**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

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**WP.No.2616 of 2012**

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**ORDER** :

In this Writ Petition, the petitioners seek a *Writ of Certiorari* to quash the order dt.21.01.2009 in proceedings No.ROR/D/7248/05 of 3rd respondent relating to issuance of Form XIII-B as well as the consequential order of 1st respondent in Revision Case No.D1/1959/2010 dt.13.01.2012.

**2.** The petitioners claim to have purchased an extent of Acs.5.21 guntas under two registered sale deeds dt.06.01.2004 in Survey No.295/2 which, according to them, is equivalent to Survey No.295/AA of Puppalguda Village, Rajendranagar Mandal, Ranga Reddy District.

**3.** The 4th respondent filed an application under Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 **(for short, 'the Act')** in Form X before 3rd respondent seeking regularization on the basis of an unregistered sale deed dt.15.12.1972 executed in his favour by one S.N. Sastry. In that application he sought regularization of an extent of Acs.5.21 guntas in Survey No.295/2 and Acs.4.19 guntas in Survey No.296/1 of Puppalguda Village.

**4.** The 3rd respondent issued orders in ROR/D/7248/05 dt.21.01.2009 regularizing an extent of Acs.5.21 guntas in Survey No.295/A and Acs.4.19 guntas in Survey No.296/LU of the said village by collecting a sum of Rs.1,050/- from 4th respondent. Certificate in Form XIII-B containing these details was issued on 21.01.2009 to 4th respondent.

**5.** Assailing this order, an appeal under Section 5(5) of the Act was filed by petitioners before 2nd respondent.

**6.** They contended that the 3rd respondent could not have directed regularization of the alleged un-stamped and un-registered sale deed produced by 4th respondent without serving any notice on petitioners, particularly when such sale deed is sought to be regularized thirty-six years after its execution. It was alleged that 4th respondent had initially sought regularization of extent of Acs.12.19 guntas in Survey Nos.295 and 296 of Puppalguda village claiming that he had purchased the same under an unregistered sale deed from one Annumula Gandaiah in 1967, and claiming that it was evacuee property, but the District Collector, Ranga Reddy District issued a Memo No.D3/1835/94 dt.17.03.2005 stating that the said land is no more an evacuee property and that it had been allotted to one Motilal Chandumal by the Government of India in the year 1970; that 4th respondent had filed WP.No.13687 of 2006 in this Court challenging the said memo of the District Collector, Ranga Reddy District, but the said Writ Petition had been dismissed on 06.07.2006; and having failed in his design to usurp the land of Acs.12.19 guntas by claiming it through Annumula Gandaiah, the 4th respondent has created the sale deed dt.15.12.1972 in respect of Acs.10.00 guntas in Survey No.295/A and 296/LU and applied for regularization under Section 5-A of the Act.

**7.** The 2nd respondent issued notice to 4th respondent, and by proceedings No.C/765/2009 dt.09.03.2010 dismissed the said appeal. After referring to the documents under which petitioners and 4th respondent claim the land, he observed that the lands claimed by them might be different though they fall in the same survey number within a total extent of Acs.19.16 guntas since the boundaries reveal a marginal difference. He rejected the contention of petitioners that no notice had been given to them as mandated under the Act on the ground that a public notice was issued in the village. He concluded that there is no scope to draw any inference that petitioners had no knowledge about the proceedings under Section 5-A of the Act in view of long-standing dispute between the parties.

**8.** Challenging the same, the petitioners filed a

Revision before the 1st respondent reiterating their contention that no notice had been given to them by 3rd respondent before he issued Form XIII-B certificate to 4th respondent. The said Revision was numbered as Case No.D1/1959/2010.

**9.** Pending that Revision, the 4th respondent died and his legal representatives, i.e., respondent nos.5 to 11 herein were impleaded.

**10.** The 1st respondent also dismissed the Revision observing that Survey No.295/2 cannot be under possession by both parties at the same time, and there is a need for localization of the subject land which is in possession of the respective parties. In spite of making the said observations, he disposed of the Revision without waiting for the survey of the land in Survey No.295 to be conducted and localization of the sub-divisions in the said survey number by merely observing that till the sub-division work is completed respective possession of the claimants to the land is not to be disturbed. He was also of the view that in view of the decision of a Division Bench of this Court in **B.G. Laxman (died) per L.Rs. v. Joint Collector, Ranga Reddy District**[1], only a general notice is contemplated in proceedings under Section 5 of the Act and no individual notices need be sent.

**11.** Assailing the same, the present Writ Petition is filed.

**12.** Heard the Counsel for petitioners, the learned Government Pleader for Revenue for respondent nos.1 to 3, Sri Vedula Srinivas, counsel for respondent nos.4 to 11, and Sri N. Avinash, counsel for 12$^{th}$ respondent.

**13.** Sri K. Vinaya Kumar filed WPMP.No.25966 of 2016 for impleading three persons who claim to have purchased portions of land in Sy.No.295 from 5$^{th}$ respondent.

**14.** The counsel for petitioners would contend that the judgment in **B.G. Laxman** (1 supra) relied upon by 1$^{st}$ respondent was over-ruled in **Chinnam Pandurangam v. Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District and others**[2] by a Full Bench of this Court. He contended that the Full Bench held that individual notices are required to be given to persons whose names are entered in the Revenue Records, and that this is necessary in order to comply with the rule of *audi alteram partem*. He contended that both 2$^{nd}$ respondent and 1$^{st}$ respondent erred in holding that a general notice would be sufficient and not individual notice under Rule 22 (3) in respect of proceedings taken up by 3$^{rd}$ respondent under Section 5-A of the Act on the application filed by 4$^{th}$ respondent. He also contended that having directed a survey to ascertain whether the lands being claimed by petitioners and the 4th respondent are one and the same or not, the 1st respondent ought not to have disposed of the appeal without awaiting the result of the said survey.

**15.** The learned Government Pleader appearing for respondent nos.1 to 3 fairly stated that principles of natural justice would require that notice be issued to petitioners and that in view of the law declared by the Full Bench in **Chinnam Pandurangam** (2 supra), it was incumbent on the part of 3rd respondent to issue notice to petitioners also before issuing Form XIII-B certificate to 4th respondent. He also stated that localization of the lands claimed by both the petitioners and 4th respondent would be advisable so that there will not be any problem about identification of the land in future.

**16.** Sri Vedula Srinivas, counsel appearing for respondent nos.4 to 11, submitted firstly that the land claimed by petitioners is in Survey No.295/2 whereas the land for which Form XIII-B under Section 5-A of the Act was issued to petitioners is Survey No.295/A and 296/LU; that even petitioners accept that Form XIII-B certificate was granted to a land different from the land in Survey No.295/2 in para.19 and para.11 of the affidavit filed in support of the Writ Petition. He therefore contended that petitioners cannot plead that they are persons interested in the land in respect of which Form XIII-B certificate was issued to 4$^{th}$ respondent and there was no necessity to issue any notice to them. However, he does not dispute that in the event the land claimed by both petitioners and 4$^{th}$ respondent is one and the same, then in view of the Full Bench judgment in **Chinnam Pandurangam** (2 supra), the petitioners would be entitled to a notice from 3$^{rd}$ respondent.

**17.** Sri K. Vinaya Kumar, learned counsel appearing for respondent nos.14 to 16, adopted the submissions of Sri Vedula Srinivas.

**18.** There is no dispute that 4$^{th}$ respondent, on the basis of an unregistered sale deed dt.15.12.1972, executed by one S.N. Sastry in respect of Acs.5.21 guntas in Survey No.295/2 and Acs.4.19 guntas in Survey No.296/1 of Puppalguda Village, applied for regularization of the said land to 3$^{rd}$ respondent on 10.10.2005.

**19.** The 3$^{rd}$ respondent had issued Form XIII-B certificate under the Act in proceedings No.ROR/D/7248/05 dt.21.01.2009 in respect of Acs.5.21 guntas in Survey No.295/A and Acs.4.19 guntas in Survey No.296/LU.

**20.** It is to be noted the Form XIII-B certificate issued by 3rd respondent refers to a different survey number (i.e., Sy.No.295/A and 296/LU) than the one to which the 4th respondent had applied (Sy.No.295/2 and 296/1) for regularization under Section 5-A of the Act.

**21.** Even the 2nd respondent accepts in his order dt.09.03.2010 that there has been a long-standing dispute between petitioners and 4th respondent. The 2nd respondent in his order does not give any finding whether the land claimed by petitioners is different from the land claimed by 4th respondent although he says that *they might be different*. Even the 1st respondent in his order states that both petitioners and 4th respondent are claiming *the same land* under respective sale deeds, that they are claiming to be in possession of it and that the land in Survey No.295/2 cannot be under possession of both parties at the same time and that is why it needs localization.

**22.** Therefore, merely because Form XIII –B certificate given by 3rd respondent relates to Survey No.295/A and Sy.No.296/LU and the land claimed by petitioners is in Survey No.295/2, it cannot be said that petitioners cannot complain against grant of From XIII-B certificate under Section 5-A of the Act to 4th respondent, since the record reveals that both parties have a long-standing dispute in respect of the same parcel of land.

**23.** The petitioners have categorically stated in the affidavit filed in support of the Writ Petition that under the guise of Form XIII-B certificate issued to them by 3$^{rd}$ respondent, the respondent nos.4 to 11 are trying to alienate petitioners' land in favour of third parties. If the land claimed by the petitioners and 4$^{th}$ respondent is different there would not have been any long-standing dispute between them at all.

**24.** Therefore, I reject the contention of counsel for respondent nos.4 to 11 and 12$^{th}$ respondent that petitioners cannot be said to be persons aggrieved by the grant of Form XIII-B certificate to 4$^{th}$ respondent by 3$^{rd}$ respondent.

**25.** Along with the counter-affidavit filed by respondent nos.4 to 11, a sketch allegedly prepared by the Deputy Inspector of Survey, Chevella Division on 06.01.2012 is filed by respondent nos.4 to 11. Along with the sketch is annexed a report of the Deputy Inspector of Survey, Chevella Division. Though the sketch suggests that the land claimed by petitioners is different from the land claimed by 4$^{th}$ respondent, a reading of the report dt.06.01.2012 does not show that any notice was issued to petitioners before such sketch was prepared. Moreover, the said report does not reveal that documents of title and link documents of petitioners and sale deed dt.15.12.1972 of 4th respondent were scrutinized, and the said survey was done after taking into account all these documents. This is also clear from the fact that although petitioners claimed Acs.5.21 guntas in Survey No.295/2, the sketch filed by the Deputy Inspector of Survey, Chevella Division shows that the possession of petitioners is only Acs.4.30 guntas. It does not show where the balance extent of Ac.0.31 guntas belonging to petitioners is located. The said survey ought to have been done to localize the lands claimed by petitioners as well as the 4th respondent on the basis of the documents on which they rely, and not on the basis of the alleged possession claimed by either of them. Therefore, the said survey report dt.06.01.2012 of the Deputy Inspector of Survey, Chevella Division, cannot be accepted as evidence of the fact that lands claimed by petitioners and 4th respondent are different.

**26.** Section 5-A of the Act states :

> *"**Section 5-A . Regularization of certain alienations or other transfers of lands** : -*
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> *(1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or affected otherwise then by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.*
>
> *(2) On receipt of such application, the Mandal*

*Revenue Officer shall after making such enquiry as may be prescribed require the alienee or the transferee to deposit in the office of the Mandal Revenue Office an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the registering officer on a reference made to him by the Mandal Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed.*

*Provided that the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under this sub-section unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.*

*(3) Nothing contained in sub-section (1) and sub-section (2) shall be deemed to validate any alienation where such alienation is in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.*

*(4) The Mandal Revenue Officer on deposit of an amount specified in sub-section (2), shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of certificate and such certificate shall, notwithstanding anything in the Registration Act, 1908 be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him.*

*(5) The recording authority, shall on the production of the certificate issued under sub-section (2) make any entry*

*in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property.”*

**27.** Rule 22 which deals with the procedure for localization of certain transfers of land states in clause (3) as under :

> *“(3) On receipt of the application under sub-section (2) of Section 5-A of the Act, the Mandal Revenue Officer shall issue notice to the alienor or transferor in Form No.XI specifying therein the date on which and the time at which he proposes to enquiry into the application. He shall also cause to issue a notice in Form No.XII to all other persons believed to be interested in the land specifying therein, date, time and place at which he proposes to enquiry into the application. Only unregistered documents shall be considered under Section 5-A of the Act.”*

**28.** Thus, the 3rd respondent is mandated under the Rules to issue a notice in Form-XII to all other persons claiming to have interest in the land in respect of which an application for regularization is made under Section 5-A of the Act.

**29.** Admittedly, the 4th respondent had made an application for regularization under Section 5-A of the Act referring to the extent of Acs.5.21 guntas in Survey No.295/2 only. Even though Form XIII-B certificate under Section 5-A of the Act was issued referring to Acs.5.21 guntas in Survey No.295/A (i.e., a survey number different from that for which he applied under Section 5-A) the fact that 4th respondent had not raised any objection, gives rise to a suspicion that 4th respondent is relying on the certificate to claim rights in the land in Survey No.295/2 only. However, it cannot be said conclusively that the land claimed by 4th respondent and the land claimed by petitioners is one and the same till a demarcation of lands claimed by both parties is done. Since admittedly there are long-standing disputes between the parties, I am of the opinion, that it was incumbent on 3rd respondent to treat the petitioners as "persons interested" in the land in respect of which Form XIII-B certificate was sought by 4th respondent and issue notice to them also in Form XII as per sub-Rule (3) of Rule 22 of the Rules framed under the Act.

**30.** The judgment of the Full Bench in **Chinnam Pandurangam** (2 supra), while dealing with applications under Section 5 of the Act which deals with amendment and updating of Record of Rights, has construed a similar provision in sub-Section (3) as mandating issuance of notice to all persons whose names are entered in the Revenue Record and who are interested in or affected by the amendment. It rejected the interpretation of the Division Bench in **B.G. Laxman** (1 supra) that a general notice is sufficient and individual notice is not necessary. It held that issuing of individual notice would be in conformity with the principle of *audi alteram partem* which is an important facet of rules of natural justice.

**31.** Since the issuance of Form XIII-B certificate by 3rd respondent is in violation of Rule 22 (3) and since respondent nos.1 and 2 have taken a view that general notice is sufficient and individual notice to petitioners was not necessary [which view cannot be accepted in view of the decision in **Chinnam Pandurangam** (2 supra)], I am of the opinion that the proceedings No.ROR/D/7248/05 dt.21.01.2009 of the 3rd respondent as confirmed by proceedings No.C/765/2009 dt.09.03.2010 of 2nd respondent and the order dt.13.01.2012 in Case No.D1/1959/2010 of 1st respondent are all unsustainable.

**32.** So they are accordingly set aside. The matter is remitted back to 3rd respondent and he is directed to issue notice to petitioners. He will also cause a survey to be done through the Assistant Director of Survey and Land Records, Ranga Reddy District of the lands claimed by petitioners and the land claimed by 4th respondent and the said official shall conduct the survey after giving prior notice to both the parties and respondent nos.5 to 11. The 3rd respondent shall then decide whether respondent nos.5 to 11 or persons claiming through them are entitled to Form XIII-B certificate under Section 5-A within a period of six (06) months from the date of receipt of a copy of this order.

**33.** It is made clear that all parties are entitled to raise factual as well as legal contentions in support of their respective stands.

**34.** Accordingly, the Writ Petition is allowed. No order as to costs.

**35.** As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 13-07-2016
Ndr/*

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[1] 2003 (1) ALT 3 (D.B.)
[2] 2007 (6) ALT 134 (F.B.)