THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.28613, 29583 & 31156 OF 2017

Dated:15.09.2017

W.P.No.28613 of 2017

Between:

B. Venkateswara Rao, S/o. Manikyala Rao,
Aged about 38 years, R/o.D.No.1-88 (1),
Chinamill Village, Nidamarru Mandal,
West Godavari District .. Petitioner

And

The State of Andhra Pradesh, rep., by its
Secretary, Revenue Department,
A.P. Secretariat, Amaravathi,
District and others .. Respondents

The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

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COMMON ORDER:

Heard.

2. In these Writ Petitions, the petitioners challenge the endorsement dated 12.08.2017 and report dated 13.10.2016 of the Tahsildar, Ravulapalem Mandal, East Godavari District. According to petitioners, all of them have jointly purchased the lands admeasuring Acs.0.83 cents, Ac.0.14 cents and Ac.0.15 cents in survey No.492/4A of Gopalapuram Village, Ravulapalem Mandal, East Godavari District. After purchase of the said property, petitioners divided the same into individual shares along with three other persons and all of them have applied independently for mutation of their names in the revenue records. The Tahsildar, by the endorsement impugned in the Writ Petitions, held that the lands which the petitioners claim are part of the River Basin Land of Godavari River and therefore they cannot be claimed to be in physical possession and enjoyment and mutation cannot be granted to them. Petitioners allege that a report dated 13.10.2016 was submitted by Tahsildar to the Revenue Divisional Officer basing on the application filed by some other persons and the said report was drawn behind their back and the land which they now claim, except Ac.0.10 cents of land, is treated as River Basin.

3. By drawing the attention of the Court to Sections 4 and 5 of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'the Act'), particularly proviso appended to Section 5(1) of the Act, learned counsel for the petitioners contends that without further opportunity of hearing and basing on a report,

which was drawn behind the back of the petitioners, the claim of the petitioners was rejected. He submits that the lands of the petitioners are not falling in River Basin, as contended, and if only an opportunity was afforded to them, they would have satisfied the Government authorities about the issue. He further submits that when there is clear statutory violation, the petitioners need not be compelled to avail the remedy of appeal and as the impugned endorsement is vitiated on that ground, the same is liable to be set aside.

4. Learned Government Pleader for Revenue, on instructions, though sought to contend that petitioners ought to have availed remedy of appeal having regard to the provision contained in proviso to Section 5 (1) of the Act, he would fairly submit that an opportunity ought to have been given before passing the impugned endorsement rejecting the claim of the petitioners.

5. A bare reading of the impugned endorsement would show that no opportunity was afforded to the petitioners before rejecting their request for mutation of their names in the revenue records.

6. Having regard to the statutory provision, the impugned proceedings/endorsements are set aside and the matters are remitted to the Tahsildar for consideration of the applications for mutation of the names of the petitioners in the revenue records. Petitioners shall submit all the documents in support that subject lands are not falling within the River Basin and that the reasons assigned in the earlier report by the Revenue Divisional Officer were erroneous. The Tahsildar is directed to issue notices to the petitioners calling upon them to submit all the documents in support of their claim and as and when they submit the same

claiming that the lands which they claimed are owned by them and are not falling within the River Basin and therefore not prohibited from utilisation and enjoyment and therefore they are entitled to seek for mutation, the Tahsildar shall duly examine the claim of the petitioners and pass appropriate orders as warranted by law. Notices to this effect shall be given to the concerned parties within a period of two weeks from the date of receipt of a copy of this order. Petitioners shall respond to the said notices within a period of two weeks thereafter. After receipt of explanations by the petitioners, the Tahsildar shall pass final orders within a period of four weeks thereafter. The report submitted by the Tahsildar to the Revenue Divisional Officer is an internal correspondence. However, as it is contended by counsel for the petitioners that the said report was drawn behind the back of the petitioners and the same cannot be taken as the basis for consideration of the claim of the petitioners, the petitioners shall be given due opportunity to satisfy that the assessment made in the report is not valid and that their lands are not falling within the River Basin as stated in the report. Uninfluenced by the reasons assigned in the report, the Tahsildar shall independently consider the explanations submitted by the petitioners and take an appropriate decision.

7. With the above observations and directions, the Writ Petitions are allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petitions shall stand closed.

P. NAVEEN RAO, J

Date:15.09.2017
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