THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.10346 of 2016

ORDER:

In this writ petition under Article 226 of the Constitution of India, the petitioner requests to issue a writ of mandamus declaring the action of the 1st respondent in issuing the proceedings, dated 06.03.2016, in Rc.E.1873/2015 suspending the entry made by the 3rd respondent in the revenue records in respect of land of an extent of Ac.4.44 cents in Sy.no.794 of H.Muravani village, Pedakadabur Mandal, and in keeping the issue of pattadar passbooks in abeyance till the disposal of the suit pending in the civil Court as arbitrary, illegal, contrary to Section 5(5) of A.P. Rights in Land & Pattadar Passbooks Act, 1971, and Rule 21 of the Rules made under the said Act and violative of principles of natural justice and consequently set the said proceedings aside.

2. I have heard the submissions of Sri B.Sarvotham Reddy, learned counsel appearing for the petitioner, of the learned Government Pleader for Revenue (AP), appearing for respondents 1 to 4, and of *Sri Challa Dhanmjauya*, learned senior counsel appearing for the 5th respondent. I have perused the material record.

3. From the pleadings, submissions made and the contents of material documents, the following facts are noticeable.

The writ petitioner purchased the above said land (hereinafter, referred to as 'subject property', for brevity), from M.Nagaraju & M.Shiva Shankar under a registered sale deed, dated 19.06.1951, bearing document No.6446. He submitted an application to the 3rd respondent-Tahasildar for mutating the subject property in his name in the revenue records. The said officer affected mutation in the revenue records and accorded approval for issuance of e-Pattadar passbooks through online to the writ petitioner and generated pattadar passbooks in favour of the writ petitioner. While so, 5th respondent herein filed O.S.no.44 of 2015 on the file of II Additional District Court, Adoni of Kurnool District, against the said vendors of the writ petitioner (defendants 1 & 2) and the writ petitioner (defendant no.3) for specific performance of an agreement of sale, dated 15.04.2014, executed in respect of the subject property by the defendants 1 & 2 in his favour, that is, the 4th respondent. In the plaint in the said suit, the 4th respondent *inter alia* alleged that that the defendants 1 & 2 having executed the agreement of sale in his favour always entertained a *mala fide* intention to deceive and cheat the 4th respondent and that while the suit contract of sale is in force, the defendants 1 & 2 executed the aforesaid sale deed, dated 19.06.2015, in favour of the 3rd defendant, writ petitioner herein, and that the said sale deed is sham & collusive and is one created without the knowledge and consent of the 4th respondent herein. Therefore, the 4th respondent sought the relief of cancellation of the said sale deed in favour of the writ petitioner apart from the reliefs of specific performance and perpetual injunction. However, when the writ petitioner, based upon his above sale deed, sought for mutation of the property in his name in the revenue records and issuance of pattadar passbooks in his favour, his request was considered by the Tahasildar and mutation was carried out and e-pattadar passbook was generated for being issued to the writ petitioner. Nonetheless, the 5th respondent who claims to be a purchaser of the subject property from the vendors of the writ petitioner under a contract of sale and who also filed a suit for specific performance against the vendors and also the writ petitioner, filed objections before the 2nd respondent-Joint Collector, Kurnool, to direct the Tahasildar, not to carry out mutations and issue pattadar passbooks in favour of the writ petitioner in view of the pendency of the suit filed by him for specific performance and till the disposal of the said suit. It appears that the Joint Collector endorsed the same to the 1st respondent-RDO. The RDO, having examined the matter and having noted the undisputed facts borne out by record and also the further fact that pursuant to the complaint of the 5th respondent filed before the learned Judicial Magistrate of First Class, Yemmiganur, a case in Crime no.88 of 2005 was registered by the Station House Officer, Pedakakani Police Station against the two vendors, passed the impugned orders, dated 06.03.2016, suspending the revenue entries made by the Tahasildar in respect of the subject property and keeping in abeyance the issuance of the pattadar passbooks till the disposal of the civil suit.

4. Aggrieved thereof, the writ petitioner filed this writ petition. On 30.03.2016, this Court while admitting the writ petition granted interim suspension of the impugned order, vide orders passed in W.P.M.P.No.13036 of 2016. The 5th respondent filed a counter affidavit along with his vacate stay petition in W.V.M.P.no.354 of 2017. The official respondent no.3 filed counter affidavit. I have perused the pleadings of both the parties.

5. In the writ petition, the writ petitioner *inter alia* contended as follows: 'He is a purchaser of the property from the two owners under a regular registered sale deed of the year 2015. The 5th respondent only claims to be a purchaser under a contract of sale executed by the said two owners. Admittedly, no title to the property passed to the agreement holder. Even if the agreement of sale is considered to be true as the rights of the 5th respondent-agreement holder, are not yet adjudicated and as his suit for specific performance is pending. Since the writ petitioner purchased the subject property under regular registered sale deed from the two vendors, who are admittedly the owners of the subject property, he is entitled to have the property mutated in his name and receive the pattadar passbooks and that therefore, the Tahasildar was correct and that the RDO was wrong in keeping in abeyance the issuance of pattadar passbooks till the disposal of the civil suit filed by the 5th respondent against the writ petitioner and his vendors.' While reiterating the said contentions, the learned counsel for the writ petitioner contended that the orders of the RDO, which are impugned, are liable to be set aside. He further submitted that the 5th respondent would be entitled to seek cancellation of the revenue entries and passbook that may be issued to the writ petitioner in the event of his success in the suit for specific performance, which is not even a remote possibility.

5.1 Learned counsel for the writ petitioner relied upon a decision in **Ratnamma v Revenue Divisional Officer, Dharmavaram, Anantapur District** [2015 (6) ALD 609] rendered by a Division Bench of this Court in support of the contention that an appeal under Section 5(5) of the Act of 1971 to the RDO would not lie against a proceeding related to issuance of pattadar passbook and title deed document and that for that reason also, the writ petition is to be allowed.

6. Whereas, the 5th respondent contended that he is a genuine purchaser for valuable consideration under the suit contract of sale and that the vendors, with a *mala fide* intention and in collusion with the writ petitioner created the sham sale deed while his contract of sale is in force and that therefore, he filed the suit by impleading his vendors as well as the purchaser, that is, the writ petitioner, as defendants 1 to 3 for specific performance, cancellation of sale deed and perpetual injunction and that therefore, the matter is *sub judice* and that till the said civil suit is disposed of, the writ petitioner is not entitled to have the property mutated in his name and obtain pattadar passbooks and hence, the RDO is justified in passing the impugned orders keeping the action of the Tahasildar in abeyance. Learned senior counsel for the 5th respondent contends that if during the pendency of the suit mutation is effected and pattadar passbooks are issued to the writ petitioner and that if he either goes on obtaining loans from Banks & financial institutions from time to time or alienates the subject property based on such entries and passbooks, not only complex situations would arise but also third party interests would be created and that the matters get complicated and hence, it is in the interests of justice to uphold the orders of the RDO, as such a course would help in maintaining *status quo*. As regards the decision relied upon by the petitioner, learned counsel for the 5th respondent submitted that no appeal has been preferred by the 5th respondent and is entertained by the RDO and that the RDO, by his proceedings, had simply discharged his duty in issuing the impugned proceedings suspending the entries made by the Tahasildar in respect of the subject land and directing to keep in abeyance the issuance of pattadar passbooks till disposal of the civil suit and that he did not determine the rights of the parties and hence, the decision relied upon by the petitioner has no application to the facts of the case. He further submitted that since the grievance was expressed even against the revenue entries but not merely against issuance of the pattadar passbook, even if the matter is considered to be an appeal before the RDO, yet, such an appeal is maintainable and that in that view of the matter also, the decision relied upon has no application to the facts of the case.

7. The 5th respondent-plaintiff submits that the writ petitioner herein claims to have purchased the subject property under registered sale deed for a total consideration of Rs.3,56,000/-, and that the writ petitioner is admittedly closely related to the vendors of the property, whereas the same vendors executed the suit contract of sale in favour of this 5th respondent agreeing to sell the subject property for a consideration of Rs.25,30,800/- @ Rs.5,70,000/- per acre and that the said contention of the 5th respondent and other facts & circumstances make out a strong *prima facie* case in favour of the 5th respondent for sustaining the orders which are impugned in this writ petition by the writ petitioner, who is a purchaser of the subject property subsequent to the agreement of sale. In reply, learned counsel for the writ petitioner points out that even the 5th respondent-plaintiff paid a paltry amount of Rs.2,00,000/-, that is, Rs.1,00,000/- each to the two vendors but he did not pay a substantial portion of the alleged sale consideration. What is to be noted is that the vendors under the suit contract of sale said to have been executed in favour of the 5th respondent, who are also the vendors under the sale deed of the writ petitioner, are not impleaded as party respondents to this writ petition. Be that as it may.

8. Be it noted that the 3rd respondent-RDO in his counter affidavit justified his actions in passing the impugned orders while adverting to the reasoning in the said orders.

9. I have given earnest consideration to the facts & submissions.

10. Now the short question is as to whether the RDO is justified in passing the impugned orders suspending the revenue entries in respect of the subject property and in keeping in abeyance the issuance of the pattadar passbooks in respect of the subject property pending disposal of the civil suit, which is a comprehensive suit wherein the civil Court, which is a competent forum, would adjudicate all the issues and resolve the dispute.

11. Under Section 19 of the Specific Relief Act, 1963, the person who is seeking specific performance of a contract of sale may enforce specific performance of a contract against the transferee, who has acquired title under an instrument subsequent to such contract of sale. Sale of immovable property in the teeth of an earlier agreement of sale is immune from specific performance of an earlier contract of sale, if the transferee has acquired the title for valuable consideration and in good faith and without notice of the original contract of sale. This is evident from the provision of Section 19 of the Specific Relief Act, 1963. Be it noted that it is for the Civil Court before which the suit filed by the 5th respondent is pending to adjudicate the issues, viz., '(i) Whether the suit contract of sale is genuine?'; (ii) Whether the sale deed of the writ petitioner is sham and collusive?; (iii) Whether the writ petitioner is a *bona fide* purchaser for a valuable consideration without notice of the suit contract of sale? And, if so, whether the sale deed of the writ petitioner is immune from specific performance of the suit contract of sale?; and, (iv) Whether the suit contract of sale will have a precedence over the said sale deed?' and other issues which may fall for determination in the said suit. Till the above stated and other issues are determined and the claims of the parties are determined one way or the other, it is not advisable and also not fair to allow the *status quo* to be altered as regards revenue entries and the issue of pattadar passbooks and title deed documents in respect of subject property. Further, if the impugned orders of the RDO are set aside and the Tahasildar's orders/actions are allowed to be revived and the pattadar passbooks are permitted to be issued to the writ petitioner, it would amount to allowing altering of the positions of the parties during the pendency of the civil suit. In consequence of the change of revenue entries and the obtainment of the pattadar passbooks, if the property either changes hands by alienations/transfers or is subjected to mortgage while obtaining loans from Banks and financial institutions, complex situations would arise leading to multifariousness as rightly contended. On the other hand, if the orders of the RDO are sustained, *status quo* would be maintained and such a course prevents parties from altering positions during the pendency of the civil suit.

12. On the above analysis, this Court finds that the impugned orders do not brook interference.

13. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

M.SEETHARAMA MURTI, J

Date: 17th July, 2018
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