

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

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WP.No.35126 of 2014
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ORDER :
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This Writ Petition is filed seeking a *Writ of Mandamus* to declare order dt.29.04.2006 in Case No.D5/1639/2006 passed by 2nd respondent, confirming order dt.27.02.2006 in Appeal No.A2/1451/04 of 3rd respondent refusing to set aside order dt.25.01.1994 in File No.B/2269/89 passed by 4th respondent.

2. The petitioner's father, viz., J. Anjan Reddy, is the brother of respondent nos.5 and 6. The 7th respondent is the wife of 6th respondent. J. Anjan Reddy and respondent nos.6 and 7 are the children of one J. Kashi Reddy.

3. A certificate in Form 13 (B) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (**for short, 'the Act'**), was issued by 4th respondent in favour of 5th respondent by proceedings dt.25.01.1994 in File No.B/2269/89 regularizing an un-registered sale deed dt.25.12.1977 in respect of an extent Acs.25.29 guntas - comprising of Acs.4.32 guntas in Survey No.30, Acs.7.02 guntas in Survey No.31, Acs.7.23 guntas in Survey No.58, and Acs.6.11 guntas in Survey No.59, all

situate at Dasarlapally Village, Kandukur Mandal, Ranga Reddy District. The said certificate was issued in exercise of powers under Section 5A of the Act.

4. The petitioner filed an appeal under Section 5 (5) of the Act before the 3rd respondent who numbered it as file No.A2/1451/04.

5. It is the contention of petitioner that the said application before the 4th respondent was filed collusively by 5th respondent with the 6th respondent for regularization of a private sale deed dt.25.12.1977 alleging that she had purchased the above land from petitioner's grandfather late J. Kashi Reddy, and that the 4th respondent, without conducting any enquiry or issuing notices to petitioner or any concerned parties, allowed the same by his order dt.25.01.1994 in File No.B/2269/89.

6. The petitioner further contended that she filed the above appeal before 3rd respondent in the year 2003 after she came to know about the order passed by 4th respondent; that the 3rd respondent without verifying or considering the facts or the grounds raised in the appeal, dismissed it on 27.02.2006 erroneously relying on the order passed by him in proceedings No.A2/3190/2005 dt.20.01.2003, (which was an appeal concerning orders in ROR/214/93 mutating Acs.5.00 in Survey Nos.30, 31, 58 and 59 in petitioner's favor); that the subject matter of

the appeal No.A2/1451/04 dt.27.02.2006 before the 3rd respondent was totally different from the subject-matter of the appeal No.A2/3190/2005 dt.20.01.2003; and relying on the order passed in appeal No.A2/3190/2005 dt.20.01.2003, the 3rd respondent could not have dismissed the Appeal No.A2/1451/04. Petitioner contends that she filed Revision before 2nd respondent in Case No.D5/1639/2006 challenging the order dt.27.02.2006 in Appeal No.A2/1451/04 passed by 3rd respondent and that by order dt.29.04.2006 in Case No.D5/1639/2006, the 2nd respondent dismissed the Revision.

7. The petitioner contends that the basis for dismissal of this Revision by 2nd respondent is the order passed by him dt.28.01.2006 in Case No.D5/3886/2004 (which had been filed challenging the order dt.20.01.2003 in File No.A2/3190/1995 relating to ROR/214/1993 with regard to mutation referred to above).

8. The petitioner contends that civil litigation was pending between the parties and the transaction dt.25.12.1977 whereunder the 5th respondent allegedly purchased Acs.25.28 guntas was a forged document and it could not have been executed in view of the pending litigation between the parties.

9. The petitioner contends that when the 4th respondent passed orders dt.25.01.1994 in File No.B/2269/89 regularizing the unregistered sale deed set up by 5th respondent, the procedure prescribed in the Act as well as principles of natural justice were violated and no enquiry was conducted by him. It is contended that no notice was given to parties whose names are found in the Revenue Records who have interest in the said lands and there is a clear violation of provisions of Section 5 and Rule 23 of the Act.

10. The petitioner contends that the respondent nos.2 and 3 wrongly came to the conclusion that the proceedings filed before them by petitioner are covered by proceedings dt.20.01.2003 in File No.A2/3190/1995 on the file of 3rd respondent and order dt.28.01.2006 in Case No.D5/3886/2004 passed by 2nd respondent. The petitioner contends that proceedings for mutation are in respect of petitioner's own land of Acs.5.00 which arose out of an order passed in petitioner's favour under Section 5(5) of the Act, while the proceedings which are subject matter of order dt.25.01.1994 in File No.B/2269/89 (which are subject matter of this Writ Petition) are proceedings in respect of regularization of private sale deed dt.25.12.1977 for an extent of Acs.25.28 guntas in favour of 5th respondent, that both these proceedings are distinct and separate, and

proceedings under Section 5A of the Act cannot be decided on the basis of a decision in proceedings with regard to mutation under Section 5 in favour of petitioner.

11. The counsel for petitioner reiterated the said contentions.

12. Counter-affidavit has been filed by 5th respondent opposing grant of relief to petitioner.

13. In the said counter, the 5th respondent did not dispute that proceedings which are subject matter of this Writ Petition arose under Section 5A of the Act, and that proceedings dt.20.01.2003 in File No.A2/3190/1995 of the 3rd respondent which was confirmed by 2nd respondent in Case No.D5/3886/2004 dt.28.01.2006, arose under the proceedings for mutation made in favour of petitioner in respect of Acs.5.00 of land in Survey Nos.30, 31, 58 and 59 of Dasarapally village. However, he contends that this Acs.5.00 of land claimed by petitioner, which is subject matter of ROR/214/1993 and appeal in File No.A2/3190/1995 before the 3rd respondent and the Revision in Case No.D5/3886/2004 dt.28.01.2006, is part of the extent of Acs.25.29 guntas in respect of which an un-registered private sale deed was executed in favour of 5th respondent on 25.12.1977, and in respect of which the 5th respondent had sought

regularization under Section 5A of the Act before 4th respondent leading to the passing of order in File No.B/2269/89 dt.25.01.1994.

14. Although on merits, the 5th respondent has sought to justify the order passed in both the Revisions, one in relation to the ROR proceedings and the other under Section 5A of the Act, the fact remains that the decision in dt.27.02.2006 in Appeal No.A2/1451/04 of the 3rd respondent is based on the decision dt.20.01.2003 in File No.A2/3190/1995; and the decision in the Revision in Case No.D5/1639/2006 dt.29.04.2006 is based on his own decision in proceedings dt.28.01.2006 in Case No.D5/3886/2004. There is no independent application of mind to the issues raised in the appeal and revision by writ petitioner by respondent nos.3 and 2 respectively.

15. Vide a separate order pronounced today, I have allowed W.P.No.35113 of 2014 filed by petitioner challenging the order dt.28.01.2006 in Case No.D5/3886/2004 and remitting the matter back to 2nd respondent for fresh consideration.

16. Therefore, since the impugned order dt.29.04.2006 in Case No.D5/1639/2006 passed by 2nd respondent is based upon the order dt.28.01.2006 in Case No.D5/3886/2004, and since the said order has now been set aside in WP.No.35113 of 2006, the present

Writ Petition is also allowed and the order dt.29.04.2006 passed by 2nd respondent in Case No.D5/1639/2006 is set aside and the matter is remitted back to 2nd respondent to consider afresh in accordance with law after giving notice to petitioner and to the respondents herein.

17. This exercise shall be completed within twelve (12) weeks from the date of receipt of a copy of the order.

18. Miscellaneous applications, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2016
Ndr/*