HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 12581 OF 2015

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of certiorari calling for records connected to order dated 04.04.2015 passed in Roc.No.98/2015/C by the 2nd respondent, and to declare the same as illegal, irregular and violative of principles of natural justice; and consequently to direct respondents 1 to 3 to maintain entire record of rights in favour of the petitioner for the land admeasuring Ac.3.25 cents in Sy.No.1498/2 of Chintalapudi Revenue Village and Mandal, West Godavari District.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner claimed herself to be the owner and possessor of agricultural land admeasuring Ac.3.25 cents in Sy.No.1498/2 of Chintalapudi Revenue Village and Mandal, West Godavari District. Originally the said property belonged to her ancestor. Her paternal great grandfather by name Gummalla Annaiah executed a registered settlement deed dated 09.01.1942 in favour of her paternal grandfather Vedala Veda Nayakamu. After the demise of Vedala Veda Nayakamu, her father Vedala Chales Karunakara Rao, her brother Vedala Uday Kumar and herself succeeded to the said land and they have been cultivating the said land. Pattadar pass book and title deed were also granted in her favour. While things stood thus, the 3rd

respondent issued a notice dated 06.11.2014 in Prajavani complaint No.76118 of 2014, alleging that he received a complaint dated 22.09.2014 from the 5th respondent stating that his father was granted D-Form patta for the said land and sought for deletion of the name of the petitioner from the Government Web Land. Accordingly, he asked the petitioner to appear before the 3rd respondent on 12.12.2014. On that date, the brother of the petitioner appeared before the 3rd respondent and requested him to furnish a copy of the complaint and also connected record. But the 3rd respondent refused to furnish the same. Then, he submitted a representation dated 15.12.2014, with a request to furnish such documents. Without furnishing the documents as sought for, the 3rd respondent again issued a notice dated 06.01.2015. Hence, the petitioner filed W.P.No.1755 of 2015 to declare the proceedings No.76118 of 2014 initiated by the 3rd respondent and insisting her to vacate the above said land, as illegal and irregular. By an order, dated 02.02.2015, this Court disposed of the said writ petition directing the 3rd respondent to furnish a copy of the complaint made by the 5th respondent and also other communications. Without furnishing the said documents, the 3rd respondent sent a report in Roc.No.107/2015, dated 03.02.2015 to the 2nd respondent recommending cancellation of pattadar pass book and title deed. The 2nd respondent took the said report on file as suo moto appeal in Roc.No.98/2015/C, dated 06.03.2015, asking the petitioner to appear before the authority on 27.03.2015. On that day, the brother of the petitioner appeared and requested to furnish copy of report of the 3rd respondent. Without furnishing the report, the 2nd respondent adjourned the matter on 04.04.2015. On 06.04.2015, the petitioner submitted a requisition to the 2nd respondent, by way of registered post, to furnish a copy of the report so as to enable her to file explanation. Without furnishing the report, the 2nd respondent communicated a copy of order dated 04.04.2015 in Roc.No.98/2015/C, stating that the pattadar pass book and title deed issued in favour of the petitioner were cancelled. Assailing the same, the present writ petition came to be filed.

3) The Revenue Divisional Officer, Eluru, filed counter denying the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that the Tahsildar, Chintalapudi reported that respondents 5 to 7 filed a representation in Prajavani before the M.P.D.O., Chintalapudi stating that the land admeasuring Ac.3.25 cents in R.S.No.1498/2 of Chintalapudi Village, was previously assigned in favour of their late father Gummalla Devadas, vide L.D.No.369 of 1967. After the demise of assignee, they came into possession and enjoyment but have not obtained pattadar pass books sofar. When they approached the V.R.O. for issuance of pattadar pass book, they came to know that the petitioner has already granted pattadar pass book and title deed for the said land. Hence, requested to enquire into the matter and grant pattadar pass book and title deed in their favour by duly canceling the pattadar pass book

issued in favour of the petitioner. On receipt of the representation, the 3rd respondent enquired into the matter. Notices came to be issued to both the parties asking them to attend before him on 12.12.2014 and to file documents, but the petitioner failed to attend. However, she sent her brother, who sought for an adjournment, for submitting documentary evidence. Again on 21.01.2015, the petitioner sent her brother as her representative. On verification of the record, the 3rd respondent found that the above said land was government land and it was assigned to Gummalla Devadas vide L.D.No.369 of 1967. The Tahsildar, Chintalapudi also inspected the land on the ground to determine possession of the land. The neighbouring land owners gave their statements stating that respondents 5 to 7 are in possession of the said land, which was assigned previously in favour of their father. In view of the above, the Tahsildar submitted proposals to the 2nd respondent with a recommendation to cancel pattadar pass book and title deed issued in favour of the petitioner.

4) Respondent No.7 also filed counter denying the averments made in the affidavit filed in support of the writ petition.

5) The main ground urged by the learned counsel for the petitioner is that the Revenue Divisional Officer has no jurisdiction to entertain the appeal at the instance of the Mandal Revenue Officer, who cannot be said to be an aggrieved person. He further submits that since there is a dispute over title, the same cannot

be decided by the Revenue Divisional Officer and that only common law remedy would be the appropriate remedy for the un-official respondents to get their grievances ventilated.

6) Learned counsel appearing for respondents 6 and 7 would submit that since the Tahsildar found that respondents 5 to 7 are in possession of the property and as the subject land was originally assigned in favour of the father of respondents 5 to 7, there is no illegality in the order passed by the Revenue Divisional Officer by treating the report of the Tahsildar as a suo moto appeal. If any dispute is sought to be raised with regard to the land, the petitioner ought to have invoked the common law remedy and not by way of this writ petition.

7) On the other hand, the Government Pleader for Revenue submits that as per R.S.R. of the village, the subject land is a government land and it was assigned in favour of Gummalla Devadas, father of respondents 5 to 7 vide L.D.No.369/67. He further submits that the Tahsildar also inspected the land to determine the possession of the land. After examination of the neighbouring land owners, he opined that respondents 5 to 7 are in possession of the property and thereby submitted proposals to the Revenue Divisional officer with a recommendation to cancel the pattadar pass book/title deed issued in favour of the petitioner and also for correction of the entries.

8) In view of the above, the short point that arises for consideration is whether the Revenue Divisional Officer has got

jurisdiction to entertain the matter, as appeal, basing on the report of the Tahsildar, under the provisions of R.O.R.Act.

9) Dealing with the said issue, this Court in *Krishtappa and others v. Joint Collector and Additional District Magistrate, Anantapur*[1] held as under:

> "The difference between the jurisdiction conferred on the Collector by way of revision and on the Revenue Divisional Officer by way of appeal is different and distinct. Right to appeal is a substantive right and is a creature of statute. Therefore, the jurisdiction of appeal has to be exercised before such authority and in such manner the statute has provided for. It is one thing to note that a clerical error is corrected by the recording authority but another to forward report to appellate authority and the same is treated as appeal and disposed of by RDO. For RDO to entertain a case, there should be a properly presented appeal by aggrieved party.
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> As regards the Revenue Divisional Officer, with the presentation of an appeal he gets jurisdiction to correct an entry made either on amendment or updating in record of rights. There is no procedure to receive objection petition by the Mandal Revenue Officer after he has issued pattadar passbooks/title deeds. Further, such communication cannot be treated as an appeal by the RDO. But, what is required to be noted is that if an appeal as directed by the Act is taken up and pursued by a party, the same is subjected to rigors of appeal procedure in filing, by aggrieved party etc. The manner of entertaining appeal to decide the grievance between the parties, this Court is of the opinion that the Writ Petitioners have suffered prejudice and the ultimate orders suffer from patent illegality."

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[1] (2014) 4 ALD 8

10) Similar view was taken by this Court in W.P.No.29022 of 2012 dated 24.11.2015 in *Katta Adamma @ Adalu and others v. Joint Collector, Warangal District.*

11) From the judgments referred to above, it is clear that the Revenue Divisional Officer could not have entertained an appeal without there being an order of the Tahsildar.

12) For the aforesaid reasons, the Writ petition is allowed, the order under challenge is set aside and the matter is remanded back to the Tahsildar, Chintalapudi, enabling the aggrieved persons to make an appropriate application seeking appropriate relief in terms of the judgment of this Court referred to above. In which event the same shall be dealt with in accordance with law within a period of four (4) weeks from the date of application.

13) There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

JUSTICE C. PRAVEEN KUMAR

30.03.2017
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