

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.17202 OF 2016

ORDER :

This writ petition is filed seeking writ of mandamus declaring the order dated 11.10.2012 in proceedings No.Rc.E5/375/2012 passed by the 2nd respondent-Joint Collector, dismissing for default the revision petition filed by the petitioner under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short 'the Act'), which was filed challenging the order dated 12.12.2011 in file No.A/798/2011 passed by the 3rd respondent as illegal and arbitrary and consequently to set aside the same.

Heard Sri B.Vijaysen Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Revenue appearing for the respondents 1 to 4 and Sri G.M.Mohiuddin, learned counsel for the 5th respondent.

Learned counsel for the petitioner submits that the Joint Collector-2nd respondent being a quasi judicial authority, has no power to dismiss the revision petition for default filed under Section 9 of the Act and that the provisions of Order 9 of Civil Procedure Code are not applicable to the provisions of the Act. In support of his contention, he relied on the judgment reported in **Kommineni Haribabu v. Tahsildar, Chandragiri Mandal, Chittoor District**^[1].

On the other hand, learned counsel for 5th respondent though not disputed with the principle laid down in the above citation, but tried to argue stating that the 2nd respondent-Joint Collector has considered the case of the petitioner on merits on an application filed by the petitioner for reopening the revision petition.

A perusal of the impugned proceedings dated 11.10.2012 in

Rc.No.E5/375/2012 goes to show that the 2nd respondent has dismissed the revision petition for default on the ground that the revision petitioner was absent consecutively three times. Aggrieved by the same, the petitioner also filed petition for reopening the said revision. The 2nd respondent vide Memo dated 24.02.2013 in Rc.No.E5/375/2012, passed order as follows:

“Sri Bathual Krisna had filed a revision petition filed u/s 9 of the A.P.Rights in land and Pattedar Pass Book Act, 1971 against the impugned proceedings of the Revenue Divisional Officer, Mahabubabad file No.A/798/2011, dated 12.12.2011. The case was called, the revision petitioner was absent consequently (3) times, and finally called on 6.10.2012 the revision petitioner is absent. Hence the revision petition is hereby dismissed vide reference 2nd cited.

However the petitioner had filed affidavit vide reference 3rd cited and requested to reopen the case. The request made by the petitioner has been examined and inform that the case was already dismissed and cannot reopen.”

In **Kommineni Haribabu v. Tahsildar, Chandragiri Mandal, Chittoor District (supra)**, learned Single Judge of this Court held as follows:

“7. On a compendious reading of these provisions, it is evident that only a few provisions of CPC are made applicable to the proceedings under the Act. The provisions of Order IX CPC not having been made applicable to the proceedings under the Act, invoking the said provision for dismissing the case for default by respondent No.3 cannot be sustained. Even in the absence of the parties, respondent No.3 ought to have applied his mind and passed an order either confirming or reversing the order of the lower authorities on merits.”

A perusal of the impugned proceedings in the writ petition dated 11.10.2012 as well as Memo dated 24.02.2013 both issued by the 2nd respondent-Joint Collector goes to show that the case of the petitioner was not considered on merits. Invocation of provisions of Order 9 CPC for dismissing the case for default by Joint Collector, cannot be sustained. Even in the absence of parties, the Joint Collector have to apply his mind and passed order either confirming or reversing order of lower authorities on merits as held in **Kommineni Haribabu v.**

Tahsildar, Chandragiri Mandal, Chittoor District (supra). As such the contention of the learned counsel for the 5th respondent that the case of the petitioner was considered on merits on the application filed by the petitioner for reopening the revision petition, cannot be accepted.

In view of above facts and circumstances, this writ petition is allowed by setting aside the impugned order of the 2nd respondent dated 11.10.2012. However, the 2nd respondent-Joint Collector, Warangal, is directed to dispose of the revision petition filed by the petitioner on merits, within a period of three months from the date of receipt of a copy of this order, in accordance with law.

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

A.RAJASHEKER REDDY, J

24.08.2016
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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