THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Writ Appeal No.437 of 2017

Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No.1067 of 2017 dated 16.2.2017. The appellants herein are the petitioners in W.P. No. 1067 of 2017 wherein the relief sought for was to declare that the appeal preferred by the daughter of the 4th respondent, under Section 5(5) of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short 'the Act'), was not maintainable in view of the decision of the Division Bench of this Court in **Ratnamma vs. Revenue Divisional Officer, Anantapur District**[1]; and passing interim orders was illegal, arbitrary and against principles of natural justice in view of the decision of the Full Bench of this Court in **Chinnam Pandurangam. vs The Mandal Revenue Officer**[2].

In the order under appeal, the learned Single Judge noted the contentions of the learned counsel for the appellants that the 4th respondent had filed I.A. Nos. 583 and 601 of 2006 in O.S. Nos. 63 and 64 of 2004 filed for specific performance of an agreement of sale, and the said IAs were dismissed; and the 2nd respondent could not have passed the interim order directing deletion of the names of the appellants-writ petitioners without issuing notice to the appellants-writ petitioners which was in violation of Section 5(2) of the Act.

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[1] 2015(5) ALT 228
[2] AIR 2008 AP 15

The learned Single Judge noted the submission of the learned Assistant Government Pleader that the appeal preferred by the daughter of the 4th respondent, was against the orders of mutation passed by the 3rd respondent in favour of the appellants-writ petitioners; as such, the appeal was maintainable under Section 5(5) of the Act; and the judgment relied upon by the appellants-writ petitioners related only to an appeal filed against the grant of pattadar passbooks, and not against mutation orders; though the interim order was granted in the year 2006, the writ petition was filed in the year 2017; and the appellants-writ petitioners could raise all their objections before the appellate authority.

The learned Single Judge noted the submission, urged on behalf of the 4th respondent, that the appellants-writ petitioners had earlier filed W.P. No. 8471 of 2015 questioning the very same order; they had withdrawn the same and had filed the present writ petition; the appellants-writ petitioners could raise all their pleas before the appellate authority; and when the interim order is in operation for the last several years, it is not open to the appellants-writ petitioners, at this juncture, to challenge the very same order which was challenged earlier in W.P. No. 8471 of 2015.

Having noted that the mutation order, passed on 4.1.2006 in favour of the petitioners, was suspended by the appellate authority by his order dated 30.10.2006, and all through the interim order was in operation, the learned Single Judge extracted the relevant portion of the judgment of the Division Bench in **Ratnamma**[1] and then observed that, in the present case, the appeal was preferred against the mutation order dated 4.1.2006; the result portion of the appeal filed by the 4th respondent showed that it was only filed against the mutation order passed by the 3rd respondent, and not against the cancellation of the pattadar passbooks; as such the appeal was not maintainable; in so far as the judgment of the Full Bench was concerned, it was regarding issuance of notice to the appellants-writ petitioners whose names were recorded in the revenue records; and, since the appeal was pending, the appellants-writ petitioners could raise their objections before the appellate authority.

The learned Single Judge further observed that it was unfortunate that, though the appeal was filed in the year 2006, no notice was given to the affected party. As no relief could be granted in the writ petition, the writ petition was disposed of granting liberty to the appellants-writ petitioners to raise all their objections before the 2nd respondent, and the 2nd respondent was directed to dispose of the appeal within a period of eight weeks from the date of receipt of a copy of the order after issuing notice and opportunity of hearing to the parties in the appeal.

Before us Smt. Neeraja Sudhakar Reddy, learned counsel appearing on behalf of the appellants, would contend that, since pattadar passbooks and title deeds are issued as a consequence of the entry made in the revenue records, they cannot be separated from each other; an appeal could, therefore, not be entertained against a mere entry in the revenue records, when pattadar passbooks and title deeds have been issued based on the amendment to the entry; the learned Single Judge had misunderstood the observations of the Division Bench in **Ratnamma**[1]; the judgment in **Ratnamma**[1] binds both the learned

Single Judge and a co-ordinate Division Bench; even if this Court were to take a different view, the appeal must be referred to a Full Bench; and an appeal would not lie to the Revenue Divisional Officer, under Section 5(5) of the Act, as the title deeds are eventually issued under the signature of the Revenue Divisional Officer.

The learned Assistant Government Pleader for Revenue drew our attention to Sections 4, 5(1) and 5(5) of the Act to submit that an amendment of an entry in the record of rights, caused as a result of acquisition of rights, should be first recorded by the Tahsildar in the revenue records under Section 5(1) of the Act; against amendment of an entry in the records, an appeal lies to the Revenue Divisional Officer under Section 5(5) of the Act; the pattadar passbooks and title deeds, issued under Section 6-A of the Act, is merely a consequence of an amendment to the entry in the revenue records under Section 5(1); an appeal has been provided under Section 5(5) against the amendment of the entries, in the record of rights, under Section 5(1); no appeal has been provided under the Act against the consequential action of the Tahsildar in issuing pattadar passbooks and title deeds under Section 6-A; the Division Bench, in **Ratnamma**[1], had pointed out this distinction; and, consequently, the learned Singe Judge was justified in directing the appellate authority to decide the appeal within a specified time frame.

Sri Mirza Safiulla Baig, learned counsel for the 4th respondent, would submit that the word “not”, in the order of the learned Single Judge, is merely a typographical error; on a reading of the said paragraph as a whole, and the consequential direction issued in the Writ Petition, it is clear that the learned Single Judge was of the view that an appeal is maintainable; the word “not”, in the order under appeal, is evidently a clerical/typographical error; and, as the judgment of the learned Singe Judge must be read as a whole, the typographical error in the order, by inclusion of the word “not” therein, cannot be understood otherwise than that the appellate authority has jurisdiction to entertain the appeal, under Section 5(5) of the Act, against amendment of an entry in the record of rights.

Section 4 of the Act requires the acquisition of rights to be intimated and, under sub-section (1) thereof, any person acquiring, by a decree of a Court, any right as owner or pattadar shall intimate in writing, his acquisition of such a right, to the Mandal Revenue Officer (Tahsildar) within ninety days from the date of such acquisition, and the said Mandal Revenue Officer shall give or send a written acknowledgment, of the receipt of such intimation, to the person making it. Section 5 relates to Amendment and updating of the record of rights and, under Sub-section (1) thereof, on receipt of intimation of the fact of acquisition of any right, referred to in Section 4, the Mandal Revenue Officer (Tahsildar) shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence therefore, and shall carry out the amendment in the record of rights in accordance with such determination. Section 5(5) stipulates that against, every order of the Mandal Revenue Officer either making an amendment in the record of rights or refusing to make such an amendment, an appeal shall lie to the Revenue Divisional officer or such authority as may be prescribed, within a period of sixty days from the date of communication of the said order, and the decision of the appellate authority thereon shall, subject to the provisions of Section 9, be final.

While the Tahsildar is required to amend the record of rights under Section 5(1) of the Act, pursuant to an intimation of acquisition of a right under Section 4(1) thereof, Section 6-A of the Act stipulates that the acquirer of the right shall apply for issuance of a passbook and title deed to the Mandal Revenue Officer on payment of such fee as may be prescribed. Section 6-A(2) stipulates that, on making such an application, the Mandal Revenue Officer shall cause an enquiry to be made in such manner as may be prescribed, and shall issue a title deed and pass book in accordance with the record of rights, with such particulars and in such form as may be prescribed. Under the proviso thereto, no such title deed and passbook shall be issued by the Mandal Revenue Officer unless the Record of Rights have been brought upto date.

It is evident from Section 6-A(2) that the pattadar pass books and title deeds, to be issued by the Mandal Revenue Officer, must be in accordance with the record of rights, and nothing more. The right of appeal under Section 5(5) of the Act is against an amendment caused to the entry in the record of rights. As a right of appeal is provided under Section 5(5) of the Act against the amendment of the entry in the record of rights, the Legislature has, in its wisdom, chosen not to provide a remedy of appeal against the consequential action of issuing a pattadar passbook and title deeds under Section 6-A of the Act.

The question which arose for consideration before the Division Bench, in **Ratnamma**[1], was whether an appeal was maintainable, against the issuance of pattadar passbook and title deeds under Section 6-A of the Act, before the Revenue Divisional Officer. This question was answered by the Division Bench holding that:

> "……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**........" (emphasis supplied)

As noted herein above the Division Bench, in **Ratnamma**[1] observed that the pattadar passbook was nothing but a reflection of the entries in the record of rights prepared or maintained at one or the other stages under the Act; the pattadar passbook/title deed contained the entries borne out by the 1-B Register; with the issue of a passbook to any person, whose name in the applicable column is recorded in the record of rights, it cannot be said that such issuance adversely affects any person; a person is certainly aggrieved by the illegal preparation of the record of rights and, against such illegal preparation, a remedy is provided for under

Section 3(3) of the Act; against the illegal or erroneous updation of the record of rights under Sections 4 and 5, the remedy of an appeal under Section 5(5) is available to an aggrieved party; the reasons for not providing for the remedy of an appeal, against the issuance of pattadar passbook/title deed, is manifest from the Scheme of the Act; the issuance of title deed/passbook does not, by itself, adversely affect the substantive right of a person, who claims or has a right in the property for which the pattadar passbook was issued; issuance of a pattadar passbook/title deed is a consequential act; the entries in the pattadar passbook/title deed are a mere reflection of the entries in the 1B register; and the remedy of an appeal, against issuance of pattadar passbook which is only a copy of the 1-B register, is not provided.

Thereafter, the Division Bench observed that, on a literal construction of Sections 3 to 6-A of the Act, it must be held that the remedy of an appeal, under Section 5(5) of the Act, was not provided against issuance of pattadar passbooks under Section 6-A of the Act; by treating the action under Sections 5 and 6-A of the Act, as a single or mutually dependent act, the remedy of an appeal, against mere issuance of pattadar passbook/title deed under Section 6-A of the Act, was not available.

It is evident from the judgment of the Division Bench, in **Ratnamma**[1], that the right of appeal, under Section 5(5) of the Act, is available only against the amendment of an entry in the record of rights under Section 5(1) of the Act. What has not been provided for, under the Act, is the remedy of an appeal against the consequential action of the Tahsildar in issuing a pattadar passbook, for the pattadar passbook is a mere reflection of the entry in the record of rights. As a person's right is affected by the entry, or the amendment of an entry, in the record of rights, the Legislature has provided for an appeal thereagainst, and not against the consequential act of issuing a pattadar passbook or title deed. The law declared by the Division Bench in **Ratnamma**[1], in our view, has been rightly applied by the learned Single Judge in holding that an appeal is maintainable, under Section 5(5) of the Act, against amendment of entries in the record of rights.

Instead of holding that an appeal is maintainable, the order under appeal records that the appeal is not maintainable. This is, evidently, a typographical or a clerical error as, on a reading of the said paragraph as a whole and the consequential direction issued to the appellate authority, it is clear that the learned Single Judge was also of the view that an appeal was, in fact, maintainable. The learned Single Judge has observed that the appeal preferred by the 4th respondent was against the mutation orders passed by the Tahsildar, and not against the cancellation of pattadar passbooks. As the Division Bench, in **Ratnamma**[1], has held that an appeal lies against the mutation order passed by the Tahsildar, it is evident that the learned Single Judge intended to hold that an appeal was maintainable and the word "not", mentioned in the order, is merely a typographical error.

Accepting the submission of Smt. Neeraja Sudhakar Reddy that an appeal, even against the order of mutation/amendment of an entry in the record of rights, would not lie, would render Section 5(5) of the Act redundant. Courts have adhered to the principle that effort should be made to give meaning to each and every word used by the legislature, and it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage if they can have a proper application in circumstances conceivable within the contemplation of the statute. (**Gurudevdatta VKSSS Maryadit v. State of Maharashtra**[3]**; Manohar Lal v. Vinesh Anand**[4]**; Aswini Kumar Ghose v. Arabhinda Bose**[5]). A construction that reduces one of the provisions to a "dead letter" must be avoided. (**Anwar Hasan Khan v. Mohd. Shafi**[6]).

The submission that, since the title deeds are eventually signed by the Revenue Divisional Officer, an appeal would not lie to him is only to be noted to be rejected. As noted hereinabove amendment of an entry, in the record of rights, is carried out by the Tahsildar, and issuance of pattadar passbook is a mere reflection of the entry in the record of rights. The consequential act of the pattadar passbooks having been eventually signed by the Revenue Divisional Officer is of no consequence.

Viewed from any angle, we find no error in the order under appeal necessitating interference. The writ appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J)

10th April, 2017
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3 2001 (4) SCC 534
4 (2001) 5 SCC 407
5 1953 SCR 1 = AIR 1952 SC 369
6 (2001) 8 SCC 540

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