

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.266 OF 2007

ORDER:

This writ petition is filed seeking to declare the order bearing D.Dis.No.(E10)8920/05, dated 16.9.2006 canceling the Pattadar Pass Book and Title Deed issued in favour of the petitioner in respect of land admeasuring Ac.4.74 cents in RS.No.134/1 of Chedodu Village of Kota Mandal in Nellore District as arbitrary, illegal and violative of provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971.

2. It is the case of the petitioner that she is the absolute owner and possessor of land in an extent of Ac.4.74 cents in Sy.No.134/1, situated at Chedodu Village, Kota Mandal, Nellore District and that she inherited the said property through her father Pakala Venkata Krishnaiah vide registered Will bearing document No.1070/2004, dated 1.10.2004. The Mandal Revenue Officer, Kota issued pattadar pass book and title deed on 5.6.2006 in her favour. While so, the third respondent filed an appeal before the 2nd respondent on 2.9.2005, inter alia contending that his mother late Smt.P.Sankaramma purchased the said land in the year 1981 under a registered sale deed dated 6/1981 of Sub-Registrar, Kota and that his mother died in the year 1998 and he succeeded the said property and that the father of the petitioner obtained the said property under a registered deed bearing document No.114/2001 fraudulently by referring to non existing Will purported to have been executed by his mother in favour of his distant relative by name Jonna

Subramanyam of Nellore and that the father of the petitioner obtained the pass book and title deed by suppressing the facts.

3. It is further stated that the 2nd respondent after hearing the 3rd respondent, has dismissed the appeal in D.Dis.No.B2/2245/2005 dated 2.11.2005 on the ground that the pattadar pass book was issued to the father of the petitioner on 19.12.2001 and the 3rd respondent filed the appeal on 2.9.2005 and the said appeal was filed beyond 60 days and therefore barred by limitation under Section 5(5) of Pattadar Pass Book Act, 1971. Aggrieved by the said order, the 3rd respondent filed a revision before the 1st respondent and the first respondent after hearing both sides, vide order dated 16.09.2006 cancelled the pattadar pass book and title deed issued in favour of the petitioner, which is challenged in this writ petition.

4. The third respondent filed a counter affidavit, denying the allegations in the affidavit filed by the petitioner. The father of the petitioner has got the land registered in his favour forcibly from Sri Jonna Subrahmanyam through a registered sale deed No.114/2001, dated 3.2.2001, and gifted the same to the petitioner, but the said land belong to the mother of the 3rd respondent. The petitioner suppressed the facts before the Mandal Revenue Officer and obtained pattadar pass book and title deed. In the criminal case filed by the 3rd respondent, Jonna Subrahmanyam confessed that his aunt late Paduchuru Sankaramma, who is mother of the 3rd respondent did not execute any Will in his favour and that he borrowed an amount

of Rs.50,000/- from one Rajagopal, who is husband of the petitioner and when he did not pay the amount, said Rajagopal and Pakala Venkata Krishnaiah directed him to register the land in question or otherwise to pay the borrowed amount immediately and basing on the fraudulent documents, the Mandal Revenue Officer, Kota has issued pass book No.J387758 and title deed No.J 387758 without verifying the proper link documents in favour of the petitioner, which is irregular and hence the pattadar pass book and title deed was cancelled under the provisions of Section 9 of Record of Rights Act, 1971. There was no Will deed, which was said to have been executed by P.Sankaramma in favour of the vendor of the land i.e., Subrahmanyam. The first respondent has rightly cancelled the pattdar pass book and title deed issued in favour of the petitioner with an observation that they may get the title cleared in a competent civil Court and then only, they are entitled to apply for pattadar pass book and title deed.

5. Heard.

6. There is a claim and counter claim by the petitioner and third respondent in respect of the subject land in this writ petition. The petitioner is claiming title over the subject land. Per contra, the third respondent is also having a counter claim. The third respondent filed an appeal dated 2.9.2005 before the second respondent, Revenue Divisional Officer, Guduru, Nellore District and requested him to cancel the pattadar pass book and title deed issued in favour of the petitioner in respect of the land in an extent of Ac.4.74 cents in Sy.No.134/1, situated at

Chedodu Village, Kota Mandal, Nellore District. On verification of the records, it is revealed that on 19.12.2001, the Mandal Revenue Officer, Kota issued pattadar pass book and title deed in favour of the father of the petitioner. As per Section 5(5) of the Andhra Pradesh Pattadar Pass Book Act, 1971, appeal has to be filed within 60 days from the date of the orders of the Mandal Revenue Officer by duly enclosing the copy of the order along with the appeal. The said appeal was rejected by the second respondent by order dated 2.11.2005 on two grounds i.e., (1) for not enclosing the copy of the order of the Mandal Revenue Officer, Kota and (2) the appeal was not filed in time. Aggrieved by the said order, the third respondent preferred a revision before the first respondent and the first respondent, ignoring the grounds of rejection of appeal before the Revenue Divisional Officer, Guduru, has passed the order on merits and by order dated 16.09.2006 cancelled the pattadar pass book and title deed under Section 9 of the Record of Rights Act, 1971, which were issued in favour of the petitioner and the said order is impugned in this writ petition.

7. It is apparent from the order of the first respondent that the petitioner has lost the opportunity of making his statement before the original authority i.e., the second respondent and also file a revision under the statute. The legal remedy available under the statute upon a citizen cannot be shut in the process of deciding the issue by the quasi judicial authority. Hence the writ petition is liable to be allowed.

8. Accordingly writ petition is allowed, setting aside the order of the first respondent. The third respondent shall file an appeal before the second respondent as per the procedure contemplated under the statute and upon such appeal, the second respondent shall give opportunity to all concerned and decide the same on merits in accordance with law. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

T.AMARNATH GOUD,J

Date: 17-08-2018

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