**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION NO.18958 OF 2017**

**Date: 08.08.2017**

Between:

K.Muragaiah S/o late K.Gillaiah,
Aged 90 years, Cultivation,
r/o Bodidevarapalli Harijanawada,
SR Puram Mandal, Chittoor Dist.

.....Petitioner

and

The State of Andhra Pradesh, rep.by its
Principal Secretary, Revenue Department,
AP Secretariat, Velagapudi at Amaravathi,
Guntur District.

.....Respondents

The Court made the following:

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**ORDER:**

Petitioner claims that he and his wife Smt. Munemma were in possession and enjoyment of the land to an extent of Ac.3.00 cents of land in Sy.No.359/2 of Bodidevarapalle village, SR Puram Mandal, Chitoor district for very very long time. Petitioner belongs to Scheduled Caste community and come under the landless poor category. In recognition of his wife's eligibility and also Sivai Jamadar Rights, the Tahsildar granted DKT Patta on 04.04.2010 to an extent of Ac.3.00 cents in two survey numbers. The name of his wife was mutated in the revenue records including Form No.1B and pattadar pass book and title deeds were issued. After the demise of his wife, petitioner and his children are in possession and enjoyment of the said property. While so, 5th respondent, her husband and others sought to dispossess the petitioner from the subject properties. Apprehending their interference, petitioner filed O.S.No.1 of 2017 pending on the file of Principal Junior Civil Judge at Puttur. Petitioner also sought for injunction against 5th respondent in I.A.No.7 of 2017. The trial Court granted injunction in favour of the petitioner restraining the 5th respondent from interfering inthe petitioner's peaceful possession and enjoyment. While so, 5th respondent filed appeal before the Revenue Divisional Officer under Section 5-B of the Andhra Pradesh Rights in Land & Pattadar Pass Books Act, 1971, (Act, 1971) challenging the pattadar pass book and title deeds issued in favour of the petitioner. While entertaining the said appeal, the Revenue Divisional Officer also passed interlocutory order directing the petitioner not to enter into the peaceful possession and enjoyment of the land of appellant, pending disposal of the appeal. Aggrieved thereby, this writ petition is filed.

2. Learned counsel for petitioner submits that once matter is seized by the Civil Court and injunction order is granted, the Revenue Divisional Officer has no authority and competence to entertain the appeal and to pass interlocutory order. He further submits that the Revenue Divisional Officer cannot pass an order restraining the peaceful possession and enjoyment of the petitioner when on the same issue an injunction order was granted in favour of the petitioner. The said order is *ex facie* illegal and void *ab initio* and further submits that the Revenue Divisional Officer has no jurisdiction to entertain the appeal against pattadar pass books granted in the year 2010, more so, when there is no application filed for condonation of delay.

3. Learned counsel for 5th respondent do not dispute the fact of issuance of interim injunction by the trial Court and operation of the said interim order.

4. In view of the fact that injunction order passed by the trial Court in favour of petitioner is in operation, there cannot be conflicting order passed by the Revenue Divisional Officer, even assuming that he has validly entertained the appeal and said appeal requires his consideration. Thus, on that ground, the order impugned is liable to be set aside.

5. Learned counsel for petitioner sought to further contend that appeal itself is not maintainable on the ground of delay and also on the ground of pendency of civil suit. I am not inclined to examine the said contention at this stage. The Revenue Divisional Officer as appellate authority against the decision of the Tahsildar under the Act, 1971 discharges quasi-judicial functions. Competency of the

Revenue Divisional Officer to entertain appeals arising out of the decision of Tahsildar under the Act, 1971 is not in dispute. That being so, whether in a given case appeal is validly entertained and whether there is unexplained delay on the part of the appellant for instituting the appeal and also the continuation of the proceedings during the pendency of the civil suit, *inter se*, the same parties, are matters which can be agitated before the Revenue Divisional Officer and require his consideration and decision thereon. This Court cannot go into these aspects even before the issues are raised before the authority and finding are arrived at by him.

6. Writ petition is allowed to the extent of holding the order dated 27.03.2017 of the Revenue Divisional Officer as *ex facie* illegal and is accordingly set aside, leaving it open to the petitioner to raise all other contentions as urged in this writ petition including maintainability of appeal under the Act, 1971 on the ground of pendency of civil suit on the same issue between the same parties and on the ground of delay in filing appeal. It is needless to observe that the Revenue Divisional Officer shall consider all contentions objectively and shall pass orders assigning due reasons in support of the decision and communicate the decision to the parties.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

**JUSTICE P.NAVEEN RAO**

Date: 08.08.2017
*kkm*

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