

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.24775 of 2012

ORDER :

This Writ Petition has been filed by the petitioner challenging the order dt.23.06.2012 in R.C.No.E5/2078/2008 of the 3rd respondent passed under Section 9 of the Andhra Pradesh Record of Rights in Land and Pattadar Passbooks Act, 1971 (**for short, 'the Act'**).

2. The petitioner and the 6th respondent are brothers and they are sons of one G. Raja Reddy.

3. The subject matter of the Writ Petition is an extent of Acs.17.26 guntas in Survey Nos.37, 38, 40, 152 and 153 of Tapasapalli Village, Cheriya Mandal, Warangal District.

4. Some of these lands, which the petitioner as well as the 6th respondent contend to be their joint family properties, were occupied by third parties by name Kankanala Kistaiah and twenty others and the names of the said persons had been entered in the cultivation column of Pahanies for the year 1991-92.

5. On a joint application made by petitioner as well as 6th respondent on 02.10.1995 for deleting the names of the encroachers and to issue pattadar pass books and title deeds to them, the District Collector, Warangal on 01.10.2002 directed the Tahsildar, Cheriya Mandal (R.5) to take action.

6. The 5th respondent conducted an enquiry and submitted a report on 12.12.2002 to the 4th respondent to delete the names of the illegal occupants from the occupier column in the Pahanies and to issue rectification orders in the Pahanies from 1991-92 onwards.

7. Thereafter, the 4th respondent directed the 5th respondent to initiate proceedings under Section 5 (3) of the Act and conduct an enquiry into the matter and then rectify the record in favour of the rightful owners.

8. It is alleged by the Writ Petitioner that a joint statement was given in the enquiry conducted by the 5th respondent by himself and the 6th respondent setting out the portions of land to which each of them was entitled to and seeking further action on the basis of the said statement.

9. On 14.08.2004, the 5th respondent addressed the 4th respondent to issue orders to remove the names of the illegal occupants and to issue pattadar pass book and title deeds according to Thaksimnama / Phaisalanama dt.20.07.1989 produced by both parties.

10. Ultimately, proceedings were issued by the 4th respondent on 22.08.2007 on the basis of the Thaksimnama / Phaisalanama dt.20.07.1989.

“1. The names of illegal occupants i.e., Kankanala Kistaiah and (20 others be removed / deleted from cultivation column in pahanies from 1991-92 to till this year in Sy.Nos.37, 38, 40 & 152 of Tapaspalli (V).

2. *The name of Sri Guda Raghava Reddy to be entered in pattedar column from 1979-80 to till this year in Sy.Nos.37, 38, 40 & 152 in 1/2 share.*

3. *To issue PPBS / TDS according to Thaksimnama / Phaisalanama which their shares given below.*

**G. Ranga Reddy Share by Sy.Nos.40 (13.07), 35 (1.10), 126 (0.29), 26 (0.04) Total extent 15.10 acres.*

**G. Raghava Reddy share Sy.Nos.37 (9.37), 38 (4.02), 153 (1.06), 152 (1.33). Total extent 16.38 acres."*

11. This order was questioned by the 6th respondent by way of Revision before the 3rd respondent under Section 9 of the Act taking a specific plea that the 4th respondent had not issued any notice to him though the 5th respondent conducted an enquiry at the behest of the 4th respondent and examined him and that the order of the 4th respondent is therefore in violation of principles of natural justice. He further contended that his signature on the Thaksimnama / Phaisalanama dt.20.07.1989 relied upon by the 4th respondent was forged; that it was a fabricated document apart from being unregistered; and the 4th respondent was not competent to decide the title disputes basing on such document.

12. The petitioner opposed the said application and contended that the said partition deed / Thaksimnama / Phaisalanama dt.20.07.1989 was in fact acted upon and that the 6th respondent had admitted the petitioner's ownership over the lands in other proceedings apart from proceedings under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. He also stated that the 6th

respondent filed O.S.No.72 of 2008 before the Junior Civil Judge, Janagaon seeking perpetual injunction against him, that though an *ex parte ad interim* injunction was granted initially, it was vacated on 13.04.2001 in I.A.No.307 of 2008, and that the 6th respondent preferred C.M.A.No.8 of 2009 before the Senior Civil Judge, Janagaon which was also dismissed on 14.07.2010.

13. The 3rd respondent then passed the impugned order holding that the order passed by the 4th respondent was in violation of principles of natural justice since the record of enquiry did not show that the 4th respondent himself had issued any notice to the affected parties before passing of the impugned orders though in the enquiry by 5th respondent (as directed by the 4th respondent) notices were issued to the parties. She held that the genuineness of the Thaksimnama / Phaisalanama dt.20.07.1989 being seriously disputed before her, it being a dispute of civil nature, Revenue Authorities are not proper Forums to decide it. She further held that proceedings before Civil Court in O.S.No.72 of 2008 were pending adjudication; as per the order dt.29.05.1979 of the Land Reforms Tribunal, there was allotment of lands to petitioner and 6th respondent; if the petitioner was aggrieved by the said order, he had to challenged the said award of the Land Reforms Tribunal; without doing so, he filed a petition for rectification of records before the 4th respondent; and that the order passed by the Land Reforms Tribunal would operate as *res judicata*. The 3rd respondent therefore held that the order of the 4th respondent

was passed without following principles of natural justice and was legally void *ab initio* and that the 4th respondent had no competence or jurisdiction to decide when the matter was already decided under the Land Ceiling Act. It was also observed that the basis of the order passed by the 4th respondent for cancellation of the pattadar pass books, is bad in law.

14. Assailing the same, the present Writ Petition is filed by petitioner.

15. The counsel for petitioner contended that not only before the Land Reforms Tribunal but also in proceedings in LA.OP.No.35 of 2010 before the Senior Civil Judge, Janagaon, the 6th respondent's son on 21.06.2013 admitted that there was a partition between the petitioner and the 6th respondent, and in any event, since the civil suit filed by 6th respondent against the petitioner was dismissed for non-prosecution on 20.11.2013, the 3rd respondent's order deserves to be set aside.

16. Pending the Writ Petition, the 6th respondent died and his legal representatives have been brought on record.

17. The learned Government Pleader for Revenue as well as Sri K. Chidambaram, counsel for legal representatives of the deceased-6th respondent supported the order passed by the Court below.

18. From the facts on record, it is not in dispute that the subject properties originally belong to the father of the petitioner and the 6th

respondent and he died. Therefore, petitioner and 6th respondent would both have a half share in the properties. Though an unregistered partition deed / Thaksimnama / Phaisalanama dt.20.07.1989 was relied upon by the 4th respondent and the division of the properties mentioned therein was taken as the basis for rectification of records under Section 5 of the Act, the 6th respondent disputed his signature on the said document before the 3rd respondent, and contended that it is a forged and fabricated document. He also raised a contention that the 4th respondent did not issue any notice to him before passing his order on 22.08.2007 and the order is vitiated by principles of natural justice.

19. The fact that the 4th respondent had not given any notice to 6th respondent before passing the order dt.22.08.2007 is not disputed by the counsel for petitioner. But he contended that the 4th respondent had directed an enquiry through the 5th respondent and the 5th respondent had issued notices to the 6th respondent. It may be that the 5th respondent was asked to do an enquiry and collect the material by the 4th respondent, but after such material was collected, before passing a final order, the 4th respondent ought to have heard the 6th respondent also. Since this has not been done, there is a clear violation of principles of natural justice.

20. Had the 4th respondent given an opportunity to the 6th respondent, the 6th respondent might have clarified with regard to the Thaksimnama / Phaisalanama dt.20.07.1989 and stated whether it was

his signature thereon or not. When this point was specifically raised by 6th respondent before the 3rd respondent, since the 3rd respondent is not competent to decide the question of forgery, the 3rd respondent rightly took the view that it was for the Civil Court to go into the issue; and since a civil suit was any way pending at that point of time, the order passed by 4th respondent cannot be sustained. No doubt, while doing so, the 3rd respondent also expressed a view that the order passed on 29.05.1979 by the Land Reforms Tribunal, to which both petitioner and 6th respondent were parties, operated as *res judicata*. When the 3rd respondent was setting aside the order of 4th respondent on the ground of violation of principles of natural justice and also on the ground that Civil Court is the appropriate Forum, the 3rd respondent ought not to have expressed any view on the binding nature or otherwise of the order dt.29.05.1979 of the Land Reforms Tribunal to which both petitioner and 6th respondent were parties. To this extent only order of 3rd respondent is set aside. But, I do not find any infirmity in the rest of the order passed by the 3rd respondent setting aside the order dt.22.08.2007 passed by the 4th respondent.

21. Therefore, the Writ Petition is partly allowed to the above extent only. It is held that the decision of the 3rd respondent in setting aside the order dt.22.08.2007 of the 4th respondent was correct and both parties are directed to approach a competent Civil Court to adjudicate their *inter se* claims of title and possession and seek appropriate relief there.

22. Since considerable time has lapsed, since proceedings under the Land Ceiling Act attained finality and more than 4 ½ years have elapsed since the filing of the Writ Petition and it is not clear as to who is in possession of the subject properties at this point of time, I am not inclined to say anything about the possession of either party, and as and when any party approaches the appropriate Civil Court, the Civil Court will decide the said issue along with the other issues raised by the parties. No order as to costs.

23. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-02-2017

Ndr/*

