THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.9684 of 2012

ORDER:

This Writ Petition has been filed by the petitioners assailing the order dated 20.01.2012 in File No.F2/2215/2009 of the 1st respondent confirming the order dated 13.02.2009 in proceedings No.B/2594/2008 of the 2nd respondent cancelling 13-B certificate issued vide proceedings No.B/2553/94 by the 3rd respondent in favour of the petitioners at the instance of respondents 4 to 13.

2. It is not in dispute that the petitioners had been given 13 B certificate under Section 5-A of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 vide proceedings No.B/2553/94 in respect of an extent of Ac.2.33 guntas in Survey No.813 of Nalgonda Village and Mandal, Nalgonda District by the 3rd respondent.

3. Fifteen years later, respondents 4 to 13 filed an application before the Tahsildar, Nalgonda Mandal stating that an extent of Ac.06.36 guntas of Nalgonda Village in Survey No.813 is under their possession; but the land stands patta in the name of Tummala Lachi Reddy S/o Rami Reddy and 13-B certificate was issued for the extent of Ac.2.33 guntas in favour of the Writ Petitioners without the knowledge of the pattadars and respondents 4 to13. They contended that they also obtained certificate under Section 38-E of the A.P.(Telangana Area)Tenancy and Agricultural Lands Act, 1950.

4. This application was referred by the Tahsildar, Nalgonda to the Revenue Divisional Officer, Nalgonda.

5. He issued notice to the petitioners without stating under which statute he is exercising the said power. He ultimately held that under Section 40 of the A.P. (T.A) Tenancy and Agricultural Lands Act, 1950, respondents 4 to 13 were very poor landless persons and were eligible for certificate under the said Act; out of ignorance and illiteracy their fore-fathers, could not obtain mutation proceedings in their names; and respondents 4 to 13, who are their legal heirs are eligible for issuance of pattadar passbooks. He accordingly, set aside 13-B certificate issued in proceedings No.B/2553/94 to the petitioners.

6. This was questioned by the petitioners in Revision before the 1st respondent, who also confirmed the same.

7. Counsel for the petitioners contended firstly that 38-E certificate dated 28.11.1995 issued to respondents 4 to 13 did not mentioned survey No.813 at all and in the light of the said fact, respondents 4 to 13 could not have made any claim for the land in respect of which 13-B certificate under Section 5-A of the A.P. Rights in Land and Pattadar Passbooks Act, 1971 was issued. In any event, counsel for the petitioners would contend that no appeal was preferred under Section 5-B of the Act by respondents 4 to 13 before the Revenue Divisional Officer, Nalgonda challenging 13-B certificate issued to the petitioners within the time prescribed by law, and it was not open to the Revenue Divisional Officer to entertain the petition filed by respondents 4 to 13 before the Tahsildar on a reference made by the Tahsildar since such a

procedure is not contemplated under the Act, 1971. He further contended that when 38-E certificate did not refer to Survey No.813 at all, on the basis of the protected tenancy register entries and without reference to 38-E certificate which omitted the mention of Survey No.813, and which was not got amended by respondents 4 to 13, it was not open to the Joint Collector to confirm the order passed by the 2nd respondent. He also contended that the validity of the exercise of power by the Revenue Divisional Officer though specifically raised in Ground No.7 before the Joint Collector, was not adverted to by the Joint Collector.

8. Government Pleader for Revenue appearing for respondents 1 to 3 stated that the Revenue Divisional Officer had forwarded the petition filed by respondents 4 to 13 before the 3rd respondent-Tahsildar and he entertained such a reference and passed the order on 13.02.2009. He did not dispute the fact that there is no procedure contemplated under the A.P. Rights in Land and Pattadar Passbook Act, 1971 empowering the Revenue Divisional Officer to *suo mutu* entertain any application or appeal unless such appeal is filed under Section 5-B of the said Act within the time prescribed therein.

9. Even counsel for respondents 4 to 14 did not dispute this legal position. He also did not dispute the fact that 38-E certificate issued to respondents 4 to 13 did not mention Survey No.813.

10. When the very entertainment of the application made by respondents 4 to 13 before the Revenue Divisional Officer is without jurisdiction (since such procedure is not contemplated under the Act), his order has to be held without jurisdiction.

Consequently, confirmation of the same by the Joint Collector without considering the question of jurisdiction is equally null and void.

11. Accordingly, the writ petition is allowed. Order dated 13.02.2009 of the 2nd respondent in proceedings No.B/2594/2008 as well as order dated 20.01.2012 in file No.F2/2215/2009 of the Joint Collector, Nalgonda are both set aside and it is declared that 13-B certificate issued in proceedings No.B/2553/94 to the petitioners is valid. There shall be no order as to costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 12.04.2017
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