HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.11258 of 2012

ORDER:

Heard Mrs. M.Umadevi, learned counsel appearing for the petitioner, the learned Assistant Government Pleader for Revenue (AP) for respondents 1 to 3 and Sri P.Ramesh Babu, learned counsel for the 4^{th} respondent.

2. The petitioner challenges the orders in D.Dis.No.KRC/2605/ 2010 dated 20.10.2011 and D. Dis.No.842/2009/A, dated 19.07.2010 of the respondents 1 and 2, respectively, as illegal, without jurisdiction and arbitrary.

3. The issue arises under A.P. Rights in Land and Pattadar Passbook Act, 1971 (for short 'the Act'). The 4^{th} respondent filed an appeal before the 2^{nd} respondent against grant of pattadar pass book and title deed in favour of the petitioner. The appeal was disposed of vide order dated 19.07.2010. The writ petitioner filed revision under Section 9 of the Act before the 1^{st} respondent and the revision was not entertained but the issue was left open for consideration by the competent civil court.

4. Mrs. M Umadevi, learned counsel appearing for the petitioner, fairly submits that the mutation under the Act is always subject to adjudication of civil court under Section 8 sub-section (2) of the Act and after issuing the pattadar pass book, refusing to consider the case of the petitioner, is illegal, arbitrary and without jurisdiction. She placed reliance upon the decision in '***Ratnamma vs. Revenue Divisional Officer, Dharmavaram, Anantapur District and others***[1]'.

5. The question considered by the Division Bench in the above

case reads thus:

"The order of reference reads thus:

The law settled on this aspect is that when the statute is silent about the right of appeal, the Courts cannot interpret and say that consequently an appeal is also maintainable. When the cases on hand are looked at in that angle, as stated supra it is only against the orders passed under sub-section (1) of Section 5 of the Act and an order passed under sub-section (4) of Section 5-A of the Act, appeals are provided for under sub-section (5) of Section 5 and Section 5-B of the Act respectively and for others the Act is silent. Of course, it is the contention of learned counsel Sri V.Rama Krishna Reddy, appearing for respondents that the impugned order passed in W.P.No.13096 of 1998 is only an order passed under Section 5 of the Act, but not an order passed under Section 6-A of the Act, as contended by learned counsel Sri K.Mahipathi Rao, appearing for petitioner.

Having heard the matter at length, this Court is of the view that the contention of Sri K.Mahipathi Rao and Sri Addepalli Suryanarayana, learned counsel appearing for petitioners appears to be correct and it is only an order passed under Section 6-A of the Act, but not an order passed under Section 5(1) of the Act. When once it is considered to be an order passed under Section 6-A of the Act, whether the appeal, as preferred by respondents is maintainable or not, is the question. Of course, if the judgment of the learned Single Judge of this Court is accepted, definitely an appeal is maintainable. But as stated supra, the Courts cannot interpret and give a right of appeal to the parties when the statute itself is silent, and as such, this Court is of the view that the matter requires re-consideration. Hence, for appreciation and determination of law on the subject, these matters have to be referred to a Division bench of this Court."

6. The Division Bench held as follows:

"Sections 5-B and 6-A are introduced through Amendment Act 9 of 1994. Through the amendment, remedy of appeal against regularization order under Section 5-A of the Act and provision for issuance of PPB/TD under Section 6-A of the Act is enacted. Sub-section (3) of Section 6-A provides for correction of entries in the PPB/TD by the Mandal Revenue Officer either suo motu or on an application. As already noticed, the record- of- rights is prepared under Section 3 of the Act, updated/ maintained under Sections 4, 5 and also as a consequence of regularization under Section 5-

A of the Act. Issuance of PPB is covered by Section 6-A of the Act. The PPB is nothing but a copy or reflection of entries in the record of rights prepared or maintained at one or the other stages under the Act as stated above. The PPB/TD is maintained and issued in Form No.14-C of the Rules. PPB/TD contains the entries as borne out by 1-B Register. With the issue of pass book to any person whose name in the applicable column is recorded in record of rights, it cannot be said such issuance adversely affects any person. A person is certainly aggrieved by illegal preparation of record of rights and against such illegal preparation the remedy is provided under Section 3(3) of the Act. Likewise, against illegal or erroneous updation of record of rights under Sections 4 and 5 or regularization under Section 5-A of the Act, the remedy of appeal under Section 5(5) or Section 5-B respectively is available to an aggrieved party. On the other hand, Section 6-A(3) provides for correction of erroneous entries in PPB/TD issued by the Mandal Revenue Officer. The reason for not providing any appeal against the issuance of PPB/TD is manifest from the Scheme of the Act viz., that the issuance of TD/PPB does not by itself adversely affect the substantive right of a person, who claims or has a right in the property for which PPB is issued. In other words, the issuance of PPB/TD is a consequential act and entries in PPB/TD are mere reflection of entries of 1-B Register. Mere filing of appeal against issuance of pattadar pass book which is only a copy of 1-B register is not an efficacious remedy under the scheme of the Act.

It is well settled that the right of appeal must find its source in legislative authority. The right of appeal accrues to the litigant when it is expressly provided for in the statute and axiomatic that the right of appeal is a substantive right and must be conferred by a statute. As already held, appeal is provided for against the original proceedings or substantive determination under Sections 4, 5 and 5-A of the Act. The Legislature in its wisdom and noticing the purpose of issuing PPB/TD did not provide right of appeal against mere issuance of PPB/TD under Section 6-A of the Act. Therefore, on the literal construction of Sections 3 to 6-A of the Act, it can be held that the remedy of appeal under Section 5(5) of the Act is not provided against the issuance of PPB/TD under Section 6-A of the Act. By treating the action under Sections 5 and 6-A of the Act as single or mutually dependent, in our considered view, the remedy of appeal against mere issuance of PPB/TD under Section 6-A of the Act is not available."

7. Learned counsel for 4th respondent, after perusing the order of the 2nd respondent dated 19.07.2010 and realizing the fact that the appeal was filed against mere issue of pattadar passbook and title deed, submits that the appeal filed by 4th respondent, in fact, is not maintainable.

8. Having regard to the above submission, I am satisfied the orders impugned in the writ petition are set aside by following the decision referred to above and the parties are given liberty to workout their remedies, if so advised, in a suit instituted before a competent court.

9. The writ petition is ordered, as indicated above. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 26.07.2016
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HON'BLE SRI JUSTICE S.V. BHATT

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Date: 26.07.2016

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[1] 2015(6) ALD 609 (DB)