

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.4534 of 2004

ORDER :

Assailing the order dated 10.04.2003 passed by the Joint Collector – respondent No.1, the present writ petition came to be filed.

2. The facts in issue are as under:

The petitioner is the owner and occupant of the agricultural land admeasuring Acs.5.01 guntas in Survey No.302 and Acs.1.15 guntas in Survey No.318 situated at Tirumalagiri Village and Mandal, Nalgonda District. He claims to have acquired the said properties, from the joint family properties vide partition suit in O.S.No.43 of 1971. As per the said decree, he got lands in Survey Nos. 125, 124, 286, 384, 302, 318 and 11. It is stated that the name of the petitioner was incorporated in the revenue records upto 1993-1994. While things stood thus, the second respondent i.e., the MRO, Tirumalagiri is said to have recorded the names of respondent Nos.3 to 5 and one P.Veeraiah as pattadars and possessors for the lands in Survey Nos.302 and 318 in the year 1994 – 1995. The petitioner is none other than step brother of respondent Nos.3 to 5. Taking advantage of his absence in the village, the respondents got their names recorded in the revenue records from 1994 onwards. On coming to know about the same, he made a representation before the MRO, but his efforts went in vain. Aggrieved thereby, he made a representation before the District Collector, on 15.06.2002, narrating all the facts. The first respondent – Collector is said to have called for a report from the second respondent, who submitted the same vide letter No.B/3187/2002, dated

28.10.2002. After considering the material on record, the District Collector passed the impugned order dated 10.04.2003.

3. By an order dated 11.03.2004, this Court while issuing rule nisi, granted interim direction, as prayed for, pending further orders.

4. A counter came to be filed on behalf of respondent Nos.1 and 2 in the year 2004, disputing the averments made in the affidavit filed in support of the writ petition. It is stated that respondent Nos.3 to 5, who are step brothers, filed claims in Form-1A under A.P.Rights in Land and PPB Rules 1989, stating that the patta stands in the name of petitioners herein, the said lands fell to their share in the oral partition and hence requested for change of patta in their name. The claims were entered in respect of Survey Nos.105, 106 and 107, by the recording authority in the 2A Claims register. It is stated that the petitioner gave his consent for transfer of patta in the name of respondent Nos.3 to 5, admitting that they fell to their share. The statement of the petitioner was also recorded while transferring the suit lands in the name of respondent Nos.3 to 5. Therefore, it is pleaded that the argument that the petitioner never transferred the lands in the name of respondent Nos.3 to 5, is incorrect. The record further discloses that the petitioner filed an appeal under Section 5(5) of the A.P.Rights in Land and PPB Act, 1971 (for short, 'the Act'), but subsequently, the same was withdrawn. In view of the above it is stated that since the petitioner himself gave consent for transfer of land and as the changes were affected, pursuant thereto, it is urged that the writ petition lacks merits and is liable to be dismissed.

5. Before proceeding further, it would be appropriate to extract the order in O.S.No.43 of 1971:

O.S.No.43 of 1971 is a partition suit filed by the petitioner claiming 1/5th share in the property mentioned in the schedule. Having filed a compromise memo, the Court passed a decree, wherein the plaintiff (Sri Sankepally Raja Malla Reddy) was allotted land admeasuring Acs.4.35 guntas, Acs.2.14 guntas, Acs.2.13 guntas situated at Thirumalgiri and Ac.0.20 guntas of wet land situated at Survey Nos.125, 124, 286 and 122 respectively. Defendant No.2 (respondent No.5 herein) was declared to be the absolute owner and possessor of the property situated at Thirumalgiri and Anantharam in Survey Nos.302, 318, 384, 119 and 119 (wet land) admeasuring **Acs.5.01 guntas, Ac.1.16 guntas**, Ac.1.02 guntas, Acs.3.21 guntas and Ac.0.26 guntas respectively. Defendant Nos.3 was allotted dry land situated in Survey Nos.275, 141, 142, 144, 145, 146, 147, 148 and 678 admeasuring different extents at Thirumalgiri and Acs.0.11 guntas of land in Survey No.627 at Thirumalgiri. It was also observed that the plaintiff and defendant Nos.2 to 5 shall not be liable for any debts incurred by defendant No.1. This decree has become final.

Subsequently, the petitioner (Sri Sankepally Raja Malla Reddy) submitted a petition on 15.06.2002, stating that he is the pattadar of land in Survey Nos.302 and 318 admeasuring Acs.10.02 guntas and Acs.2.31 guntas respectively upto 1993 – 1994 and in the year 1994-1995, the patta was recorded in the name of respondent Nos.3 and 6, without any valid documents and reasons and as such requested for corrections of the entries said to have been made. After referring to the letter, the MRO, Thirumalgiri reported vide his letter No.B/3187/2002, dated 28.10.2002, that the land stands originally as patta in the name of the petitioner, but

during the year 1994-1995, it was recorded in the name of respondents. After extracting the arguments advanced by both the parties and taking into consideration the orders passed by the Civil Court, it was held that the suit lands fell to the share of the respondents and basing on it the recording authority has mutated the patta in the name of the respondents. The scribes of the statement, Sri Eedunuri Yakavu Reddy, S/o.Venkat Reddy and Gadaraboina Kotilingam, S/o. Venkaiah have submitted notary affidavit stating that the recording authority has recorded the statement of revision petitioner on 29.03.1993 in token of his consent for partition of the lands in favour of the respondents therein in their presence.

6. Learned counsel for the petitioner submits that the entries came to be made by playing fraud by the unofficial respondents. Though he pleaded about the alleged fraud, but failed to substantiate the same. In order to establish the fraud, mere taking of the plea is not sufficient, but the same has to be established by adducing evidence. As seen from the record, except averring in the affidavit filed in support of the writ petition, no other material has been placed before the Court to prove the alleged fraud, except producing the order of the revisional authority and the decree. Further, it is to be noted that the entries came to be made in the revenue record pursuant to the compromise decree and the statement made by the petitioner before the recording authority. An Appeal under Section 5 (5) of the Act was filed before the RDO, but for reasons best known, the same was withdrawn. Thereafter, a letter was given to the Joint Collector, which was treated as a revision under Section 9 of the A.P. Rights in Land and PPB Act, 1971. Since the material discloses that the transfer has been affected, pursuant to the consent given by the petitioner, the entries made

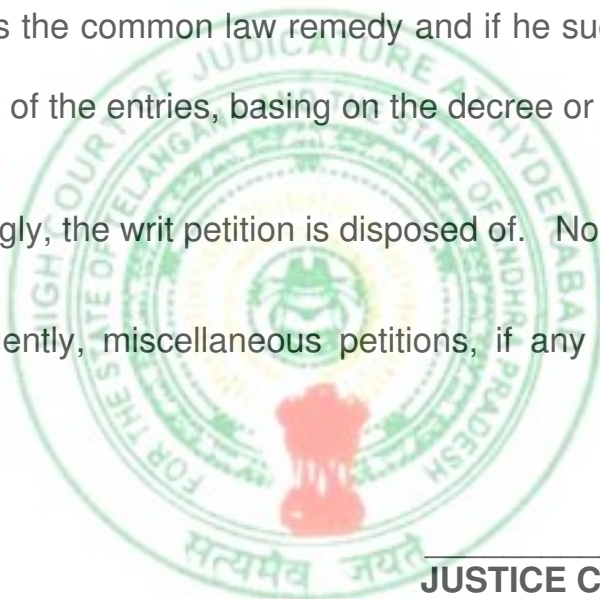
cannot be said to be incorrect or made by adopting a fraudulent method. Further, it is to be noted that Section 8(2) of the Act states that if any person is aggrieved by the entries in the record of rights, he is entitled to file a civil suit under Chapter VI of the Specific Relief Act.

7. In view of the above circumstances; since the main dispute is with regard to the entries made in the revenue records, way back in the year 1994-199 and as the plea of fraud could not be established, I see no reason to interfere with the order. But however, since there is a dispute with regard to rights of the parties over the land, it would be proper, if the petitioner avails the common law remedy and if he succeeds, he is entitled for amendment of the entries, basing on the decree or order.

8. Accordingly, the writ petition is disposed of. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

17.08.2017
vnb



JUSTICE C. PRAVEEN KUMAR