

**THE HON'BLE SRI JUSTICE
M.S.RAMACHANDRA RAO**

WRIT PETITION No.28410 of 2012

ORDER:

In this Writ Petition, the petitioners have assailed the order dt.03-05-2011 in Case No.D5/922/2008 of the 1st respondent passed under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act") confirming the order dt.23-07-2007 in File No.A2/1662/2003 of the 2nd respondent.

2. Petitioners purchased a total extent of Ac.40.35 guntas in Sy.Nos.73, 117 and 118 of Nedunoor Village of Kandukoor Mandal of Ranga Reddy District under a registered sale deed dt.03-04-2003 from one Chenchu Narayana and 12 others including the 5th respondent. Petitioners contend that after they purchased the property, they applied for mutation in the Revenue records and such mutation was sanctioned in their favour in proceedings No.RoR/B/1564/2003 dt.28-07-2003. They also claim that their names were recorded as pattadars and possessors continuously from 2003-2004.

3. Prior thereto, vide proceedings Ref.ROR/532/95 dt.18.5.1995 mutation was

ordered by the Mandal Revenue Inspector, Recording Authority, Kandukur Mandal, R.R.District in favor 5th respondent herein in respect of Ac.0.31 gts in Sy.No.73 and Ac.0.18 gts in Sy.No.117 of Nedunur Village. It was recorded that he was the owner of this land.

4. Chenchu Ramulu, husband of 6th respondent and father of respondent Nos.7 and 8, filed an appeal under Section 5(5) of the Act in File No.A2/1662/2003 against 5th respondent challenging an order dt.18-05-1995 in proceedings No.RoR/532/1995. The 5th respondent, who is also one of the vendors of the petitioners, was the sole respondent in the appeal No.A2/1662/2003.

5. In that appeal, the said Chenchu Ramulu claimed to be absolute owner and possessor of agricultural land of extent Ac.0.31 guntas in Sy.No.73, Ac.0.37 guntas in Sy.No.117 and Ac.1.01 guntas in Sy.No.118 and contended that he came to know in May, 2003 about the proceedings No.RoR/532/1995 dt.18-05-1995.

6. An order dt.23-07-2007 was passed by the 2nd respondent in the appeal No.A2/1662/2003 whereby the patta in the name of 5th respondent was ordered to be deleted in the pahani for the

year 2001-2002 and the name of Chenchu Ramulu was directed to be restored as pattadar.

7. Petitioners contend that their vendors had been issued pattadar pass books and title deeds under the provisions of the Act; and that the petitioners' vendors had acquired title from one Chenchu Yellaiah, who had obtained title under Section 50-B of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950; both Chenchu Ramulu and 5th respondent were aware of the purchase of land by petitioners and also the land which was the subject matter of the appeal No.A2/1662/2003, but they colluded with each other and got the order dt.23.7.2007 passed in the said appeal. So petitioners filed a Revision under Section 9 of the Act before the 1st respondent, which was numbered as Proc.No.D5/922/2008 challenging the order dt.23.7.2007 in appeal No.A2/1662/2003 appeal No.A2/1662/2003.

8. The said Revision was dismissed on 03-05-2011 by

1st respondent for default and not on merits on the ground that petitioners had been absent since several adjournments and had not shown any interest in pursuing the Revision before the 1st

respondent.

9. Challenging the same, this Writ Petition has been filed.

10. Petitioners contend that the provisions of Order IX Rule 3 C.P.C. are inapplicable to the Revision proceedings pending before the 1st respondent since all the provisions of the C.P.C have not been made applicable to the Act under Section 10 of the Act and Rule 28 of the Rules. They contend that even in the absence of the parties, the

1st respondent, while exercising the Revisional jurisdiction under Section 9 of the Act, has to apply his mind to the Revision Petition and pass an order on merits and he cannot dismiss the Revision for default. They place reliance on the decision of this Court in **Kommineni Haribabu Vs. Tahsildar, Chandagiri Mandal, Chittoor District and others**^[1].

11. In **Kommineni Haribabu** (1 supra), this Court held that the provisions of Order IX C.P.C. have not been made applicable to the proceedings under the Act and that the Revisional authority is not competent to dismiss a Revision for default and is bound to decide the same on merits.

12. Respondent Nos.5 to 8 in the Writ Petition was served. But none appears on their behalf.

13. W.P.M.P.No.27181 of 2015 was filed by one B.Damodar Reddy, who claimed to have purchased under registered sale deed dt.03-08-2012 from one Chenchu Rajamma, W/o.Chenchu Ramulu of extent Ac.0.31 guntas in Sy.No.73/EE, Ac.0.37 guntas in Sy.No.118/EE and Ac.1.01 guntas in Sy.No.117/EE, total admeasuring Ac.2.29 guntas in Nednur village, Kandukur Mandal, Ranga Reddy District. This application for impleadment has been allowed on 01-06-2016 by this Court. He filed a counter affidavit with supporting documents disputing the right of petitioners in the subject land and contending that after purchase of the above land by him from Chenchu Rajamma, the above lands were mutated in his name in the Revenue records on 23-10-2012. He contended that Chenchu Narayana and Chenchu Beerappa, from whom the petitioners allegedly purchased the properties as claimed by them, had fabricated an agreement of sale dt.23-12-1994 as if Chenchu Ramulu had agreed to sell the said land and basing on the said agreement of sale, got managed to get the name of Chenchu Beerappa mutated in Revenue records on 18-05-1995; that when these mutation proceedings came to the notice of

Chenchu Ramulu, he filed an appeal under Section 5(5) of the Act before the 2nd respondent, which was allowed on 23-07-2007. He contended that the Revision filed by petitioners before the 1st respondent had been dismissed for default and there is no error in the order passed by the 1st respondent.

14. Learned counsel for 9th respondent, however, did not dispute the principle laid down in **Kommineni Haribabu** (1 supra) cited by the learned counsel for petitioners i.e that it is obligatory on the part of the authorities under the Act to decide the matters on merits and they have no jurisdiction to dismiss the Revision filed under the Act for default without going into the merits.

15. Since this legal position is undisputed, it has to be held that the order dt.03-05-2011 passed by 1st respondent in Case No.D5/922/2008 is contrary to law and is liable to be set aside.

16. The Writ Petition is allowed and order dt.03-05-2011 passed by 1st respondent in Case No.D5/922/2008 order dt.03-05-2011 is accordingly set aside; the matter is remitted back to 1st respondent to issue fresh notice to petitioners as well as respondent Nos.5 to 9;

consider the matter on merits; and then pass final order and communicate the same to the petitioners as well as respondent Nos.5 to 9. This exercise shall be completed within three (03) months from the date of receipt of a copy of this order.

17. The Writ Petition is allowed with the above directions. No costs.

18. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-06-2016

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