THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12945 OF 1998

ORDER :

This writ petition is filed seeking writ of Certiorari calling for the records pertaining to case No.C3/JC/ROR/27/95, dated 20.04.1998 of the Joint Collector & Additional District Magistrate, Nalgonda and consequently to set aside the same as illegal and arbitrary.

2. It is the case of the petitioner that himself and the respondents 6 to 9 are the joint owners and possessors of the property to an extent of 1.01 acres in Sy.No.186, 0.20 acres in S.No.187, 2.34 acres in S.No.248, 0.25 acres in S.No.249 total admeasuring Acs.5.00 (hereinafter referred to as 'subject property') of Malipuram Village, Tirumalagiri Mandal, Nalgonda District and that the said property is hereditary property. Their names have been mutated in revenue records including the records maintained under Rights in Land and Pattedar Pass Books Act, 1971 (for short 'the Act of 1971'). That the 4th and 5th respondents have made an application before the 1st respondent for mutation of the aforesaid land in their favour under the Act of 1971. The 1st respondent in File No.A/1427/92, dated 09.11.1992 issued 13-B Certificate under the Act of 1971 in favour of the respondents 4 and 5, without issuing notice to the petitioner and respondents 6 to 9. Aggrieved by the orders of the 1st respondent dated 09.11.1992, the petitioner preferred appeal under the Act of 1971 before the 2nd respondent in case

No.E/2197/93. The 2nd respondent allowed the appeal through orders dated 31.12.1994. Against the said orders of the 2nd respondent, the 5th respondent preferred revision before the 3rd respondent in case No.C3/JC/ROR/27/95. The 3rd respondent allowed the revision filed by the 5th respondent stating that under Rule 27(4) of the A.P. Rights in Land and Pattedar Pass Books Rules, 1989 (for short 'the Rules of 1989'), the recording authority can implement the court decree without issuing notices and without holding an enquiry and set aside the order passed by the 2nd respondent. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the respondents 1 to 3 denying the averments in the affidavit filed in support of the writ petition stating that the respondents 4 and 5 have filed a petition before the 1st respondent-MRO, Tirumalgiri, stating that they have purchased the subject property from Md.Ibrahim S/o.Khasim and others and obtained a civil Court decree in O.S.No.170/70 on the file of M.M.Court, Suryapet and mutation was affected in their favour. Aggrieved by the same, the petitioner filed appeal before the 2nd respondent-RDO, who allowed the appeal. Against the orders of the appellate authority-Revenue Divisional Officer, revision was preferred by the 5th respondent before the 3rd respondent-Joint Collector. The Joint Collector allowed the revision vide orders dated 20.04.1998 by setting aside the orders of the 2nd respondent. It is stated that the respondents 4 and 5 are in continuous possession of the subject property and the M.R.O had implemented decree in O.S.No.170/70 under Rule

27(4) of the Rules of 1989, as such, the order passed under Revision is correct. That Section 5(3) of the Act of 1971 is applicable only in the case of sada sale deeds and in the civil court decrees Rule 27(4) of the Rules 1989 is applicable, for which no notice is required to be issued to the petitioner. It is stated that the orders in O.S.No.121/95, 1993/87 and 170/70 are exclusively relating to this dispute and all of them are decided against the writ petitioner and sought for vacation of interim order and dismiss the writ petition.

4. Counter affidavit is filed by the 4th respondent denying the averments in the affidavit filed in support of the writ petition stating that he purchased subject property from Mohd.Ibrahim, Mohd.Komuruddin, MOhd.Abbas, who is writ petitioner herein and Goremma and Rajiya Becum under an unregistered sale deed dated 06.05.1970. He applied for regularization of the said sale deed under Section 5-A of the Act of 1971 before the MRO, who issued Form-XIII B Certificate dated 09.11.1992 after issuing notice to the petitioner and respondents 6 to 9 herein. That himself and his co-purchaser Jonna Venkat Reddy filed joint suit bearing OS No.170 of 1970 before the District Munsif, Suryapet for rectification of entries in Record of Rights on the basis of the unregistered sale deed executed by the petitioner and respondents 6 to 9 on 06.05.1970 and they were made parties in the said suit and after contest the same was decreed on 30.06.1970. As no appeal has been preferred against the said decree and judgment, it has become final. That the writ petitioner as well as respondents 6 to 9 have not challenged the

regularization of sale deed under Section 5-A of the Act though statutory appeal is provided under Section 5-B of the Act. That when once the regularization has become final, the petitioner is not entitled to challenge the Certificate issued under Form 13-B of the Act. That the writ petition is not maintainable as only one owner had challenged the impugned order and in respect of others, it has become final. That the petitioner has not stated about his share in the suit land to resettle the orders already passed by the MRO regarding regularization as well as Form XIII B certificate under Section 8(2) of the Act.

5. Reply to the counter affidavit of 4th respondent is filed by the petitioner reiterating the averments in the affidavit filed in support of the writ petition.

6. During pendency of the writ petition, the 5th respondent expired and his legal heirs were brought on record as respondents 10 to 18 as per orders of this Court dated 23.02.2004 in WPMP No.3046 of 2004. The respondents 19 and 20 to 23 were brought on record as legal heirs of the deceased respondents 9 and 7 respectively as per orders of this Court dated 11.07.2016 in W.P.M.P.Nos.40499 of 2015 and 43211 of 2013 respectively.

7. W.P.M.P. No.22309 of 2006 was filed on 24.08.2006 to record the compromise entered into between the petitioner and the respondents 5 to 9 and legal heirs of 5th respondent stating as follows:

> "**Memo of Compromise filed on behalf of writ petitioner and respondents 5 to 9 & legal heirs of respondent 5**

> The writ petitioner and Respondents 5 to 9 and legal heirs of Respondent 5 herein have compromised the dispute among themselves by way of an out of court settlement.
>
> In view of the compromise entered into, the Respondents 5 to 9 & legal heirs of Respondent 5 herein hereby wish to withdraw all their claims, rights and proceedings in favour of the Writ Petitioner as covered in W.P.No.12945 of 1998, to the extent of their shares forming part of Sy.Nos.186, 187, 248 & 249 situated at Malipuram, Thirumalagiri Mandal, Nalgonda District.
>
> The decree in OS.1081/90 on the file of the Junior Civil Judge, Suryapet, Nalgonda District filed by the 5th respondent is not executable and that to the extent of the claim of the legal heirs of Respondent No.5 is concerned, they have withdrawn the same, and apart from this in view of the Judgment in O.S.No.121/1995, dated 18-2-2000 and the Judgment in O.S.No.124/1998, dated 21-12-2004 on the file of the Junior Civil Judge, Suryapet, Nalgonda District, and the injunction granted in O.S.No.116/1998, on the file of the Junior Civil Judge, Suryapet, Nalgonda District, have become final, the petitioner is entitled for the relief sought for in the writ petition and the decree in O.S.No.170 of 1970 on the file of the District Munsiff, Suryapet, Nalgonda District, dated 30-06-1970, cannot be enforced.
>
> The parties hereby seek disposal of the above writ petition taking into consideration of the fact that the legal heirs of Respondent No.5 withdrawn their claim in relation to the subject matter of the property."

8. Heard Sri D.Prakash Reddy, learned Senior Counsel for the petitioner, who submits that the revision is preferred by the 5th respondent only against orders of Revenue Divisional Officer, who allowed the appeal of the petitioner. He submits that the writ petitioner, respondents 6 to 9 and legal representatives of 5th respondent have filed a compromise stating that they have no objection for setting aside the impugned order. He submits that since the 5th respondent has only filed revision against the orders passed by the 2nd respondent-Revenue Divisional Officer dated 31.12.1994 but not the 4th respondent, as such, the 4th respondent cannot have any objection for setting aside the impugned order dated 20.04.1998 passed by the 3rd

respondent, since the order impugned is at the instance of 5th respondent. He submits that the impugned order is passed basing on judgment and decree in O.S.No.1081 of 1990 on the file of District Munsiff, Suryapet, dated 13.11.1990 filed by the 5th respondent, but the same was set aside in O.S.No.124 of 1998 vide order dated 21.12.2004, filed by the petitioner and others. He submits that the declaration of title granted in favour of 5th respondent was set aside in O.S.No.124 of 1998 at the instance of the petitioner. He submits that the 3rd respondent-Joint Collector has also relied on interim orders passed in I.A.No.5 of 1995 in O.S.No.121 of 1995, but the said suit was dismissed for default on 18.02.2000, as such, the basis for passing the revisional order by the 3rd respondent is erroneous. He submits that the judgment and decree dated 30.06.1970 in O.S.No.170 of 1970 is for correction of entries, as such, the 1st respondent-M.R.O could not have validated any sale deed vide proceedings R.C.No.A/1427/92, dated 09.11.1992, without notice to the petitioner, and respondents 6 to 9, who are admittedly owners of the land. He submits that the 2nd respondent-Revenue Divisional Officer rightly observed that without issuing notice to the petitioners, who are pattedars of subject land, validation of sale deed could not have been passed and remanded the matter to the original authority i.e., 1st respondent-Mandal Revenue Officer for fresh enquiry and that the 3rd respondent could not have interfered with the order passed by the appellate authority-2nd respondent. He further submits that Rule 27(4) of the A.P.Rights in Land and Pattedar Pass Books Rules, 1989, applies only in case when the suit for declaration of title is decreed but in the present case, the judgment and decree in O.S.No.170 of 1970 is not for declaration of title, but it is only for correction of entries in the revenue records.

9. On the other hand, Sri M.Rama Rao, learned counsel appearing for the 4th respondent submits that when the judgment and decree in O.S.No.170 of 1970 become final, no notice was required to be issued before mutating the names of the respondents 4 and 5 in the revenue records, as predecessors in interest of petitioner are parties to the said suit. He submits that for implementing the civil Court's decree, no notice is required as envisaged under Rule 27 (4) of the Rules. He also submits that the appeal filed by petitioner before R.D.O is not maintainable. He submits that the subject property had not been divided, as such, the revisional order ensures to the benefit of the 4th respondent also, as such, 4th respondent can contest the writ petition by supporting the revisional order passed by the 3rd respondent. He submits that if the petitioner has any grievance, he should have approached under Section 8(2) of the Act for declaration of title.

10. Sri V.Ramakrishna Reddy, learned counsel appearing for the legal representatives of 5th respondent and respondents 6 to 9 submits that the respondents 6 to 9 and

legal representatives of 5th respondents have settled the matter outside the Court and they have no objection for setting aside the revisional order in view of the compromise entered into between the petitioner and respondents 6 to 9 and legal representatives of 5th respondent.

11. Learned Assistant Government Pleader for Revenue submits that since the 1st respondent has implemented the Court decree, no notice is required to be issued to the petitioner and respondents 6 to 9.

12. In this case, it is to be seen that the 3rd respondent-Joint Collector has relied on the decree of the Court in O.S.No.1081 of 1990 dated 13.11.1990 passed by the District Munsiff Court, Suryapet in favour of the 5th respondent declaring him as owner and possessor of the subject property. But the said decree in O.S.No.1081 of 1990 dated 13.11.1990 is set aside in O.S.No.124 of 1998 vide orders dated 21.12.2004. It is stated that the above orders have become final, 3rd respondent also relied on the interim orders in I.A.No.5 of 1995 in O.S.No.121 of 1995 and passed impugned orders. Now it is brought to the notice of this Court that the said suit O.S.No.121 of 1995 was also dismissed for default on 18.02.2000. The basis for passing of impugned order is judgment and decree in O.S.No.1081 of 1990 and same is set aside in O.S.No.124 of 1998 and suit filed by the 4th respondent i.e., OS No.121 of 1995 was also dismissed for default on 18.02.2000. What remains is the decree in O.S.No.170 of 1970. It is the case of the 4th

respondent as well as learned Assistant Government Pleader for Revenue that basing on the judgment and decree in OS No.170 of 1970, validation of orders have been issued under Section 5-A and form 13-B Certificate has also been issued in favour of the respondents 4 and 5 without notice to the petitioner and respondents 6 to 9. A copy of plaint in OS No.1081 of 1990 filed by the 5th respondent is filed before this Court, wherein at paragraph 4 of the plaint, it is stated as follows:

> "4.That the plaintiff has purchased the suit land from the defendants through an agreement of sale about 13 years back and he put in possession thereof as a part performance of the said agreement and ever since he is in exclusive un-interrupted and continuous possession thereof to the knowledge of the defendant. The documents etc., are misplaced and could not be traced out despite vigorous search for the same. Thus, the plaintiff has perfected his title by way of adverse possession."

In the above para, it is mentioned that the 5th respondent has purchased the property through an agreement of sale, said to have been executed by the petitioner's predecessors and that the same was lost. Even the record does not indicate that there is any document filed except some receipts. As per the Judgment of the Hon'ble Division Bench reported in **Konkana Ravinder Goud v. Bhavanarishi Co-operative House Building Society, Hyderabad**[1] sale agreement cannot be validated and when there is validation of the certificate under Section 13-B, notice should have been issued to the petitioners. The 2nd respondent-Revenue Divisional Officer has found that no notice was issued to the concerned parties and no procedure

---

[1] 2003 (6) ALT 1 (25) AP (DB)

was followed in issuing 13-B Certificate. A perusal of the proceedings before the 2nd respondent goes to show that the 1st respondent has not issued any notice to the concerned parties and also not followed the procedure envisaged under the Act of 1971 while validating sale deed vide proceedings dated 09.11.1992. As per Rule 22 of the Rules, the validation of so-called documents could not have been affected, but the Joint Collector-3rd respondent, without going into the factual aspects, by relying on Rule 27(4) of the Rules, has allowed the revision setting aside the order of the 2nd respondent holding that no notice is required to be issued while implementing the decree of civil Court.

13. In **Veeramachaneni Ramchander Rao v.Tahsildar, Chityal Mandal, Nalgonda District[2]**, this Court held as follows:

> "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 acqauisition 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 re 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 (1 supra)……".*

In view of the above, I am of the opinion that notices ought to have been issued to the petitioner and respondents 6 to 9 before passing proceedings dated 09.11.1992 by the 1st respondent-Mandal Revenue Officer, as rightly observed

---

[2] 2009 (3) ALT 92

by the 2nd respondent-Revenue Divisional Officer. More so, the documents sought to be validated are 23 years old and even as per the averments in plaint in OS No.1081 of 1990, the so-called sale agreement is lost and it is not known how the same is validated. It is pertinent to note that the 4th respondent has not filed any revision against the orders of the 2nd respondent, as such, he cannot object for setting aside the impugned order, when legal representatives of 5th respondent in whose favour impugned order is passed, has no objection.

In view of the above facts and circumstances, the impugned order is liable to be set aside and accordingly set aside.

Accordingly, the writ petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

14.12.2016
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12945 OF 1998

Date: 14.12.2016

kvs