed to be filed by respondent No.4 nor respondent No.2 passed any order condoning the delay before entertaining and adjudicating the appeal on merits. Respondent No.2 ought not to have, therefore, entertained the petition of respondent No.4 and treated it as an appeal. If respondent No.4 was aggrieved by the issuance of pattadar passbooks and title deeds, he should have filed a statutory appeal under Section 5(5) of the Act, within the time limit, or a civil suit under Section 8(2) of the Act before the competent Civil Court. As he did not take recourse to either of the two remedies, it is beyond

> the jurisdiction of respondent No.2 to entertain the petition filed by respondent No.4, because he has no power akin to the power vested in respondent No.1 under Section 9 of the Act."

In view of the provisions of the Act and the order of the learned Single Judge, it is evident that the 3rd respondent-Revenue Divisional, failed to consider the aspect of delay in filing appeal by the grandmother of the petitioner.

It is submitted by the learned counsel for the petitioner that the date knowledge of the appealable order is the date of the order for the purpose of computing the period of limitation irrespective of the date on which it is actually passed as held in **Dara Singh v. State through Director of Enforcement, New Delhi (supra).** But in the instant case, the 3rd respondent-Revenue Divisional Officer has not whispered anything about the delay in filing the appeal by the grandmother of the petitioner. Even there is no averment in the appeal with regard to delay in filing appeal. As such, the aforesaid judgment of the Hon'ble Supreme Court will not come to the rescue of the petitioner.

10. Even according to the petitioner, the petitioner's grandmother's name was reflected in revenue records in occupant columns from 1981-82 to 1992-93. It is not known as to why the petitioner's grandmother kept quite till 2012. There is no explanation as to why the petitioner's grandmother kept quite from 1992-93 till 2002, after mutation was affected in favour of the father of the 5th respondent and 6th respondent in the year 2002. It is pertinent to note that even the Land Acquisition Officer granted compensation to the father of the 5th respondent and 6th

respondents on the statement given by the grandfather of the petitioner, who is father of the 6th respondent and also grandfather of the 5th respondent herein.

11. It is next contended by the learned counsel for the petitioner that no notice in writing was issued to the grandmother of the petitioner while issuing mutation orders by the 4th respondent in favour of the father of the 5th respondent and 6th respondent, as such, the said mutation was rightly set aside by the Revenue Divisional Order-3rd respondent vide order dated 04.04.2015. In **Chinnam Pandurangam v. Mandal Revenue Officer, Serilingampally Mandal (supra),** the Full Bench of this Court held as follows:

> "11. From the above discussion, it is clear that the requirement of issuing notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment is independent of the requirement of publication of notice in accordance with the second part of Section 5(3) read with Rules 19 and 5(2) of the Rules. The language of Form-VIII in which the notice is required to be published cannot control the interpretation of the substantive provision contained in Section 5(3), which, as mentioned above, casts a duty on the recording authority to issue notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the proposed amendment."

In the instant case, the mutation order was passed by the Tahsildar-4th respondent in the year 2002 vide proceedings dated .07.2002. Admittedly, it is the pleaded case of the petitioner that his grandmother's name was not shown in the revenue records since the year 1992-1993. When that is so, there is no question of issuing notice in writing to the grandmother of the petitioner in the year 2002, when her name is not shown in the revenue records. As such, the decision of the Hon'ble Full Bench of this Court has no application to the facts of the case on hand.

12. Be that as it may, in the counter, the 5th and 6th respondents have alleged that the petitioner is not only the legal heir claiming the property but also there are other legal heirs, who are not added as parties to this *lis.* It is also contended by the learned counsel for the 5th and 6th respondents that the sisters of the grandmother have categorically deposed that their father, had never gifted any property in favour of the grandmother of the petitioner. In fact, the sisters of the grandmother of the petitioner have also filed sworn affidavits to that effect. The petitioner has not filed any reply rebutting the aforesaid averments in the counter affidavit of the respondents 5 and 6. As rightly pointed out by the revisional authority, the disputed questions of title cannot be gone into by the revenue authorities, in the revision. This Court cannot also go into the disputed questions of facts. As Sub-Section (2) of Section 8 of the Act of 1971 provides that if any person is aggrieved as to any rights of which he is in possession by an entry made in record of rights, he may institute a suit against any person denying or interested to deny title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963. Basing on the declaration given by a Civil Court, any entry in the record of rights, shall be amended. When once the petitioner has alternative remedy of filing a civil suit under Section 8(2) of the Act of 1971, I do not see any merit in the writ petition.

In view of above facts and circumstances, this writ petition is dismissed. However, it is open for the petitioner to approach Civil Court under Section 8(2) of the Act. In the event, he obtains a decree in his favour from the competent Civil Court, he can approach the official respondents for correction of entries and cancellation of pattadar passbooks and title deeds issued in favour of the 5th and 6th respondents.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition shall stands dismissed.

A.RAJASHEKER REDDY, J

30.09.2016
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17220 OF 2016

Date: 30.09.2016

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