

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI

Writ Appeal No.853 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.22423 of 2009 dated 25.10.2016. The appellant herein is the petitioner in the writ petition. The said writ petition was filed seeking a mandamus to set aside the order passed by the Joint Collector, Nizamabad District dated 19.09.2009 entertaining a revision filed by respondents 3 to 6 for restoration of their father's name in the revenue records, after deleting the name of the appellant-writ petitioner.

This case has had a chequered history. On an earlier order passed in revision by the Joint Collector, Nizamabad dated 19.03.2005, holding that he lacked jurisdiction to entertain a revision relating to an entry, made in the revenue records for the crop year 1977-78, as the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short "the 1971 Act") came into force thereafter from 15.08.1978, respondents 3 to 6 herein invoked the writ jurisdiction of this Court. By order in W.P.No.16550 of 2005, a Learned Single Judge of this Court held that there was a provision identical to Section 9 of the 1971 Act available in Section 15(2) of the Hyderabad Record of Rights in Land Regulation 1358 Fasli; and the Joint Collector should consider the revision in terms of the said provision.

Thereafter, by the order impugned in the writ petition dated 19.09.2009, the Joint Collector observed that the appellant-writ petitioner had failed to submit any valid documents to claim the property; mere entry in the revenue records did not create any title unless the land holders had a valid title by way of succession, sale deed etc; the Tahsildar had erred in deciding the case; the entries made in the

pattadar pass books and the title deeds issued to the appellant-writ petitioner were not justified; it was a clerical mistake, and clerical mistakes could be rectified only by a *suo motu* revision or by an application from the parties at any time; and, hence, the revision application was not time barred. The Joint Collector ordered cancellation of the pattadar pass books and title deeds issued by the Tahsildar to the appellant-writ petitioner, and directed him to take consequential action by removing the name of the appellant-writ petitioner in the pahanies, and incorporate the names of respondents 3 to 6 and issue pattadar pass books and title deeds in their favour.

Sri N.Sreedhar Reddy, learned counsel for the appellant-writ petitioner, would contend that the subject land is covered by several buildings, where colleges are being run; the revisional authority lacked jurisdiction to entertain a revision nearly three decades after the entry was made in the revenue records in the year 1977-78; Section 8(2) of the 1971 Act requires any person aggrieved to invoke the jurisdiction of this Court; as it is respondents 3 to 6, who are aggrieved by the entry in the revenue records made in the year 1977-78, it is they who ought to have been relegated to the remedy of a Civil suit; and the Learned Single Judge had erred in directing the appellant-writ petitioner to avail the remedy of a Civil Suit.

On the other hand Sri S.Sriram, learned counsel for respondents 3 to 6, would submit that there is no averment in the writ affidavit, much less in the counter filed by them before the Joint Collector, regarding the appellant-writ petitioner's title over the subject land; there is no dispute that it is the father of respondents 3 to 6 who was the owner of the land, and whose name was reflected in the khasra pahanies of the year 1954-55 and continued to be shown in the revenue records till the crop year 1977-78; it is for the first time in 1977-78 that the Tahsildar had surreptitiously entered the name of the appellant-writ petitioner in the revenue records; the entry was corrected without

respondents 3 to 6 herein being put on notice, much less being given an opportunity of being heard; and, since the names of respondents 3 to 6 are now required to be entered in the revenue records, consequent upon the order passed by the revisional authority, it is the appellant -writ petitioner who is aggrieved thereby and must therefore, in terms of Section 8(2) of the 1971 Act, avail the remedy of a Civil Suit.

Sri V.Venugopala Rao, learned counsel appearing on behalf of impleaded respondents 7 and 8, would submit that the appeal itself is not maintainable, as the resolution dated 29.01.2015 allegedly passed by the appellant-society merely authorised Sri G.Ramachandra Reddy, to complete registration and other processes to convey the properties in the name of the college; Sri G.Ramachandra Reddy is not a Secretary of the Society and, as such, lacks authority to file this appeal in the absence of the society authorising him to do so; and this Court should, therefore, not entertain this appeal under Clause 15 of the Letters Patent.

While it does appear that the Learned Single Judge has not examined the questions whether inclusion of the appellant-writ petitioner's name in the revenue records for the year 1977-78 is a clerical error justifying its correction nearly three decades thereafter, or whether a challenge to the entry made in the revenue records in the year 1977-78 could or could not have been entertained after three decades, the fact also remains that, before the Learned Single Judge also, the appellant-writ petitioner has not produced any document in support of their claim to be the owner of the subject land. Except to state that they were in possession of the subject lands, and buildings were constructed thereupon after 1977-78, no details have been furnished by the appellant-writ petitioner as to the period during which buildings were constructed on the subject land, and the date from which they have been in possession of the subject land.

While Sri N.Sreedhar Reddy, learned counsel for the appellant-writ petitioner, would submit that, if a report is called for from the Tahsildar,

all these facts would come to light, this Court, in proceedings under Article 226 of the Constitution of India, would not cause a roving enquiry to record findings of fact, or undertake the exercise of determining whether or not the appellant-writ petitioner is in possession of the subject land, that too for the past three decades.

Section 8(2) of the 1971 Act reads as under:

“If any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration.”

In terms of Section 8(2) of the 1971 Act any person aggrieved by any right in his possession, as a result of an entry made in the record of rights, may institute a suit against the person denying his title to such right, and seek declaration of his right under Chapter VI of the Specific Relief Act, 1963. Consequent on the order passed by the Joint Collector in revision, it is the names of respondents 3 to 6 which are now required to be mutated, in the revenue records, as pattadars of the subject land. It is the appellant-writ petitioner, who would be aggrieved by the rights which have been conferred on respondents 3 to 6 by the entry in the record of rights. Consequently the Learned Single Judge was justified in relegating the appellant-writ petitioner to the remedy of filing a Civil Suit. The order of the Learned Single Judge is, therefore, not in violation of Section 8(2) of the 1971 Act.

In an intra-court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order passed by the Learned Single Judge. Suffice it to make it clear that, in case the appellant-writ petitioner avail their remedy of filing a Civil Suit, the competent Civil Court shall adjudicate their claim uninfluenced by any

observations made either in the order under appeal, or in the order now passed by us.

Subject to the above observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

19th July, 2017
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Date: 19.07.2017

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