

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.5704 of 2006

ORDER:

This writ petition is filed questioning the order dated 27.05.2003 in File No.D5/ 7098/ 2000 passed under Section 9 of the A.P. Record of Rights in Lands and Pattadar Pass Books Act, 1971 (for short 'the ROR Act'), ordering to implement the compromise decree in C.R.P.No.1717 of 1996 passed by this Court and subsequent orders of the Mandal Revenue Officer, Keesara Mandal dated 01.12.2003 in Case No.B/ 187/ 2003 ordering mutation in favour of respondents 3 to 8 in respect of the lands covered by Sy.Nos.174, 17 and 176 of Diara Village, Keesara Mandal, Ranga Reddy District, as illegal and arbitrary.

2. Brief facts of the case, in so far as they are relevant, for the disposal of this writ petition, are that, originally, Tudum Pochaiah, Poondru Narsaiah and others were conferred 38-E ownership certificate under the provisions of A.P. (Telangana Area) Tenancy and Agricultural Lands Act of 1950 pursuant to the orders of the Revenue Divisional Officer (Land Reforms), Hyderabad; the petitioners and others are successors in interest of some of 38-E holders; Respondents 3 to 8, who are the members of the family of original pattadar, have questioned the grant of 38-E certificates to the ancestors of the petitioners, in an appeal before the Joint Collector, under Section 90 of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and the said appeal was dismissed by the Joint Collector on 11.09.1989 confirming the grant of 38-E ownership certificate in favour of the ancestors of the petitioners; subsequently, there was partition among the branches of 38-E holders, wherein, the petitioners were allotted Ac.30.17 gts of land in Sy.Nos.174

to 176 of Diara village; the unofficial Respondents 3 to 8, without questioning the orders of the Joint Collector dated 11.09.1989, preferred another revision before the Joint Collector seeking rectification of the entries in the pattadar columns of *pahanies* against the lands in respect of which 38-E was conferred; pending revision before the Joint Collector, respondents 3 to 8 have filed CRP No.1717 of 1996 before this Court assailing the order of the Joint Collector dated 11.09.1989 about seven years after the order of the Joint Collector; in the CRP, the 1st petitioner and the father of the 6th petitioner were shown in the array of respondents; entire proceedings in the said CRP, including the compromise therein, ended without notices and behind back of the petitioners; the memorandum of compromise contained forged signatures of the 1st petitioner and the father of the 6th petitioner and others; even the dead person, by name Poondru Narsaiah, father of the 6th petitioner was figured as party to the compromise by impersonation; respondents 3 to 8 obtained the orders dated 04.11.1997 in terms of memorandum of compromise in the said CRP by playing fraud on the Court; the said recording of compromise in CRP No.1717 of 1996 was not within the knowledge of the petitioners, till the date of withdrawal of the revision before the Joint Collector on 27.09.2005; the petitioners came to know about the filing of the CRP and the compromise decree only on 27.09.2005 when respondents 3 to 8 filed a memo before the Joint Collector in the said revision on the date of withdrawal; the petitioners filed CMP No.659 of 2000 on 09.08.2002; the said CMP was disposed of directing the parties, who are aggrieved by the compromise decree, to go to the Civil Court; the petitioners filed OS No.57 of 2006 on the file of the I Additional District Judge, Ranga Reddy District, seeking cancellation of the compromise decree on the ground of

fraud and the same is pending; the petitioners came to know about the *suo motu* case taken up for enquiry under Section 9 of the ROR Act with regard to the entries in the pattadar column as against the subject lands; the impugned order was passed on 27.05.2003 without giving notice to the petitioners, though they are the pattadars claiming ownership under Section 38-E; respondents 2 to 8 are only made parties to the said proceedings; in the said impugned order, the Joint Collector directed the Mandal Revenue Officer to implement the compromise decree, which is the subject matter in OS No.57 of 2006; though the proviso to Section 9 of the ROR Act mandates issuance of notice to all the affected parties, the official respondents, have not issued the same and prays to allow the writ petition.

3. A counter-affidavit has been filed by the un-official respondents 7 and 8 stating that that the order of the 1st respondent is not *suo motu* order and that it was passed after giving opportunity to both the parties to the said proceedings; the un-official respondents also denied conferring of 38-E ownership certificate on Tudum Pochaiah, Puduru Narsaiah and others; they also denied that the petitioners are the successors in interest of some of 38-E holders; the lands in Sy.Nos.173 to 176, 179 and 213 of Daira village, Keesara Mandal, were not cultivated by the above said alleged 38-E certificate holders or the writ petitioners at any point of time and as the said survey numbers were not recorded in the original tenancy register of Daira village, the question of succession does not arise; they denied about the partition among the branches of 38-E holders; with the advice of the village elders, the 1st petitioner and other respondents in the CRP No.1717 of 1996 compromised amicably; it is true that the writ petitioners filed suit OS No.57 of 2006 and the same is being keenly contested by the

respondents; the notices in File No.D5/ 7098 of 2000 dated 27.05.2003 were issued to the petitioners and the 1st respondent passed orders to implement the compromise decree in CRP No.1717 of 1996; the 2nd respondent followed the due process of law by giving notice and waited for the prescribed period and passed mutation orders without any fault; the 2nd respondent has got every right to conduct the spot enquiry with regard to the physical possession and cultivation of the lands by following due process of law; it is not true to state that fraudulent decree was obtained behind the back of the petitioners and managed to obtain the impugned orders dated 27.05.2003 and 01.12.2003; family members are the owners of the land admeasuring Ac.103.26 cents in Sy.Nos.166 part, 167 Part, 173 Part and 213 part, devolved to the share of their father late Pagi Linga Reddy; during the life time of their father, he sold the lands in an extent of Ac.22.31 cents out of Ac.103.26 cents to Seelam Sayanna along with Pagi Narayan Reddy and two others; after demise of their father, the remaining extent of Ac.80.96 cents was devolved to their share; out of which, the land an extent of Ac.24.77 cents in Sy.Nos.166 part, 167 Part, 173 Part to 176 Part and 213 part, were declared as surplus land by the Land Reforms Tribunal, Ranga Reddy District; after perusing the revenue records, the Additional Revenue Divisional Officer cum Land Reforms Tribunal, passed orders by reverting back an extent of Ac.19.86 cents out of Ac.24.77 cents of Daira village to the respondents and their brothers; against the said orders, the State preferred appeal before the Chairman, LRAT, Ranga Reddy District and the said appeal was dismissed confirming the order of the lower authority; the subject lands in Sy.Nos.174 to 176 and lands in other survey numbers of Daira revenue village belongs to them and their brothers; the alleged 38-E certificate holders or their ancestors never

cultivated the subject land because they are *Banjara Kancha* lands, therefore, their names are not recorded in the Tenancy Register of Daira Village and prays for dismissal of the writ petition.

4. Heard Sri B. Venkat Rama Rao, learned counsel for the petitioners, learned Assistant Government Pleader for Revenue and Sri A. Kesava Reddy, learned counsel for the 7th respondent. Perused the record.

5. The only issue raised in this Writ Petition is, whether the notice to the affected person is mandatory in accordance with the provisions of Section 9 of the ROR Act?

6. Learned counsel for the petitioners would submit that though notice under Section 9 of the ROR Act is mandatory to the adversely affected person, the respondents have not served any notice under Section 9 of the ROR Act and hence, the impugned order is liable to be set aside.

7. Section 9 of the ROR Act reads as under:

“Section 9 – Revision:- The Collector may either *suo motu* or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue Officer or Revenue Divisional Officer under Sections 3, 5, 5-A or 5-B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for re-consideration, he may pass orders accordingly:-

Provided that no such order adversely affecting any person shall be passed under this section unless he had an opportunity of making a representation.”

8. As seen from the impugned order, no notice whatsoever has been served on the petitioners before passing the order under Section 9 of the A.P. Record of Rights in Lands and Pattadar Pass Books Act, 1971. The proviso specifically says that no order adversely affecting any person shall be passed against the person unless he had an opportunity of making representation.

9. In the view of the above facts and circumstances of the case, without going into the merits of the case, as no notice has been served on the petitioners before passing the order dated 27.05.2003, the matter is remanded back to the Joint Collector, Ranga Reddy District, for fresh disposal and to pass appropriate orders in accordance with law, after giving opportunity of hearing to both sides, as expeditiously as possible.

10. The writ petition is, accordingly, disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

Date: 17.07.2018
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KONGARA VIJAYA LAKSHMI, J

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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