HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.21600 & 22027 of 2012

COMMON ORDER:

Since the common order dated 02.06.2012 passed by the 1st respondent in File No.D5/1031/2010 and D5/1032/2010 is challenged in these writ petitions and since the subject matter is one and the same, they are being heard together and disposed of by this common order.

Heard learned counsel for the petitioners, learned Assistant Government Pleader for Revenue, Sri B.Venkata Rama Rao, learned counsel appearing for the 12th respondent.

Learned counsel for the petitioners submits that Section 5B of the A.P.Rights in Land and Pattadar Pass Books Act, 1971 was introduced by way of Amendment Act 9 of 1994 which came into effect from 31.10.1993. As such, appeal does not lie before the 2nd respondent-Revenue Divisional Officer, against the orders of respondent No.3, therefore, the petitioners preferred revision before the 1st respondent against the orders passed by the 3rd respondent dated 23.02.1990 and also the orders dated 30.11.2009 passed by the 2nd respondent and that the 1st respondent should have entertained the revision against the orders dated 23.02.1990 passed by the 3rd respondent validating the sale deeds in favour of unofficial respondents. But, instead the 1st respondent confirmed the orders of the appellate authority by way of impugned order which is erroneous. In support of his contention he relied on the Judgment rendered by the Division Bench of this Court in ***Konkana Ravinder Goud and others v. Bhavanarishi Co-operative House Building Society, Hyderabad and others***[1] stating that the amended act is only clarificatory in nature.

On the other hand, learned Assistant Government Pleader for Revenue submits that the 1st respondent-Revisional authority has rightly dismissed the revision confirming the orders of the appellate authority stating that there is no provision of appeal against the order dated 23.02.1990 passed by the 3rd respondent validating the sale in favour of unofficial respondents, as Section 5 B was introduced by way of Amendment Act 9 of 1994 which came into effect from 31.10.1993.

Learned Assistant Government Pleader for Revenue also submits that this Court on 08.08.2016, directed the Revenue Divisional Officer to file an affidavit on the initiation and conclusion of proceedings before the Tahsildar, Uppal Mandal, Rangareddy District, but as informed through Memo

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[1] 2003 (5) ALD 654 (DB)

dated 18.02.2008, the same could not be traced out by the Tahsildar. In pursuance of the said orders the 2nd respondent filed affidavit stating that in compliance of the orders of this Court, the 2nd respondent verified the Adangals/pahanies of Survey No.151, Uppal Bagayat village, and that till the year 1997-1998 the petitioners' names were recorded in the possessor column and as per the pahani for the year 1998-1999, it is observed that the names of the unofficial respondents were incorporated by deleting the names of the writ petitioners by mentioning the file Nos.B/ROR/25/89, B/ROR/26/89. It is further submitted that on verification of Tahsil office records and as per the report of the Tahsildar dated 27.09.2016, it is observed that the aforesaid file numbers are not traceable and in the absence of the said files, he is unable to come to the conclusion that whether the initiation and conclusion of proceedings by the Tahsildar, Uppal under ROR Act is genuine or not.

Learned counsel for the 12th respondent submits that the petitioner can be permitted to file fresh revision without interfering with the impugned orders passed by the revisional authority.

Though notice is ordered and served, there is no appearance on behalf of other unofficial respondents.

Now in this case it is to be seen that as on the date of passing orders by the Tahasildar on 23.02.1990, there is no appeal provision against the said order before the 2nd respondent as provision 5 B (appeal provision) was inserted by way of Amendment Act 9 of 1994 which came into effect from 31.10.1993. By the said Amendment Act 9 of 1994, amendments were also made to Section 9 of the Act. In view of the same and as per the Judgment relied on by the learned counsel appearing for the 12th respondent in ***M.B.Ratnam and others v. Revenue Divisional Officer, Ranga reddy District and others*** [2]**,** no appeal lies against the order dated 23.02.1990 passed by the 3rd respondent. In view of the same the orders of the Revenue Divisional Officer-2nd respondent cannot be found fault.

As far as the amendment to Section 9 of the Act by way Amendment Act 9 of 1994 is concerned the same was subject matter before the Division Bench in **Konkana Ravinder Goud's case (supra 1)** which was relied on by the petitioner. In the said case the Division Bench of this Court at para-76 held as follows;

> "76. The revisional power conferred on the Collector under the unamended Section 9 of the Act to call for

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[2] 2003 (1) ALD 826 (DB)

and examine any record of rights prepared or maintained under Section 3 or any order passed or proceedings taken by any recording authority or an appellate authority, in our opinion, is exhaustive and inherent inclusive of any proceedings taken under Section 5 A of the Act. To say that such revisional power by the Collector could not be exercised by him against such an on order as was passed by the Mandal Revenue officer would be contrary to the intent and object with which the powers were conferred on the Collector under unamended Section 9. It was obligatory on the part of the Collector if he was of the view that grave irregularity or illegality had crept in the record of rights requiring amendment, modification etc., to exercise powers of revision. The fact that the order passed by the Mandal Revenue Officer under Section 5 A was not made appealable prior to Section 5 B was inserted by Act 9 of 1994 cannot be taken to mean that the revisional powers conferred on the Collector under the unamended Section 9 of the Act were not available to rectify the record of right. Because of the insertion of Section 5B by the Amendment Act specific appellate power has conferred against the orders passed by the Mandal Revenue Officer on the Revenue Divisional Officer, therefore, it appears that in order to be more specific and precise Section 9 was brought in the present form with the sole view to clarify the powers of revision exercisable by the Collector even against the orders passed under Section 5 A of the Act by the Mandal Revenue Officer."

The prayer in the revision goes to show that the petitioners have challenged two orders in the revision. One is order passed by the 3rd respondent on 23.02.1990 and the other is appellate order dated 30.11.2009 by the 2nd respondent. The Division Bench in the aforesaid Judgment clearly held that the Amendment Act 9 of 1994 is clarificatory in nature. As such, the 1st respondent should have decided about validity of the order dated 23.02.1990 passed by the respondent No.3.

The petitioners filed memo dated 18.02.2008 wherein 3rd respondent stated that the original file pertaining to validation of sale deeds was not available. The 2nd respondent also filed affidavit observing that the said files are not traceable and that in the absence of the said records, he is unable to come to the conclusion that whether the initiation and conclusion proceedings by the Tahsildar Uppal under ROR Act is genuine or not. All these factual aspects have to be gone into by the Revisional Authority by conducting an enquiry, because, as on the date of filing revision, the Revisional Authority has power to deal with the orders passed by the 3rd respondents dated 23.02.1990, since the nature of amendment to Section 5 B of the Act held to be clarificatory in nature.

As on the date of filing of the revision, the revisional authority has power to deal with the orders passed by the 3rd respondent dated 23.02.1990, but respondent No.1 erroneously dismissed the same.

In view of the above facts and circumstances, the impugned order dated 02.06.2012 passed in case Nos.D5/1031/2010 and D5/1032/2010, by the revisional authority-Joint Collector, Ranga Reddy District is set aside and the 1st respondent-Joint Collector is directed to dispose of the revision after issuing notice and giving opportunity of hearing to the parties of revision, in accordance with law.

Accordingly, the writ petition is allowed to the extent indicated. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

20.10.2016
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