

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

-
WP.No.35113 of 2014
-

-
ORDER :
-

-
This Writ Petition is filed by petitioner challenging the order dt.28.01.2006 in Case No.D5/3886/2004 of the 2nd respondent confirming the order dt.20.01.2003 in File No.A2/3190/95 of 3rd respondent.

2. The petitioner herein is claiming an extent of Acs.5.00 of land - comprising Ac.0.30 guntas in Survey No.30, Acs.1.14 guntas in Survey No.31, Acs.1.36 guntas in Survey No.58 and Acs.1.00 in Survey No.59, situate at Dasarlapally Village, Kandukur Mandal, Ranga Reddy District.

3. She claims right to this property through her father, i.e., Sri J. Anjan Reddy, who is the son of late J. Kashi Reddy.

4. According to her, her grand-father Late J. Kashi Reddy and his late brother J. Venkat Reddy owned an extent of Acs.51.16 guntas in Survey Nos.30 and 59, that this land of Acs.5.00 had fallen to the share of Sri J. Anjan Reddy, that he had in turn given it to the Writ petitioner, and her name had been mutated in the Revenue Records by proceedings of 4th respondent dt.03.08.1993

in File No.ROR/214/1993.

5. It is not in dispute that 5th respondent, who is the sister of Sri J. Anjan Reddy, challenged the proceedings in File No.ROR/214/1993 dt.03.08.1993 before 3rd respondent in an appeal filed under Section 5 (5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (**for short, 'the Act'**) in Appeal No.A2/3190/95. The said appeal was allowed on 20.01.2003 setting aside the order passed by 4th respondent.

6. Challenging the same, the petitioner filed Revision under Section 9 of the Act before 2nd respondent which was numbered Case No.D5/3886/2004.

7. However, by the impugned order dt.28.01.2006, the 2nd respondent dismissed the said appeal for non-prosecution.

8. The petitioner herein then filed an application to re-open the proceedings.

9. The said application was rejected by proceedings No.D5/3593/2012 dt.20.11.2012 by 2nd respondent, stating that as per sub-Section (4) of Rule 23 of the Act, orders under Revision shall be final and there shall be no further review by the Joint Collector.

10. Sri Vedula Srinivas, counsel for petitioner,

contends that as per the decision of this Court reported in **Kommineni Haribabu v. Tahsildar, Chandragiri Mandal, Chittoor District and others**^[1], the 2nd respondent had no jurisdiction to dismiss the Revision No.D5/3886/2004 on 28.1.2006 for non-prosecution or for default since 2nd respondent is not a Civil Court and he cannot invoke Order IX Rule 3 Civil Procedure Code, 1908. He contended that even in the absence of parties, the 2nd respondent has to apply his mind to the Revision petition filed and pass order on merits, and therefore, the order dt.28.01.2006 passed by 2nd respondent in Case No.D5/3886/2004 is without jurisdiction, and is liable to be set aside. He further contended that the 3rd respondent had adjudicated the appeal filed by 5th respondent before him on certain facts which were newly pleaded, instead of remanding the matter for fresh enquiry to the 4th respondent, who was the primary authority under the Act; and that it was not open to 3rd respondent to conduct enquiry over new facts pleaded for the first time by 5th respondent in the said Appeal.

11. Other contentions on merits were also raised including the ground that civil litigation is pending between the parties, particularly in O.S.No.1383 of 2005 in respect of the subject land for partition and separate possession.

12. Sri B. Vijaysen Reddy, counsel for 5th respondent, however refuted the above contentions and pointed out that petitioner had filed the present Writ Petition with laches, and therefore, the Writ Petition should be dismissed *in limine*. He contended that the 3rd respondent had rightly allowed the appeal filed by 5th respondent by his order dt.20.01.2003 in Appeal No.A2/3190/95 and set aside the order dt.03.08.1993 in File No.ROR/214/93 passed by 4th respondent.

13. The counsel for 5th respondent however did not dispute the principle laid down in **Kommineni Haribabu** (1 supra) to the effect that the 2nd respondent has no jurisdiction to dismiss the Revision pending before him for default, invoking Order IX Rule 3 Civil Procedure Code, 1908 or the fact that the 2nd respondent is not a Civil Court, and all provisions of the Civil Procedure Code, 1908 are not applicable to proceedings under the Act except to the extent mentioned in Section 10 of the Act and Rule 28 of the Rules framed thereunder. He also did not dispute the fact that after the Revision was dismissed on 28.01.2006, a memo was filed by petitioner on 05.10.2012 to re-open the proceedings and the same was dismissed under proceedings No.D5/3593/2011 dt.20.11.2012 by 2nd respondent.

14. In **Kommineni Haribabu** (1 supra), a learned single Judge of this Court held that Section 10 of the Act and Rule 28 of the Rules framed under the Act make applicable only some of the provisions of Civil Procedure Code, 1908 to proceedings under the Act such as entering upon and inspecting any land or taking or causing to take measurements thereof; and that provisions to Order IX Civil Procedure Code, 1908 have not been made applicable to the proceedings under the Act. It further held that even in the absence of the parties, the 2nd respondent should have to apply his mind and pass an order either confirming or reversing the order of the lower authorities on merits and he had no jurisdiction to dismiss a Revision filed before him for default.

15. Since this legal position is not contested by counsel for 5th respondent, the dismissal of Revision on 28.01.2006 by 2nd respondent is totally without jurisdiction and null and void. (See **Union of India v. Tarachand Gupta and Brothers**^[2]).

16. It is settled law that such an order without jurisdiction being a nullity could be challenged in collateral proceedings also. (See **Kiran Singh and others v. Chaman Paswan and others**^[3]).

17. It is settled law that there is no inviolable rule of

law that wherever there are laches in filing a Writ Petition, the Court must necessarily refuse to entertain the petition and each case must be dealt on its own facts. (See **M/s. Dehri Rohtas Light Railway Company Limited v. District Board, Bhojpur and others**^[4])

18. In view of this legal position, it has to be held that the impugned order being one without jurisdiction cannot be sustained even if there are any laches on the part of the petitioner in approaching the Court.

19. Accordingly, the Writ Petition is allowed and the order dt.28.01.2006 passed by 2nd respondent in Case No.D5/3886/2004 are set aside and the matter is remitted back to 2nd respondent to consider the matter on merits after issuing fresh notice to parties in accordance with law.

20. This exercise shall be completed by 2nd respondent within a period of eight (08) weeks from the date of receipt of a copy of this order.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2016

Ndr/*

[\[1\]](#) 2014 (3) ALT 674

[\[2\]](#) (1971) 1 SCC 486

[\[3\]](#) AIR 1954 SC 340

[\[4\]](#) (1992) 2 SCC 598