

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.3622 of 2006

ORDER :

In this Writ Petition, the Petitioner questions endorsement bearing No.A/641/05 dt.03.09.2005 of the 3rd respondent - Mandal Revenue Officer, Kottur Mandal in informing that the petitioner is not in possession of the lands in question since decades, that some others are having adverse possession and advising the petitioner, who has approached the 3rd respondent for grant of succession, to file a civil suit in a Court of law.

2. According to petitioner, one Late Abdul Rahman Khan was the actual pattedar of an extent of Acs.19.23 guntas in Survey No.671 and Acs.9.22 guntas in Survey No.664 of Mamidipalli Village, Kothur Mandal, Mahabubnagar District. He alleged that he had no children and his brother Munawar Ali succeeded to his estate as per Mohammedan Law; that Munawar Ali also had a sister by name Haleema Bee and petitioner was her son ; that one stranger by name Mohd. Khan, colluded with the 3rd respondent, and got his name entered in the Revenue Records for the above land as pattedar. He further contended that the land of Acs.19.23 guntas in Survey No.671 was Kancha land, that it was not cultivated and no one was in actual possession thereof. He contended that in the *Vasool Baqui* of 1953

and the *Assal Sethwar*, the name of the original pattedar continues to be recorded.

3. He filed an application before 1st respondent – District Collector, Mahabubnagar under Section 9 (i) of the Andhra Pradesh Rights in Land and Pattedar Pass Books Act, 1971 for grant of succession as legal heir of the original pattedar Abdul Rehman; that he forwarded it to the 2nd respondent – Revenue Divisional Officer, Mahabubnagar vide proceedings No.B/3231/05 dt.25.07.2005; that on the direction of respondent nos.1 and 2, the 3rd respondent issued the impugned endorsement in proceedings No.A/6401/05 dt.03.09.2005.

4. The petitioner alleges that the impugned endorsement dt.03.09.2005 is not valid in law and that respondent nos.1 to 3 have no right to declare right by adverse possession of third parties and only a civil court is competent to do so.

5. The counsel for petitioner reiterated the said contentions.

6. In the counter-affidavit filed by 3rd respondent, the above contentions are refuted. The 3rd respondent accepted the possibility of the siblings of late Abdul Rehman being alive and also the relationship of the petitioner with the said individual, but contends that the subject land was shown in the *khasra Pahani* of 1954-55 in the name of Mohd. Khan, son of Karim Khan till 1973-74. He contended that the names of the petitioner or his ancestors are not found in the Revenue Records as pattedar or occupants of the land and

it is therefore not possible to confirm their right in the land. According to the 3rd respondent, the *Khasra Pahani* is the fundamental and basic record to determine the ownership of land and he denied that there was any collusion between himself and third parties. He further stated that even the name of Abdul Rehman was not recorded in the Record of Rights, though names of petitioner's ancestors are mentioned in the *Vasssol Baqui* and *Sethwar* and contended that the land was being enjoyed by protected tenants by name Dhannada Pentaiah and Mangali Venkaiah. It is also pleaded that the application of the petitioner for mutation is filed after a gap of fifty years and is beyond the period of limitation. It is contended that the endorsement was rightly issued under Section 5 of the Act since petitioner was not in possession of the land and third parties were in possession thereof and advising petitioner to approach civil court.

7. In the impugned endorsement dt.03.09.2005 issued by 3rd respondent, the following was stated by him :

“Sub : Land disputes – Kothur Mandal – Mamidipally Village, Sy.No.671 extent 19.23 acres grant of succession to the LR's of pattedars – Reg.

Your application got enquired with reference to record and local enquiry the lands are not in your possession since decades and others persons are having adverse possession since long time.

Therefore you can file a suit in appropriate Court of law for justice.”

8. From the facts narrated above, it is clear that the petitioner had approached the 1st respondent through an application dt.02.06.2005 for grant of succession to late Abdul Rehman, the pattedar of the land. Even according to the petitioner, the name of Mohd. Khan was recorded in the Revenue Records, while the 3rd respondent contended that Mohd. Khan's name was also mentioned in *Khasra Pahani* of 1954-55 and continued till 1973-74. The petitioner has not filed any material to show the possession of his family members over the subject land and does not dispute the fact that he is not in possession thereof. According to him, it is vacant.

9. A person acquiring a right by succession has to approach the 3rd respondent by filing an application under Section 4 of the Act within (90) days from the date of such acquisition of right in the land. This would be enquired into under sub-Section (1) of Section 5 and then if satisfied, the Mandal Revenue Officer can amend the Record of Rights after issuing notice in writing to all interested persons. This order is subject to Appeal under sub-Section (5) of Section 5 of the Act. This legal position is not disputed by counsel for petitioner.

10. It is not also disputed that *Khasra Pahani* of 1954-55 is the basic and fundamental record to determine ownership of land in Telangana area. The petitioner or his ancestors ought to have taken steps to challenge the ownership of Mohd. Khan within a reasonable time after such entry was made. But they have not chosen to do so. Fifty years after the event they had filed the application before the 1st

respondent for grant of succession to Late Abdul Rehman Khan, without having possession. Unless the petitioner gets his title declared in a competent Civil Court and recovers possession of the land, his claim for grant of succession to Late Abdul Rehman or for mutation as well as issuance of pattedar pass books and title deeds, cannot be entertained.

11. Therefore, no objection can be taken by the petitioner to the impugned endorsement pointing out that the land in question was not in petitioner's possession and advising the petitioner to approach a Court of law for appropriate relief though the observation regarding adverse possession of other persons was not warranted.

12. Therefore, I do not find any merit in the Writ Petition and it is accordingly dismissed. No order as to costs.

13. As a sequel, miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-02-2017

Ndr/*