HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20268 of 2008

ORDER:

This Writ Petition came to be filed seeking issuance of a Writ of Certiorari calling for the records relating to proceedings D.Dis.No.413/2008-D5 dated 19.08.2008.

2. The petitioners herein claim to be the absolute owners of the land to an extent of Ac.22.47 cents in Survey Nos.56/3, 65/3, 65/4, 65/6, 65/7 and 64/5 of Bharinakam village, Poosapatirega Mandal of Vizianagaram District. It is stated that the said lands were under the exclusive possession and enjoyment of the petitioners and pattadar pass books and title deeds were also issued by the revenue authorities in their names. It is stated that at the instance of the 3rd respondent herein, the Revenue Divisional Officer passed an order canceling the pattadar pass books and title deeds issued by the then Tahsildar with regard to lands admeasuring Ac.26.62 cents of Bharinakam village, Poosapatirega Mandal. It is stated that the said order is passed by the Revenue Divisional Officer at the instance of the 4th respondent herein, against whom, petitioners filed O.S.No.70 of 1995 seeking injunction. Aggrieved by the orders of the Revenue Divisional Officer, the petitioners herein preferred a revision before the Joint Collector, which was dismissed vide proceedings D.Dis.No.413/2008-D5 dated 19.08.2008. Assailing the said order, the present Writ Petition came to be filed.

3. By an order dated 17.09.2008, this Court granted interim stay of dispossession.

4. The averments filed in support of the Writ Petition refers to filing of O.S.No.70 of 2005 for permanent injunction against the unofficial respondents and in I.A.No.301 of 2005, temporary injunction was ordered against the 4th respondent and other defendants therein. It is stated that, without establishing any claim before the civil court, the 4th respondent prevailed upon the 3rd respondent-Tahsildar, who, in turn, reported to the 2nd respondent-RDO, which led to issuance of notice dated 29.07.2007, seeking cancellation of pattadar passbooks and title deeds issued in favour of the petitioners. Though initially Writ Petition was filed questioning the very issuance of notice, but, however, it is stated that, by order dated 19.08.2008, the Revenue Divisional Officer canceled the pattadar passbooks and title deeds.

5. A counter-affidavit came to be filed by the 4th respondent, admitting that petitioners filed O.S.No.70 of 2005 before the Principal Junior Civil Judge, Vizianagaram, but, however, it is stated that the documents upon which the petitioners have placed reliance have no legal sanctity since the vendors of the petitioners themselves have no right or title over the property. It is stated that the subject lands are part of Estate village under the Madras Estates Abolition Act, 1948 and neither the petitioners nor their vendors were granted any ryotwari pattas under the said Act. It is stated that against the order of the trial

court decreeing the suit, an appeal vide A.S.No.102 of 2009 came to be filed before the II Additional District Judge, Vizianagaram and the same is pending. The averments in the counter-affidavit also state that petitioners are not in possession of the property and that the interim order granted by the Court is causing great inconvenience to the respondents.

6. Though various grounds are raised in the Writ Petition, Sri Vedula Venkatarama, learned senior counsel for the petitioners mainly submits that cancellation of pattadar passbooks and title deeds by the Revenue Divisional Officer, basing on the report submitted by the Tahsildar, is without jurisdiction. A reading of the order of the Revenue Divisional Officer dated 29.10.2007, would show that since the patta holders have not submitted any documents to prove their title, though they appeared on the date of enquiry and in the absence of any material in support of their claim, the pattadar passbooks and title deeds issued by the Tahsildar deserve cancellation. It has been held that the registration of the same has been done fraudulently.

7. On the other hand, learned counsel for the respondents would submit that since the petitioners themselves have challenged the orders of the Revenue Divisional Officer before the Joint Collector, by exercising power under Section 9 of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act"), they cannot now question the jurisdiction of the Revenue Divisional Officer in canceling the pattadar passbooks and title deeds.

It is his case that the only remedy available is to file a suit under Section 8 of the Act.

8. Learned Government Pleader for Revenue would submit that since the Writ Petition is silent as to the jurisdiction of the Revenue Divisional Officer and as the order of the RDO is not challenged earlier, the plea now put forth cannot be accepted. It is his case that since there is an element of fraud, everything stands vitiated. In the reply affidavit filed by the petitioners, it has been stated that the order of the Collector, confirming the orders of the Revenue Divisional Officer, is without jurisdiction and the same is null and void.

9. The issue as to whether the Revenue Divisional Officer has any jurisdiction to cancel the pattadar passbooks and title deeds came up for consideration before this Court in *Ratnamma v. Revenue Divisional Officer, Dharmavaram* (order dated 24.07.2015 passed in W.P.No.21689 of 1999), wherein a Division Bench of this Court, differing with the view taken in the case of *N. Bal Reddy v. Revenue Divisional Officer, Hyderabad East (2004 (2) ALD 419)*, held as under:

> "From a bare reading of Section 5(5) of the Act, it can be held that against every order of recording authority either making an amendment in the record of rights or refusing to make such an amendment, an appeal to the RDO, is provided within the time stipulated in the Section. Under the Act, making an amendment in the record of rights or refusing to make amendment in record of rights is a

> crucial stage and a substantive decision rendered by the recording authority. Therefore, right of appeal is provided against such decisions. Likewise, from the reading of Section 5(5) of the Act, it cannot be construed that Section 5(5) provides remedy of appeal against orders under Section 6-A of the Act. Issuance of PPB/TD or making entries therein is always a step consequential to the record of rights prepared. Therefore the plain reading of Section 5(5) makes it clear that appeal against order under Section 6-A is not maintainable."

10. In the instant case, the Revenue Divisional Officer ordered cancellation of pattadar pass books and title deeds basing on a report submitted by the Tahsildar. When a remedy by way of appeal to the Revenue Divisional Officer against issuance of pattadar passbooks and title deeds is held to be not available, the question of the Revenue Divisional Officer canceling the pattadar passbooks and title deeds, on his own, does not arise, since an appeal can be filed under Section 5(5) and Section 5-A of the Act. In fact, the judgment referred to above clearly states that the Legislature did not provide a right of appeal against issuance of pattadar passbooks and title deeds under Section 6-A of the Act. The question of canceling the pattadar passbooks and title deeds would arise only after carrying out the necessary corrections in the revenue records and then making a suitable application before the authority concerned. A Division Bench of this Court in **Sannepalli Nageswar Rao and another v. District**

Collector, Khammam and others[1], considering an identical issue, held as under:

> "Our attention was drawn to the provisions of the Act, viz., Sections 3, 5(5), 5-B, 6, 6-A and 8 of the Act. We have carefully perused those provisions. Section 3 of the Act provides for the preparation of record of rights in all lands in every village to which the Act is first applied and updating of record of rights in respect of the villages to which the Act has already been applied. Section 5(5) provides for an appeal to the Revenue Divisional Officer against the order of recording authority either in making or refusing to make amendment to record of rights. Section 5-B provides for appeal to the Revenue Divisional Officer against the order passed by the Mandal Revenue Officer under Sub-section (4) of Section 5-A of the Act. Section 6 deals with the presumption of correctness of entries in record of rights. Section 6-A deals with the issuance of pass book to every owner, pattadar, mortgage or tenant of land and recording of entries of alienation in it. Section 8 of the Act provides that no suit shall lie against the Government or any officer of the Government in respect of claim for entry made in any record of rights, but it is open for any person aggrieved to file a suit for declaration of his rights under Chapter VI of Special Relief Act.
>
> It is fairly well settled that where a statute prescribes a particular thing to be in a particular manner, it shall be done only in the manner prescribed as held by the Hon'ble Supreme Court in Asst. Collector, CE v. N.T. Co., of India Limited, , which was followed in CIT v. Anjum M.H. Ghaswala, . A careful perusal of the provisions of the Act would show that a

---

[1] **2002 (4) ALT 465 (D.B)**

detailed procedure as to the manner in which the appeals are to be filed, including the period of limitation, is prescribed under the Act, Therefore, as rightly contended by the learned Counsel for the appellants that any appeal filed in violation of the said procedure cannot be entertained. In the instant case, the Revenue Divisional Officer has exceeded his jurisdiction and has acted in violation of the provisions of the Act and therefore the appellants/writ petitioners have rightly approached this Court. This apart, the allegations made by the fourth respondent do not constitute a ground for filing an appeal under Section 5(5) of the Act. If the fourth respondent is aggrieved by any entry, the only remedy available is under Section 8(2) of the Act under which he has to seek a declaration of his right under Chapter VI of the Special Relief Act, 1963 in Civil Court and the entry in record of rights shall be amended in accordance with any such declaration. In the instant case, both the parties allege that they are in possession of the respective extents of land in Sy.No.394/AA. The appellants contend that they are in possession of Ac.6.21 guntas and Ac.4.20 guntas out of Survey No.394/ AA respectively situated at Gumpena village, whereas fourth respondent contends that he is in possession of part of extent of land in the said survey number. Under such circumstances, it is left to both parties to approach the Civil Court for redressal of their grievance. But, in the instant case, it is submitted by the learned Counsel for the fourth respondent that there is tampering of records and therefore, in our opinion, the remedy would be to approach the Mandal Revenue Officer for amendment and updating of record of rights. Section 5(5) provides that against every order of recording authority either in making amendment in record of rights or refusing to make such amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed within sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall be subject to provisions of Section 9 be final. Therefore, it is proper for the fourth respondent, who is now complaining that there is tampering of records, to approach the Mandal Revenue Officer under Section 5 of the Act, who shall determine as to whether and if so in what manner the record of rights may be amended in consequence thereof and shall carry out the amendment in the record of rights in accordance with such determination. At the time of hearing, all the parties fairly concede that the Mandal Revenue Officer has the jurisdiction to carry out the amendment as per the provisions of the Act and therefore all of them are ready and willing to submit to the jurisdiction of Mandal Revenue Officer, instead of approaching the Revenue Divisional Officer, who is an appellate authority."

11. Having regard to the above, impugned proceedings - D.Dis.No.413/2008-D5 dated 19.08.2008 is hereby set aside, giving liberty to the respondents to avail the remedy available under law.

12. Writ Petition is accordingly allowed.

Miscellaneous petitions pending, if any, stand closed. No costs.

C. PRAVEEN KUMAR, J

27th February, 2017
MRR