HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.11785 OF 2005

ORDER:

This Writ Petition came to be filed seeking issuance of a Writ of Mandamus declaring the proceedings in Ref.No.A/102/2005 dated 13.04.2005 whereby the respondent herein directed the petitioner to give evidence and to produce relevant documents in connection with an enquiry in respect of agricultural land in survey No.43/2 of Lingala Dinne Village, as illegal, arbitrary and without jurisdiction.

Heard Sri V.S.Subramanyan, learned counsel for the petitioner, and the learned Government Pleader for Revenue.

The averments made in the affidavit filed in support of the writ petition would show that the petitioner is in occupation of the lands in survey Nos.95/3, 43/2, 94/3 and 96/1 of Lingala Dinne Village. Accordingly, the Tahasildar, Proddutur, issued notification under Section 3 of the Inams Abolition Act and notified the lands for which Ryotwari patta under Section 7 has to be granted to the persons entitled thereto. The Tahasildar after taking up the enquiry under Section 7 of the Inam Abolition Act, granted Ryotwari Patta in survey No.43/2 to an extent of Acs.9-37 cents and out of said land, the petitioner is in possession and enjoyment of Acs.4-68 cents. It is further stated that after introduction of A.P. Rights in Land and Pattadar Passbook Act, the petitioner claims to have applied for issuance of pattadar pass book in respect of the land possessed by him and after due enquiry the Mandal Revenue Officer, Maidukur, has issue pattadar passbook

No.28 in favour of the petitioner. While things stood thus, the respondent issued proceedings dated 30.10.2004 against the petitioner to provide rasta to a village. Since the said action of the respondent was contrary to the judgment and decree passed in O.S.No.419 of 1998, W.P.No.53317 of 2005 came to be filed wherein this Court granted interim stay of all further proceedings pursuant to the proceedings dated 30.10.2004. It is further submitted in the affidavit that subsequent thereto, the impugned notice came to be issued directing the petitioner to produce necessary documents and also to give evidence in connection with the enquiry in respect of subject lands. Challenging the jurisdiction of the respondent in issuing the said notice, present writ petition came to be filed.

On 07.06.2005, while admitting the writ petition, this Court granted interim stay of all further proceedings pursuant to the impugned proceedings. Seeking to vacate the said order, W.V.M.P.No.1363 of 2015 came to be filed along with a counter affidavit stating that the respondent being the Revenue Divisional Officer and Appellate Authority is competent to invoke his jurisdiction. It is further submitted that the petitioner ought to have appeared before the respondent and produced his evidence to show that the passbook obtained by him is genuine, instead of approaching this Court directly.

The main ground urged by the learned counsel for the petitioner is that the respondent has no jurisdiction to issue the impugned notice. In order to substantiate the same, he referred to Section 1 of A.P. Revenue Summon Act, which reads as under:

> **Section 1. Revenue officers empowered to summon persons to appear or to produce documents**:- Collectors, Sub-Collectors, Assistant Collectors, Deputy Collectors, Tahasildars and Deputy Tahasildars shall have power to summon any person whose evidence may appear to them to be necessary for the investigation of any matter in which they are authorized to hold an inquiry, and also to require the production of any document or other article relevant to the matter under inquiry, which may be in the possession or under the control of such person.

A reading of the said provision makes it clear that the authority concerned is empowered to summon any person demanding his appearance for investigation of any matter in which he is authorized to hold an enquiry.

Learned Government Pleader for Revenue states that the impugned notice is only for production of certain documents to know the truth and no coercive action is sought to be taken basing on the documents that will be produced by the petitioner. He further submits that the Revenue Divisional Officer can *suo motto* take up the action for cancellation of pattadar passbooks.

A reading of sub-section 5 (b) of the Revenue Recovery Act would show that the *suo motto* power on the Revenue Divisional Officer to cause an enquiry under the said provision came to be introduced only in the year 2012 whereas the proceedings, which are the subject matter of dispute in the present writ petition, are of the year 2005, by which time, the Act does not confer any power on the Revenue Divisional Officer to conduct enquiry with regard to issuance of pattadar passbooks, *suo motto*. The Act only speaks about an appeal to be entertained by the Revenue Divisional Officer against issuance of title deeds and pattadar passbooks.

Though the learned Government Pleader tried to contend that the impugned order is issued only for the purpose of conducting enquiry and no coercive steps will be taken, but as observed earlier, the Revenue Divisional Officer can do so only after the year 2012.

The issue 'as to whether the RDO has *suo motto* power' came up for consideration before this Court in ***Entala Bhupal and another v. District Revenue Officer, Warangal and others***[1] wherein this Court held as follows:

> "13. .... When the entries in Record of Rights have been updated under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971, any person aggrieved by the entries has to work out his remedies as provided under the Act i.e. by way of appeal under Section 5-B or revision as provided under Section 9. There is also remedy to the aggrieved persons with regard to any entries made in the revenue records by way of filing suit as provided under Section 8 (2) of the A.P. Rights in Land and Pattadar Pass Book Act, 1971. The 3rd respondent instead of working out remedies provided under the Act has chosen to file an application before the 1st respondent seeking review by invoking the provisions of A.P. (T.A.) Land Revenue Act, 1317 Fasli. Such course is not permissible in the circumstances of the case."

From the above, it is clear that issuance of notice under the provisions of The A.P. Revenue Summon Act by the Revenue Divisional Officer asking the petitioner to appear for an enquiry to produce evidence in support of his claim appears to be beyond

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jurisdiction since the RDO at that point of time has no *suo motto* power of causing an enquiry. Hence, the impugned proceedings are liable to be set aside.

Accordingly, the Writ Petition is allowed and the proceedings in Ref.No.A/102/2005 dated 13.04.2005 issued by the respondent herein are set aside. However, it is always open to the respondent to issue fresh notice to the petitioner and proceed in accordance with law.

Miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. No order as to costs.

C. PRAVEEN KUMAR, J

Date: 31.01.2017
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