THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO.9744 of 2015

ORDER:

1) The present writ petition came to be filed with the following prayer:

> "seeking issuance of writ of Certiorari calling for entire records connected to order dated 17.12.2014 in proceedings No.D.Dis.E2/608/2013 passed by the second respondent and also order in D.Dis.C/1768/2011 dated 30.08.2012 passed by the third respondent, examine the same and *set aside* the same after declaring the same as illegal, irregular, contrary to the provisions of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short "the Act") and rules framed thereunder and offends Articles 14, 21 and 300-A of the Constitution of India; and consequently direct the fourth respondent to continue petitioners' name in record of rights and other revenue records pertaining to land to an extent of Ac.5.00 in Sy.No.12/3 of Venkatadripalem Revenue Village, Yerragondapalem Mandal, Prakasham District."

2) The facts in issue are as under:

Both the petitioners claimed themselves to be the absolute owners, possessors and enjoyers of the property admeasuring Ac.5.00 in Sy.No.12/3 of Venkatadripalem Village, Yerragondapalem Mandal, Prakasam District. It is said that these petitioners, who were landless persons approached the fourth respondent for assignment of government assessed waste land situated in the said survey number. After due enquiry, the fourth respondent granted D.K.T.patta vide proceedings dated 12.04.1972. It is stated that since the date of assignment, the petitioners are in peaceful possession and enjoyment over the said property. Thereafter, pattadar pass books and title deeds came to be issued in favour of the petitioners in the year 1994. When respondents 5 to 7 tried to interfere with their possession over the said land, the petitioners herein filed O.S.No.11 of 2012 seeking permanent injunction. Pending suit, there was a compromise as such respondents 5 to 7 dropped their claim over the said land and the suit was also dismissed as withdrawn. Thereafter respondents 5 to 7 submitted an application to the third respondent in R.C.C.No.1768/2011 with a request to cancel the pattadar pass book and title deeds granted in favour of the petitioners, alleging that the said land devolved upon them from their ancestors. The third respondent ie. the Revenue Divisional Officer took the matter on to his file and issued notice to all the concerned for enquiry. Objections came to be filed and basing on the report of the Tahsildar, the third respondent cancelled the pattadar pass book and title deeds vide an order dated 30.08.2012. Aggrieved by the same, the petitioners preferred a revision before the 2nd respondent, who confirmed the same vide order dated 17.12.2014. Challenging the same the present writ petition came to be filed.

3) By an order dated 08.04.2015, this Court while admitting the writ petition granted interim suspension.

4) The learned counsel for the petitioners mainly submits that the order of the third respondent is illegal, improper and incorrect. It is his case that as against the order of the fourth respondent in making entries in the revenue records, an appeal would lie to the third respondent within 60 days and the present appeal came to be filed after lapse of 19 years without filing an application to condone the

delay. It is further urged that since the name of the petitioners were entered in the records in the year 1972 itself, the proper course for the un-official respondents would be to file a civil suit under Section 8 (2) of the Act, 1971. In other words it is submitted that entertaining an appeal after 19 years, without any application for condoning the delay is beyond the jurisdiction of the third respondent. It is further urged that the order of the third respondent in calling for a report from the fourth respondent and then passing an order, basing on the report of the fourth respondent is unheard of. It is also urged that if the proceedings before the R.D.O. are to be treated as an appeal under the provisions of the Act, he should have dealt with the same independently without calling for a report from the authority, who was instrumental in making false entries.

5) A counter came to be filed by the un-official respondents disputing the averments made in the affidavit filed in support of the writ petition. It is said that the un-official respondents are in possession of the property and when the petitioners tried to interfere with the same stating that the lands were assigned to them, they made a representation dated 12.09.2011 to the Tahsildar, requesting him to conduct enquiry and recommend for cancellation of pattadar pass books given to the petitioners. Since the Tahsildar failed to act on the representation, the un-official respondents approached the R.D.O., who conducted an enquiry after giving notices to all the concerned and ordered cancellation of pattadar pass books and title deeds given to the petitioners. It is stated that though the petitioners claim that the D.K.T. pattas were issued to them but the originals were never filed before the Joint Collector. Though the petitioners claim that civil

Court ceased of the matter but failed to mention the number of the case. The averments in the counter also indicate that respondents 5 to 7 are having documents to show that they are owners of the property and the claim of the petitioners that lands were assigned to them, cannot be accepted.

6) The fourth respondent-Tahsildar also filed counter stating that the assignments said to have been granted to the petitioners is not maintainable since the assignment pattas said to have been issued to the petitioners are in patta lands and not on assessed waste or surplus government land or relinquished land or un-claimed land. It is further stated that the petitioners are not residents of the said village and they are neither in possession not cultivating the lands. It is stated that irregular assignments made in favour of the petitioners have to be dealt with in terms of BSO 15 and not under the provisions of the Act. It is stated that the third respondent has only sent proposal to the Collector, Ongole for cancellation of irregular assignments made in favour of the petitioners and the Collector shall follow due procedure after receiving the factual position from the fourth respondent. It is further stated that the writ petitioners are residents of Chinakulukula, Nallagundla Bordhan Mandal and the arguments advanced by them with regard to assignment, possession and cultivation are far from truth.

7) Reiterating the averments made in the affidavit filed in support of the petition, learned counsel for the petitioner would submit that the Revenue Divisional Officer as well as the Joint Collector erred in entertaining an application for cancellation of pattadar pass book and title deed which was filed after 19 years, without an application to

condone the delay. It is further stated that since there is a dispute as to who is in possession and as to who are the owners of the land, it is only the civil Court which has to decide the same and not by the authorities.

8) The Revenue Divisional Officer in his order held that the land in question is a patta land and not government land and the D.K.T. assignment might have been made by mistake and accordingly, directed the Tahsildar to send the proposals for cancellation of the assignment pattas granted to the petitioners herein. Challenging the same, appeals came to be filed before the Collector, who dismissed the same, confirming the orders of the Revenue Divisional Officer. A reading of both the orders only indicate that the Revenue Divisional Officer has directed the Tahsildar to send a report to the Collector for canceling the pattas granted in favour of the petitioners as there was an illegality in assignment of the land, since the Collector, is competent authority, to cancel the illegal assignments made, after following the procedure required under law. It is to be seen that there is no order canceling the pattas issued in favour of the petitioners. No steps have been taken for cancellation of assignment pattas till date. Therefore, if there is any dispute with regard to the title over the property and if the petitioners claim that they are having a right over the property, it is always open to them to approach the civil Court, and obtain appropriate orders thereon. If the Collector intends to take any steps for canceling the pattas granted to the petitioners, he can do so only in accordance with law ie. after giving notice to the writ petitioners and also to the un-official respondents. Since the order under challenge was only with regard to a direction given by the Revenue Divisional Officer to the

Tahsildar to send proposals to the Collector for cancellation of pattas, which has not happened so far, though the order of the Revenue Divisional Officer was confirmed by the Joint Collector in a revision, I see no merit in the writ petition and the same is liable to be dismissed.

9) Accordingly, the writ petition is dismissed. However, the Collector shall follow due process of law, if he intends to take steps to cancel the pattas granted to the petitioners. There shall be no order as to costs.

10) Consequently, miscellaneous petitions, if any, pending shall stands closed.

JUSTICE C. PRAVEEN KUMAR

26.04.2017
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