HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.1067 OF 2017

ORDER:

This writ petition is filed against the 2nd respondent in entertaining the appeal under Section 5(5) of the Andhra Pradesh Rights in Land and Pattadar and Passbooks Act, 1971 (for short 'the Act') and also for setting aside the interim order dated 30.10.2006 passed in appeal in B.ROR/3243/2006.

Learned counsel for the petitioner submits that appeal itself is not maintainable in view of the judgment reported in 2007(6) ALT 134. She also submits the respondent No.4 already filed I.A.Nos.583 of 2006 and 601 of 2006 in the suits filed by the petitioner in O.S.Nos. 63 and 64 of 2004, for specific performance of agreement of sale and the said I.As. were dismissed. She also submits the 2nd respondent could not have passed the interim order directing for deletion of the names of the petitioners without issuing notice to the petitioners which is in violation of Section 5(2) of the Act by relying on Full Bench judgment reported in 2007(6) ALT 134.

On the other hand, learned Assistant Government Pleader for Revenue submits that appeal is filed by the daughter of the 4th respondent against the orders of mutation passed by the 3rd respondent in favour of the petitioners. As such, the appeal is maintainable under Section 5(5) of the Act and the judgment cited by the learned counsel for the petitioners pertains to only appeal filed against the grant of pattadar pass books but not against the mutation orders. He also submits that interim order granted in the year 2006 and writ petition is filed in the year 2017 and petitioners can raise all their objections before the appellate authority.

Learned counsel appearing for the 4th respondent submits that earlier petitioners filed W.P.No.8471 of 2015 questioning the very same impugned orders and petitioners got withdrew the same and filed the present writ petition. He also submits that petitioners can raise all their pleas before the appellate authority. When interim order is in operation for the last several years, at this juncture it is not open for the petitioners to challenge the very same order which is challenged in the earlier writ petition i.e., W.P.No.8471 of 2015. At the same time, when appeal is pending, the petitioner cannot argue on merits.

In this case, it is to be seen that admittedly, mutation order dated 04.01.2006 is passed in favour of the petitioners and the same was suspended vide order dated 30.10.2006 and all through the interim order was in operation. The Division Bench in ***Ratnamma v. Revenue Divisional Officer, Ananthapur District and others***[1] held as follows:

> "It is well settled that the right of appeal must find its source in legislative authority. The right of appeal accrues to the litigant when it is expressly provided for in the statute and axiomatic that the

[1] 2015 (5) ALT 228

> right of appeal is a substantive right and must be conferred by a statute. As already held, appeal is provided for against the original proceedings or substantive determination under Sections 4, 5 and 5-A of the Act. The Legislature in its wisdom and noticing the purpose of issuing PPB/TD did not provide right of appeal against mere issuance of PPB/TD under Section 6-A of the Act. Therefore, on the literal construction of Sections 3 to 6-A of the Act, it can be held that the remedy of appeal under Section 5(5) of the Act is not provided against the issuance of PPB/RD under Section 6-A of the Act.. By treating the action under Section 5 and 6-A of the Act as single or mutually dependent, in our considered view, the remedy of appeal against mere issuance of PPB/TD under Section 6-A of the Act is not available."

In this case appeal is preferred against the mutation order dated 04.01.2006. The result portion of the appeal filed by the 4th respondent also goes to show that it is only filed against the mutation orders passed by the 3rd respondent and not against the cancellation of pattadar passbooks. As such, the appeal is not maintainable. As far as the judgment of Full Bench is concerned, it is regarding issuance of notice to the petitioners whose names are recorded in the revenue records. Since the appeal is pending, petitioners can raise their objections before the appellate authority.

It is unfortunate that though appeal is filed in the year 2006, no notice is issued to the affected parties even after long lapse of time.

In view of the same, no relief can be granted in this writ petition and the writ petition is disposed of granting liberty to the petitioners to raise all their objections before the 2nd respondent and the 2nd respondent is directed to dispose of the appeal within a period of eight (08) weeks from the date of receipt of copy of this order after issuing notice and opportunity of hearing to the parties in the appeal. There shall be no order as to costs.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

16.02.2017
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