

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION Nos.10719 of 2009, 26723 of 2009, 28489 of 2009, 29340 of 2009 and 4565 of 2010

COMMON ORDER:

—
Since all these Writ Petitions are inter-connected, the same are being disposed of by this common order.

One Penchala Jagannadharao, along with other family members, claim to be the owners and possessors of agricultural land situated in Sy.Nos.730, 731/B, 732/A, 732/C, 791, 792 and 792/B admeasuring Ac.3.39 gts, Ac.1.12 gts, Ac.5.02 gts, Ac.2.21 gts, Ac.7.39 gts, Ac.7.00 gts and Ac.1.13 respectively at Nagnoor village and Mandal, Karimnagar District. Penchala Venkataiah, Penchala Chinna Ramaiah and Penchala Rajaiah are his brothers. One Penchala Rajaiah is the father of Penchala Jagannadha Rao (writ petitioner in W.P. No.10719 of 2009). As P.Chinna Ramaiah sold some of the lands of the joint family detrimental to the interest of others, P.Venkataiah filed O.S. No.89 of 1970 on the file of the District Munsif, Karimnagar for partition and separate possession of his 1/3rd share in the suit schedule property. The said suit was filed against 4 defendants i.e., D-1 and D-2 being his brothers and D-3 and D-4 the purchasers of joint family property from P.Chinna Ramaiah. The said suit was dismissed with costs. Challenging the same, the plaintiff filed A.S. No.9 of 1973 before the Sub Court which was allowed on 18.10.1973. Aggrieved by the same, Second Appeal No.629 of 1973 came to be filed before this Court. By an order, dated 04.09.1975 the said case was remanded back to the District Court, Karimnagar, which came to be numbered as A.S. No.41 of 1971. The said appeal was allowed on merits and a

preliminary decree came to be passed on 16.01.1978, directing division of property into three equal shares and allotment of one such share to the plaintiff. The final decree was passed on 13.10.1981 in terms of the preliminary decree. Thereafter E.P. No.16 of 1984 was filed before the District Munsif at Karimnagar. By an order dated 30.09.1988, a warrant came to be issued to the Bailiff to put the parties in possession of their respective shares. Accordingly, the Bailiff is said to have delivered physical and vacant possession of 1/3rd share of the suit schedule property to the father of the petitioner in W.P. No.10719 of 2009 under a cover of panchanama dated 12.11.1988. Since that date P.Jagannadha Rao claims to be in possession and enjoyment of 1/3rd share. As the M.R.O., was not mutating the name of P.Jagannadha Rao, he approached the District Collector, who by an order dated 18.09.2008 directed mutation of the name of the petitioner in the records. Since the Tahasildar failed to implement the orders of the District Collector, the petitioner herein was constrained to file W.P. No.10719 of 2009 before this Court seeking implementation of the orders. Pending the main Writ Petition, this Court by its order dated 29.05.2009 in W.P.M.P.No.13720 of 2009 gave "interim direction". In view of the interim directions and keeping in view the instructions received from the District Collector, the Tahasildar issued proceedings No.B1/3559/2008 dated 30.11.2009 incorporating the names of the Writ Petitioner therein and their family members in the revenue records. Since the Tahasildar included the names of the daughters also, a request was made for deletion of the same which was accordingly amended by an order dated 11.12.2009. It is also to be noted that the inaction of the authorities made the petitioner to file Contempt Case before this Court and ending the said proceedings, pattadar passbook and title deed were said to have

been granted to the petitioner. Subsequently the petitioner sought for amendment of prayer which was allowed on 20.04.2012.

The averments in the reply affidavit of the petitioner in W.P.No.10719 of 2009 also refers to amendment of the record of rights vide proceedings No.B1/3559/2008 dated 30.11.2009, but till date no title deed was issued.

The averments in the affidavit of one Ch.Laxma Reddy who is implead petitioner in W.P.No.10719 of 2009, show that one O.Rayapa Reddy purchased Ac.2.00 in Sy.No.792/A and Ac.1.21 guntas in Sy.No.791 of Nagnoor village, which is part of suit schedule property in O.S. No.89 of 1970 from P.Chinna Ramaiah, under a registered sale deed dated 22.08.1971. The impleaded respondent is said to have purchased the said property from Rayapa Reddy through a registered sale deed dated 25.08.2005. He sought impleadment on the ground that he was not aware either about the pendency of any of the proceedings as he was not made a party in Appeal Suit or Second Appeal.

As the name of Laxma Reddy and three others were reflected in the revenue records and since pattadar pass books and title deeds were also issued, they have preferred W.P.No.26723 of 2009 seeking issuance of writ of mandamus to declare the action of the Tahsildar and District Collector in trying to implement the preliminary decree and final decree in O.S.No.89 of 1970 and also the orders of this Court in W.P.M.P.No.13720 of 2009, as illegal and arbitrary. The averments in the said affidavit are as under:

The first petitioner Ch.Laxma Reddy states that O.Rayapa Reddy purchased Ac.2.00 in S.No.792/A and Ac.1.21 guntas in S.No.791 of Nagnoor village under a registered sale deed dated

22.08.1971 from P.Chinna Ramaiah (D-1) in O.S. No.89 of 1970. He claims to have purchased the said land from Rayapa Reddy under a registered sale deed dated 22.08.2005. It is his case that neither himself nor his predecessor in title were aware about the pendency of the suit and were not made parties though their names reflected in the revenue records. It is further stated that the father of the second petitioner in the above Writ Petition (in W.P.No.26723 of 2009) by name Boyapati Showreddy purchased the property to an extent of Ac.3.20 guntas in S.No.791 of Nagnoor village in the year 1961 from P.Chinna Ramaiah and got the sale deed regularized on 08.02.1995 under A.P. Record of Rights in Land and Pattedar Passbooks Act. He submits that the name of the second petitioner was entered into the revenue records and Parttedar Passbooks and title deeds were also issued to him and that he was neither aware of litigation nor was he made a party to the litigation.

The third petitioner Bal Reddy claims that his father Papi Reddy purchased Ac.3.00 guntas in Sy.No.791 of Nagnoor village from Yaram Siva Reddy on 07.09.1963 and the said land was purchased by Yaram Siva Reddy from Penchala Chinna Ramaiah in 1961. Both the sale deeds are said to have been regularized and pattadar passbooks and title deeds were issued and their names were also entered in the revenue records.

The fourth petitioner by name Mekala Sudhakar Reddy states that his grandmother Mekala Terojamma purchased Ac.5.20 guntas in S.No.732/A of Nagnoor village from Penchala Chinna Ramaiah on 13.01.1960 and after her death he claims to be in possession and enjoyment of the same. According to him, pattadar passbooks were also issued in his favour.

Pending the said proceedings W.P.M.P. No.36045 of 2012 seeking amendment of prayer in the above W.P., ie. to set aside the order dated 18.9.2008 passed by R-2, order dated 30.11.2009 passed by R-1 and the order dated 11.12.2009 passed by R-1, came to be filed.

W.P. No.28489 of 2009 is filed by one Kandi Soundarya stating that one Gopu Rayapu Reddy purchased Ac.3.20 guntas in S.No.792/A of Nagnoor village from Chinna Ramaiah under a registered sale deed in the year 1965 and the petitioner purchased the same from Gopu Rayapu Reddy under a registered sale deed on 23.10.1973. Her purchase was implemented in Faisal patta for the year 1974-75 and later her name was mutated in the revenue records. She also filed W.P.M.P. No.36043 of 2012 seeking amendment of prayer.

Similarly Eravelli Tirupathi Rao, Pachunuri Madhusudan and Tumma Rayapu Reddy filed W.P. No.29340 of 2009 seeking issuance of a writ of mandamus to declare the Preliminary Decree dated 29.11.1974 in OS.No.89 of 1970 on the file of the Court of the District Munsiff at Karimnagar; the final decree dated 13.10.1981 in the said OS.and also orders made in W.P.M.P.No.10719 of 2009 on the file of this Hon`ble Court as not binding on them on the ground that they are not a parties to the said proceedings and the action of the respondents in passing orders based on the said proceedings, as illegal, arbitrary, unreasonable illegal, violative of principles of natural justice. All three of them claim to have purchased land, which is subject matter of suit schedule property. The first petitioner states that he purchased Ac.1.13 guntas in S.No.730 and Ac.0.17 guntas in S.No.731/AA from Paidipalla Pochavva and her six sons under a registered sale deed dated 28.08.2006. He also

claims to have purchased Ac.1.20 guntas in S.No.732/A from Gali Vijaya Kumar Reddy under a registered sale deed dated 17.03.2006, who got it from his mother Gali Elizebetamma under a gift deed dated 30.03.2005. In turn his mother obtained the same from her mother by name Mekala Terojamma under a registered gift deed dated 04.01.1988. The said Terojamma purchased it from Penchala Chinna Ramaiah under a sale deed dated 13.01.1960. The first petitioner also purchased an extent of Ac.1.00 in S.No.732/A from Mekala Show Reddy and Mekala Bala Pratap under a registered sale deed dated 29.05.2006 and from the said date he claims to be in possession and enjoyment of the said land. He submits that his name was mutated and pattadar pass book and title deed were also issued.

Second petitioner Pachunuri Madhusudhan claims to have purchased land an extent of Ac.2.23 guntas in S.No.792/E and an extent of Ac.1.15 guntas in S.No.792/AA from Eravelli Tirupathi Rao under a registered sale deed dated 15.01.2005. The said Eravelli Tirupathi Rao purchased the same from Penchala Laxmi Bai W/o. Venkataiah under a registered sale deed dated 17.12.2002 being L.R. of Penchala Venkataiah. From that date he also claims to be in possession and enjoyment of the said land and that his name was entered in revenue record and pattadar pass book and title deed were also issued.

The third petitioner Tumma Rayapu Reddy states that he purchased Ac.2.21 guntas in S.No.732/C from Penchala Venkateswara Rao and Penchala Jagannatha Rao, L.Rs., of Penchala Rajaiah under a registered sale deed dated 15.05.1992. From that date he claims to be in possession and enjoyment and that his name was entered in revenue records apart from issuing

pattadar pass book and title deed.

Similarly, W.P. No.4565 of 2010 is filed by Tadem Raj Gopal. His claim is that he purchased Ac.0.23 guntas in S.No.730 and Ac.0.17 guntas in S.No.731/A from Veenavanka Kamamma under a registered sale deed dated 17.08.2009. The said Kamamma's husband purchased the said land from Panchala Hanumaiah S/o. Venkataiah, Laxmi Bai W/o. Venkataiah, Panchala Ramayya S/o. Venkataiah under a registered sale deed dated 13.04.1976. It is to be noted that Panchala Venkataiah was a plaintiff in O.S. No.89 of 1970. After registration of the sale deed, her name was mutated in the revenue records and pattadar pass book and title deed were issued to him. He also purchased 11 ½ guntas in S.No.730 and 23 ½ guntas in S.No.730/A under a registered sale deed dated 31.12.2009 from Veeramalla Chandraiah S/o. Venkataiah, who in turn purchased it from Veenavanka Hanumaiah under a registered sale deed dated 02.12.2007. He also filed W.P.M.P. No.36047 of 2012 seeking amendment of the prayer.

The main ground urged by Sri P.Govind Reddy, learned counsel for the petitioner in W.P.No.10719 of 2009 is that since the order of the civil court has become final, the same is binding on the writ petitioners in other four writ petitions and also on the implead petitioner in W.P. No.10719 of 2009. According to him, any order passed by this Court would tantamount to nullifying the order of the Civil Court which has become final long back. He further submits that the implead petitioner in the writ petition ought to have filed an appeal under Section 5(5) of the Act instead of filing these writ petitions before this Court.

Per contra, Sri M. Raja Malla Reddy, learned counsel for the respondent would submit that application dated 16.09.2008 was

made before the District Collector nearly 27 years after the accrual of rights and hence the same could not have been entertained. He submits that the District Collector or Tahasildar of the Mandal should have issued notices to the writ petitioners in W.P.Nos.26723 of 2009, 28489 of 2009, 29340 of 2009 and 4565 of 2010 as they are in possession of properties from 23.07.1987. He further submits that the District Collector to whom an application was made could not have entertained an application without there being an application to condone the delay, since he can entertain an application by exercising the powers of Revision within 90 days as contemplated under Section 5(3) of the R.O.R. Act. He further submits that the civil court decree is not binding on his clients as it could be a collusive one. The learned counsel for the respondent further submits that order dated 30.11.2009, wherein the District Collector directed the Tahasildar to implement the interim order of the High Court by mutating the names of the petitioners, runs contrary to the contents of the counter filed by the Tahsildar in the Contempt Case.

One of the objections raised by the learned counsel for the petitioner is with regard to amendment which the petitioners in W.P.Nos.26723 of 2009, 28489 of 2009, 29340 of 2009 and 4565 of 2010 have sought for. The amendment as sought for is as under:

“to amend the prayer in the writ petition by adding the words “by setting aside the order No.D1/5691/2008 dated 18.09.2008 of the second respondent herein and also order No.B1/3559/2009 dated 30.11.2009 and No.B1/3559/2008 dated 11.12.2009 of the first respondent herein as they are violative of the provisions of A.P.Rights in Land and Pattadar Pass Books Act, particularly Section 9 and 5 (3) of the said Act” after the words “not to cancel the pattadar pass books and title deeds issued to the petitioners vendors in respect of

the above said lands” .

It is the case of the petitioners that the said amendment applications cannot be accepted at a belated stage. According to him, the request made is contemptuous in nature since the petitioners are seeking injunction against the revenue authorities by directing them not to implement the decree of the civil Court, which is impermissible. It is to be noted here that subsequent to the interim orders passed by this Court in the month of May, 2009, there was an order of *status-quo* passed by this Court in W.P.M.P. No.34810 of 2009 in W.P. No.26723 of 2009 with regard to the entries pertaining to the subject property in the revenue records for a period of eight weeks, which was subsequently extended until further orders.

The contention of the implead petitioners/writ petitioners is that they have purchased property from O.Rayapa Reddy, who inturn purchased the same from P.China Ramaiah or from the other vendees of China Ramaiah and that the said properties were purchased long prior to the date of institution of the suit and they were not aware about the pendency of the litigation between the brothers. It is their case that, ever since the date of purchase they have been in possession and enjoyment of the property and pattadar pass books and title deeds were also issued in their favour. It is urged that they were not aware about the change of entries made by virtue of a final decree in O.S.No.89 of 1970 and they came to know about the orders passed by the civil Court only after the orders are passed by this Court in W.P.M.P.No.13720 of 2009 in W.P.No.10719 of 2009. Admittedly the petitioners in all the four writ petitions except W.P.No.10719 of 2009 were not parties to any of the litigation initiated by the petitioner in W.P.No.10719 of

2009 and they are effected by virtue of the orders passed without hearing them,. Hence, I am of the view that the request of the petitioners for amendment of prayer and the impleadment of one Laxma Reddy in W.P.No.10719 of 2009 can be accepted.

Coming to the merits of the case, the record shows that O.S.No.89 of 1970 was filed by one P.Rajaiah for partition of the suit schedule properties as his brother by name Penchala China Ramaiah was acting detrimental to the interest of the joint family property. The averments in the affidavits filed by the petitioners in four other writ petitions (except W.P.No.10719 of 2009) show that they have purchased the property either through P.China Ramaiah or through the vendees of P.China Ramaiah. The said properties were purchased by way of registered sale deeds. Some of the properties were purchased even prior to the institution of the suit and some after the institution of the suit. The vendees of P.China Ramaiah and the persons who purchased the property from the vendees of P.China Ramaiah were never made parties to the proceedings in O.S.No.89 of 1970 and in A.S.No.41 of 1971. It is true that a final decree was passed on 13.10.1981 dividing the properties into three equal shares and it is also not in dispute that China Ramaiah who was one of the defendants in the suit and contested the matter, never informed about the sales made by him. It is also not in dispute that a contempt case has been initiated when the Tahsildar failed to implement the orders passed by this Court in W.P.M.P.No.13720 of 2009 in W.P.No.10719 of 2009. It would be appropriate to extract the relevant paragraphs of the counter filed by the Tahsildar in the contempt case, which is as under:-

“I beg to submit that an interim direction was passed by

this Court in W.P.M.P.No.13720 of 2009 in W.P.No.10719 of 2009, dated 29.05.2009 directing this respondent to take necessary action to incorporate the names of the writ petitioner and his family members in revenue records in pursuance of the orders of the District Collector. The copy of the order was received by this respondent on 10.06.2009. Prior to that i.e. on 28.04.2009 the representation of the petitioner along with the order passed by the first respondent was forwarded to the Mandal Revenue Inspector to enquire into the matter and submit a detailed report. Pursuant to the said instructions, the Mandal Revenue Inspector submitted his report on 08.06.2009. Based on the said report, a notice was issued to the petitioner as well as to the persons who are in patta and possession of the land fixing the date of hearing on 18.07.2009. The petitioner engaged an advocate and filed vakalat on 18.07.2009 and the persons who are in patta and possession of the land also appeared for the hearing on 18.07.2009 and requested time to produce the relevant documents.

I submit with respect that the matter was heard on 01.08.2009 and an order has been passed by this respondent after perusing the entire records including the decree produced by the petitioner in O.S.No.89 of 1970 dated 13.10.1981 and informed the petitioner that it is not possible to implement the decree at this belated stage after lapse of 27 years since the land has been already transferred in the name of several persons basing on the entries in pahanies 1954-55. The said order has been communicated to the petitioner on 01.08.2009 and to that effect he has acknowledged the same. Thus, the order passed by this Court has been duly complied.

The petitioner did not approach the authorities after obtaining final decree to get it implemented the same in revenue records. After lapse of 27 years, he filed the present application. As stated supra, in obedience to the directions issued by this Court, the same has been considered and passed final order on 01.08.2009. The limitation to file an application to get it implemented their names in the revenue records is only 90 days, but where as the application filed by the petitioner is after 27 years

which cannot be entertained as held by this Court in several cases.”

A reading of the averments in the counter clearly indicate that the Tahsildar informed the petitioner that implementation of the decree which was passed in the year 1981 may not be possible after 27 years since the land was already transferred in the name of several persons basing on the entries in the pahanies.

From the above, it is clear that neither in the suit nor in the first appeal nor in the proceedings before the Tahsildar, the petitioners in the writ petitions (except W.P.No.10719 of 2009) were heard nor they were aware about the litigation between the brothers. The record *prima facie* indicates that these petitioners came to know about the litigation only when the name of P.Jagannadha Rao was mutated in the revenue records pursuant to the order of this Court in W.P.M.P.No.13720 of 2009. It is also to be noted that though the decree was passed in the year 1981, P.Jagannadha Rao never approached the authorities with the copy of the decree till 2008. No explanation is forthcoming as to why it took such a long time in making an application for mutation of his name in the revenue records. It is also to be noted that China Ramaiah, who was a vendor to the some of the writ petitioners never informed about the pendency of litigation between his brothers with regard to the land which is subject matter in dispute. Further, one of the vendors in W.P.No.4565 of 2010 purchased the property from the son of Venkataiah i.e. petitioner in W.P.No.10719 of 2009 and plaintiff in O.S.No.89 of 1970 in respect of land admeasuring Ac.2.21 gts.

Keeping this factual position in background, I shall deal with the contentions raised by either parties.

It is true that under Section 5 (5) of the R.O.R.Act, 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 be subject to the provisions of Section 9 of the Act. There is no dispute about the proposition that an appeal would lie against an order of M.R.O. making entries in the record of rights and that 60 days period has to be reckoned from the date of communication of the order. In the instant case, the petitioners in four writ petitions ie. W.P.Nos. 26723, 28489 and 29340 of 2009 and 4565 of 2010 were not aware about making of entries in the record of rights and the changes that are carried on thereafter. As stated earlier, they were not made parties to any of the proceedings including in W.P.No.10719 of 2009. Hence, the present writ petitions came to be filed before this Court challenging the orders passed by the Collector in the year 2008 and also the orders of the Tahsildar effecting the mutation behind their back. While entertaining the four writ petitions, this Hon'ble Court ordered *status-quo*. Having entertained the writ petitions and as they are pending adjudication since last five years it may not be proper for this Court to direct the parties to avail the remedies available under law after such a long time.

Even otherwise, dealing with the issue of maintainability of the Writ Petition without availing the alternate remedy available under Law, a three Judge bench of the Apex Court in **State of H.P. and others v. Gujarat Ambuja Cement Ltd., and another**^[1], observed as under:

“19. We shall first deal with the plea regarding alternative remedy as raised by the appellant-State. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.”

In **Harbans Lal Sahnia v. Indian Oil Corporation Ltd.**^[2],
the Apex Court held as follows :

“The rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

In **L.Hirday Narain v. Income Tax Officer, Bareilly**^[3], the
Apex Court observed as under :

“If the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal

with them in a writ petition.”

In **Estate Officer and Manager (Recoveries), A.P. Industrial Infrastructure Corporation Ltd. And another v. Recovery Officer, Debts Recovery Tribunal, Bangalore and others**^[4], the Apex Court held as under :

“There are at least two well recognized exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Art.226 for issuing appropriate writs. In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice. Moreover, in a case where the Court having admitted the writ petition and having put the parties to trial normally cannot refuse to exercise its jurisdiction and dismiss the writ petition on the ground of availability of an alternative remedy.

When an order complained of is illegal and ultra vires, this Court in appropriate cases can entertain the writ petition and adjudicate the same on merits. That on the facts and in the circumstances, we are not inclined to dismiss the writ petitions on the ground of availability of alternative remedy at this stage after a period of more than 5 years of their admission by this Court for its consideration and disposal on merits. ”

The said view was also taken in ***Veeramachaneni Ramchander Rao v. Tahsildar, Chityal Mandal***^[5] wherein this Court held as under:

“Though the impugned order is no doubt appealable under Section 5 (5) of the R.O.R.Act, but having regard to the fact that no notice was issued to the petitioners, who were also issued pattadar pass book and who were enjoying the land, the order was held liable to be set aside.”

In view of the judgments referred to above, it is clear that the doctrine of availing an alternative remedy has no application in a case where impugned order is in violative of principles of natural justice. Further, the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law as held by the Apex Court in **Ram and Shyam Co.**

v. State of Haryana^[6]. The case on hand also falls within the parameters laid down in the judgments referred to above. Hence non-availing of an alternative remedy of Revision, cannot be a ground to reject the writ petition, moreso when the Writ Petition which was filed in the year 2010 was entertained by this Court.

The second issue which has been strenuously canvassed by the learned counsel for the petitioner in W.P.NO.10719 of 2009 is that the order of the civil Court which has become final is binding on the parties as the vendor of the implead petitioners and the petitioners in other writ petitions was defendant No.1 in the said suit. It is thus urged that the same cannot be ignored as the impugned order came to be passed basing on the order of a civil Court, which cannot be nullified by any direction or order of this Court. The counsel for the respondents mainly contended that the decree passed in the suit cannot be binding on the petitioners as they were not parties to the suit and that the decree cannot be enforced 27 years after passing of the judgment.

It is further urged by the learned counsel for the respondents that the District Collector could not have directly entertained a suo moto revision under Section 9 of the R.O.R.Act and could not have passed an order directing the Tahsildar to effect mutation in view of the decree of the civil Court when the names of the petitioners in all

four writ petitions ie. W.P.Nos.26723, 28489, 29340 of 2009 and 4565 of 2010 were already mutated in the revenue records in respect of the suit land without hearing the aggrieved persons.

A perusal of the said order shows that on 18.09.2008 the Collector issued proceedings No.D1/5691/2008, directing the Tahsildar, Karimnagar, to mutate the name of the petitioner basing on a decree passed in O.S.No.89 of 1970, after collecting the necessary stamp duty and registration. On 30.11.2009 the Collector wrote a letter to the Tahsildar bringing to his notice the interim orders passed by this Court in W.P.M.P.No.13720 of 2009 dated 29.05.2009 and consequently directed him to implement the order. On the same day the Tahsildar is said to have complied with the order of the Collector. The question is whether the same is binding on others who are not parties to these proceedings.

Situation identical to the case on hand came up for consideration in ***Veeramachaneni Ramchander Rao case (5 supra)***. While dealing with Section 5 (3) and 4 of the R.O.R.Act and Rule 27 (4) of the Rules the Court held as under:

“Rule 27 of the Rules contains procedure for effecting alterations/modifications of record of rights.

Rule 27(4) reads as under.

Whenever a Court decree about acquisition of title by purchase of land through deeds on plain paper or by oral purchase is received from court or presented to the Mandal Revenue Officer for implementing and incorporating charges in the Record of Rights and Pattadar Pass Books, the Mandal Revenue Officer shall incorporate changes in the Record of Rights and Pattadar Pass Book, based on Court decree only after collection of stamp duty and registration fee on the sale price of the land or market value of the land whichever is higher. If the person seeking execution of Court decree claims that he had already paid proper and adequate stamp duty in the Court and produces certificate issued by the Court to this

effect and other evidence to the satisfaction of Mandal Revenue Officer, the Mandal Revenue Officer shall demand and collect only registration fee and incorporate changes in the Record of Rights and Pattadar Pass Books. If the decree is received or produced by or before a Registration Officer or other Officers, these officers shall immediately send these decrees to the concerned Mandal Revenue Officer for necessary action.

After receiving Court decree, Mandal Revenue Officer is required to incorporate changes based on the Court decree only after collection of stamp duty and registration fee of the sale price or market value of the land, whichever is higher. The rule is silent with regard to issue of notice to third party in a Court decree or to the persons whose names are already included in the record of rights and pattadar pass books. However, it is not possible to interpret the rule as excluding audi alteram partem. As noticed supra, Rule 27 is the final stage after necessary procedure contemplated under Rules 18 to 23 of the Rules is followed. These Rules at different stages require personal notice to persons interested as well as general notice is to be published in the office of Mandal Revenue Officer and Panchayat offices. Anxiety of Legislature as seen from various provisions of Act and Rules is to ensure fairness in recording or altering entries in Record of Rights. Such being the position, can natural justice be excluded when Rule 27(4) of the Rules is applied."

Relying upon the judgment of the Apex Court in ***Rakesh Kumar Jain v. State through C.B.I., New Delhi***^[7] and ***Indian Express Newspapers (Bombay) Private Limited v. Union of India***^[8] the learned Single Judge further held as under:

"If a subordinate legislation does not specifically or explicitly provide for affording opportunity of making a representation by a person who is adversely affected and does not specifically or explicitly exclude such affording of opportunity, it is presumed that the legislature expected the executive to be reasonable and provide such opportunity. Therefore, the Court would read natural

justice into the provisions of the rules. Indeed, in given circumstances, the rule can be read down so as to provide for compliance with the principles of natural justice.

To what extent compliance with natural justice can be entranced? The two principal modes of hearing are oral or personal before the adjudicatory authority and the other is hearing by way of a written representation. It is no doubt true that oral personal hearing is more advantageous to the affected person because he can persuade the authorities to accept his point of argument. However, in all situations, oral personal hearing is not compulsory. An opportunity of making a representation is equally efficacious and it also amounts to hearing. However, it must be clarified that where a provision of law or a rule specifically provides that oral personal hearing should be afforded, strict compliance is required, and as the law exists, not affording oral personal hearing could itself prejudice the person and render the order invalid or ineffective.”

After summarizing the authorities, learned Judge in the said case held as under:

When Division Bench laid down that Rule 27(4) of the Rules has to be read with Section 4 of the Act, it would necessarily mean that it has to be read with Sections 4 and 5 of the Act for the reason that Section 4 only contemplates intimation of acquisition of rights to Mandal Revenue Officer, whereas Section 5 contains broad procedure to be followed by Mandal Revenue Officer after receiving intimation of acquisition of rights. Section 5(3) of the Act contemplates issue of notice in writing to all persons whose names are entered in Record of Rights and are interested in or affected by the amendment and to any other person whom the officer has reason to believe to be interested or affected thereby to show cause within the period specified as to why amendment should not be carried out. The same procedure proprio vigore applies even to cases where the decrees are produced for necessary action under Rule 27(4) of the Rules. This view is also supported by the decision of the Full Bench in **Chinnam Pandurangam v. Mandal Revenue Officer**^[9],

wherein it is laid down that if an application is made for amendment of the existing entries in the record of Rights, the person whose name already exists in such record is entitled to contest the proposed amendment. He can do so only if a notice regarding the proposed amendment is given to him by the recording authority. An order passed against a person whose name already exists in the Record of Rights without giving him notice of the proposed amendment and effective opportunity of hearing is liable to be declared nullity on the ground of violation of the rule of audi alteram partem, which, as mentioned above, represents the most important facet of the rules of natural justice. ... it is clear that the requirement of issuing notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment is independent of the requirement of publication of notice in accordance with the second part of Section 5(3) read with Rule 19 and 5(2) of the Rules. The language of Form-VIII in which the notice is required to be published cannot control the interpretation of the substantive provision contained in section 5(3), which, as mentioned above, casts a duty on the recording authority to issue notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the proposed amendment.

From the above judgment, it is clear that even in case where a decree is produced for necessary action under Rule 27 (4) of the Rules, the principle of audi alteram partem cannot be given a go by and the persons whose names are already shown in the record of rights need to be heard before making any changes. It is also to be noted that Rule 27 (4) of the Rules has to be read with Sections 4 and 5 of the R.O.R.Act. Section 5 (3) of the R.O.R.Act contemplates issuance of notice in writing to all the parties, whose names are entered in record of rights and are interested in or affected by the amendment and to any other person whom the officer has reason to believe to be interested or affected thereby to show cause within the period specified as to why amendment

should not be carried out. Hence, even in cases where the party is likely to be affected by a decision is entitled to know the evidence against him and to have an opportunity of making a representation and even the petitioners who are parties to the suit, should be heard by the competent authority.

Dealing with the aspect of making changes in record of rights, this Court in **Kallem Penta Reddy v. Mandal Revenue Officer, Saroornagar Mandal**^[10] held as under:

“It is not in dispute that for the year 1999-2000, the petitioner’s name was appearing as pattadar as well as occupant in the revenue records. If any person is affected by an entry in the record of rights, he is required to apply for rectification to the prescribed officer and such application should be made within a period of one year from the date of notification. Further, Sections 4 and 5 of the Act deals with acquisition of new rights and the procedure for intimation and effecting necessary changes in the record of rights. The procedure for making application and the manner of the same are set out in Rules 15 to 17 of the A.P Rights in Land and Pattadar Pass Books Act and Rules, 1971 (for short, “the Rules”) which contemplate holding of an enquiry after giving notice to any person referred to in the application as having right or interest and also to any person whose name has been entered in the record as having interest in the land and such notice shall be in Form No.5 as prescribed under the Rules. After enquiry, final orders would be passed which orders would be subject to appeal and revision under the Act. Admittedly, in the present case, assuming for the sake of argument that there is a power to issue the memo like the one which has been issued the procedure contemplated under the Act and Rules have been violated more in the breach than in practice.”

Further, in **P.Anjaneyulu Gupta v. Mohd. Abdul Basith Khan**^[11] this Court was dealing with a case where there was a

preliminary decree and serious disputes between the petitioners in the writ petitions and private respondents with respect to the land in Survey No.69 of Miyapur Village, Serilingampally Mandal, Ranga Reddy District. Based on the preliminary decree, dated 29.12.2000, in O.S.No.38 of 1993, on the file of the learned I Additional District Judge, Ranga Reddy District, the private respondents directly approached the Joint Collector invoking his revisional jurisdiction under Section 9 of the A.P.Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') for mutation of their names in the record of rights. Though the petitioners in the writ petitions therein were not made parties to the revision petition, they filed objections, both on merits and also on the maintainability of the revision petition before the Joint Collector. The Joint Collector by the impugned order, while holding that the private respondents are entitled for mutation of their names in the records of rights as pattadars for the patta land in Survey No.69 of Miyapur Village, Serilingampally Mandal, Ranga Reddy District in terms of the civil Court's decree, directed the Deputy Collector & Tahsildar, Serilingampally, Ranga Reddy District to take necessary action on the claim of the private respondents for effecting mutation as per the decree of the civil Court duly following the procedure and protecting the Government's interest, if any. Dealing with the aspect as to whether the Joint Collector can suo-motu pass orders mutating the names while exercising powers of revision basing on a preliminary decree observed as under:

From the above order reflecting on the inability of the Joint Collector in answering the queries of the Court, it is evident that the Joint Collector had no proper comprehension of the statutory scheme under which he was functioning as revisional authority. This is not a case where the Joint Collector has chosen to exercise his suo motu revisional powers. Admittedly, this is a case where

the dispute is between two private parties and the interests of the Government are not involved. Therefore, there is no semblance of justification to the Joint Collector to exercise revisional jurisdiction at the instance of one set of the parties which has bypassed the remedies available to it under Sections 4 and 5(5) of the Act. When the statute prescribed a specific procedure, the authorities functioning under it shall strictly adhere to the same. Whenever such procedure is sought to be bypassed, the authority is bound to justify such action. Even if the Joint Collector under certain circumstances could straightaway exercise his revisional jurisdiction, the facts of these cases do not fall under such category. In order to exercise the revisional jurisdiction, there must have been a decision taken, an order passed or proceeding made by any of his subordinate authorities.

As noted above, the only reason for the private respondents in approaching the Joint Collector was the purported acquisition of their right under a preliminary decree in a partition suit and they claimed for mutation in terms of such decree. The Joint Collector has absolutely no jurisdiction whatsoever to entertain such application in purported exercise of his revisional jurisdiction in the absence of any decision taken or order passed or proceeding made in that regard by his subordinate officers. On this ground alone, the impugned order passed by the Joint Collector is liable to be set aside and the same is accordingly set aside.”

From the judgment referred to above it is clear that, even if there is a preliminary decree in favour of one of the party, still a notice has to be issued to the aggrieved person, whose name already appears in the records, before effecting any changes pursuant to that decree and that the Collector cannot exercise the revisional jurisdiction without there being an order of his subordinate officers. In the instant case the petitioners in W.P.Nos.26723, 28489 and 29340 of 2009 and 4565 of 2010 stand on the same footing as that of the petitioners therein.

Though the entries are carried out pursuant to a direction given by this Court, but in view of the aforesaid findings, the order under challenge needs to be set-aside. Accordingly, the orders impugned is set-aside and the matter is remitted back to the Tahsildar, directing him to dispose of the same, as expeditiously as possible, preferably within a period of 3 to 6 months from the date of receipt of a copy of the order, after giving a notice to the petitioners and private respondents in all the writ petitions. Till such time, status-quo as on today to be maintained in all respects with regard to properties which are subject matter of dispute.

Accordingly, all the writ petitions disposed of. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

07.01.2016
GM/gkv

-
- [\[1\]](#) AIR 2005 supreme Court 3936
 - [\[2\]](#) 2003(2) SCC 107
 - [\[3\]](#) AIR 1971 SC 33
 - [\[4\]](#) AIR 2004 Andhra Pradesh 198
 - [\[5\]](#) (2009) 2 ALD 432
 - [\[6\]](#) AIR 1985 SC 1147
 - [\[7\]](#) (2000) 2 ALD (CrL.) 428 SC
 - [\[8\]](#) AIR 1986 SC 515
 - [\[9\]](#) (2007) 6 ALD 348
 - [\[10\]](#) (2013) 5 ALD 471
 - [\[11\]](#) (2014) 2 ALD 77