

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1147 of 2006

ORDER:

This Writ Petition is filed by petitioner seeking a Writ of Mandamus to declare the action of respondents in not issuing 13-B certificate under Section 5-A of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short “the Act”) and the Rules made thereunder in respect of an extent of Ac.5.00 of Yavapur village, Bommala Ramaram Mandal, Nalgonda District.

2. Petitioner’s case is that he purchased the said land under an unregistered sale deed, which was impounded vide proceedings No.K/4791/80 dt.02-10-1980 from one J.Gola Singh, who had in turn purchased it from the original pattedars Smt.Shamshunnisa Begum, Smt.Karimunnisa Begum and Akbar Yarkhan.

3. The petitioner claims to have made an application in Form-X before the 2nd respondent for issuance of 13-B certificate under Section 5-A of the Act on 29-12-2005. He seeks a direction to respondents to consider the same.

4. Petitioner contended in the affidavit filed in support of the Writ Petition that earlier he had filed an application before the 2nd respondent and he rejected it on the ground that petitioner was not in possession, that he made an application to the 1st respondent, that the 1st respondent directed the 2nd respondent to reexamine the issue by proceedings dt.26-09-1998, that the petitioner then made an

application in 2005 referred to supra, but the 2nd respondent had not issued the certificate. Reference is also made to the proceedings dt.05-09-2001 of the Collector issued to the 2nd respondent to implement the directions of the Sub-Collector dt.26-09-1998.

5. The 2nd respondent has filed counter-affidavit stating that the petitioner purchased Ac.5.00 of land in Sy.No.54 by sada sale deeds dt.03-08-1962 and 18-06-1963; that these were impounded by the then Sub-Collector, that the petitioner approached the 2nd respondent by filing Form-X seeking regularization under Section 5-A of the Act; that the pattedar filed O.S.No.143 of 1980 before the Principal District Munsif, Bhongir, which was dismissed; that the pattedar then preferred the appeal to the District Court, which was allowed; and that the petitioner then filed C.R.P.No.3175 of 1983 before this Court, which was decided in favour of petitioner. He contended that the pattedar then filed petition before the 2nd respondent not to issue 13-B certificate. It is also stated that the petitioner was recorded as possessor in the revenue records only upto 1992-1993 and thereafter since there was a threat by the extremists, the legal heirs of the pattedar occupied the land by force and that was why Form-X claim for issuance of 13-B certificate was rejected on the ground that the petitioner was not in possession of the land.

6. It is not denied that the Revenue Divisional Officer, Bhongir had issued instructions to reexamine Form-X on 26-09-1998 by duly following the procedure, but it is stated that since the Government had

issued instructions to complete enquiry into the said claims upto Mach, 1998 only, the 2nd respondent had not complied with the instructions of the 1st respondent.

7. No where in the counter-affidavit it is stated that the rejection order dt.30-08-1993, which is now produced by the learned Government Pleader, was communicated to petitioner. Even in the copy produced by the learned Government Pleader, it is merely stated that the 2nd respondent came to know that the petitioner is not in possession of the land. What is the basis on which the 2nd respondent came to the conclusion that the petitioner is not in possession of the land is not stated. It appears that the order on 30-08-1993 is based on hear say and no enquiry appears to have been made.

8. In any event, there is no material to show that this order has been communicated to the petitioner.

9. When a person approaches with an application for regularization under Section 5-A of the Act, there is a mandatory duty cast upon 2nd respondent to conduct an enquiry into the issue after giving notice to the parties. Without conducting any such enquiry, the endorsement dt.30-08-1993 seems to have been made on petitioner's form-X application itself without communicating the said endorsement to the petitioner.

10. Therefore the said endorsement dt.30-08-1993, which was never communicated to petitioner, cannot be relied by the respondents

to contend that they will not consider the application dt.29-12-2005 made by petitioner.

11. Therefore the 2nd respondent is directed to consider the said application in accordance with law after conducting appropriate enquiry as contemplated in sub-Section (2) of Section 5-A of the Act and the Rules framed under the Act. This exercise shall be completed within a period of eight (08) weeks from the date of the order.

12. The Writ Petition is allowed with the above directions. No costs.

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

Date: 28-03-2017
Vsv/*

JUSTICE M.S.RAMACHANDRA RAO

