HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 19246 of 2012

ORDER:

The present writ petition came to be filed seeking issuance of writ of certiorari and quash the orders in Rc.No.E5/3697/2010, dated 16.07.2011 and orders in Rc.No.A/110/2010, dated 22.06.2010, passed by respondent Nos.1 and 2 respectively and to declare the same as arbitrary, illegal, unjust, contrary to law, perverse and violation of provisions of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short "the R.O.R.Act").

The facts which lead to filing of the present writ petition are as under:

The petitioner herein claims to have purchased property admeasuring Ac.23.09 gts. in Sy.No.495/B of Kampally Village, Kuravi Mandal, from its original owner by name Akula Narsamma under a sada sale deed in the year 2002 and since then he claims to be in physical possession of the property and enjoying the same. Pattadar pass books and title deeds were issued in his favour on 14.11.2002. Later, land admeasuring Ac.6.00 out of total extent of Ac.23.09 gts. was sold to one Kankanala Subrahmanyam, to which effect entries were also made in the pattadar pass books and title deeds. In view of the above, the petitioner claims to be an absolute owner and possessor of the land to an extent of Ac.17.09 gts. In the said land the petitioner was carrying on granite quarry business as there was abundant good quality of granite in existence. It is stated that he also obtained necessary permissions from the concerned for carrying out the said operations.

It is averred that the fourth respondent developed an evil eye and with a view to grab the land, started making false claims over the said area. According to him, the land of the fourth respondent is situated in

Sy.No.492/B and the land of the petitioner is situated in Sy.No.492/B/12 and both the properties are different with clear demarcations. The fourth respondent made an application before the Minister for Mines and Geology on 08.01.2010, requesting him to stop the execution of lease deed in favour of the petitioner. Thereafter, the fourth respondent filed O.S.No.8 of 2010 before the Junior Civil Judge, Mahaboobad seeking permanent injunction and also filed I.A.No.22 of 2010 for temporary injunction but no interim injunction was granted.

It is further averred that having failed in all his attempts, the fourth respondent filed an appeal before the statutory authority under Section 5-B of the Act questioning the R.O.R. proceedings and for cancellation of pattadar pass book and title deed issued in favour of the petitioner on 10.11.2002. On receipt of the same, the petitioner herein filed counter explaining the grounds, but the authority vide his order, dated 22.06.2010 in Rc.No.A/110/10 cancelled the pattadar pass book and title deed. Aggrieved by the same, the petitioner filed a revision under Section 9 of the Act before the Joint Collector. Pending the said revision, the petitioner also filed W.P.No.16719 of 2010 before this Court. The said writ petition was disposed of directing the first respondent therein to dispose of the revision within six weeks and till such time *status quo* as on 02.08.2010 was directed to be maintained for a period of four weeks. Later, on 16.07.2011 the first respondent is said to have dismissed the said revision, which lead to filing of the present writ petition.

On 25.09.2012 this Court issued rule-nisi and called for records. However in W.P.M.P.No.2466 of 2012, this Court refused to suspend the orders as the same would result in restoring the pattadar pass book and title deed in favour of the petitioner.

The fourth respondent filed his counter denying the averments made in the writ petition. It is specifically mentioned in the counter that the petitioner herein has no valid right or title over the said land and the same is being claimed by virtue of a false document created with the connivance of certain officials. It is the case of the fourth respondent that his Principal Sri Koneru Bhanu has purchased agricultural land admeasuring Ac.5.00 in Sy.No.492/B of Kampally Village, Kuravi Mandal, Warangal District, from its true and lawful owner Smt. Akula Narasamma through a registered sale deed bearing No.89/90, dated 11.01.1990 for a valuable consideration. The property was mutated in the revenue records and thereafter a quarry lease was granted in the above said land in the name and style of M/s. Hy-Stone, vide proceedings of the Deputy Director of Mines and Geology, Warangal in Rc.No.1379/Q1/DD/90, dated 12.07.1990. It is stated that the fourth respondent is in possession of the land since then. With a view to grab the land, wherein black stone was available, the petitioner herein filed O.S.No.21 of 1992 before the District Munsif, Mahaboobabad seeking permanent injunction. It is averred that the Court having adjudicated the matter, rejected the claim of the petitioner stating that he has not adduced any material to establish his claim over the said property. Challenging the same, an appeal came to be filed vide A.S.No.19 of 1997, but the same was also dismissed on 05.11.2011. It is the case of the fourth respondent that the petitioner having failed in his efforts to get the land, has come forward with the plea of existence of sada sale deed executed in his favour. It is stated that this sada sale deed pertains to land in Sy.No.495/B of Kampally Village and the same was executed in the year 2002, which is a decade after a registration of the sale deed in favour of the fourth respondent. It is stated that the fourth respondent herein purchased the land in Sy.No.492/B in the year 1990 and he is owner of the said land.

In para No.5 of the counter it has been stated that the petitioner has fraudulently mislead the M.R.O./Tahsildar by producing the sada sale deed and obtained N.O.C. and pattadar pass books. According to him, the entire proceedings are sham in nature and contrary to the provisions of the R.O.R. Act and Rules. He submits that the R.D.O. has appreciated the material on record and accordingly held that the M.R.O. erred in regularizing a fake transaction and issued pass books contrary to the provisions of the R.O.R. Act. In view of the above, he submits that there are no merits in the writ petition and the same is liable to be dismissed.

The Revenue Divisional Officer filed his counter-affidavit stating that Smt. Akula Narasamma was the original pattadar of the land admeasuring Ac.44.19 gts., situated in Sy.No.492 of Kampalli Village. Out of which, respondent No.4 purchased Ac.5.00 through registered sale deed bearing document No.89/90 and the same was mutated in his name. The Deputy Director of Mines and Geology, Warangal, sanctioned mining lease in favour of respondent No.4 vide proceedings No.1379/Q1/DD/90, dated 12.07.1990. The sada sale deed through which the petitioner purchased land admeasuring Ac.23.09 gts., from Smt. Akula Narsamma in the year 2002, was not produced either in appeal or in the revision. It is said that the file relating to the regularization of so called sada sale deed of the petitioner is also not available. Refering to the contents of the impugned orders, it is averred that the petitioner was issued pattadar pass book under the provisions of the R.O.R.Act to an extent of Ac.23.09 gts. and his name was recorded as pattadar in the pahani for the year 2004-2005. The appellate authority held that when the petitioner himself admitted purchase of subject land during the year 2002, there is no provision to regularize under Section 5-A of the R.O.R.Act. It is said that as per the amendment made to Rule 22 of Andhra Pradesh Rights in Land and Pattadar Pass Book Rules, 1989, the last date for receiving claims in form X under Section 5-A of the R.O.R.Act, for regularization, was 31.10.1998 in respect of sale deeds executed prior to 31.07.1989, which was extended upto 31.03.2009 in respect of the sale deeds executed prior to 31.12.2000 vide G.O.Ms.No.1765, Revenue, dated 06.10.2005. It is further stated that the simple sale deed said to have been executed in favour of the petitioner during the year 2002 does not deserve regularization and the authorities have rightly cancelled the pattadar pass books and title deeds issued in favour of the petitioner.

Learned counsel for the petitioner mainly submits that pattadar pass books issued to the petitioner under Section 6-A of the R.O.R. Act cannot be cancelled under Section 5-B of the Act, at the instance of the fourth respondent, who is a third party to the lands purchased by the petitioner. He submits that such being the position, the question of entertaining an appeal at a belated stage is un-sustainable. He further submits that even assuming that an appeal is maintainable, it has to be filed within 90 days. It is urged that there is no whisper in the material filed to show that there was an application condoning the delay and that the delay has been condoned. It is his case that by virtue of sada sale deed he purchased Ac.23.09 gts. of land out of Ac.33.00 of land after paying valid sale consideration to which the respondent No.4 has no right or title. Learned counsel for the petitioner mainly contended that the only remedy available to respondent No.4 was by way of filing a civil Suit and he cannot invoke the jurisdiction of the R.D.O. In support of his contention, the petitioner relied upon the following citations.

1. ***M.B.Ratnam and others v. R.D.O.*** [1]
2. ***Sannepalli Nageswar Rao and another v. Dist. Collector, Khammam*** [2]
3. ***Sri Bhavanarishi Co-operative House Building Society, Hyderabad v. Joint Collector, R.R.District and others*** [3]
4. ***Krishtappa and others v. Joint Collector*** [4]
5. ***Vutukuru Subba Rao v. State of Andhra Pradesh and others*** [5]
6. ***Division Bench Judgment of this Court in W.P.No.21689 of 1999***

On the other hand, the Government Pleader for Revenue reiterated the averments made in the counter.

Learned counsel for respondent No.4 would submit that if really the sada sale deed was in existence as claimed now, nothing prevented the petitioner from filing the same before the civil Court. On the otherhand, the Civil Court categorically held that the petitioner failed to produce any material to show his right or title over the same. He further submits that respondent No.4 purchased the land by way of sale deed which was registered in the year 1990 and pursuant thereto pattadar pass book and title deeds were issued in his favour. He placed on record the judgments of the civil Court.

Before proceeding further, it would be relevant to refer to Section 5-A of the R.O.R.Act, which reads as under:

> "Regularisation of certain alienations or other transfers of lands:-- (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 effected otherwise than 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 Officer 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.
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> (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

Rule 22 (2) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 (herein after referred to as "the Rules") reads as under:

"22. **Regularisation of certain alienations or transfers of land:**

(1) xxxxxxxx

(2) The alienee or transferee shall file an application in Form 'X' on or before 31.03.2006 on the notification issued under sub-rule (1) to the Mandal Revenue Officer, if the alienation or as the case may be, the transfer took place before 31.12.2000: Provided that it shall not apply to the alienations or transfers made in contravention of the provisions of the Acts specified in the proviso to sub-section (2) of Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971."

As stated earlier, the main contentions advanced by the learned counsel for the petitioner relate to jurisdiction of the Revenue Divisional Officer in entertaining an appeal under Section 5-B of the Act. Before dealing with this aspect, I shall first consider the case on merits.

It is to be noted that the petitioner herein claims to have purchased land in the year 2002 by way of a sada sale deed. Pattadar pass books and title deeds were also obtained based on the sada sale deed with Khata Number as 610. Due to over writings the mining lease could not be issued, as such the petitioner approached the Tahsildar for issuance of duplicate pass books stating that the originals were lost. Pursuant there to, the Tahsildar is said to have issued pass books with Khata Number 721 though the petitioner claims to be having lands in Sy.No.492/B with Khata Number 610. Basing on duplicate pass books, mining lease was sought to be obtained by getting no objection certificate in the year 2009. The fourth respondent came to know about the same when the writ petitioner started interfering with his property. His enquiries revealed about the alterations were made in the revenue records which made him to file an appeal immediately. Fourth respondent also filed O.S.No.8 of 2010 on the file of the Prl. Junior Civil Judge, Mahabubabad seeking injunction against the petitioner herein in respect of land admeasuring Ac.5.00 in Sy.No.492/B in which there was an interim injunction in his favour.

The material placed by the fourth respondent and Government Pleader for Revenue would show that in the year 1992 the petitioner herein filed O.S.No.21 of 1992 on the file of the District Munsif, Mahaboobad, seeking injunction restraining the respondents therein over the property which is subject matter of dispute in the present writ petition as well. The said suit came to be dismissed holding that the plaintiff therein i.e. the petitioner herein has not filed any documents to show that for 10 years his father was in possession of the property and they are doing mining work. It was held that even with regard to the factum of possession, the plaintiff has not filed any document in support of it. It has been categorically held that no material has been placed before the Court to show that there was a black granite in the land which was leased out to the petitioner and that he was enjoying the same since long time. In para No.54 of the Judgment it was further held that the plaintiff has not filed a single scrap of paper to show that the possession was delivered to him and he was in possession of the land in which black granite is mined. Challenging the same, the petitioner filed A.S.No. 19 of 1997 before the Senior Civil Judge, Mahaboobabad, which was dismissed confirming the findings in O.S.No.21 of 1992.

From a reading of the material placed on record, one fact which stands established is one Smt. Akula Narasamma is the owner of the said land. The fourth respondent had purchased the same from her through registered document No.89/90 dated 11.01.1990. The material also shows that the petitioner herein obtained lease hold rights of Ac.7.00 gts., and his father was lease holder of Ac.21.19 cents in the said survey number. A claim is now made that the petitioner herein purchased the same from Akula Narasamma in the year 2002 on the basis of a sada sale deed and basing on the sada sale deed, the Tahsildar, Kuravi, is said to have issued pass book.

The sada sale deed which is sought to be relied upon was said to have been executed in the year 2002. Sub-Rule 2 of Rule 22 of the Rules, prescribes that any alienee or transferee has to make an application in Form 'X' on or before 31.03.2006, on the basis of a notification issued under sub-rule (1) to the Mandal Revenue Officer, if the alienation or as the case may be, took place before 31.12.2000, provided that it shall not apply to the alienations or transfers made in contravention of the provisions of the Acts specified in the proviso to sub-section (2) of Section 5-A of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. Subsequently the cut of date was extended upto 31.03.2009 in respect of sale deeds executed prior to 31.12.2000 vide G.O.Ms.No.1765, Revenue, dated 06.10.2005. In view of the fact that the simple sada sale deed came to be executed in the year 2002, the question of regularising the same would not arise.

Further, the Revenue Divisional Officer, in his order dated 22.06.2010 categorically observed that the Mandal Revenue Officer/ Tahsildar, Kuravi, has regularised the fake sale transaction under Section 5-A of the R.O.R. Act and failed to submit the connected file despite repeated remainders on phone and after much persuasion reported that the file was not traced out. Apart from that, it is important to note that in the first set of pass books and title deeds the khata number was mentioned as 610 but in the duplicate books, the khata number of the same land was mentioned as 721. There is no explanation to this vital discrepancy. Therefore, both the Revenue Divisional Officer and the Joint Collector, doubted the integrity of the Tahsildar in issuing duplicate pass books without observing Rule 31 of the R.O.R. Rules and also issuance of No Objection Certificate for obtaining mining lease from Assistant Director, Mines and Geology, Warangal.

For the aforesaid reasons, it can be said that elements of fraud in issuance of no objection certificate cannot be ruled out, more so when the petitioner herein has failed to produce the sada sale deed before any of the forums where he contested the matter and for the first time a document styling itself to a sada sale deed is produced before this Court.

In identical circumstances this Court in ***Pochi Reddy v. R.D.O. Vikarabad***[6]***,*** after referring to the judgment of the Apex Court in ***S.P.Changalvaraya Naidu v. Jagannath***[7]***,*** held as under:

> "It is well settled that no order can be allowed to stand if obtained by fraud and fraud unravels everything. In view of the same, the Revenue Divisional Officer rightly allowed the appeal and set aside the order passed by the M.R.O. which do not suffer from incurable legal infirmities for exercising extraordinary discretionary jurisdiction of this Court under Article 226 of the Constitution of India."

Having regard to the circumstances stated above, it cannot be said that on merits the order under challenge is illegal or improper.

Coming to the issue of maintainability of appeal, it would be necessary to refer to Section 5-B and 5 (5) of the R.O.R.Act.

Section 5-B of the R.O.R.Act reads as under:

> "An appeal shall lie against the order passed by the Mandal Revenue Officer under sub-section (4) of Section 5-A, to the Revenue Divisional Officer within thirty days of the date of communication of the order and the Revenue Divisional Officer shall, after due enquiry pass such order on the appeal as he deems fit, and such order shall, subject to revision under Section 9 be final".

Section 5 (5) of the R.O.R. Act reads as under:

> "Against every order of 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 a period of sixty 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 of the Act, be final."

A reading of Section 5-B and sub-section (5) of Section 5 of the R.O.R. Act shows that an appeal would lie against an order passed by the primary authority to the Revenue Divisional Officer. An appeal under Section 5-B of the R.O.R.Act would lie against an order under sub Section 4 of Section 5-A of the Act. An appeal under Section 5 (5) of the R.O.R. Act would lie against every order of the Mandal Revenue Officer either making an amendment in the record of rights or refusing to make such an amendment.

Infact, a Division bench of this Court in W.P.No.21689 of 1999 categorically held that against an illegal or erroneous updation of record of rights under Sections 4 and 5 or regularization under Section 5-A of the R.O.R.Act, the remedy of appeal under Section 5 (5) or 5-B of the R.O.R.Act respectively is available to an aggrieved party.

As observed earlier, the present appeal filed under Section 5-B of the R.O.R. Act was not with regard to issuance of pattadar pass book and title deed. A comprehensive look at the petition filed before the Revenue Divisional Officer, would show that the fourth respondent was aggrieved by the amendments/ entries made in the record of rights. Therefore, it cannot be said that an appeal under Section 5-B of the Act would not arise. Insofar as the delay in filing of the appeal is concerned, an appeal under Section 5(5) and 5-B of the R.O.R.Act, would lie within 60 or 30 days respectively from the date of communication of the order. In the instant case, there is no communication of the order to the fourth respondent, which fact is not disputed in the counter filed by the Government as well. Therefore, an appeal came to be filed immediately on coming to know about the same. It has been stated that these facts came to the knowledge of the fourth respondent only when the petitioner started interfering with his possession and enjoyment over the property. Therefore, the argument of the learned counsel for the petitioner that the appeal was filed after lapse of eight years cannot be accepted.

As stated earlier, the Revenue Divisional Officer, called for records from the Tahsildar, Kuravi to know the provisions under which the entries are sought to be corrected since the same are made without any notice to the fourth respondent. It was reported by the Tahsildar that the file was not traceable in his office. Therefore, both the forums have categorically held that the petitioner along with Tahsildar, Kuravi, played fraud in issuing pattadar pass book and title deed with two different khata numbers at two different points of time, while issuing pass books in the year 2002 and 2009. Even assuming for the sake of argument that the petitioner has preferred an appeal under wrong provision of law and that an appeal ought to have been preferred under Section 5(5) of the R.O.R.Act, no prejudice would be caused to the petitioner as the authority to decide an appeal under Section 5(5) of the R.O.R.Act and under Section 5 (B) of the R.O.R.Act is one and the same.

In Vutukuru Subba Rao (5 supra) this Court held that the R.D.O. cannot suo-moto act unless an appeal is brought before him in the manner as prescribed under Section 5 (5) of the Act and Rule 21 of the Act.

M.B.Ratnam and others case (1 supra) relied upon by the learned counsel for the petitioner may not be any help to the petitioner. In the said case an appeal was preferred morethan ten years after passing of the order. This Court held that "the belated attempt on the part of the respondents to impugn the orders passed by the M.R.O. is nothing but an after thought. Settled legal rights cannot be permitted to be unsettled in this fashion. Such course is not permissible in law. If such a course is permitted, there will be no end to the litigation and no finality can be attached to any of the orders of the Courts or Tribunals, as the case may be."

The case on hand stands on a different footing from the cases referred to above. The fourth respondent was not put to notice at any point of time and no notice was given to him while making changes in the revenue records either in the year 2002 or in the year 2009 when duplicate passbooks were issued by changing the khata number from 610 to 721 and he preferred the appeal on coming to know about the changes made in the revenue records. For the aforesaid reasons, this Court is of the view that the order under challenge warrants no interference and accordingly, the writ petition is dismissed. No order as to costs.

Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

07.01.2016
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[1] (2003) 1 ALT 688 (D.B.)

[2] (2002) 4 ALT 465 (D.B.)

[3] (2003) 1 ALT 182

[4] (2014) 4 ALD 8

[5] (2014) 4 ALD 205

[6] (2004) 4 ALD 77

[7] AIR 1994 SC 853