HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 26340 of 2003

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings of the Joint Collector in Rc.No.E5/12330/2001 dated 10.11.2003, in reversing the order of the Revenue Divisional Officer dated 22.02.2001 as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India.

2) The averments in the affidavit filed in support of the writ petition are as under:

The petitioner herein claims to be the owner and possessor of land admeasuring Ac.4.20 gts., in Sy.Nos.561, 562, 563, 564 and 566b of Ursu Village, Warangal District. The petitioner is said to have purchased the same under a registered sale deed dated 06.07.1966 from Smt. Kavoori Janaki Manoharam. The said Kavoori Janaki Manoharam purchased the said land from one Ganta Radha Kistaiah under a private sale deed dated 16.04.1958. The said Ganta Radha Kistaiah is said to have purchased Ac.3.20 gts. from Bavurusetti Peda Mallesham and Shaik Hussain and Ac.1.00 from one Moulana on 06.03.1957. In view of the above, the petitioner claims to be owner and possessor of the said land.

3) During the pendency of the writ petition, the petitioner died and subsequently his legal heirs are brought on record as per the

orders in W.P.M.P.No.3570 of 2016 dated 01.03.2016. It is stated that after the death of the petitioner, his legal heirs claimed to be in possession and enjoyment over the entire extent of land. During Jamabandi of the year 1974-75, mutation was done in the name of the petitioner basing on the above documents, which was approved by the P.A. to Collector and the same was carried out in the pahanies for the year 1975-76. Respondent Nos.4 and 5 are none other than the great grand daughters of Shaik Hussain, who is one of the predecessor in title. Respondent No.3 is the son of Pedda Mallesham, who is also another predecessor-in-title. It is stated that on 07.04.1997, respondent No.3 filed an application stating that though he is the owner and possessor of the lands referred to above and the name of the petitioner was erroneously entered in the pahanies from 1974-75 onwards. Respondent Nos.4 and 5 also filed a petition on 06.08.1997, contending that they are in peaceful possession and enjoyment over the said land and no sale was made either by themselves or by their ancestors at any time and that the registered sale deed dated 06.07.1966 executed by Kavoori Janaki Manoharam is a fabricated one. Hence prayed that the name of the petitioner may be deleted from the pattadar column, from the year 1974-75 onwards.

4) By an order dated 26.12.1998, the Joint Collector remanded the matter to the Revenue Divisional Officer, Warangal, to pass orders afresh after giving an opportunity to the parties. Meanwhile, land admeasuring Ac.0.21 gts., in Sy.No.562/2 was acquired by the State Government under the provisions of the

Land Acquisition Act. However, a dispute arose between the petitioner and respondent Nos.3 to 5 with regard to receipt of compensation. Therefore, a reference under Section 30 of the Land Acquisition Act was made which was numbered as O.P.No.93 of 1993 before the Court of the Additional Senior Civil Judge, Warangal. By an order dated 24.03.1999, the Court upheld the title of the petitioner, basing on the sale deed dated 06.07.1966 and rejected the claim of respondent Nos.3 to 5. The said order was confirmed by this Court in C.R.P.No.2075 of 1999 dated 24.03.1999. After considering the order in O.P.No.93 of 1991, the Revenue Divisional Officer held the issue in favour of the petitioner. Aggrieved by the said order, respondent Nos.3 to 5 preferred a revision before the Joint Collector, which was allowed, canceling the mutation granted on the basis of registered sale deed dated 06.07.1966 and consequently the Mandal Revenue Officer was directed to incorporate the necessary changes in the pahanies for the said survey numbers, except Sy.No.562/2, since the land covered under the said survey number was held to be in favour of the petitioner, by the civil Court. Challenging the same, the present writ petition is filed.

5) The main ground urged by the learned counsel for the petitioner is that the mutation was affected in favour of the petitioner in the year 1974-75 and an application came to be filed by the respondent relying on Section 166-B of Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F ie. 22 years after making the entries, which cannot be entertained. Though no

period of limitation is prescribed under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, but filing of an application, 22 years after the entries are made, being abnormal, the authorities should have rejected the same at the threshold. He further submits that since the petitioner is in possession of land, he acquired title by adverse possession. Relying upon the order passed by the civil Court in O.P.No.93 of 1991, the learned counsel for the petitioner would submit that the Joint Collector erred in holding that the petitioner is entitled for the benefit only in respect of land covered in Sy.No.562/2 and not in respect of other survey numbers, when the order of the civil Court is otherwise. He placed reliance on number of judgments in support of his plea.

6) One B.Radhika, filed W.P.M.P.No.39722 of 2016, to implead herself as respondent No.9, so as to represent the estate of the deceased respondent No.3. It is her case that during his life time, the writ petitioner has alienated the total extent of Ac.4.20 gts., in favour of several individuals through different registered sale deeds, though he has no title over the same.

7) A counter came to be filed by respondent No.3 disputing the averments made in the affidavit filed in support of the writ petition. According to him, his father Bavirisetti Gangaiah was pattadar of the land admeasuring Ac.0.12 gts. in Sy.No.561/A and Ac.0.10 gts., in Sy.No.562/B. It is stated that Shaik Moulana, who is the father of respondent Nos.4 and 5 and one Pedda Mallesham,

were joint pattadars in lands in Sy.No.561, 562, 563, 564 and 566 of Ursu Village. It is stated that under the guise of registered sale deed dated 06.07.1966, the petitioner got his name mutated in the revenue records in the above survey numbers. It is stated that without conducting any enquiry, the Village Officer mutated his name. The original sale deed was not executed by the original pattadar and it is non-est in the eye of law. It is also averred that Bavisetti Gangaiah, filed an appeal for cancellation of mutation before the P.A. to Collector, Warangal, under Section 15 (2) of R.O.R. in Land Regulation (repealed) Act. Vide order dated 22.07.1976, the same was allowed and the matter was remanded to the Sub-Collector, Warangal, for a detail enquiry. The Revenue Divisional Officer took up the case and decided it on 19.06.1990, directing the Mandal Revenue Officer, Hanamkonda, to insert the name of Bavisetti Gangaiah, in respect of land admeasuring Ac.0.12 gts., in Sy.No.561/A and Ac.0.10 gts., in Sy.No.562/B, which appeared prior to Jamabandhi 1989-90, but it is said that the said order was not complied with by the Mandal Revenue Officer, Hanamkonda. Since the order of the Revenue Divisional Officer was not complied with, the respondent No.3 again filed an application before the Joint Collector on 07.04.1997 and respondent Nos.4 and 5 filed petition on 06.08.1997 for correction of entries. It is stated that the Joint Collector remanded the matter to the Revenue Divisional Officer, with the following directions.

> "i) Since the Revenue Divisional Officer has already issued orders for Sy.No.561/A and 562/B to an extent of Ac.0.12 gts and Ac.0.10 gts., respectively, the Mandal Revenue Officer, Warangal is hereby directed to incorporate the necessary changes in the pahanies as held by the R.D.O. Warangal in his orders dated 19.06.1990 in File No.B/K/4557/86 and as per the Faisalpatty for the year 1990-91.
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> ii) With regard to other survey numbers they are similar and covered in the same registered sale deed ie. 3022 dated 06.07.1966 basing on which the mutation was granted. As such, the case is remanded to the Revenue Divisional Officer, Warangal to enquire the matter afresh in respect of sy.Nos. 561/B, 562/A, 563/A, 564/A, 564/B and 566 situated at Ursu Village."

8) Pursuant to remand, the Revenue Divisional Officer conducted a fresh enquiry and passed an order on 22.02.2001. Aggrieved by the same, respondent Nos.3 to 5 preferred an appeal before the Joint Collector. The order of the Joint Collector is now challenged in the present writ petition. It is also sated that the plea taken by the learned counsel for the petitioner with regard to the delay is absolutely incorrect. According to him, there is no delay in making the application, as the father of respondent No.3 filed an appeal in the year 1976 itself. Coming to the merits of the case, it is urged that the Joint Collector considered the entire record and basing on the documents available, cancelled the mutation, which warrants no interference.

9) One Vannala Sreeramulu, filed a reply affidavit dated 02.06.2017, stating that the petitioner purchased the subject land, converted it into plots and sold the same to several persons.

It is his case that G.P.A. dated 27.12.1980 vide document No.169/1980 was executed in favour of Rayabarapu Prakash, S/o. Venkateswarlu by the following persons:

1. Rayabharapu Venkateswarlu S/o. Ramaswamy,
2. Rayabharapu Vidyasagar, S/o. Venakteswarlu,
3. Rayabharapu Sudharshan, S/o. Venkateswarlu,
4. Rayabharapu Ravikumar, S/o. Venkateswarlu,
5. Rayabharapu Krishna Murthy, S/o. Venkateswarlu,
6. Rayabharapu Ramchaner, S/o. Venkateswarlu,
7. Rayabharapu Ramesh, S/o. Venkateswarlu,
8. Rayabharapu Dayanand, S/o. Venkateswarlu,
9. Rayabharapu Sharadanand, S/o. Venkateswarlu,
10. Rayabharapu Vinodanand, S/o. Venkateswarlu,
11. Rayabharapu Ramaswamy, S/o. Venkateswarlu,

All are residents of Old Beat Bazar, Warangal.

10) It is pleaded that the petitioner sold the said property during the year 1981 to about 20 individuals, through sale deeds, without canceling the G.P.A. executed by him along with others in favour of Rayabarapu Prakash. The names of the persons, who are said to have purchased the property, are referred to in the affidavit filed by this respondent. According to him, 19 members filed suits against respondent No.3 herein and two others vide O.S.No.494 of 2004 on the file of the II Additional Senior Civil Judge, Warangal. The said suit was dismissed on 01.02.2010 holding that a suit for bare injunction without prayer of declaration of title is not maintainable when the plaintiff's title is denied by the respondents. Aggrieved by the same, A.S.No.8 of

2011 came to be filed, which was also dismissed on 06.08.2015. He also refers to filing of a suit in O.S.No.383 of 2015. Having regard to the circumstances referred to above, it is his case that the deponent herein is in possession of the property and that the order of the Joint Collector warrants no interference.

11) As seen from the record, the main ground urged by the learned counsel for the petitioner is that there is an abnormal delay in filing the application seeking cancellation of mutation. It is his case that though his name figured in the revenue records from the year 1974-75 onwards, but the application for cancellation of mutation came to be filed in the year 1997, without explaining the delay of 22 years in making such application.

12) It is to be noted here that challenging the incorporation of the names of the petitioner in the revenue records, the father of respondent No.3 by name B.Gangaiah, preferred an appeal before the P.A. to District Collector for cancellationof mutation under Section 15 (2) of R.O.R.Act. Vide order dated 22.07.1976 the said appeal was allowed and the matter was remanded to Sub-Collector, Warangal for detail enquiry. The Revenue Divisional Officer, took the case on file, conducted an enquiry and thereafter decided the same on 19.06.1990 directing the Mandal Revenue Officer, Hanamkonda, to insert the name of the father of respondent No.3, by name B.Gangaiah, in respect of lands in Sy.Nos.561/A and 562/B. Since the same was not complied with

by the Mandal Revenue Officer, in the year 1997, respondent No.3 filed an application before the Joint Collector for correction of records. The Joint Collector after conducting the enquiry remanded the matter back to the Revenue Divisional Officer, who rejected the same. Against which a revision was filed before the Joint Collector. Therefore, it cannot be said that the application filed for cancellation of mutation in the year 1997 was with undue delay. The facts referred to above, do show that proceedings were pending before one authority or another, in respect of the said issue and the inaction of the Mandal Revenue Officer in complying with the directions of the Revenue Divisional Officer lead to making of an application in the year 1997. Therefore, the judgments relied upon by the learned counsel for the petitioner with regard to delay, have no direct bearing on the issue.

13) Apart from that, the order dated 22.02.2001, passed by the Revenue Divisional Officer, refers to the order passed by the civil Court in O.P.No.93 of 1991, wherein it was declared that the petitioner is owner of the land in Sy.No.562/2 and consequently awarded compensation in respect of the said land under the Land Acquisition Act. After considering the material on record, the Revenue Divisional Officer, held as under:

> "In the instant case, the then M.R.O. has regularized the transfer as per the registered sale deed No.3022 of 1966, U/s. 5-A of the A.P.Rights in Land and Pattadar Pass Books Act, 1971 as amended in Act 11 of 1980, 1 of 1989, 24 of 1989 and 9 of 1994, where the transfer is disputed on the basis of fraud, coercion, forgery and other circumstances

which may become void or voidable and such question can only be decided by the civil Court, nor such question can be decided in a summary enquiry by this Court. In this case once the matter was decided by the civil Court in respect of the right of Sy.No.562. As such I see no reason to interfere into the sale transaction offered in the ROR 1975-76 in favour of the respondent by the then Tahsildar, Warangal at a later stage."

14) But however, the Joint Collector reversed the findings of the Revenue Divisional Officer. He framed the following three issues:-

1. Whether the mutation sanctioned by the then P.A. to Collector, Warangal in the capacity of Nazim-e-Jamabandi, as per registered document No.3022 dated 06.07.1966 in respect of lands in Sy.Nos. 561, 562, 563, 564 and 566 to an extent of Ac.4.20 during the Jamabandi for the year 1975-75 in favour of Sri Rayabarapu Venkateswarlu is correct or not.

2. Whether the orders of the Hon'ble I Additional Senior Civil Judge, Warangal, in O.P.No.93 of 1991, dated 24.03.1999 should be taken as conclusive proof of title for the suit land.

3. Whether the instant case comes under jurisdiction of the revenue Court or not.

The findings of the Joint Collector on the above issues, are as under: :

"Issue No.1: It is clearly established that the mutation in question was irregular and the issue was discussed at length in all revenue courts and suitable orders were issued earlier, but not implemented. Hence, the impugned order is escaping in nature.

Issue No.2: The orders of the I Additional Senior Civil Judge, Warangal, in O.P.No.93 of 1991, dated 24.03.1999 cannot be taken as conclusive proof of title for the suit land. The orders are applicable to the limited extent ie. Ac.0.21 gts., in respect of Sy.No.562/2 and were given in the absence of the rectified revenue record.

Issue No.3: The mutation granted on the basis of the registered sale deed ie. 3022 dated 06.07.1966 is hereby cancelled. The Mandal Revenue Officer, Warangal is directed to incorporate the necessary changes in the pahanies."

15) It is to be noted here that litigation did not end here. Subsequent to filing of the writ petition, number of suits came to be filed and different decisions were given by different courts. O.S.No.494 of 2004 came to be filed by about 19 persons seeking injunction in respect of the very same property. Respondent Nos.3 and others were shown as defendants in the said suit. Considering the oral and documentary evidence and also the orders passed in O.P.No.93 of 1991, the Court held that no title is established in respect of the suit property in favour of the plaintiffs. It was held that the facts and circumstances of the case, requires a decision on title and recovery of possession and that the suit is not maintainable without seeking a declaration of title and recovery of possession. Challenging the same, A.S.No.8 of 2011 came to be filed by the plaintiffs but the same was dismissed for non-prosecution.

16) One of the persons, who got impleaded in this writ petition, by name Vanala Sriramulu, and his son, filed O.S.No.383 of 2015 seeking injunction. Along with the said suit, they also filed

I.A.No.310 of 2016 seeking ad-interim temporary injunction. By an order dated 05.02.2016 the said Court granted status-quo.

17) It is to be noted here that all the suits which are filed by the parties except O.P.No.93 of 1991, relates to bare injunction and no suit has been filed by any of the subsequent purchasers seeking declaration of title. In O.P.No.93 of 1991, the issue before the Court was as to who is the owner of the land admeasuring Ac.0.12 gts., in Sy.No.562/2, which was acquired along with other survey numbers, for a Railway double line. Dealing with the same, the Court took into consideration the sale deed dated 06.07.1966 executed by Janaki Manoharan in favour of petitioner along with the link document and held that the claimant therein was the owner of the said land. The said order was confirmed by this Court in C.R.P.No.2075 of 1999.

18) As things stood today, on one hand there is order of the civil Court upholding the claim of the claimant therein as owner of the land in Sy.No.562/2, basing on the sale deed executed in the year 1966. A different plea is taken by the un-official respondents therein that the said registered sale deeds are fake and forged. Though the Revenue Divisional Officer did not agree with the same, but the Joint Collector went into the merits of the case and held that though Janaki Manoharam executed the sale deed in favour of the petitioner but she is neither a pattadar nor an occupant. It was also held that except the signature of Moulana, who is the pattadar of the land in Sy.No.562/A, the names of

other pattadars namely B.Pedda Mallaiah, Shaik Hussan, B.Komaraiah and Gavunnisa Begum etc. are not found in the said document. It was further held that the name of Janaki Manoharam was shown in occupation column, against 562/A & B and 563/B only in the year 1958-59. In the year 1966-67 the names of the respondents therein were entered in occupation column. Hence, it is clear that the name of the respondent was brought on the record basing on the registered sale deed executed in the year 1966 without the sanction of a competent officer.

19) Therefore, it is clear that not only the legal heirs of the petitioner but also the legal heirs of the respondents herein are claiming possession over the land which is evident from the suits filed by the parties. It is also to be noted here that a land grabbing case was also filed vide L.G.C.No.02 of 1997, which was subsequently withdrawn.

20) From the above, it is clear that, two different stands are being put up before this Court, more particularly with regard to genuinity and authenticity of the sale deeds executed in the year 1958 and 1966. Subsequent to the order passed by the Joint Collector in the year 2003, much litigation cropped up, over the ownership of the property. The persons, who got themselves impleaded in the writ petition are those who have purchased the said property which was sold by way of plots. As stated earlier, two suits were filed for injunction. Strangely no suit for declaration of title has been filed. But in O.P.No.93 of 1991,

these two documents which are subject matter of dispute came up for consideration but there was no finding as to whether the said sale deeds were forged or fabricated.

21) In *K.Pratap Reddy and others v. Joint Collector, Ranga Reddy District, Hyderabad and others*[1] this Court while dealing with the scope of Section 5 of A.P.Rights in Land and Pattadar Passbooks Act, 1971 and also dealt with some what identical issue observed as under:

> "93. Complex and serious disputes of title falling beyond the ambit of Rule 9 of the Rules of 1989 are not within the ken of the adjudicative authority of revenue authorities even under the Act of 1971. It is for the parties to initiate appropriate proceedings before a civil Court of competent jurisdiction to resolve their dispute and it is not open to either party to turn to the Act of 1971 to steal a march over the other."

22) In *Thummalapally Bhagya Laxmi v. Joint Collector, Ranga Reddy District and others*[2] a learned single Judge of this Court held as under:

> "The enquiry under the Act is summary in nature. The decision of recording authority under Section 5-A of the Act is required to be confined to the limited extent of regularizing a transaction which is otherwise not in conformity with the requirement of the Stamp Act/the Registration Act etc. If, in respect of the same property the parties approach or have approached the Civil Court and the Civil Court decided the rights of parties, in the opinion of this Court, the revenue authorities are bound

[1] (2009) 2 ALD 212
[2] (2014) 4 ALD 289

by the judgment and decree of the Civil Court in exercise of their jurisdiction under the Act, because Section 8(2) has made it mandatory to update record of rights in accordance with such declaration. If contrary view is taken, then it results in anomalies and contradictory situations and to avoid such situations, the revenue authorities are bound by the adjudication of competent civil Court in exercise of their power under the Act. It is relevant to refer to the decision in VANGA NARSA REDDY's case(2 supra), which reads as follows:

> "The law is well-settled that the Revenue Authorities exercising the jurisdiction under the ROR Act cannot go into the serious questions of title. It has been held by the Courts in a catena of decisions that the revenue authorities are not substitutes for the courts of competent civil jurisdiction and they cannot decide the complicated questions of title in the summary enquiry provided under the ROR Act."

From the above perspective, if the chronology of events in the case is considered, it is evident that the petitioner purchased the property when there is no order of regularization under Section 5-A of the Act."

23) Taking into consideration the two judgments referred to above and in view of the order passed in O.P.No.93 of 1991 which though filed for claiming compensation in respect of land admeasuring ac.0.12 gts., in Sy.No.562/A, but having regard to the fact that the said judgment refers to two sale deeds of the year 1958 and 1966, which are now said to be forged and fabricated, this Court is of the view that the aggrieved person/persons shall invoke the common law remedy claiming

title over the said land and also seek appropriate orders, if any, from the said Court. Till such time status quo as on today shall be maintained with regard to possession and entries made in the record.

24) Accordingly, the writ petition is disposed of. There shall be no order as to costs.

25) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.08.2017
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