THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.2052 of 2011

In

WP.No.11077 of 2011

And

WP.No.11077 of 2011

ORDER :

Heard Sri J. Kanakaiah, counsel for petitioners; the learned Government Pleader for Revenue for respondent nos.1 to 3; and Sri K. Raghuveer Reddy, counsel for 4th respondent.

2. In this Writ Petition, the petitioners have questioned order dt.13.05.2010 in proceedings Rc.No.E5/5951/2008 **(for short, the 'impugned order')** of 1st respondent under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 **(for short, 'the Act')**.

3. The petitioners contend that their mother, Smt. Peddakula Bhoolakshmi, was the owner of agricultural land of extent Acs.4.03 guntas in Survey No.413/A situate at Kistampeta Village; that this land was given on lease to 4th respondent; thereafter the petitioners had gone to Pune and Bombay for eking out their livelihood; after they left the village and moved to Pune and Bombay, the 4th respondent claimed that he purchased the subject land from their father Sri Peddakula Sayanna under an unregistered sale deed dt.22.05.1976 and got it validated under a certificate No.B1/1110/1997 dt.06.05.1997 and obtained pattadar pass book under the Act, and later he obtained even Form 13-B Certificate No.B1/1110/1989 deleting the name of Sri Peddakula Sayanna and incorporating his name in the Revenue Records.

4. It is not in dispute that petitioners questioned the same by filing an application through their wives on 12.07.2007 before 2nd respondent for cancellation of the mutation invoking Section 5-B of the Act.

5. The 2nd respondent, by proceeding No.I/1325/2007 dt.10.07.2008, allowed the said appeal and set aside the order of 3rd respondent dt.29.11.1997 approving the amendment for change of patta of the subject land from Sri Peddakula Sayanna to 4th respondent as also the entry incorporating the 4th respondent's name in the Revenue Records, after canceling the passbook issued to 4th respondent.

6. This order of 2nd respondent was challenged by 4th respondent before 1st respondent, and by the impugned order, the 1st respondent set aside the order of 2nd respondent on the following grounds :

"2. … … …

(a). The RDO Jangaon issued impugned proceedings without mentioning any rule provision.

(b) The RDO, Jangaon issued the order of cancellation of ROR issued to the revision petitioner, without issuing notices to the affected parties and without following proper procedure which is bad in law.

(c) The RDO, jangaon issued impugned proceedings Suo-Motu without any application from any appellant, exercised revision jurisdiction for which he is not competent.

(d) The RDO, Jangaon issued impugned proceedings without conducting proper enquiry and without giving any opportunity to the petitioners, which is against the principles of natural justice.

3. The Court relied upon the Hon'ble High Cour order 2009 (1) ALD 248, wherein it was held that "the RDO has no power akin to power vested in Joint Collector under section 9 of Act"."

7. The counsel for petitioners contended that reasons given by 1st respondent are not correct. According to him, the 2nd respondent is empowered under Section 5-B of the Act to entertain an appeal against the order passed on 29.11.1997 in favour of 4th respondent, and merely because he did not mention any rule provision, his order cannot be nullified. He contended that the counsel for 4th respondent was heard before passing the order dt.10.07.2008 in proceeding No.I/1325/2007 passed by 2nd respondent and the said order refers to submissions of counsel for 2nd respondent. So, the 1st respondent was not correct in stating that 2nd respondent had passed the orders without issuing notices to the affected parties or that the said order was passed *suo motu*, or without conducting any enquiry. He also contended that the decision in **Thripuravaram Krishna Reddy v. Joint Collector, Cuddapah and others**[1] referred to in the order of 1st respondent has no application to the facts of the case.

8. The learned Government Pleader for Revenue, appearing for respondents, states that under Section 5-B of the Act, the 2nd respondent is empowered to entertain appeals against the orders passed under Section 5-A (4) by 3rd respondent. He also admitted that a reading of the impugned order indicates that the said order was passed not *suo motu*, but on application filed by the wives of petitioners dt.12.07.2007. He did not dispute that the counsel for 4th respondent was heard by 2nd respondent before passing the order dt.10.07.2008.

9. Sri K. Raghuveer Reddy, counsel for 4th respondent, sought to support the impugned order on the ground that the appeal could not have been entertained by 2nd respondent beyond the period of 30 days from the date of communication of the order, since the order itself was passed on 29.11.1997 by the 3rd respondent. He therefore contended that the order passed by 1st respondent was correct and can be supported on the ground that the 2nd respondent had no jurisdiction to entertain the appeal beyond the period of 30 days.

10. I have noted the submissions of the counsel for the parties.

11. Section 5-A provides for regularization of alienations of land even if such alienation is not pursuant to a registered document. This provision was introduced to help illiterate land owners to get certificates of validation under sub-Section (4) of Section 5-A.

12. Unfortunately, the said provision is being invoked indiscriminately without issuing notices to affected parties, and orders are being passed behind the back of transferees or their legal heirs; and the provision is being misused.

13. Be that as it may, an appeal is provided under Section 5-B of the Act against an order passed under sub-Section (4) of Section 5-A by the Tahsildar to the Revenue Divisional Officer within 30 days of *the date of communication of the order*.

14. Rule 22-A of the Rules framed under the Act states as follows :

> "***22-A.*** *(1) An appeal against every order of the Mandal Revenue Officer under sub-section (4) of Section 5-A of the Act shall lie to the Revenue Divisional Officer / Sub-*

Collector / Assistant – Collector.

(2) Every appeal referred to in sub-rule (1) shall be in writing and shall set forth concisely the grounds thereof <u>*within a period of sixty days, from the date of communication of order*</u> *and shall be accompanied by a copy of the order appealed against.*

(3) Every appeal referred to in sub-rule (1) above shall bear a Court-fee stamp of rupees five only.

(4) Every appeal shall be disposed of within a period of six months from the date of filing the appeal."

15. A reading of Section 5-B as well as Rule 22-A indicate that an appeal can be filed against the order passed under sub-Section (4) of Section 5-A to the Revenue Divisional Officer within 30 days from the date of communication of the order, though the rule says the appeal should be filed within 60 days from the date of communication of the order.

16. It is not the case of 4th respondent that he was granted validation certificate under sub-Section (4) of Section 5-A of the Act vide proceedings No.B1/1100/97, dt.06.05.1997 on the basis of alleged purchase by him under ordinary sale deed dt.22.05.1976 from Sri Peddakula Sayanna after issuing of notice to the family members of the said Sri Peddakula Sayanna, including his wife Smt. Peddakula Bhoolakshmi, or the petitioners.

17. Thus, the 4th respondent had managed to obtain the said order dt.06.05.1997 behind the back of petitioners.

18. He has also not been able to place any material before this Court to show that the said order had been communicated to petitioners or to their mother Smt. Peddakula Bhoolakshmi during her lifetime.

19. In my considered opinion, the period of limitation does not commence unless the order passed by 2nd respondent was communicated to petitioners. Therefore, it is not open to 4th respondent to contend that the appeal or application filed on behalf of petitioners before the 2nd respondent was time-barred and they had approached the 2nd respondent beyond the period prescribed under the Act for filing the appeal.

20. I am also of the opinion that the 1st respondent is not correct in stating that the order was passed by 2nd respondent without mentioning any rule provision. In fact, under the heading 'subject' on page no.1, the 2nd respondent has clearly indicated that he was passing orders exercising powers under Section 5-B of the Act and he had specifically mentioned in para no.2 of the order that the application was filed seeking cancellation of the patta in view of the report submitted by 3rd respondent for disposal under Section 5-B of the Act.

21. The order passed by 2nd respondent also states that on behalf of Smt. Peddakula Bhoolakshmi and petitioners, the wives of petitioner nos.1 and 2 had filed the said application through Advocates, and the 4th respondent had also engaged Advocates. It is further observed in the order passed by 2nd respondent as under :

> *"During the course of enquiry, the Advocate appearing for Madupally Yadaiah filed Memo, dated 28.06.2008 stating that Smt. Peddakula Bhulaxmi died about 5 months back and requested to dismiss the appeal as abated. But, the L.R.s of said Smt. Peddakula Bhulaxmi have already appeared through their Advocates. The case is underwent many adjournments. But, neither party chose to file their claims. On the last date of hearing, the Advocate for the L.R.s of Peddakula Bhulaxmi requested to dispose of the case as per the enquiry report submitted by the Tahsildar, Cherial."*

The above passage clearly indicate that the order was passed by 2nd respondent after hearing the counsel for 4th respondent and after causing enquiry to be made through 3rd respondent, and adequate opportunity was given to 4th respondent. Therefore, the 1st respondent is not correct in stating that the order was passed by 2nd respondent without issuing notice to 4th respondent or without following proper procedure or principles of natural justice were violated. It is also not correct on the part of 1st respondent to state that 2nd respondent had passed orders *suo motu* without any application from petitioners and that he had exercised Revisional jurisdiction. The 2nd respondent had clearly passed the order on application filed by wives of petitioners on their behalf and had exercised appellate jurisdiction under Section 5-B of the Act, and not Revisional jurisdiction.

22. The 1st respondent erred in placing reliance on the judgment reported in **Thripuravaram Krishna Reddy** (1 supra) which related to orders passed under Section 5 (5) of the Act. The said case was not a case dealing with proceedings under Section 5-A of the Act. Therefore, the said decision has also no application to the facts of the present case.

23. In my considered opinion, the 1st respondent has clearly committed an error of jurisdiction by grossly misreading the order of 2nd respondent, and in drawing conclusions which are not supported by record as set out above.

24. Therefore, the Writ Petition is allowed and the order dt.13.05.2010 in proceeding Rc.No.E5/5951/2008 of 1st respondent is set aside. However, the order dt.10.07.2008 in Rc.No.I/1325/07 passed by 2nd respondent would be subject to the result in O.S.No.244 of 2007 filed by petitioners before the Additional Junior Civil Judge, Janagaon, which is said to be pending as on date wherein reliefs of declaration of title and recovery of possession have been sought by petitioner.

Consequently, WVMP.No.2052 of 2011 is also dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 07-06-2016
Ndr/*

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[1] 2009 (1) ALD 248