

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.33091 OF 2016

ORDER :

This writ petition is filed seeking writ of mandamus declaring the endorsement made by the 3rd respondent-Revenue Divisional Officer vide N.Dis.E2/05/2016, dated 30.05.2016 directing the 4th respondent-Tahsildar, Banswada Mandal, to issue suitable instructions to the 5th respondent- Village Revenue Officer, Tadkol to incorporate the names of respondents 7 to 9 in the enjoyer's column in respect of the land in Sy.No.87/3, 87/2 and 87/1 to an extent of Acs.3.00 situated at Tadkol village, Banswada Mandal, Nizamabad District and consequential proceedings issued by the 4th respondent vide Memo No.A/05/2016, dated 06.06.2016 directing the 5th respondent to incorporate the names of respondents 7 to 9 herein as illegal and arbitrary.

2. Brief facts necessary for disposal of the writ petition are as follows:

It is the case of the petitioners that the 2nd petitioner is the original owner, pattadar and enjoyer of the agricultural lands bearing Sy.Nos.87/1 to an extent of Ac.0.24 guntas, 87/2 to an extent of Ac.1.38 guntas and 87/3 to an extent of Ac.1.05 guntas total Ac.3.27 guntas, situated within the shivar of Tadkol Village, Banswada Mandal, Nizamabad District. The revenue authorities have also issued pattadar pass books and title deeds to the 2nd petitioner in the year 1993-95. The relevant pahanies for the year 1990-91 also shows that the 2nd petitioner is the owner and

possessor of the subject land. The 2nd petitioner, due to old age and out of love and affection towards the 1st petitioner, being grandson, executed a registered Gift Settlement Deed bearing document No.4188 of 2015 in favour of the 1st petitioner in respect of the subject property and delivered the possession of the same. In pursuant to the same, the 1st petitioner approached the 4th respondent under Section 4 of the A.P.Rights in Land and Pattedar Pass Books Act, 1971 read with Section 18 of the A.P. Rights in Land and Pattedar Pass Books Rules, 1989 for mutation of his name in revenue records. As no action is being taken, the petitioner approached the District Collector, Nizamabad and submitted representation dated 14.03.2016, wherein the District Collector instructed the 4th respondent to take steps in accordance with law. While so, respondents 7 to 9 tried to interfere with the possession of the petitioners. Aggrieved by the same, petitioners filed O.S.No.21 of 2016 on the file of Junior Civil Judge, Banswada for decree of perpetual injunction against the respondents 7 to 9. The respondents 7 to 9 filed written statement stating that the 2nd petitioner had sold the subject land in favour of the father of the respondents 7 to 9 through unregistered sale deed dated 16.03.1992 and claiming that they are in possession of the same. After the death of the father of the respondents 7 to 9 on 09.08.2014, they succeeded the subject property and made an application before the 3rd respondent-Revenue Divisional Officer on 08.02.2016 requesting to incorporate their names in the possessor column of the pahani. Basing on the said application, the 3rd respondent-Revenue Divisional Officer issued orders vide

N.Dis.No.E2/05/2016, dated 30.05.2016 directing the 4th respondent to issue suitable directions to the 5th respondent-Village Revenue Officer, Tadkol village to incorporate their names in the possession column of pahani for the year 2015-2016. The petitioners made an application to the 4th respondent under Right to Information Act, 2005 on 31.08.2016 for furnishing information relating to the subject land. Thereafter, the 4th respondent issued Memo vide Lr.No.D/429/2013, dated 15.09.2016 furnishing the documents sought for by the petitioners. When the petitioners came to know that the present impugned proceedings are issued by the 3rd respondent, the present writ petition is filed.

3. Counter affidavit is filed by the respondents 7 to 9 denying the averments in the affidavit filed in support of the writ petition stating that their father purchased the subject land from the 2nd petitioner on 16.03.1992 for valid sale consideration of Rs.69,000/- and executed an unregistered Sale agreement and delivered possession to their father. After the demise of their father on 09.08.2014, the respondents 8 and 9 are physically cultivating the said land and petitioners were out of possession since 16.03.1992. That respondents 7 to 9 filed suit O.S.No.27 of 2016 against the petitioners for specific performance of agreement of sale dated 16.03.1992 and perpetual injunction and also for cancellation of Registered Gift Deed bearing No.4188/2015, dated 31.10.2015, executed by the 2nd petitioner in favour of 1st petitioner, wherein the Court below granted *status quo* orders. That in the suit filed by the petitioners in O.S.No.21 of 2016 for declaration and perpetual injunction, no interim orders were granted and that after

conducting an enquiry, the 4th respondent passed orders for incorporating their names in revenue records.

3. Heard learned counsel for the petitioners and learned Assistant Government Pleader for Revenue for respondents 1 to 6 and Sri M.Bhushan Reddy, learned counsel for respondents 7 to 9.

4. Learned counsel for the petitioners submits that the impugned proceedings issued by the 3rd respondent as well as 4th respondent were apparently without notice to the petitioners, as such, the same is in violation of principles of natural justice. He would further contend that the so-called report submitted by the 5th respondent-Village Revenue Officer is also without notice to the petitioners. He further submits that though the respondents 7 to 9 have purchased the subject land in the year 1992, they have neither sought for validation of sale nor any suit is filed for specific performance of the agreement of sale dated 16.03.1992 alleged to have been executed by the 2nd petitioner in favour of the father of the respondents 7 to 9 till recently. He further submits that even the names of the respondents 7 to 9 are also not recorded in revenue records. Though the 1st petitioner approached the 4th respondent for mutation of his name in revenue records, without considering the same, impugned proceedings were passed behind the back of the petitioners. He would contend that civil suits are filed by the petitioners i.e., O.S.No.21 of 2016 seeking declaration and perpetual injunction and respondents 7 to 9 filed suit O.S.No.27 of 2016 for specific performance of agreement of sale dated 16.03.1992 and same are pending. He further submits that the 3rd respondent ought not to have issued impugned proceedings

unilaterally so also the 4th respondent, without conducting any enquiry.

5. On the other hand, apart from reiterating averments in the counter affidavit, learned counsel for the respondents 7 to 9 submit that the father of the respondents 7 to 9 purchased the subject land from the 2nd petitioner and that after the demise of their father, they are in possession of the subject lands and that after conducting an enquiry, the 4th respondent issued impugned proceedings dated 06.06.2016 directing the 5th respondent to incorporate their names in possession column.

6. A reading of the impugned proceedings vide N.Dis.E2/05/2016, dated 30.05.2016 goes to show that the application filed by the respondents 7 to 9 was forwarded by the 3rd respondent to the 4th respondent instructing him to issue suitable directions to the 5th respondent to incorporate the names of the respondents 7 to 9 in occupation column as per merits, without issuing any notice to the petitioners. Though the 3rd respondent directed the 4th respondent to instruct the 5th respondent to incorporate the names of the respondents 7 to 9 on merits, the 4th respondent had not issued any notice to the petitioners before passing impugned proceedings No.A/05/2016, dated 06.06.2016. It shows that simply basing on the endorsement of the 3rd respondent, 4th respondent passed impugned proceedings dated 06.06.2016, which is nothing but violation of principles of natural justice. It also does not indicate any enquiry was conducted before passing such impugned order. More so, comprehensive suits were filed by the petitioners as well as respondents 7 to 9 against each

other and in the suit filed by the respondents 7 to 9 i.e., OS.No.27 of 2016, *status quo* orders were granted by the Court below in I.A.No.69 of 2016 in O.S.No.27 of 2016 and admittedly both the suits are pending. When once the comprehensive suits filed by both parties are pending before the Court below, they have to seek appropriate remedy in respect of the right and title of the subject property. More over, this Court also cannot go into the disputed questions of fact by exercising power under Article 226 of the Constitution of India.

In view of above, without expressing any opinion on the merits of the case, only on the ground that no notice was preceded before passing the impugned orders, which is nothing but violation of principles of natural justice, the impugned proceedings of the 3rd respondent in proceedings vide N.Dis.E2/05/2016, dated 30.05.2016 and consequential proceedings of the 4th respondent vide Memo No.A/05/2016, dated 06.06.2016 are set aside.

Accordingly, this writ petition is allowed and the entries in the revenue records in respect of subject lands will be subject to result of suits filed by both the parties. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stands dismissed.

A.RAJASHEKER REDDY, J

15.03.2017
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date:15.03.2016

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