

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.23896 of 2002

ORDER:

The present Writ Petition came to be filed questioning the order of 2nd respondent in Case No.F2/JC/ROR/6/2001 dated 21.10.2002 in confirming the order of third and fourth respondents dt:07.06.2000 and 09.02.2001 respectively, in refusing to grant pattadar passbook and title deed, as illegal, arbitrary and improper.

2) The averments in the affidavit filed in support of the Writ Petition are as under:-

2.1) The petitioners claim to be the owners and pattadars of the land in Sy.Nos.242 to 249 situated at Anusetti Duppalapalli village Thipparthi Mandal, Nalgonda District having inherited the same from their late mother Smt. Khaderunnisa Begum under a gift deed. The first respondent herein filed O.S.No.543 of 1976 on the file of the Court of District Munsif at Nalgonda against the mother of the first petitioner and one Kunkuntla Mallaiah for a perpetual injunction restraining them from interfering with the alleged possession of the land. After a full-fledged trial, the trial court by its judgment dated 04.08.1979 dismissed the suit holding that the defendants in the suit are not in possession of the said lands. On appeal vide A.S.No.48 of 1979, the Additional District Judge, Nalgonda, confirmed the judgment and decree on 17.03.1982. Thereafter, a Second Appeal was

filed vide S.A.No.582 of 1982, which was also dismissed on 16.07.1982.

The averments in the affidavit further show that the mother of the petitioner filed a petition in File No.B1/1270/81 before the then Tahasildar, Nalgonda for correction of entries in R.O.R. as the first respondent herein, being the Patwari, is alleged to have manipulated the revenue records by showing himself as a protected tenant. By an order dated 17.07.1983, the Tahasildar dismissed the said application. An appeal was preferred before the R.D.O., Nalgonda, which was also dismissed. Thereafter, in view of the death of the mother of the first petitioner, the petitioners filed W.P.No.9699 of 1985. By an order dated 25.01.1999 this Court allowed the Writ Petition, set aside the impugned order and remanded the matter back to the original authority for fresh disposal in accordance with law.

2.2) While things stood thus, the first respondent along with his brothers filed an application under Section 32 of the A.P. (T.A) Tenancy and Agricultural Lands Act for confirmation of his possession and recovery of possession of the said lands. By an order dated 26.02.1985, the Tahasildar held that the first respondent and his brothers being protected tenants are entitled to be in possession of the said lands. An appeal came to be filed before the Joint Collector, Nalgonda, which was also dismissed. An S.L.P.12527/1986 preferred before the Apex Court against the said order was also dismissed confirming the findings of the Tahasildar and Joint Collector. It is

said that in view of the orders passed, the first respondent claims to be the protected tenant of the said lands and in partition, the said lands fell to his share. It is further stated in the affidavit that after remanding the case under ROR proceedings by this Court vide order in W.P.No.9699 of 1985, the 4th respondent issued notice to all the parties and enquired into the matter for correction of R.O.R. and for issuance of pattadar passbooks. After due enquiry, the 4th respondent, by an order dated 03.01.1996, ordered issuance of pattadar passbooks in favour of the first petitioner and his brother. Aggrieved by the same, the first respondent preferred an appeal before the third respondent, but the order passed by fourth respondent was confirmed. Against the said order, a revision was filed before the second respondent which was allowed. Thereafter, the petitioner filed W.P.No.25069 of 1998, challenging the validity of the said order. By an order dated 09.11.1998, the Writ Petition was allowed and the fourth respondent was directed to reconsider the issuance of pattadar passbooks to the petitioners. Subsequent to the remand, the fourth respondent dismissed the application for grant of title deeds and pattadar passbooks. Challenging the same, the petitioners preferred an appeal before the third respondent but the same was dismissed on 09.02.2001. Aggrieved by the same, the petitioners preferred revision before the second respondent which was also rejected. Challenging the order passed by the second

respondent/Joint Collector, the present Writ Petition came to be filed.

3) The main ground urged by the learned counsel for the petitioners is that the fact of first respondent being declared as a protected tenant does not bar the petitioners from claiming title deeds and pattadar passbooks under Section 6A read with sub-rule 3 & 7 of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989. Hence, the findings of the authorities that pattadar pass books and title deeds can only be given to those who are in actual possession of the land, is illegal. Referring to rule 26 of the R.O.R. Act, the counsel would contend that merely because the petitioners are not in possession, that by itself will not debar them from claiming the title deeds or passbooks. It is urged that the order passed by all the authorities are contrary to the findings given by this Court in the writ petitions, more particularly in W.P.No.25061 of 1998. It is urged that in view of the orders passed, the authorities are now trying to issue title deeds and pattadar pass books in favour of the first respondent. It is contended that the tenant cannot become pattadar by virtue of his right as a protected tenant and if a pattadar passbook is issued to the tenant, there is every possibility of he alienating the said land, hence, prays to set-aside the orders passed.

4) By an order dated 29.01.2012 this Court while issuing rule nisi ordered status quo as regards possession as on that day to be maintained pending further orders.

5) A counter came to be filed by the first respondent disputing the averments made in the affidavit filed in support of the writ petition. The averments in the counter would show that the name of the first respondent was entered in the protected tenant register maintained by the revenue authorities and the revenue records and pahani patrikas would disclose continuous possession and enjoyment of the land by the respondent. It is stated that questioning the entries made in the PT register, the original pattadar filed an appeal under Section 3(3) of the A.P. ROR Act before the fourth respondent, for correction of entries. By an order dated 17.07.1983, the fourth respondent held that the first respondent and his brothers are protected tenants of the land. During the said period, when the petitioners and late Smt. Khaderunnisa Begum were interfering with the possession and enjoyment of the property, the respondents filed O.S.No.543/1976 before the Court of Junior Civil Judge for grant of temporary injunction. Though the suit, appeal and second appeal were dismissed, the observations made in the order dated 17.03.1982 in I.A.No.245/1979 in A.S.No.48/1979 clearly indicate that the appellant therein i.e., the first respondent herein, shall avail the remedy provided to the protected tenants to protect his possession

from the landlord and that an injunction cannot be granted by the civil court since the provisions of Specific Relief Act are not made applicable to the proceedings under A.P. (TA) Tenancy and Agricultural Lands Act, 1950. Thereafter, the respondents filed an application under Section 32 of the Tenancy Act to protect their possession. After giving an opportunity to the petitioner, the Tahasildar, on 26.02.1985, allowed the application holding that in view of the order of the civil court the respondents are protected tenants; that tenancy rights are not terminated at any time and the certificate of tenancy issued by Tahasildar is a conclusive proof of possession of protected tenant. Questioning the same, the petitioner preferred an appeal before the second respondent, which was dismissed on 15.07.1985 and then C.R.P. filed against the said order vide C.R.P.No.11604/1985 was dismissed by this Court on 31.07.1985. The S.L.P. preferred against the said order was also rejected. In view of the findings arrived at and taking into consideration the provisions of the Tenancy Act and as the findings with regard to petitioners being protected tenants, have become final, it is urged that the order under challenge warrants no interference.

6) From the material placed on record, it is not in dispute that the first respondent herein is a protected tenant and the tenancy rights were not terminated at any point of time. It is also to be noted that in view of the findings given by the Addl. District Court

in A.S.No.48/1979 on the file of the District Court of Nalgonda, the first respondent herein filed an application on under Section 32 of the A.P.(T.A.) Tenancy and Agriculture Lands Act, 1950 to protect his possession, in which he was successful. Though the learned counsel for the petitioners relied upon the findings given by this Court in W.P.No.25069/1998, but it would be pertinent to mention that the High Court also gave a finding that the first respondent is a protected tenant and that the pattadar passbook has to be issued to the tenant which includes protected tenant/mortgagee cultivating pattadar and non-cultivating pattadar. The findings of the Tahasildar with regard to respondent being a protected tenant was confirmed by the Supreme Court in S.L.P.No.12527/1986. Insofar as possession is concerned, the Joint Collector-Addl. District Magistrate, Nalgonda vide order dated 21.10.2002 held that the possession of the petitioners herein was not proved on the suit lands and accordingly confirmed the findings of the M.R.O. and R.D.O., Nalgonda wherein it has been held that the Writ Petitioners herein are not entitled for pattadar passbooks and title deeds under Rule 26(3) and 26(6) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989. It was also held that number of cases came to be filed by the petitioners questioning their rights but they were unsuccessful in all their attempts.

7) Rule 26(3) of the A.P. Rights in Land and Pattadar Passbooks Rules, 1989 reads that a pattadar passbook shall be given to the owner pattadars, tenants, mortgagee and occupants of inam lands. The entries in the pass book shall be treated as sufficient evidence to grant loans without insisting on the production of copies village revenue records, namely; Adangal/Pahani/ and Account No.4. Rule 26(6) States that a title deed or passbook shall be given only to those persons who are in actual possession of the land.

8) From the above, it is clear that a pattadar passbook or title deed shall be given to only those persons, who are in possession of the property. Admittedly, the first respondent and his family members are in possession of the property. This finding of fact was confirmed by all the three authorities. The PT register shows the name of the first respondent as a protected tenant. Unless the same is deleted, their claim cannot be overlooked. One of the grounds raised by the learned counsel for the petitioners is that no opportunity was given to them to contest the matter before the primary authority. It is urged that any orders passed without giving any notice to parties, is in violation of principles of natural justice. But as seen from the proceedings, notice was issued to both the parties and the case was called on 24.06.1999. But the son of the pattadar rejected to take notice in the absence of pattadar. The case was posted to 20.08.1999 and the notice was served on pattadar

Sri Md. Maqsood Ali. Thereafter, the petitioners and the respondent herein attended the enquiry. The case was again adjourned to 23.09.1999 and the notices were sent through registered post. The same was served on the respondents, Md. Maqsood Ali and Jaheebunnisa Begum. The notice pertaining to Munwar Ali was returned, as he refused to take the same. The notice sent to the remaining pattadars were returned as un-served as they are not residing at the given addresses. Hence, the case was called on 23.09.1999. Since the respondent and the counsel of Sri Maqsood Ali were present, the case was adjourned to 04.10.1999. Therefore, it cannot be said that the authority failed to comply with the order of the High Court in conducting enquiry after issuing notice to the parties. The order of M.R.O., dated 07.06.2000 clearly shows the dates and the number of times the notices were served on the parties. The order of M.R.O., also indicate that Md. Maqsood Ali, did not furnish the addresses of the share holders, only with a view to avoid the service of notices and thereby to continue the litigation by retaining the PPBs, which were already issued in their favour. The order also indicates the manner in which the issue was dragged on one pretext or the other. From the record, it is clear that neither the pattadar Maqsood Ali nor his shareholders are in possession of the land and on the other hand the respondent who is residing in the village, is in continuous possession of the land for the last 50 years. Further, as per the amended Rule 26(6) of the A.P. Rights in Lands

and Pattadar Pass Books Rules, 1989, only the person in possession would be entitled to the same. The said finding of M.R.O., was confirmed by the R.D.O., and also by the Joint Collector. It is also to be noted here that a reading of the order passed by the Joint Collector would show that there are some disputes even with regard to share and title. Therefore, the revisional authority felt that as there are disputes with regard to share and title, the parties have to approach the civil court.

9) Having regard to the circumstances stated above, I see no reason to interfere with the order passed by the Joint Collector while confirming the orders of the R.D.O., and M.R.O.

10) Accordingly, the Writ Petition is dismissed. No costs. As a sequel to it, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Dt: 02.08.2017.
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