

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.18375 of 2012

ORDER :

Heard counsel for the petitioners, the Government Pleader for Revenue appearing for respondents 1 to 3 and Sri K.Purushotham, Counsel appearing for 6th respondent.

2. This Writ Petition is filed challenging the order dt.28.05.2012 in D.Dis.No.494/2011/KRC of the 1st respondent.

3. One Godali Joga Rayudu had three daughters by name Gouramma(5th respondent), Paidamma (4th respondent) and Appala Narsamma (mother of 7th respondent). Petitioner is the son of the 5th respondent and the 6th respondent is the son of 4th respondent. An extent of Acres 3-17 cents in survey No.137 in Kallikota Village, H/o Komarada Mandal, Vizianagaram District was assigned to Godali Joga Rayudu and D-Form patta was issued to him in 1972. He died in 1978. The 4th respondent and Appala Narsamma left the village and went to another village and were not residing in Kallikota village. Petitioner cultivated the said land and obtained Pattadar Passbook and Title Deed in his name and this continued till 2010.

4. In 2010, respondents 4 and 5 filed application before the Project Officer, ITDA, Parvathipuram seeking to handover the subject land to them, even though Pattadar Passbook and Title Deeds were issued to the petitioner. This was forwarded by the Project Officer, ITDA to the 2nd respondent.

5. The respondents 4 and 5 in the said application had stated that it was assigned to their father Joga Rayudu, that after the

death of their father in 1978, they cultivated the same for two years and thereafter they went to other place for their livelihood by handing over the subject land to the petitioner; and after they came back to the village, when they asked the petitioner to handover the land, he refused to do so. They therefore prayed that the subject land be handed over to them by dispossessing the petitioner.

6. By order in ROR appeal No.1865/2010/C dt.03.02.2011 the 2nd respondent dismissed the appeal/ petition. He stated that respondents 4 and 5 are not residing in Garavalasa village, H/o Kallikota Village where the land is situated; that the land was under the occupation of the petitioner since a long time and he was also issued Pattadar Passbook and Title deed; that loan was also sanctioned from ADB, Parvathipuram; and that the land in question is an assigned land and there is no record of evidence of occupation of respondents 4 and 5 of the said land.

7. Challenging the same, respondents 4 and 5 preferred Revision before the 1st respondent, which was numbered as D.Dis.No.494/2011/KRC.

8. By order dt.28.05.2012, the 1st respondent allowed the Revision canceling the Pattadar Passbook and Title Deed issued to the petitioner and directed the 3rd respondent to distribute the land to the legal heirs of Joga Rayudu, who have no land. In the said order, the 1st respondent concluded that the assigned land is heritable, that all the legal heirs are entitled to enjoy it and therefore, the pattadar Passbook and Title Deed issued to the petitioner should be cancelled and the land should be distributed among the legal heirs, who do not have the land.

9. Assailing the same, this Writ Petition is filed.

10. Counsel for the petitioner contended that the very application of respondents 4 and 5 before the 2nd respondent for delivery of possession is not maintainable under the provisions of A.P. Rights in land and Pattadar Pass Books Act, 1971 (for short 'the Act'), since the relief of recovery of possession sought by them cannot be granted by the said authority under the said act as the said authority is not the Original Authority under the Act and is only the Appellate Authority; and when respondents 4 and 5 specifically pleaded that they are not living in the village, where the assigned lands are located, and petitioner is cultivating the said land, the respondents 4 and 5 cannot seek for issuance of pattadar Passbook and Title Deed, since sub-rule (6) of Rule 26 of Rules framed under the Act mandates that Pattadar Passbook and Title Deed shall be given only to those persons who are in actual possession of the lands. He contended that the order of the 1st respondent is contrary to the legal position and it is without jurisdiction, since the 1st respondent is not entitled to go into the issue of succession and act contrary to Sub-Rule (6) of Rule 26 and cancel the Pattadar Passbook and Title Deed issued to the petitioner and direct the 3rd respondent to distribute the land to the legal heirs of Godali Jogarayudu, who have no land.

11. Sri K.Purushotham, Counsel appearing for 6th respondent supported the order passed by the 1st respondent and contended that all the legal heirs would be entitled to inherit the assigned land and get Pattadar Passbook and Title Deeds, and there is nothing wrong in the 1st respondent directing cancellation of Pattadar Passbook and Title Deeds issued to the petitioner for the subject

land and directing it to be redistributed among the legal heirs, who have no land.

12. The Government Pleader for Revenue appearing for respondents 1 to 3 also supported the action of the 1st respondent and sought to sustain the order.

13. I have noted the submissions of all the counsel for parties.

14. It is an admitted fact that respondents 4 and 5 have filed application before the Project Officer, ITDA, Parvathipuram seeking recovery of possession of the subject land in respect of which Pattadar Passbook and Title Deeds were issued to the petitioner. In the said application they admitted that they were not cultivating the land and the petitioner was cultivating the same and that the land was in his occupation. This was forwarded by the Project Officer, ITDA to the 2nd respondent.

15. In my opinion the 2nd respondent had rightly rejected the request of the respondents 4 and 5 for recovery of possession, not only for the reason stated by him in the said order, but also on the ground that the said relief of recovery of possession could not have been granted by him and could have only been granted by a competent Civil Court. Also he is not the original authority under the Act to consider requests for issuance of Pattadar Passbooks or Title Deeds and he is only an appellate authority. Therefore he could not have entertained the application of the respondents 4 and 5 forwarded to him by the Project Officer, ITDA under the provisions of the above Act.

16. Coming to the order of the 1st respondent, who entertained

the revision filed by respondents 4 and 5 against that order dt.03.02.2011 of the 2nd respondent is concerned, 1st respondent ought to have taken note of Sub-Rule (6) of Rule 26 of the Rules framed under the Act, which mandates that the Title Deed or Pattadar Passbook under the Act shall be given only to the persons who are in actual possession of the land. He also ought to have seen that the relief of recovery of possession cannot be granted by authorities under the Act and can only be granted by a Civil Court and he ought to have dismissed the Revision also on the ground that it is not maintainable.

17. For the aforesaid reasons, I hold that 1st respondent had no jurisdiction to decide succession to Godali Joga Rayudu and direct dispossession of the petitioner from the subject land, cancellation of his Pattadar Passbook and Title Deed and distribution of the said land to legal heirs of Joga Rayudu, who do not have land.

18. Therefore, this Writ Petition is allowed and the impugned order of the 1st respondent is set aside. The respondents 1 to 3, 6 and 7 are directed to pay costs of Rs.500/- each to the petitioner.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st June, 2016.

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