

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION NO.18221 OF 2009

ORDER :

The case of the petitioners is that they have purchased the agricultural land to an extent of Ac.3-05 guntas in Sy.No.399/AA and Ac.2.32 guntas in Sy.No.402/AA situated in the limits of Pinjerla Village, Kothur Mandal from its original owner and pattadar late Sathani Lakshmaiah under an un-registered sale deed dated 15.09.1972. On application made by the petitioners before the Mandal Revenue Officer for regularization of the sale deed under Section 5(A) of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short 'the Act') and the said sale deed was validated. Aggrieved by the order dated 02.09.2008 passed by the 3rd respondent, the respondents 4 to 6 filed an appeal under Section 5(B) of the Act before the 2nd respondent and the 2nd respondent allowed the appeal directing the cancellation of pattadar pass books and title deeds issued in favour of the petitioners. Against the orders of the 2nd respondent, the petitioners filed Revision before the Joint Collector-1st respondent under Section 9 of the Act and the same was dismissed vide order dated 31.07.2016. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioners submits that the petitioners have purchased the subject land from original pattadars and basing on the application filed by the petitioners, notices were issued to the legal representatives of the original pattadar and after due enquiry, the sale dated 15.09.1972 was

validated in favour of the petitioners and their names were also entered in the revenue records and they were issued pattadar pass books and title deeds. He also submits that though the Revenue Divisional Officer allowed the appeal filed by the unofficial respondents and gave a finding that the respondents 4 to 6 are entitled for equal shares, the scope of enquiry under Section 5(A) read with Rule 22 is very limited. If the pattadar admits the execution of the sale deed, the same has to be validated and the 3rd respondent has no locus standi to oppose the same. He also submits that the revenue authorities cannot decide the rights of the 3rd parties in the said enquiry, when the dispute is between the vendor and vendee. He further submits that the appeal filed by the unofficial respondents before the RDO is also not maintainable and the Revisional authority has not applied his mind while passing the impugned order. In support of his contentions, he relied on judgment reported in ***V.Krishnaiah and others v. Joint Collector, Mahbubnagar and others***¹. He submits that respondent 4 to 6 filed suit for partition in O.S.No.218 of 2008 which goes to show that respondents have admitted the title of the petitioners. He also submits that no notice is required to be given to the persons who are in possession of the subject property except pattadar who sold the land to the applicants.

On the other hand, learned counsel appearing for respondents 4 to 6 submits that the respondents 4 to 6 are in joint possession as tenants along with the petitioners, as such

¹ 2007 (3) ALT 720

they are entitled for notice. Only on the ground of non-issuance of notice to the respondents 4 to 6, the Revenue Divisional Officer allowed the appeal and the same was rightly confirmed by the Revisional authority by relying on Rule 22(3) of the Rules framed under the Act. He submits that the suits filed by the respondents 4 to 6 in O.S.No.28 of 2014 and O.S.No.30 of 2014 are pending before the Senior Civil Judge, Shadnagar and O.S.No.46 of 2015 filed by the petitioners for injunction is also clubbed with the above suits and in view of the same, no interference is called for.

The admitted fact is that the petitioners and the respondents 4 to 6 are found to be in joint possession of the subject land as observed by the appellate authority i.e. RDO. Both RDO and Joint Collector held that no notice was issued to the respondents 4 to 6, Rule 22(3) of the Rules which reads as follows.

“On receipt of the application under sub-section (2) of Section 5-A of the Act, the Mandal Revenue Officer shall issue notice to the alienor or transferor in Form No.XI specifying therein the date on which and the time at which he proposes to enquire into the application. He shall also cause to issue a notice in Form No.XII to all other persons believed to be interested in the land specifying therein, date, time and place at which he proposes to enquire into the application. Only unregistered documents shall considered under Section 5-A of the Act”

A reading of the Rule 22(3) goes to show that notice is required to be issued in Form No.XII to all the persons who are believed to be interested in the land.

In the present case, since the unofficial respondents are found to be in joint possession with the petitioners,

notice is bound to be issued on them as per Rule 22(3) framed under the Act. The Full Bench of this Court in ***Chinnam Pandurangam v. Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District and others***² while interpreting Rule 19 held as follows:

“10. The issue deserves to be considered from another angle. If an application is made for amendment of the existing entries in the Record of Rights, the person whose name already exists in such recode is entitled to contest the proposed amendment. He can do so only if a notice regarding the proposed amendment is given to him by the recording authority. An order passed against a person whose name already exists in the Record of Rights without giving him notice of the proposed amendment and effective opportunity of hearing is liable to be declared nullity on the ground of violation of the rule of *audi alteram partem*, which, as mentioned above, represents the most important facet of the rules of natural justice. It need no emphasis that the rules of natural justice are applicable in all judicial and quasi-judicial proceedings. The rule of hearing is also applicable in purely administrative proceedings and actions where any public authority passes an order affecting the rights of any individual. The applicability of the rules of natural justice to purely administrative actions has been recognized by the Supreme Court in *State of Orissa v. Dr. (Miss) Binapani Del* and has been reiterated in various judgments including those of *A.K.Kraipak v. Union of India*, *Maneka Gandhi v. Union of India*, *S.L.Kapoor v. Jagmohan*, *Swadeshi Cotton Mills v. Union of India* and *Olga Tellis v. Bombay Municipal Corporation*.

11. From the above discussion, it is clear that the requirement of issuing notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment is independent of the requirement of publication of notice in

² 2007 (6) ALT 134(F.B)

accordance with the second part of Section 5(3) read with Rule 19 and 5 (2) of the Rules. The language of Form-VIII in which the notice is required to be published cannot control the interpretation of the substantive provision contained in Section 5(3), which, as mentioned above, casts a duty on the recording authority to issue notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the proposed amendment”

As held by the Full Bench of this Court, the same ratio applies here. The Revenue Divisional Officer also observed that petitioners and respondents are in joint possession as tenants and that they have approached the Tribunal under Section 38(A) of the Tenancy Act and even the Revisional authority found that no notice was issued to the respondents who are found to be in joint possession. Moreso, O.S.Nos.28/2014, 30/2014 and 46/2015 are pending for joint trial before the Civil Court and this Court has also not granted stay pending the suit in O.S.No.219 of 2008.

As such, I do not see any reason to interfere with the order passed by the Revisional authority. Accordingly, the writ petition is dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

17.11.2016
dv