

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.41438 OF 2016

ORDER:

Heard Mr.A.Giridhar Rao for petitioner, the learned Assistant Government Pleader (Revenue) for respondents 1 to 4, Mr.S.R.Sanku for respondent Nos. 5, 6 and 8 and Mr. D.V.Staram Murthy, learned senior counsel for respondent No.7.

The petitioner challenges proceeding No.Ref/H/2762/2016 dated 19.11.2016 as without jurisdiction and contrary to the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') and the Rules made thereunder.

The circumstances relevant for disposal are briefly stated thus:

Respondents 5 and 6 filed a representation/petition on the entries of transfer made in favour of petitioner and the issue of Pattadar Pass Book and title deeds. It is not in dispute that the representation filed by respondents 5 and 6 has been treated as an appeal filed by a person aggrieved and the 3rd respondent has issued the proceeding impugned in the writ petition. The operative portion of the proceeding reads thus:

“Taking in to consideration of explanations submitted by the then Tahsildar and staff worked during the period of suspected tampering and depositions of L.Hrs of Kanchumarthi Pardhasaradhi and Sub Registrar, Vijayawada, are the conclusive proof that the Adangal and ROR 1B and Pattadar Pass Books and Title deed Nos.925511 & 925512 were fabricated and forged. It no

more holds any value as Revenue Records for further transactions.

To adjudicate the dispute on the basis of the facts available on record, I feel it is not only appropriate, but also imperative to issue the following directions to the Tahsildar, Rajamahendravaram urban to resolve the conflict with regard to title over the land situated in Sy.No.416/2 of Rajamahendravaram.

The Tahsildar, Rajamahendravaram urban is hereby directed:-

To restore the names of Kanchumarthi family against Sy.No.416/2 of Rajamahendravaram in the Village Account No.3 of Rajamahendravaram urban with immediate effect and the rectified record shall be sent to this office as a compliance report of this order and the land shall remain in the list of LCC declarations by the declaration till the disposal of LCC No.919/Rjy/75 which is pending before the LRAT, Kakinada.

Kanchumarthi family is free to initiate legal actions against the fabricators of codicil and the Pattadar Pass Books in any court of law based on this order.

Appeal lies to the Collector (Revenue) Kakinada on the RDO's orders within sixty days from the date of issuance of this order."

Now the challenge of the petitioner is that the representation filed by respondents 5 and 6 under the scheme of Act cannot be treated as an appeal by any stretch of imagination either in fact or law, hence the order passed on such representation, according to petitioner, is completely illegal and without jurisdiction. Without adverting to the merits of the matter, it is contended that on this

short ground alone the proceeding impugned in the writ petition is liable to be set aside.

The Assistant Government Pleader by drawing the attention of the Court to the effort that has gone in to the matter and the enquiry conducted by respondent No.3 has made alternative submissions. Firstly, it is contended that through the proceeding impugned in the writ petition, it cannot be contended that any order vis-à-vis entries in 1-B register or issue of Pattadar Pass Book is made by the 3rd respondent. Even assuming without admitting that the 3rd respondent has dealt with the legality, reasonableness or otherwise of the entries in record of rights, since fraud is alleged, no case is made out for interference under Article 226 of the Constitution of India. The Assistant Government Pleader further submits that as the dispute relates to regularity correctness, legality or propriety of decision taken or order passed or proceeding made in respect thereof, these entries can always be examined by the District Collector, East Godavari/2nd respondent herein. Therefore, he submits that liberty to 2nd respondent to look into this aspect of the matter may be left open.

Mr.S.R.Sanku appearing for respondents 5, 6 and 8 tried to persuade this Court on merits of the matter to sustain the proceeding impugned in the writ petition. Having regard to the scheme of the Act and also the decision of this Court in Sannepalli Nageswar Rao and another v. Dist. Collector, Khammam and

others¹ he has fairly stated that in the fact situation, the representation could not be treated as appeal. Mr.D.V.Staram Murthy appearing for respondent No.7 after relying upon portions of the proceeding dated 19.11.2016 contends that the case on hand squarely fits into the requirement of Section 9 of the Act and, therefore, the issue can be left open for consideration by the revisional authority in a properly instituted proceeding or petition.

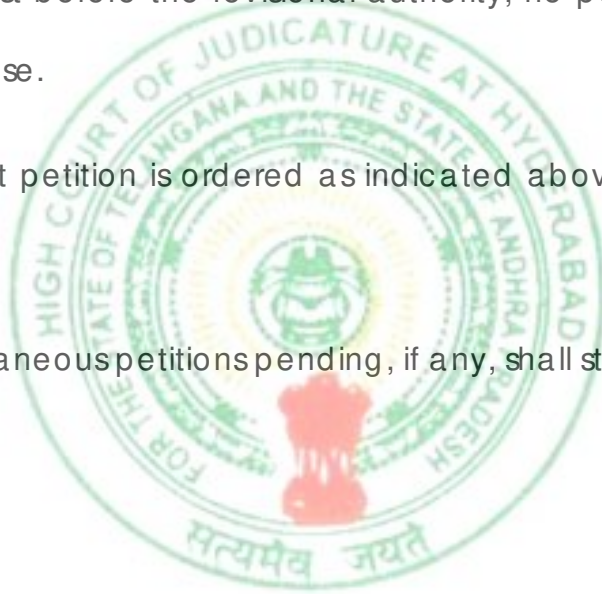
In view of the above limited submissions, also the consensus on the lack of jurisdiction for 3rd respondent to entertain appeal and pass the order dated 19.11.2016, I am satisfied that the proceeding impugned in the writ petition can be set aside and is accordingly set aside. Respondents 3 and 4 if are of the view that the case warrants consideration by 2nd respondent under Section 9 of the Act can forward the material on which they are pointing out illegality, impropriety etc. to 2nd respondent for consideration under Section 9 of the Act. This Court is also of the view that the jurisdiction of revision can be entertained by a person aggrieved by an entry in the record of rights. Hence, the unofficial respondents, if so advised, are also given liberty to avail the remedy under Section 9 of the Act. Having passed the above order, keeping in view the circumstances on which both the sides have argued with vehemence and after taking note of the stage at which disputes

¹2002 (4) ALT465 (DB)

have arisen between the parties, in exercise of the discretion and jurisdiction of this Court under Article 226 of the Constitution of India, this Court directs that the entries in 1-B register or the Pass Books are not to be utilised by any person till the revision is heard and disposed of by respondent No.2. The 2nd respondent endeavours to dispose of the revision within four months from today. The direction in this order shall not be understood as this Court expressing a view after taking note of merits, but directions are issued to ensure that basing on the entries so made which are the subject matter of serious contest before the revisional authority, no person is allowed to use or misuse.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.



S.V.BHATT, J

Date: 29.06.2017
Sp