HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.27571 of 2007

ORDER :

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking a Writ of Certiorari to call for the records in Case No.D5/10435/1998, dt.10.01.2006 of respondent No.21 (Joint Collector, Ranga Reddy District) and to quash the same.

2. Petitioner Nos.1 to 3 filed a claim under Section 5-A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for brevity "the Act") before the Mandal Revenue Officer Medchal Mandal, Ranga Reddy District (respondent No.23), for regularization of an unregistered document dt.24.04.1960 allegedly executed in their favour by Rampalli Mallaiah, Nakka Yellaiah, V. Rangaiah, Nakka Chinna Sathaiah and Nakka Pedda Sathaiah.

3. Respondent Nos.1 to 20 claim through the above said individuals.

4. After issuing notices to the vendors and conducting enquiry, the Mandal Revenue Officer, Medchal Mandal, by order in File No.C/41/89, dt.23.12.1994, regularized the said transaction, treating it as a private unregistered sale deed and directed the petitioners to pay Registration Fee and Stamp Duty as directed by the Sub-Registrar concerned.

5. The said order dated 23.12.1994 was assailed by respondent Nos.1 to 12 under Section 5-B of the Act before the Revenue Divisional Officer, Ranga Reddy (East) Division (respondent No.22), who confirmed the order of the Mandal Revenue Officer, by order in Ref.No.A2/4687/1995, dt.18.11.1998.

6. The said order dt.18.11.1998 was assailed by respondent Nos.1 to 12 before the Joint Collector, Ranga Reddy District (respondent No.21).

7. The Joint Collector, by the impugned order dt.10.01.2006, held that respondent Nos.1 to 12 contended during the course of the proceedings that the document, on which petitioner Nos.1 to 3 relied upon, is a fictitious one; that the Mandal Revenue Officer had rejected the said contention; that the Mandal Revenue Officer cannot go into the serious disputes of title; and when a transfer is disputed on the basis of fraud, coercion, forgery or other circumstances under which a contract may be void or voidable, he should direct such questions to be decided only by a Civil Court and he cannot assume the role of the Civil Court. He, therefore, set aside the order dt.23.12.1994 of the Mandal Revenue Officer, as well as the order dt.18.11.1998 of the Revenue Divisional Officer.

8. Assailing the same, the present Writ Petition is filed.

9. Heard Sri Pottigari Sridhar Reddy, learned counsel for the petitioners; Sri N. Ranga Rao, learned counsel for respondent Nos.10 and 11; Sri K. Goverdhan Reddy, learned counsel for respondent Nos.24 to 30, who are the legal representatives of the deceased respondent No.6; and the learned Government Pleader for Revenue appearing for respondent Nos.21 to 23. Sri A. Kannaiahlal, learned counsel for respondent Nos.3 to 5, 7 and 15 to 20 did not appear and argue the matter, even though his name is printed in the cause list.

10. Pending the Writ Petition, petitioner No.1 died and petitioner Nos.4 to 6 were recognised as her legal representatives, by order dt.09.07.2014 in WPMP.No.23672 of 2014.

11. WPMP.No.23674 of 2014 was filed by the petitioners to implead the legal representatives of respondent Nos.2, 6, 8, 9, 12 and 13. Though notices were issued to the said legal representatives and was served, nobody entered appearance on their behalf. Therefore, WPMP.No.23674 of 2014 was ordered on 18.04.2017.

<u>Contentions of counsel for petitioners :</u>

12. Learned counsel for the petitioners contended that the Joint Collector had failed to note that the Mandal Revenue Officer was empowered under the Act to validate the unregistered sale deed and also to conduct an enquiry under Section 5-A of the Act; that the source of title to the

petitioners is from Nakka Mallaiah and other respondents; that there is no serious dispute of title; that the Revenue records establish the physical possession of the petitioners over the land since the time of execution of unregistered sale deed in question; and the possession of the petitioners was recorded as Khaniga Karidars. He contended that the Mandal Revenue Officer considered the deposition of the scribe of the document that the property was sold to the petitioners by Nakka Mallaiah and others, including some of the respondents and that the full consideration was received and possession was delivered. He contended that merely because an allegation is made by the respondents that the document is fictitious and it was executed by one Kaukuntla Bhadraiah on 02.04.1961, and Malla Reddy stated that his father had gone in his childhood in Mental retardness and did not sell the land to the petitioners, without there being any material in support of the said allegation, the Joint Collector cannot drive the petitioners to the Civil Court. He would further contend that since respondent Nos.1 to 20 have set up the plea of fraud and forgery, the Joint Collector should have asked them to approach the Civil Court and prove their allegation of fraud, instead of setting aside the orders passed by the Mandal Revenue Officer and the Revenue Divisional Officer.

<u>Contentions of Government Pleader for Revenue and private respondents:</u>

13. The learned Government Pleader for Revenue appearing for official respondents and the learned counsel for unofficial

respondents sought to sustain the order passed by the Joint Collector. They contended that the document, on the basis of which the application for regularisation was filed by the petitioner Nos.1 to 3 before the Mandal Revenue Officer, is, in fact, an Agreement of Sale and not a Sale Deed and, therefore, the provisions under Section 5-A of the Act are not attracted.

Consideration by the Court :

14. This contention of the learned counsel for respondents is not tenable, because in the pleadings raised by the respondents before the Mandal Revenue Officer, and in the appeal filed before the Revenue Divisional Officer as well as before the Joint Collector, Ranga Reddy District, they categorically stated that the document relied upon by the petitioners is an unregistered sale deed, though it is a forged and created one. Without raising any contention either before the Primary Authority or before the first Appellate Authority or before the Revisional Authority that the document is not an unregistered sale deed but only an agreement of sale, it is not open for the respondents to raise such a plea before this Court, for the first time.

15. Before the Mandal Revenue Officer, Medchal Mandal, Malla Reddy/Rampally Mallaiah had deposed on 20.12.1994 that his father is one Kaukuntla Bhadraiah; and the said Bhadraiah executed a document dt.02.04.1961 in favour of petitioner Nos.1 to 3; that his father had gone in his childhood with mental retardness and did not sell the subject

land to the petitioners. This is the essence of plea of fraud raised by private respondents.

16. This very same document produced by petitioner Nos.1 to 3 before the Mandal Revenue Officer, Medchal Mandal, shows that it was not executed by Bhadraiah. So the allegations of the respondents that on account of Bhadraiah's mental retardness, the document executed by him is invalid and is vitiated by fraud, is totally irrelevant.

17. No doubt, it was stated before the Mandal Revenue Officer by the executants of the document dt.24.04.1960 in favour of petitioner Nos.1 to 3 i.e., Rampalli Mallaiah, Nakka Yellaiah, V. Rangaiah, Nakka Chinna Sathaiah and Nakka Pedda Sathaiah and other legal representatives of Pattadars that they never sold the land and do not know about the transaction of the land. But petitioner Nos.1 to 3 had examined one Challa Narsimha Reddy, who was the scribe of the document dt.24.04.1960, and he clearly stated that the pattadars sold the suit land to the petitioners after receiving the total consideration and also handed over possession.

18. Also the Mandal Revenue Officer relied upon the Revenue record, which shows possession of the petitioners over the subject land and the ROR prepared in 1979-80 also recorded petitioner Nos.1 to 3 as occupants by way of private pattadars and this entry was not challenged by the pattadars or their legal representatives.

19. The order of the Mandal Revenue Officer was challenged by respondent Nos.1 to 12 before the Revenue Divisional Officer, primarily on the ground that they were not given opportunity to contest the matter and this allegation was rejected by the Revenue Divisional Officer. He also noted that petitioner Nos.1 to 3 submitted photo copies of the Land Revenue Receipts of 1964-65 to 1993 and the Pahani entries show their possession over the land for a very long time.

20. Before the Joint Collector, the plea of forgery was raised, for the first time, and such plea found favour before the said respondent. As stated above, the pleadings of respondent Nos.1 to 12 before the Mandal Revenue Officer was that Kaukuntla Bhadraiah executed the sale deed and he had mental retardness. This plea was rejected by the Mandal Revenue Officer on the basis of deposition of the scribe of the Agreement dt.24.04.1960.

21. The view of the Joint Collector that the moment the stand of fraud is raised, the Mandal Revenue Officer has to simply return the application cannot be accepted because, *prima-facie*, such a plea needs to be backed by relevant material suggesting existence of fraud.

22. In the present case, there is no such material placed by respondent Nos.1 to 12 before the Mandal Revenue Officer and their very plea that Kaukuntla Bhadraiah executed the sale deed is contrary to the record. Their further plea that the pattadars did not execute the sale deed was rightly rejected

on the basis of the deposition of the scribe before the Mandal Revenue Officer.

23. Therefore, I am of the opinion that the order dt.10.01.2006 passed by the Joint Collector, Ranga Reddy District, is not sustainable and it is accordingly set aside. However, if respondent Nos.1 to 20 are so advised, they are at liberty to approach the Civil Court for appropriate relief, raising all the points available to them under law.

24. Accordingly, this writ petition is allowed. No order as to costs.

25. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

19.04.2017.
Msr

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.27571 of 2007

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Msr