HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 32053 of 2015

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the orders dated 25.07.2015 in D.Dis.No.C/2608/2014 passed by the second respondent, as illegal, arbitrary and against to the principles of natural justice.

2) The facts in issue are as under:

The fourth respondent herein has filed R.O.R. Appeal under Section 5 (5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, questioning the issuance of pattadar pass book and title deed in favour of the petitioner. The said appeal was taken on file basing on the application filed by the fourth respondent. Pursuant to a notice issued by the second respondent to which a counter is filed by the petitioner. Basing on the report of the Tahsildar, the second respondent passed an order dated 25.07.2015. Challenging the order of the second respondent, the petitioner preferred a revision before the first respondent, who inturn confirmed the same. Aggrieved by the same the present writ petition came to be filed.

3) Learned counsel for the petitioner submits that in view of the Division Bench Judgment of this Court in *Ratnamma v. Revenue Divisional Officer, Dharmavaram, Anantapur District*

and others[1] the Revenue Divisional Officer has no jurisdiction to pass the orders canceling the entries made in the pattadar pass book and title deed.

4) Learned counsel for the fourth respondent submits that there is no illegality in the order passed by the Revenue Divisional Officer.

5) Dealing with the jurisdiction of the Revenue Divisional Officer in entertaining an appeal directly without there being any order passed by the Tahsildar, a Division Bench of this Court in Ratnamma case (1 supra) held as under:

> "Sections 5-B and 6-A are introduced through Amendment Act 9 of 1994. Through the amendment, remedy of appeal against regularization order under Section 5-A of the Act and provision for issuance of PPB/TD under Section 6-A of the Act is enacted. Sub-section (3) of Section 6-A provides for correction of entries in the PPB/TD by the Mandal Revenue Officer either suo motu or on an application. As already noticed, the record-of-rights is prepared under Section 3 of the Act, updated/ maintained under Sections 4, 5 and also as a consequence of regularization under Section 5-A of the Act. Issuance of PPB is covered by Section 6-A of the Act. The PPB is nothing but a copy or reflection of entries in the record of rights prepared or maintained at one or the other stages under the Act as stated above. The PPB/TD is maintained and issued in Form No.14-C of the Rules. PPB/TD contains the entries as borne out by 1-B Register. With the issue of pass book to any person whose name in the applicable column is recorded in record of rights, it cannot be said such issuance adversely affects any person. A person is

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[1] (2015) 6 ALD 609 (DB)

certainly aggrieved by illegal preparation of record of rights and against such illegal preparation the remedy is provided under Section 3(3) of the Act. Likewise, against illegal or erroneous updation of record of rights under Sections 4 and 5 or regularization under Section 5-A of the Act, the remedy of appeal under Section 5(5) or Section 5-B respectively is available to an aggrieved party. On the other hand, Section 6-A(3) provides for correction of erroneous entries in PPB/TD issued by the Mandal Revenue Officer. The reason for not providing any appeal against the issuance of PPB/TD is manifest from the Scheme of the Act viz., that the issuance of TD/PPB does not by itself adversely affect the substantive right of a person, who claims or has a right in the property for which PPB is issued. In other words, the issuance of PPB/TD is a consequential act and entries in PPB/TD are mere reflection of entries of 1-B Register. Mere filing of appeal against issuance of pattadar pass book which is only a copy of 1-B register is not an efficacious remedy under the scheme of the Act. 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 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/TD under Section 6-A of the Act. By treating the action under Sections 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."

6) From the judgment referred to above, it is clear that the Revenue Divisional Officer, could not have entertained an appeal directly without there being any order passed by the Tahsildar. The said fact is not disputed by the learned counsel for the fourth respondent.

7) A reading of the impugned order would show that before passing an order, the Revenue Divisional Officer called for report from the Tahsildar and basing on the said report he issued the impugned proceedings. Admittedly the same is contrary to the guidelines laid down in Ratnamma case (1 supra).

8) In view of the above, the order under challenge is *set aside* and the matter is remanded back to the Tahsildar, Gannavaram Mandal (respondent No.3), with a direction to deal with the matter in accordance with law after hearing the petitioner as well as un-official respondent and all other aggrieved persons, if any. The petitioner as well as the un-official respondent, are at liberty to raise all their defence before the third respondent. It is needless to mention that the third respondent shall dispose of the above matter as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of the order.

9) Accordingly, the writ petition is disposed of. There shall be no order as to costs.

10) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

25.04.2017
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