**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE**
**AND**
**HON'BLE SRI JUSTICE P.NAVEEN RAO**

**<u>WRIT APPEAL No. 248 of 2016</u>**

Date: 6.4.2016

<u>Between:</u>

A.Kanakaraj s/o. Iyyappa Swamy,
r/o. 8, 2nd Main Road, Krishnapuram,
Chennai and another.

…..Appellants/ respondents 5 & 6
Petitioner

and

A.Arokya Mary, w/o. late S.Arulandu,
Aged about 56 years, Occu: Housewife,
r/o. D.No.14, Kribashankar Street,
West Mambalam, Chennai.

…..Respondent/ writ petitioner

The State of A.P., rep.by its Principal
Secretary, Revenue Department at
Secretariat, Hyderabad and others.

…. Respondents/respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE**

**AND**

**HON'BLE SRI JUSTICE P. NAVEEN RAO**

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PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Heard Sri S.Lakshminarayana Reddy, learned counsel for appellants, Sri N.Sridhar Reddy, learned counsel for respondent No.1 and Sri K Ramakrishna Reddy, learned Advocate General for State of Telangana.

2. Appellants herein are respondents 5 and 6 in the writ petition. Parties are referred to as arrayed in the writ petition. In W.P.No.14083 of 2015 petitioner challenged the orders of the Joint Collector in D.Dis No. D4/1456/2014 dated 3.9.2014. This order of the Joint Collector is in exercise of revisional jurisdiction under A.P. Rights in Lands and Pattadar Pass Books Act, 1971 (for short the Act) against the order of the Revenue Divisional Officer as appellate authority on the decision of Tahasildar. The Tahsildar rejected the claim of 5$^{th}$ respondent to issue pattadar pass books under the Act, 1971. On appeal by the 5$^{th}$ respondent, Revenue Divisional Officer remitted the matter to Tahsildar to consider unregistered power of attorney while considering the claim of 5$^{th}$ respondent to issue pattadar pass book on land in Sy.Nos.130, 131, 132, 133, 134, 167 and 169 of Maharajapuram village. Challenging the said order of Revenue Divisional Officer, 6$^{th}$ respondent filed revision before the Joint Collector. The order impugned in the writ petition is the one made on the revision filed by 6$^{th}$ respondent. The order of Joint Collector is in two limbs. In the first limb of the order, he holds that there exists dispute to title and parties should work out remedy before the civil Court for resolution of title dispute. In the second limb of the order, he directs the Tahsildar, Vijayapuram to restore the pattadar pass books and title deeds in favour of the revision petitioner.

3. Learned single Judge, in the order under appeal, sets aside the second limb of the order of Joint Collector, directing restoration of pattadar pass books to 5$^{th}$ respondent.

4. Learned counsel for appellants/respondents 5 and 6 contends

that the appeal filed before the Revenue Divisional Officer is not maintainable and, therefore, consequential direction issued by the revisional authority restoring the pattedar pass books to respondents 5 and 6 is not erroneous and learned single Judge erred in setting aside that portion of the order of Joint Collector impugned in the writ petition. Learned counsel further submits that the principle of merger is not attracted if the appellate authority lacks competence and jurisdiction. The respondents 5 and 6 are the owners of the property and they are entitled to pattadar pass books.

5. Both contentions were considered by the learned single Judge. Learned single Judge, on detailed analysis of the facts on record and long history of litigation held that once the earlier orders of the Tahsildar granting pattadar pass books and title deeds in favour of respondents 5 and 6 were set aside and matter was remanded as early as in the year 2006 by the Revenue Divisional Officer, which decision was upheld by the very same authority in the earlier round of litigation, the order of the Joint Collector restoring the grant of pattadar pass books is erroneous, more particularly when the initial issuance of the pattadar pass books was in violation of the provisions contained in Section 5 (3) of the Act, 1971 and when the Joint Collector recognizes the fact that there is title dispute to the subject property. To that extent of the order of the Joint Collector, directing issuance of pattadar pass books to respondents 5 and 6, impugned in the writ petition was set aside.

6. The Revenue Divisional Officer vide his order dated 7.8.2006 in the earlier round of litigation, set aside the order of Tahsildar granting pattadar passbooks, title deeds covered under 1B Khatha numbers 130, 131, 132, 133, 134, 167 and 169 of Maharajapuram village and remanded to the Mandal Revenue Officer, Vijayapuram with a direction to take action under the provisions of Section 5 of the Act, 1971. This direction was affirmed by Joint Collector in his revisional order dated 4.1.2011. On remand, the Tahsildar passed further orders on 7.3.2011 upholding cancellation orders passed by the Revenue Divisional Officer and implemented the said orders of Revenue Divisional Officer dated 7.8.2006 in the 1B Register and other village accounts of Maharajapuram village. This subsequent order of Tahsildar dated 7.3.2011 on remand by the Revenue Divisional Officer was

subject matter of appeal before the Revenue Divisional Officer. The Revenue Divisional Officer only directed for reconsideration of the issue by the Tahsildar by duly taking note of unregistered power of attorney dated 28.7.1997. At no point of time, pattadar pass books were restored to respondents 5 and 6. In view of orders of Revenue Divisional Officer dated 07.08.2006, which decision has become final, unless procedure as envisaged in the Act,1971 is followed, pattadar pass books cannot be issued.

7. Having regard to the history of the case, by applying the principle of merger, learned single Judge held that the order of the Revenue Divisional Officer merged into the order of revisional authority. It is appropriate to notice that order of Joint Collector impugned in the writ petition was made on a revision filed by 6$^{th}$ respondent. In fact,
5$^{th}$ respondent filed appeal before Revenue Divisional Officer from out of which revision was preferred. They have all along participated before various authorities. Thus, respondents 5 and 6 cannot be permitted to raise such a plea at this stage. Therefore, on this ground also, we do not see any merit in the contentions urged by the learned counsel for appellants.

8. There is no error in the decision of learned Single Judge in refuting both the contentions of respondents 5 and 6.
We, therefore, see no reason to interfere with the well considered decision of the learned single Judge. The writ appeal deserves to be dismissed and the same is accordingly dismissed. Miscellaneous petitions, if any pending stand dismissed.

**DILIP B. BHOSALE, ACJ**

**P.NAVEEN RAO, J**

Date: 06.04.2016
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