

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.23463 OF 2013

ORDER:

Heard Mr.Sta Ram Chaparla for petitioners and the Assistant Government Pleader (Revenue) for respondents.

The petitioners pray for writ of *Certiorari* to call for records leading up to and inclusive of order in Rc.No.E5/E1/2907/2013 dated 20.07.2013 of 2nd respondent and the consequential proceedings Rc.No.C/B/262/2010 dated 24.07.2013 of 4th respondent and quash the same as illegal.

The order impugned in the writ petition is passed under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') and eviction notice is issued under the A.P. Land Encroachment Act, 1905.

The subject matter of writ petition is agricultural land in an extent of Ac.1-20 gts. in Survey No.287/1 of Gummudur Village, Mahabubabad Mandal, erstwhile Warangal District.

The case of petitioners is that petitioners are the absolute owners and possessors of the subject matter of writ petition. One Guguloth Nattu, a landless poor person, occupied the subject matter, reclaimed the land and brought the land under cultivation. The petitioners claim to be belonging to 'Lambada' Caste/Scheduled Tribe. The petitioners are eking out livelihood by cultivating the said land. The petitioners rely upon permanent patta certificate Rc.No.A4/445/79 dated 09.05.1979 in assertion of right

and title. The petitioners claim continuous possession and enjoyment of the property for several decades. According to petitioners, Goguloth Nattu, the predecessor in interest of petitioners, died on 02.09.1992 and his son Guguloth Rajya succeeded him. Upon the demise of Guguloth Rajya, petitioners being wife, sons etc. are in possession and enjoyment of subject land. The 3rd respondent initiated enquiry and passed orders Rc.No.A/567/2011. The petitioners challenge these orders in W.P. No.5558 of 2013 as without jurisdiction. On 13.03.2013, the writ petition was disposed of by holding that the Revenue Divisional Officer/3rd respondent herein cannot entertain *suo motu* appeal against grant of pattadar pass book in favour of petitioners and hence set aside the orders dated 22.01.2013. Thereafter, the 2nd respondent/Joint Collector initiated *suo motu* proceedings under Section 9 of the Act in Rc.No.E5/E1/2907/2013 dated 20.07.2013 and notice of enquiry was served on 1st petitioner. The 1st petitioner avers that she appeared before 2nd respondent and alleges that she requested 2nd respondent for supply of copies of all documents which are relied upon for initiating the *suo motu* revision. The respondents did not furnish the information requested by 1st petitioner. On 17.06.2013, the petitioner sent representation by RPAD. In spite of serious efforts, it is stated that the documents sought by the petitioners were not made available to 1st petitioner. Therefore, not only the initiation of *suo motu* enquiry but also the conclusion of enquiry is illegal and contrary to principles of natural justice. The subject matter was assigned in favour of one Guguloth

Nattu who is father-in-law of 1st petitioner in Rc.A4/445/79 dated 09.05.1979 and at any rate cancellation of pattadar pass book is laconic. The pattadar pass book granted to petitioners is legal and valid and pray for dropping the *suo motu* revision by setting aside the order impugned in the writ petition.

The 2nd respondent after taking note of material available on record and Section 9 of the Act has held as follows:

“ This is a case where pattadar pass book and title deed issued to Smt.Guguloth Neji w/o.Rajya based on the false fake patta certificate granted in favour of her father-in-law, Sri Guguloth Nattu. On verification of records, the following grave irregularity is observed.

The father-in-law of Smt.Guguloth Neji, Sri Guguloth Nattu said to have been issued permanent patta certificate to an extent of Ac.1-20 gts. in Matruka land without having Sy.No. in Gummudur Village of Mahabubabad mandal, vide Rc.No.A4/445/1979, dated 09.05.1979. Matruka Land is also called as Government land which is left over land without allotting Sy.No. at the time of initial survey, long back. As per the records, there is no matruka land existing in Gummudur village. Hence, it is clear that the said patta certificate is a fake and bogus. Taking advantage of the said fake patta certificate, Smt.Guguloth Neji illegally occupied the Government land to an extent of Ac.1-20 gts.. in Sy.No.287/1 of Gummudur village and she was fraudulently issued pattadar pass books for the suit land.

It is well known fact that pattadar pass books in respect of government lands are issued only after granting of assignment patta certificates. In this case, no patta certificate issued to Smt.Guguloth Neji or to her father-in-law in respect of the suit lands.

In view of the above, I deem fit to cancel the patadar pass book and title deed issued to Smt.Guguloth Neji, w/o. Rajya R/o. Gummudur village to an extent of Ac.1-20 gts. In Sy.No.287/1 of Gummudur village with Khata No.607. The Tahsildar, Mahabubabad is directed to resume the suit lands duly following the procedure laid under the A.P. Land Encroachment Act, 1905.

With this, the revision case is hereby disposed of.”

Hence the writ petition.

The 2nd respondent filed counter affidavit and also a petition to vacate the interim order dated 08.08.2013. The stand of respondents is as follows:

The subject matter of writ petition is Government Land. As per the revenue records, there is no Matraka land in Gummudur Village, therefore, the certificate found to have been issued to Guguloth Nattu, who is father-in-law of petitioner No.1 by referring to subject matter as Matraka property and it is a fake and bogus certificate. Petitioners taking advantage of fake certificate occupied the Government land in Sy.No.287/1 of Gummudur Village in an extent of Ac.1-20 gts and also managed to get pattdar passbook and title deed.

Initially, the 3rd respondent vide Rc.No.A/567/2011 dated 16.07.2011 has cancelled the pattdar pass book and title deed issued to petitioner No.1 in respect of subject matter of writ petition. Aggrieved by the order dated 16.07.2011, the petitioners filed W.P. No.22846 of 2011 and this Court has passed the following interim order:

“...As the impugned order has been passed behind the petitioners back and without putting them on notice, there shall be interim suspension as prayed for. It is made clear that this order shall not preclude the second respondent from issuing notice to the first petitioner, giving her an opportunity of being heard and thereafter, passing orders in accordance with law.”

In compliance to the order of this Court, the 3rd respondent under Section 4(A) (1) of the Act issued notice to petitioner No.1 and after hearing, cancelled the pattadar pass book and title deed issued to petitioner No.1 vide Rc.No.A/567/2011 dated 22.01.2013. Aggrieved by the order dated 22.01.2013, the petitioners filed W.P. No.5558 of 2013 and the W.P. is disposed of setting aside the order dated 22.01.2013 by making it clear that the order shall not preclude the Joint Collector/2nd respondent herein, if he so chooses, from exercising his powers of revision suo-motu under Section 9 of the Act. Accordingly, the matter was taken up suo motu under Section 9 of the Act by the 2nd respondent and issued order dated 20.07.2013 directing the 4th respondent to resume the subject matter of writ petition under the A.P. Land Encroachment Act, 1905 by issuing eviction notice to the petitioners.

Mr. Sita Ram Chaparla for petitioners contends that the respondents have not issued notice to all the petitioners in the *suo motu* revision entertained in file No.E5/E1/2907/2013. The information sought by the petitioners is not provided. Therefore, the petitioners are denied reasonable opportunity to contest the *suo motu* revision. He further submits that the 2nd respondent failed to

consider the representation filed by petitioners and the findings now recorded amount to non-consideration of material or explanation and the impugned order is liable to be set aside. He contends that the petitioners are in possession of the subject matter for over 50 years and the cancellation of pattadar pass book is unconstitutional, arbitrary and illegal.

On the other hand, the Assistant Government Pleader (Revenue) contends that the patta No.A4/445/79 recites the subject matter as Matruka land. According to Village Accounts, there is no Matruka land in Gummudur Village, Mahabubabad Mandal. The assignment does not refer to Survey No.287/1 of Gummudur Village. The claim of petitioners that they are in possession of the subject matter for over 50 years firstly is not supported by evidence and secondly the communication dated 10.05.2013 addressed by Tahsildar to Collector reads as follows:

“ I invite kind attention the references cited, and submit that the Smt.Gugulothu Neji W/o. Rajya R/o.Gumudur village of Mahabubabad Mandal has obtained Pattadar Pass Books and Title Deed in Sy.No.287/1 for an extent of 1.20 gts. by misrepresenting the facts and detailed report has already submitted vide reference 7th cited (copy enclosed herewith).

Further, I submit that the daughter in law of Late. Gugulothu Nattu on whose name permanent patta certificate is found to have been issued over an extent of Ac.1.20 gts. In Matruka land without having Sy.no. in Gummudur village of Mahabubabad Mandal in the year 1979 vide the then Mandal Revenue Officer, Mahabubabad Rc.No.A4/445/1979, Dtd.09.05.1979, which is a fake certificate and the name of the petitioner

not entered in the pahani before 2005-06. Further I am to submit that no Matruka land is available in Gummudur village of Mahabubabad Mandal. The petitioner No.1 herein taking the advantage of fake permanent patta certificate, said to be issued to her father-in-law who have been occupied to an extent of Ac.1.20 gts valuable land on the main road in Sy.No.287/1 and obtained PPB/TDs fraudulently.

Therefore, I request the Collector, Warangal kindly to take necessary action to cancel PPB/TDs issued to petitioner, as they have been issued patta in Matruka Land in Gummudur village and obtain PPb/TDs in Sy.No.287/1 of Gummudur village which is very valuable land.”

Unless and until the possession of 1st petitioner's father-in-law, then 1st petitioner's husband and the possession of petitioners are established independently, any claim based on long standing possession cannot be canvassed. The issue of pattadar pass book to Government land is illegal and without jurisdiction and the Act has no application. He prays for dismissing the writ petition.

I have taken note of the submissions of counsel for parties and perused the record. For brevity, I do not propose to reiterate either the averments or the contentions advanced by the counsel. The petitioners pray for writ of Certiorari to quash the order of 2nd respondent passed under the Act. Let me summarise the reasons assigned by 2nd respondent for exercising the revisional jurisdiction.

There is no Matruka land existing in Gummudur Village. Survey No.287 is Government land. The patta relied upon by the petitioners does not have survey number. The patta is fake and

bogus. The pattadar pass book is issued for Government land and the same amounts to fraud.

From the contentions urged by the petitioners, it is clear that the petitioners are unable to point out any infirmity or illegality in the findings recorded by the 2nd respondent. On the other hand, consideration of permanent patta relied upon by the petitioners discloses that the patta was issued without a survey number. The patta if it was issued, the possession of petitioners subsequent to grant of assignment is evidenced in Pahanis. There is no evidence to prove possession as alleged by them. On the contrary, letter dated 10.05.2013 shows that the name of 1st petitioner is not entered in the Pahanis before 2005-2006. The pattadar pass book is issued in respect of Government land. The assignment, if it is established, results in a claim for consideration of issuing pattadar pass book. Once the assignment is found to be illegal and untenable, then the pattadar pass book is granted on Government land. The Act has no application to Government land. The pattadar pass book can be issued to survey number assigned to an individual. In the case on hand, the basic documents on which the petitioners are relying upon do not show survey number and that they are not reliable. Hence the findings recorded by 2nd respondent do not warrant interference. The ancillary submissions of learned counsel were summarily noted supra, to be rejected. Having regard to the scope of judicial review of an order passed under Section 9 of the Act, this Court is of the view that the record of 2nd respondent justifies the

conclusions in the proceeding impugned in the writ petition. The proceeding impugned in the writ petition does not suffer from irregularity, illegality or error apparent on the face of record. The issue of notice under the Land Encroachment Act is in line with the findings recorded by 2nd respondent and no exception to the notice issued under the Land Encroachment Act is pointed out. The writ petition fails and is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date:05.07.2017
Sp



S.V.BHATT, J