HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.13107 of 2013

ORDER:

Seeking issuance of a writ of mandamus to declare the proceedings in D.Dis.No.2572/07A dated 05.03.2008 passed by the 2nd respondent and the consequential proceedings in Appeal in Rc.D.Dis.No.1446/08-D4 passed by 1st respondent confirming the order of the 2nd respondent, as illegal and arbitrary, the present Writ Petition came to be filed.

2) The facts in issue are as under:-

Originally, an extent of Ac.6.88 cents in Sy.Nos.15/B/B, 18/2A, 18/2B of Bolijavolu village, Nadendla Mandal was allotted to the grandfather of the petitioner. After the demise of his grandfather, his father came into possession of the property and got his name mutated in the revenue records. Pattadar passbook and title deed were also issued. The petitioner succeeded to the same. It is stated that the marriage of 4th respondent, who is none other than the sister of the father of the petitioner, was performed and huge money was given towards Pasupu Kumkuma. Subsequently, the husband of the 4th respondent developed ill-feelings to extract money from the petitioner and created false documents showing as if the petitioner's grandfather executed a Will in the year 1966 in favour of 4th respondent with regard to the above property. In fact his grandfather died in the year 1967. While things stood thus, 4th respondent filed a petition before the 2nd respondent/Revenue Divisional Officer requesting to issue pattadar passbook and title deed in her favour to the above land and in turn the 2nd respondent issued notice to father of the petitioner. In pursuant to that, the father of the petitioner appeared before the 2nd respondent and submitted entire documents to prove his title. Though the alleged Will was forged one, they have influenced the 2nd respondent to pass orders and without conducting any independent enquiry, 2nd respondent allowed the petition filed by 4th respondent by an order dated 05.03.2008 and cancelled the pattadar pass book and title deed issued in favour of the father of the petitioner and also directed the 3rd respondent/Tahasildar, Nadendla Mandal to cancel the entries made in favour of the father of the petitioner. Challenging the said order, the father of the petitioner filed revision before the 1st respondent/Joint Collector. Since his father died during the pendency of the said revision, his mother was brought on record. His mother also died during the pendency of the said revision. It is stated that as his mother was taking care of the proceedings, he did not involve himself in the proceedings and after the death of his mother his enquiries revealed that the 1st respondent dismissed the revision. It is stated that when the Will itself is in dispute, the authorities should have advised the 4th respondent to approach the civil court and get a declaration of the property claimed by her. If really the alleged Will had been executed by late Gangireddy in favour of 4th respondent, she should have claimed properties immediately after the demise of the executant i.e., in the year 1967 itself. They kept quiet for a period of 30 years and have now came with an application for mutation. It is further sated that the 2nd respondent has not assigned any valid reasons and no personal hearing was given. Further, the 1st respondent also should have applied his mind while passing the impugned order. Challenging the said order, the present Writ Petition came to be filed.

3) Learned counsel for the petitioner mainly submits that on the basis of an application made by the 4th respondent, the R.D.O., issued a notice to the father of the petitioner and though he has produced the relevant documents, cancelled the entries made in the pattadar passbook and title deeds. The said order was challenged by way of appeal, which was confirmed by the Collector. It is urged that in view of the Bench judgment of this Court in **Ratnamma v. Revenue Divisional Officer, Dharmavaram, Anantapur District and others**[1], the action of the R.D.O., is without jurisdiction.

4) By an order dated 29.04.2013 this Court while admitting the Writ Petition granted interim suspension as prayed for.

5) The 4th respondent filed counter stating that the father of the petitioner is her brother and the petitioner is her nephew. It

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

is stated that after the death of her father in the year 1967, her mother acted as guardian of the property and her marriage was performed in the year 1970. By virtue of relationship, the father of the petitioner used to cultivate the land and pay the rent to the 4th respondent. Her mother also died in the year 1993. It is stated that due to steep rise of prices of the lands the petitioner's father refused to accept the existence of the Will and stopped paying the rents to 4th respondent. She further stated that the father and grandmother of the petitioner admitted the existence of the said Will before the Land Reforms Tribunal, Guntur, which is the last Will of her father. As per the said Will, she got a share of Ac.6.88 cents in D.No.15/B,182 A and 182 B of Gorijavolu village of Nadendla Mandal and made several representations to the respondent/authorities to issue pattadar passbook. After conducting detailed enquiry by the 3rd respondent, 2nd respondent issued notice to both the parties and passed an order dated 05.03.2008 to enter the name of the 4th respondent in the records. Challenging the order passed by the 2nd respondent, the petitioner filed appeal before the 1st respondent, which was rejected. It is also submitted that if there is any dispute with regard to Will, the petitioner ought to have approached the civil court but not the 1st respondent. It is stated that mere mutation of the names in the revenue record does not convey any title in favour of the petitioner as he failed to produce any supporting documents. Hence, urged that order under challenge warrants no interference.

6) The short question that arise for consideration is; "Whether the Revenue Divisional Officer was right in entertaining an application and then directing the Tahasildar to cancel the entries made in pattadar passbooks and title deeds?"

7) The issue is no long *res integra* in view of the Bench Judgment of this Court in **Ratnamma v. Revenue Divisional officer, Dharmavaram, Anantapur District and others**[2], in which it was held as under :-

> "24. 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

[2] 2015(6) ALD 609 (DB)

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.

25. 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."

8) Having considered the circumstances of the case and in view of the Bench judgment of this Court referred to above, the Writ Petition is allowed by setting aside the orders under challenge. Further, the aggrieved person is directed to make a suitable application within a period of four weeks seeking cancellation of the entries in the revenue records, in which event, the same shall be considered in accordance with law, within a period of four weeks from the date of making an application. Till such time, *status quo* as on

today shall be maintained with regard to possession and entries in the revenue records. No costs. Miscellaneous Petitions pending if any, in this Writ Petition, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

Dt:17.04.2017
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