HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos. 28146 of 2005 and 653 of 2006

COMMON ORDER:

W.P.No.28146 of 2005 is filed seeking issuance of writ of mandamus declaring the order of the Revenue Divisional Officer, Vizianagaram (third respondent) in D.Dis.No.3657/90-A dated 30.05.2005 as illegal and without jurisdiction, where as W.P.No.653 of 2006 is filed by the very same petitioners questioning the order passed by the second respondent/Joint Collector in R.C.No.1895/05/F2, dated 14.08.2005.

Since the issues involved in both the writ petitions are one and the same, they are being disposed of by this common order.

Heard Sri D.Prakash Reddy, the learned Senior Counsel representing Sri C.Sudesh Anand, learned counsel for the petitioners, the learned Government Pleader for Revenue, Sri D.V.Sita Rama Murthy, learned Senior Counsel for respondent No.5, Sri Koneti Raja Reddy, learned counsel for respondent No.16, Sri Gudapati Venkateswara Rao, learned counsel for respondent Nos. 6 to 8, 13 to 15, 17 to 25 and Sri T.R.S.Prasad, learned counsel for respondent No.12.

The facts in issue are as under:

The first petitioner herein is elder brother of the second petitioner, where as the third petitioner is the younger brother of the second petitioner. The fourth and fifth petitioners are the sons of first petitioner. They claimed to be the absolute owners and possessors of agricultural land to an extent of Ac.91.00 in

Sy.Nos. 3,4,7 and 11 of Pedaraopalli Village, Kothavalasa Mandal, Vizianagaram District. The said land was said to have been purchased by the father of the second petitioner on 12.01.1980 from the fifth respondent and others for a valid consideration, who inturn is said to have purchased the same from Bhupathiraju Venkata Narasayamma in the year 1959. Ever since the date of purchase they claim to be in possession and enjoyment of the same by paying land revenue to the Government. It is stated that their names were also mutated in the revenue records. Further the predecessors in title to the petitioners are said to have obtained settlement patta from the Settlement Officer, Visakhapatnam under the provisions of Estates Abolition Act, 1948 as the said lands are situated in Inam Estate village and in the year 1980 the settlement officer is said to have transferred the patta in the name of the petitioners. In the year 1990, the third respondent, in exercise of his power under 34-D of Board Standing Orders issued a notice calling upon the petitioners to attend an enquiry with regard to the classification of land held by them as “ryotwari” in the revenue records. Being satisfied with the explanation given by the petitioners, the proceedings were said to have been dropped and pattadar pass books and title deeds were issued under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short “the Act”). It is stated that O.S.No.16 of 1997 came to be filed by the petitioners when the third parties were trying to disturb them, which was decreed on 15.11.2003 restraining the defendants therein from interfering with their possession. It is stated that the third respondent at the instance of the defendants in the suit got issued a notice dated 25.11.1997 calling upon the petitioners to attend the enquiry for classification of the lands in Sy.Nos. 3,4,7 and 11. The same was challenged before this Court in W.P.No.595 of 1998 which was rejected on 03.02.2004 with an observation that the third respondent would inform the circumstances under which the enquiry was undertaken as the notice is silent on the said aspect. This Court further observed that on being informed about the purpose for which the enquiry is being undertaken, the petitioners may be permitted to raise objections with regard to the maintainability and jurisdiction. After submitting the explanation given by the petitioners, raising various objections including the jurisdiction, the third respondent passed an order in D.Dis.No.3657/90 dated 30.05.2005 directing the Mandal Revenue Officer to convert the patta lands admeasuring Ac.29.16 cents in Sy.No.3/1, Ac.29.16 cents in Sy.No. 3/3, Ac.29.15 cents in Sy.No.3/4, Ac.17.03 cents in Sy.No.4/1, Ac.4.77 cents in Sy.No.4/2, Ac.4.50 cents in Sy.No.4/3, Ac.3.53 cents in Sy.No.7/3 and Ac.0.78 cents in Sy.No.11/2 from Ryotwari to Banjar/Poramboke. The said proceedings were challenged before the High Court by way of filing W.P.No.28146 of 2005. Pending the said writ petition, the respondents herein, who were also parties to the proceedings before the third respondent, preferred an appeal before the Joint Collector, who by his order dated 14.08.2005 directed the Mandal Revenue Officer, Kothavalasa to take necessary action for incorporation and changes in revenue records. Challenging the said order, W.P.No.653 of 2006 came to be filed.

In the said writ petition, the Mandal Revenue Officer filed his counter stating that the petitioners herein claim their title from respondent No.5 and others through un-registered agreement of sale. It was specifically averred that whether the petitioners have purchased the property in question from the patta holders under agreement of sale or not or whether they derive any valid title or right from the patta holders are all disputed questions of fact and they cannot be resolved under Article 226 of the Constitution of the India. It is stated that the then Mandal Revenue Officer, Kothavalasa, having noticed during the final check operations that the lands in Sy.Nos. 3/1, 3/3, ¾, 4/1, 4/2, 4/3, 7/3 and 11/2 are all banjar/poramboke lands and that the pattas were erroneously granted by treating part of the lands as ryotwari, filed an application before the Revenue Divisional Officer, Vizianagaram in the year 1990 to change the classification from Zerovathi to Banjar and to cancel the pattas granted by the then Settlement Officer. Basing on the said application, the Revenue Divisional Officer issued notice to the petitioners as well as to the un-official respondents and after conducting enquiry, the Revenue Divisional Officer ordered the lands to be converted from ryotwari to Banjar. Hence, it is urged that there is no illegality in the impugned order.

Respondent No.5 in W.P.No.653 of 2006 filed counter disputing the averments made in the affidavit filed in support of the writ petition. It is specifically stated in the counter that respondent Nos.5 to 8 are absolute owners of the land admeasuring Ac.91.00 covered in Sy.No.3 of Pedaraopalli Village of Kothavalasa Mandal as they purchased the said property through registered sale deed Nos. 2742, 2743, 2744 and 2745 of 1959. It is also stated that their predecessor in title raised mango grove in the said land and from the date of purchase they are in possession and enjoyment of the same. It is also stated that when the settlement authorities granted pattas under the provisions of Estate Abolition Act, 1948, it was for the revenue authorities to implement the said orders in the Fair Adangal (10(1) account) and other village revenue accounts as per B.S.O. 27 and 28. The authorities also declared the patta land as a non-surplus land under the provisions of the Land Reforms Act. It was also contended that the Revenue Divisional Officer or the Mandal Revenue Officer has no jurisdiction to interfere with the orders of the settlement officer.

A counter came to be filed by the un-official respondent Nos.9 to 11 in W.P.No.653 of 2006 disputing the averments made in the affidavit filed in support of the writ petition. It has been stated that the property admeasuring Ac.91.00 cents belongs to Narasayamma W/o. Bhupati Raju which fell to the share of late Bhupati Raju by way of partition in the year 1941. Respondent Nos.5 to 8 in W.P.No.653 of 2006 claimed to have been purchased the said property from the legal heirs of Bhupati Raju vide registered document bearing Nos. 2742, 2743, 2744 and 2745 of 1959 dated 27.12.1959. It is stated that respondent Nos.5 to 8 never sold the said property and the property has been declared by the Land Ceiling Authority as not in excess of ceiling. The averments in the counter also refers to filing of an appeal against an order of Assistant Settlement Officer, Srikakulam dated 08.06.1962 before the Settlement Officer, who, by his order dated 28.12.1972 held that respondent Nos.5 to 8 in W.P.No.653 of 2006 are owners of the property ie. Land admeasuring Ac.31.65 cents in Sy.Nos.3/5, Ac.7.20 cents in Sy.No.3/7, Ac.25.19 cents in Sy.No.3/9 and disallowed to an extent of Ac.27.20 cents in Sy.Nos. 3/3, 3/4 and 4. The averments in the counter further show that the Mandal Revenue Officer, Kothavalasa, is said to have submitted a report to the

Revenue Divisional Officer, against the petitioners on the ground that the pattas were wrongly issued to them. Having regard to the circumstances stated above, more particularly the orders of the settlement officer, proceedings of the Urban Land Ceiling Authority and initiation of proceedings under Section 145 Cr.P.C. by the Executive Magistrate, against the petitioners, it is urged that the question of petitioners being in possession of the property which is subject matter of dispute in the writ petition would not arise.

Respondent No.26 filed his counter stating that on presentation of four documents styled as General Power of Attorneys for the subject land ie. Sy.Nos. 3/5, 7 and 9 of Pedaraopalli Village, the then Sub-Registrar, Gopalapatnam has kept the documents pending vide P.Nos. 22, 23, 24 and 25 of 2011 and referred the matter to the Sub-Registrar, Kothavalasa (respondent No.27) for ascertaining the market value of the lands and to admit the pending documents as regular documents. The counter further shows that on receipt of a letter dated 11.02.2011 from the Sub-Registrar, Gopalapuram, the Sub-Registrar, Kothavalasa, vide his letter dated 05.03.2011 informed that as per basic value register, only Sy.Nos. 3/1 to 4 are available and the required survey numbers could not be ascertained as they are not forthcoming in the basic register. Hence, the market value cannot be provided for Sy.Nos. 3/5, 7 and 9.

The main ground urged by Sri D.Prakash Reddy, the learned Senior counsel appearing for the petitioners is that the Revenue Divisional Officer has no jurisdiction to entertain the appeal at the instance of the Mandal Revenue Officer, who cannot be said to be an aggrieved person. He further submits that since there is a dispute over the title, the same cannot be decided by the Revenue Divisional Officer and that only common law remedy would be the appropriate remedy for the un-official respondents to get their grievances ventilated. He submits that though the petitioners were parties before the Tahsildar, the un-official respondents have intentionally not made them as parties before the Joint Collector and any orders passed by the Joint Collector, without hearing the petitioners would be illegal and improper.

On the contrary Sri Gudipati Venkateswara Rao, learned counsel for respondents would submit that since the Tahsildar found that there were bogus and fake entries in the records, he wanted the same to be rectified and hence preferred an appeal as it is his duty to get the mistakes rectified. But however, submits that 34-D of Board Standing Orders does not confer power on the Mandal Revenue Officer to prefer an appeal without there being an order.

Sri Koneti Raja Reddy, learned counsel appearing for respondent No.16 would submit that since the petitioners have obtained title by way of agreement of sale, the same does not confer any right on them to question the proceedings of the Revenue Divisional Officer or by the Joint Collector. He further submits that there is no illegality in the order passed by the Revenue Divisional Officer or by the Joint Collector and if any dispute is sought to be raised with regard to the extent of land, the petitioners ought to have invoked the common law remedy and not by way of this writ petition. It is his case that the petitioners have committed fraud by getting their names incorporated in the revenue records in collusion with the then Tahsildar and as such the orders passed by the Revenue

Divisional Officer and Joint Collector warrants no interference. He further submits that in view of the order of the Director of Settlements, which has become final, the question of going into the merits of the case would not arise.

Sri D.V.Seetha Rama Murthy, learned Senior Counsel appearing on behalf of respondent No.5 took me through various provisions of Board Standing Orders and also the material placed before the Court to show that his clients are in possession of Ac.91.00 out of Ac.104.00. He submits that the claim of the petitioners with regard to possession of the land is false.

Sri Pampana Ravi Kumar, learned counsel appearing for one of the un-official respondent, while reiterating the contents of the counter, urged before the Court that the claim of the petitioners with regard to Ac.91.00 on the basis of agreement of sale cannot be accepted. He disputed the correctness of the extent of land held by the petitioners and as such submits that the same cannot be adjudicated in these writ petitions.

On the other hand, the Government Pleader for Revenue submits that between the years 1978 to 1983, the Special Tahsildar made some erroneous entries by incorporating the names of some private parties in possession of Ac.100.00 of land. When the same came to light, it was sought to be corrected by the Tahsildar. He submits that the Tahsildar has submitted a report to the Revenue Divisional Officer and basing on the said report, the Revenue Divisional Officer conducted an enquiry in the year 1980 by issuing notice to the petitioners and respondents, which was however set aside. He submits that the property of the government is also involved in the dispute and as such neither the petitioners nor the un-official respondents are entitled for the extents of lands claimed by them. However, he submits that since the petitioners herein were not heard before the Joint Collector, it would be appropriate if the matter is sent back to the Collector for passing orders after hearing the petitioners.

To this, Sri D.Prakash Reddy, learned Senior counsel appearing for the petitioners replied stating that there is no point in sending the matter back to the Joint Collector as the order which is challenged before the Joint Collector is itself without jurisdiction.

In view of the above, the points that arise for consideration are i) whether the Joint Collector was right in passing the orders without hearing the petitioners; and (ii) whether the Revenue Divisional Officer has got jurisdiction to entertain the matter as appeal basing on the report of the Mandal Revenue Officer under the provisions of R.O.R.Act.

Insofar as the first point is concerned namely as to whether the Joint Collector was justified in passing the order without hearing the petitioners, the same in my view is illegal and improper, as it violates the basic principles of natural justice.

As seen from the record, the petitioners were parties before the Revenue Divisional Officer, wherein a dispute regarding title was raised over the various extents of land in different survey numbers. After hearing the petitioners, the Revenue Divisional Officer while rejecting the claim of the petitioners herein directed the Mandal Revenue Officer to convert the patta lands admeasuring Ac.29.16 cents in Sy.No.3/1, Ac.29.16 cents in Sy.No. 3/3, Ac.29.15 cents in Sy.No.3/4, Ac.17.03 cents in Sy.No.4/1, Ac.4.77 cents in Sy.No.4/2, Ac.4.50 cents in Sy.No.4/3, Ac.3.53 cents in Sy.No.7/3 and Ac.0.78 cents in Sy.No.11/2 from Ryotwari to Banjar/Poramboke. Against the said order, the petitioners filed W.P.No.28146 of 2005, in which some of the aggrieved persons were made parties. Though the petitioners herein were aggrieved by the orders passed, the respondents herein preferred an appeal before the Joint Collector showing only the Revenue Divisional Officer as a party. Without hearing the petitioners herein, though they were parties before the Revenue Divisional Officer, the Joint Collector by his order dated 14.08.2005 directed the Mandal Revenue Officer to take necessary action for making changes in the revenue records. From the above, it is clear that the impugned order came to be passed by the Joint Collector without hearing the petitioners though they were parties before the Revenue Divisional Officer. In view of the above, it can be said, without any hesitation, that the action of the Joint Collector in passing the order against the petitioners, without hearing them, is contrary to the principles of natural justice and the same is liable to be set aside.

In order to decide as to whether the Revenue Divisional Officer was justified in entertaining an appeal on the basis of the recommendations made by the Mandal Revenue Officer for cancellation of entries in the revenue records and for re-conversion of land as Banjar Poramboke, it would be appropriate to refer to certain provisions under the R.O.R.Act.

Section 5 of the A.P.R.O.R.Act. 1971 deals with amendment of updating of record of rights. Section 5 (5) of the Act states that against every order passed by the Mandal Revenue Officer either making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed within 60 days from the date of communication of the said order and the decision of the appellate authority thereon shall subject to the provisions of Section 9 be final.

Dealing with the said aspect, the counsel for the respondents strenuously contended that since the Mandal Revenue Officer found certain defects with regard to certain entries made in the record of rights, he was justified in requesting the Revenue Divisional Officer, under Section 5 (5) of the Act, for correction of entries. It may be true that the Tahsildar noticed certain irregularities in the entries made, but Section 5 (5) of the Act states that an R.D.O. can entertain an appeal against an order passed by the Tahsildar either making amendment or refusing to make such amendment. He cannot sue-moto entertain an appeal or pass an order basing on the recommendations or report of the primary authority.

Dealing with the said aspect this Court in ***Krishtappa and others v. Joint Collector and Additional District Magistrate, Anantapur***[1] held as under:

> "The difference between the jurisdiction conferred on the Collector by way of revision and on the Revenue Divisional Officer by way of appeal is different and distinct. Right to appeal is a substantive right and is a creature of statute. Therefore, the jurisdiction of appeal has to be exercised before such authority and in such manner the statute has provided for. It is one thing to note that a clerical error is corrected by the recording authority but another to forward report to appellate authority and the same is treated as appeal and disposed of by RDO. For RDO to entertain a case, there should be a properly presented appeal by aggrieved

> party.
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> As regards the Revenue Divisional Officer, with the presentation of an appeal he gets jurisdiction to correct an entry made either on amendment or updating in record of rights. There is no procedure to receive objection petition by the Mandal Revenue Officer after he has issued pattadar passbooks/title deeds. Further, such communication cannot be treated as an appeal by the RDO. But, what is required to be noted is that if an appeal as directed by the Act is taken up and pursued by a party, the same is subjected to rigors of appeal procedure in filing, by aggrieved party etc. The manner of entertaining appeal to decide the grievance between the parties, this Court is of the opinion that the Writ Petitioners have suffered prejudice and the ultimate orders suffer from patent illegality."

Similar view was taken by this Court in W.P.No.29022 of 2012 dated 24.11.2015 in ***Katta Adamma @ Adalu and others v. Joint Collector, Warangal District.***

From the judgments referred to above, it is clear that the Revenue Divisional Officer could not have entertained an appeal without there being an order by the Tahsildar.

Further, the respondents placed reliance on 34 (D) of the Board Standing Orders to show that the Revenue Divisional Officer has got the power to entertain the appeal.

Board Standing Order 34 (D) deals with effecting changes in the revenue Accounts as a result of resurvey, supplemental survey without restricting to settlement. Clause 1 (ii) of Board Standing Order 34 states that in all cases where resurvey is undertaken, the Revenue Officers not below the rank of Tahsildar, shall effect in the Revenue Records, necessary changes arising out of such resurvey, in the matter of survey numbers, classification of lands from one class to another <u>or from one head</u>

to another area of the lands, rate of assessment and also the quantum of the assessment payable by the holder of the land. But clause 1 (iv) of the said Standing Order provides for an appeal before the Revenue Divisional Officer against the orders passed by the Revenue Officer or against the changes effected by him within 30 days from the date of communication of the orders or changes effected. A second appeal shall lie to the District Collector against the orders of revenue Divisional Officer within 30 days from the date of communication of the orders of the Revenue Divisional Officer.

In view of clause 1 (iv) of Board Standing Order 34 it cannot be said that clause 1 (ii) of Board Standing Order 34 authorises the Revenue Divisional Officer to make changes in the revenue records on his own. Though, clause 1 (ii) gives power to a Revenue Officer not below the rank of Tahsildar to effect changes in records but the same is silent as to the power of the Revenue Divisional Officer, more so when the very same provision provides for an appeal to the Revenue Divisional Officer against the order of a Revenue Officer. Therefore, the argument of the learned counsel for the un-official respondents and the Government Pleader for Revenue that 34 of Board Standing Order authorizes the Revenue Divisional Officer to entertain an appeal cannot be accepted.

Hence, it has to be held that the Revenue Divisional Officer exceeded his powers in entertaining the recommendations of the Mandal Revenue Officer as an appeal and ordering necessary changes in the revenue records.

Sri K.Raja Reddy, the learned Senior counsel appearing for the respondent strenuously contends that since the entries in the revenue records are obtained by fraud, the same can be decided at any stage and as such the question of remanding the matter back or giving any benefit to the petitioners in this Writ Petition would not arise. He placed on record the judgment of this Court in **Pochi Reddy v. Revenue Divisional Officer, Vikarabad**[2] and also the judgment of the Supreme Court in **Ganpatbhai Mahijibhai Solanki v. State of Gujarat**[3]**.** But it is to be noted that the plea of fraud was neither raised in any of the proceedings nor any evidence was adduced to show that the entries were made by adopting fraudulent practice. It is well established principles of law that fraud has to be pleaded first and then proved. Therefore, mere allegation that the entries were obtained by fraud without pleading and proving the same does not satisfy the requirement of law.

The counsel for the respondents further submits that since the entire transaction was by an agreement of sale, the petitioners have no right over the property. In support of the same he relied upon the judgments in **K.Seetharama Reddy v. Hassan Ali Khan**[4]**, Bhavana Rushi Co-operative Housing Building Society Ltd v. Joint Collector Ranga Reddy District, Mukhala Kotilingam v. Joint Collector**[5]**, V.Manjula v. Mandal Revenue Officer**[6] **and Konkana Ravinder Goud v. Bhavanarishi Co-operative House Building Society Hyderabad**[7]**.** The same is disputed by the learned counsel for the petitioners, but however states that even assuming that the transaction was by agreement of sale, ownership of land cannot be decided by the Court. The same in my view appears to be correct. Since there are number of disputed factual aspects the same cannot be decided by this Court under Article 226 of Constitution of India.

At this stage, the learned counsel for the petitioners vehemently argued that since the dispute raised is with regard to the extent of land, the remedy would be by way of initiating common law remedy under Section 8 (2) of the Act. On the other hand, Sri D.V.Seetha Rama Murthy, learned Senior Counsel would submit that, in case, this Court is not agreeing with the arguments advanced, it would be appropriate if the matter is directed to be considered by the Joint Collector rather than the Tahsildar and it would be wholly improper to direct the parties to approach the civil Court when such a plea was not raised earlier.

It is to be noted that if the R.D.O. has no authority to pass orders basing on the recommendations made by the M.R.O., by treating it as an appeal, filing of a revision against an order passed by an authority, who has no jurisdiction to pass such an order would not arise. Hence, remanding the matter back to an the Joint Collector may not be permissible. As this Court has already come to a conclusion that the R.D.O. has no power to entertain an appeal on his own, without there being an order, there is no point in remanding the matter back to the Revenue Divisional Officer as well. Instead, it would be appropriate if the matter is sent back to the Tahsildar, Kothavalasa, on whose recommendations, the impugned orders came to be passed, permitting the petitioners to raise all objections including his jurisdiction to deal with the matter.

Accordingly, both the Writ Petitions ie. W.P.No.28146 of

2005 and W.P.No.653 of 2006 are allowed, orders under challenge in both the writ petitions are set aside and the matter is remanded back to the Tahsildar, Kothavalasa to hear the matter afresh by taking into consideration all the objections raised by both the parties and pass orders in accordance with law at the earliest, preferably within a period of four months from the date of receipt of a copy of the order.

There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.02.2016
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[1] (2014) 4 ALD 8
[2] 2004(4) ALD 77
[3] (2008)12 SCC 353
[4] 2003(1) ALT 276
[5] 2005(2) ALD 838
[6] 2012(6) ALD 610
[7] 2003(6) ALT page 1