

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.23242 of 2011

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Revenue for respondent nos.1 and 2; and Sri K. Govind, counsel for 3<sup>rd</sup> respondent.

2. In this Writ Petition, the petitioner assails order dt.25.05.2011 in D.Dis.D2/4542/2008 passed by the Joint Collector, Ongole, Prakasam District, purportedly in exercise of *suo motu* revisional power under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (**for short, 'the Act'**).

3. One Chembeti Atchaiah had two sons by name Chembeti Peda Kondaiah (**for short, 'Peda Kondaiah'**) and Chembeti China Kondaiah (**for short, 'China Kondaiah'**). The 3<sup>rd</sup> respondent is the son of Peda Kondaiah and the petitioner is the son of China Kondaiah.

4. According to petitioner, Chembeti Atchaiah owned an extent of Acs.11.23 ½ guntas in Survey Nos.1007/1, 1007/2, 929, 936/1, 938, 392/3, 384/1C, 384/1A, 384/1B, 522/9B, 390 and 873/2, situate at Palukur Village, Kandukuru Mandal, Prakasham District. The petitioner contends that the said Chembeti Atchaiah died in 1979 and after his death, Peda Kondaiah and China Kondaiah

partitioned the properties; that Peda Kondaiah, in view of his financial necessities, handed over his share of the property for consideration to petitioner's father; and thereafter, the property was mutated in petitioner's father's name. The petitioner contends that after the death of petitioner's father, the properties were mutated in petitioner's name. The petitioners also placed reliance upon an unregistered agreement of sale dt.02.09.1992, allegedly executed by Peda Kondaiah in favour of China Kondaiah.

**5.** It is not in dispute that petitioner was granted pattadar passbook and title deed by 2<sup>nd</sup> respondent on 07.11.2006.

**6.** In 2008, the 3<sup>rd</sup> respondent filed WP.No.458 of 2008 seeking a direction to 2<sup>nd</sup> respondent to mutate his name in the Revenue records claiming that half-share in the properties of Chembeti Atchaiah which he claimed to have devolved on his father Peda Kondaiah, and contending that after his death he inherited the same.

**7.** By order dt.18.01.2008, this Court dismissed the Writ Petition, granting liberty to 3<sup>rd</sup> respondent to file a fresh application either before 2<sup>nd</sup> respondent or an appeal before the Revenue Divisional Officer, Kandukur, against the alleged wrong entries seeking rectification of the same.

**8.** On 18.04.2008, the 3<sup>rd</sup> respondent filed an application before 2<sup>nd</sup> respondent to enter his name in the Record of Rights claiming to be the legal heir of Late Peda Kondaiah.

**9.** On 05.09.2008, the 2<sup>nd</sup> respondent submitted a report to the Revenue Divisional Officer, Kandukur suggesting that the pattadar pass book and title deed issued to petitioner be cancelled allegedly on the ground that he obtained the same by misrepresenting the facts and that the petitioner does not have clear title.

**10.** The Revenue Divisional Officer, Kandukur on 15.09.2008 submitted proposals to the Joint Collector, recommending for cancellation of the pattadar pass book and title deeds issued to petitioner on the ground that they were issued by mistake of fact.

**11.** On the basis of this material, the Joint Collector, Ongole took up enquiry under Section 9 of the Act *suo motu* and issued notice to petitioner on 23.12.2008, i.e., more than two years after the pattadar pass book and title deed had been issued to petitioner.

**12.** While this was pending, the 3<sup>rd</sup> respondent and his brother filed O.S.No.70 of 2009 before the Senior Civil Judge, Kandukur for partition of the above referred properties and for separate possession of the same

admitting that they are not in possession of any of those properties and also paying *ad valorem* Court Fee for relief of recovery of possession of their share.

**13.** The said suit is stated to be pending, and petitioner is contesting the same.

**14.** The Joint Collector issued notice to petitioner and 3<sup>rd</sup> respondent, as stated above, on 23.12.2008 and in response thereto the petitioner filed a counter stating that although Chembeti Atchaiah was the original owner of the property there was a proposal to partition the lands orally on 23.06.1979 in the presence of elders, and at that time Peda Kondaiah, the father of 3<sup>rd</sup> respondent, stated that he was not willing to take his share since he was residing in Hyderabad and requested petitioner's father to pay Rs.50,000/- stating that he or his sons would not claim share in future over the properties. The petitioner contended that his father paid the said amount, took possession of the lands, and that the 3<sup>rd</sup> respondent is aware of the same. He contended that since then the lands were in exclusive possession and enjoyment of petitioner's father. The petitioner further contended that neither the 3<sup>rd</sup> respondent nor his father has raised any objections during the lifetime of the 3<sup>rd</sup> respondent's father for enjoyment by petitioner of share of 3<sup>rd</sup> respondent's father, and that petitioner and his father were in

continuous possession and enjoyment since thirty-one years. He pointed out that his father's name was mutated in the Revenue Records in 1979, and after the death of his father on 02.10.2006 his name was incorporated in the Revenue Records. He referred to Rule 26 (6) of the Rules framed under the Act, which states that a person who is in actual possession is entitled for pattadar pass book and contended that as per the said rule he was entitled to the same. He also raised a plea that the claim of 3<sup>rd</sup> respondent is barred by limitation and the Revision is not maintainable. He also stated that the issues of limitation and adverse possession have to be decided in O.S.No.70 of 2009; and that under Section 8 (2) of the Act, the grant of pattadar pass book and title deeds would be subject to the result in the suit where the issue of title to the property is pending consideration.

**15.** By order dt.25.05.2011, the Joint Collector, Ongole, Prakasham District, rejected the said objections; and in exercise of *suo motu* revisional powers set aside the action of 2<sup>nd</sup> respondent in issuing pattadar passbooks and title deeds to petitioner.

**16.** Challenging the same, the present Writ Petition is filed.

**17.** Sri V.V. Raghavan, counsel appearing on behalf of Sri Vinjamuri Ranga Babu, counsel for petitioner,

contended that the 3<sup>rd</sup> respondent had claimed possession in O.S.No.70 of 2009 filed by him thereby admitting that he is not in possession of the subject lands; that under Rule 26 (6) of the Rules framed under the Act only persons in actual possession of the land would be entitled to a title deed or pattadar pass book; and since the 3<sup>rd</sup> respondent does not have possession, no relief could have been granted by the Joint Collector to the 3<sup>rd</sup> respondent. He contended that in the application made by 3<sup>rd</sup> respondent to the 2<sup>nd</sup> respondent for incorporation of his name in the Revenue Records, no plea of fraud has been raised by 3<sup>rd</sup> respondent; that the said application itself was filed before 2<sup>nd</sup> respondent on 18.04.2008 and the *suo motu* revisional powers were exercised by the Joint Collector under Section 9 of the Act – two years later on 23.12.2008. He contended that the *suo motu* revisional powers cannot be exercised beyond a reasonable time; and that the very exercise of *suo motu* revisional powers by the Joint Collector after two years cannot be sustained.

**18.** *Per contra*, Sri K. Govind, counsel for 3<sup>rd</sup> respondent, supported the impugned order and contended that 3<sup>rd</sup> respondent had pursued 2<sup>nd</sup> respondent and the Joint Collector to initiate *suo motu* revisional powers since the pattadar pass book and title

deeds have been issued to petitioner beyond the 3<sup>rd</sup> respondent's back; that title from Peda Kondaiah, i.e., the 3<sup>rd</sup> respondent's father, could not have passed to China Kondaiah, i.e., the father of petitioner under an unregistered agreement of sale; and therefore, the plea of petitioner that China Kondaiah became the absolute owner of the property in 1979 or under the agreement of sale on 02.09.1992, cannot be accepted.

**19.** The learned Government Pleader appearing for respondent nos.1 and 2 also supported the impugned order.

**20.** I have noted the submissions of both sides.

**21.** It is well settled that even if no period of limitation is prescribed the power of *suo motu* revision must be exercised within a reasonable time which must be determined by the facts of each case and the nature of the order being revised. (See **Joint Collector, R.R. District, Hyderabad and another v. D. Narasing Rao and others**<sup>[1]</sup>; **State of Gujarat v. Patil Raghav Natha**<sup>[2]</sup>; and **P. Mangamma v. Women's Co-op. Housing Society Ltd., Barakatpura, Hyderabad**<sup>[3]</sup>)

**22.** No doubt, there is an exception to this Rule that where fraud is committed the principle that *suo motu* revisional power should be exercised within a reasonable

time, would not apply. (See **C. Subhash Mudiraj v. Regional Joint Commissioner, Endowments Department, Hyderabad**<sup>[4]</sup>, and **Habeeb Yahiya and another v. Government of Andhra Pradesh, rep. by Joint Collector, Rangareddy District and others**<sup>[5]</sup>).

**23.** The copy of application filed by 3<sup>rd</sup> respondent before the 2<sup>nd</sup> respondent seeking incorporation of his name in the Revenue Records does not make any allegation of fraud against petitioner. Even the notice dt.23.12.2008 issued by the Joint Collector to petitioner invoking *suo motu* revisional powers nowhere mentions that petitioner played fraud on 3<sup>rd</sup> respondent.

**24.** Admittedly, the *suo motu* revisional powers had been exercised beyond two years from 07.11.2006, i.e., the date on which the pattadar pass book and title deed had been given to petitioner by 2<sup>nd</sup> respondent.

**25.** In my considered opinion, after lapse of two years from the said date, it is not open to the Joint Collector to initiate *suo motu* revision proceedings, and set aside the pattadar pass book and title deeds issued to petitioner on 07.11.2006. More importantly, by the time the Joint Collector passed the impugned order, admittedly O.S.No.70 of 2009 filed by 3<sup>rd</sup> respondent before the Senior Civil Judge, Kandukur was pending, and in that



suit, admittedly the relief of partition as well as recovery of possession was sought by 3<sup>rd</sup> respondent. It is not disputed by 3<sup>rd</sup> respondent that as per Rule 26 (6) of the Rules framed under the Act only persons in actual possession are entitled to pattadar pass book and title deed. Since the 3<sup>rd</sup> respondent has no possession, he could not have made any claim for pattadar pass book and title deed, unless his suit is decreed.

**26.** No doubt, a Division Bench of this court in its order dt.01.08.2003 in W.A.No.65 of 2003 stated that there is no impediment for exercise of powers under Section 9 by the Joint Collector merely because a civil suit is pending. But, that does not mean that where relief of recovery of possession is sought in a civil suit, ignoring Rule 26 (6) of the Rules framed under the Act, the Joint Collector should grant pattadar pass book and title deed to the 3<sup>rd</sup> respondent (who was not in possession on the date of his application), and set aside the pattadar pass book and title deeds issued to petitioner (who was in fact in possession).

**27.** In this view of the matter, the impugned order cannot be sustained, and it is set aside.

**28.** However, it is made clear that the pattadar pass book and title deeds issued to petitioner would be subject to result in O.S.No.70 of 2009 pending before the Senior

Civil Judge, Kandukur in view of Section 8 (2) of the Act.

**29.** Accordingly, the Writ Petition is allowed as above.

No order as to costs.

**30.** 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: 16-06-2016

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[\[1\]](#) 2010 (6) ALD 748 (D.B.)

[\[2\]](#) AIR 1969 SC 1297

[\[3\]](#) 1995 (3) ALD 594

[\[4\]](#) 2003 (2) ALD 750

[\[5\]](#) 2003 (6) ALT 770