HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.11300 of 2006

ORDER:

This Writ Petition is filed questioning the orders of the 1st respondent-Joint Collector dated 10.02.2006 in observing that the aggrieved party may approach the Civil Court under Section 8(2) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the ROR Act').

2. The brief facts, according to the writ petitioner insofar as they are relevant for the disposal of this writ petition, are as follows:

The father of the petitioner i.e., Syed Gulam Ahmad was the owner and possessor and Pattadar of the lands in old Sy.Nos.2 and 25 of Shamshabad Kalam Mandal, Ranga Reddy District; after resurvey, the lands in old Sy.Nos.2 and 25 were renumbered as Sy.Nos.9,10,11, 67, 73, 75 and 78; the said lands were not surveyed during the Jagir Regime and after resurvey, there were mistakes as to corresponding old and new survey numbers; the said lands were given to the father of the petitioner by the then Jagirdar of Shamshabad Kalan, after receiving *Nazarana* amount from him; thereafter his father was in possession and enjoyment of the same; but actually the 'Pedda Bhavi' which was the name of the land given to his father, is situated in the present Sy.No.75 as reported to by the Village Patwari in his report No.6 dated 19.05.1966; when the father of the 4th respondent viz., late B.Lachaiah, in collusion with the grand mother of the petitioner, Smt.Mahabub Bee, tried to interfere with the possession of the petitioner's, his father filed suit in OS No.40 of 1960 for declaration of his title and possession and the said suit was decreed on 31.07.1964, upholding the rights of his father and negatived the rights of the said B.Lachaiah; B. Lachaiah and others carried the matter in first appeal i.e., AS No.11 and 121 of 1965 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad; the father of the petitioner also filed Cross-objections; both the appeals were dismissed and the cross-objections were allowed on 19.02.1968; then Lachaiah and others further carried the matter in S.A.No.302 of 1968 and SA No.297 of 1969 and the said two second appeals were also dismissed by this Court on 20.03.1970; thus the theory of grant by Jagirdar to his father has been upheld and the rights of Mahabub Bee (grand mother of the petitioner) were negatived; the said Mahabub Bee has no right to the said lands and hence, the *ex-parte* decrees in OS Nso.28 and 79 of 1967 obtained by the said Lachanna for correction of revenue records is not binding either on the petitioner or on his father; the land acquisition under Section 4(1) of the Land Acquisition Act with regard to the land in Sy.Nos.10 and 11 was issued, the revenue officials conducted a *panchanama* dated 24.06.2002 wherein, in it is specifically found that the father of the petitioner was the owner and possession of the lands in Sy.Nos.10, 11 and 75; the Land Acquisition Officer passed an award on 06.11.2002 acquiring part of the lands in Sy.Nos.10 and 11, the petitioner was served with the notice of the award; the petitioner sought for a reference to the civil Court and when the Land acquisition Officer refused to refer the matter to the civil Court, the petitioner filed WP No.8472 of 2003. Pending the writ petition, the Land Acquisition Officer referred the matter to the civil Court under Sections 30 and 31; thus the question of title to the said land is yet to be decided; the petitioner gave an explanation on 02.02.1989 to the 3rd respondent-Mandal Revenue Officer, for correction of the entries, since no action was taken, he gave applications on 20.02.1990, 14.12.1992 and 25.06.2002; without any opportunity to the petitioner and without conducting any enquiry, the Mandal Revenue Officer passed orders on 24.06.2003 negativing the rights of the petitioner; against the said orders, the petitioner filed an appeal before the 2nd respondent-Revenue Divisional Officer; the 2nd respondent remanded the matter on 25.09.2004 to the 3rd respondent to decide the issue after due enquiry; after the remand, the 3rd respondent passed final orders on 28.01.2005; thus the remand order has been worked out; the 4th respondent suppressing the order of the 3rd respondent, filed a revision petition before the 1st respondent-Joint Collector in February, 2005 challenging the order of the 2nd respondent dated 25.09.2004; the petitioner filed written arguments on 16.09.2005 enclosing the order of the 3rd respondent dated 28.01.2005 pleading that in view of the orders of the 3rd respondent, the revision petition before the 1st respondent is not maintainable; and prays to set aside the orders of the 1st respondent.

3. During the pendency of the writ petition, the 4th respondent died and his legal representatives, respondents 5 to 8 were brought on record and notices were also served on them.

4. The writ petition was admitted on 09.06.2006 and an interim stay was granted on the same day. Subsequently on 13.10.2009, the interim stay granted earlier was made absolute.

5. Heard Sri K.Mahipathi Rao, learned counsel for the petitioner, the Assistant Government Pleader for Revenue for Respondents 1 to 3 and M/s Bharadwaj Associates for 5th Respondent. Perused the record.

6. The main contention of the learned counsel for the petitioner is that in view of the orders passed by the Mandal Revenue Officer on 28.01.2005 pursuant to the remand by the Revenue Divisional Officer, the revision petition filed by the 4th respondent before the Joint Collector in February, 2005 is not maintainable. He further contended that even though the fact of the Mandal Revenue Officer, passing the orders pursuant to the remand was specifically brought to the notice of the 1st respondent, the 1st respondent-Joint Collector, without taking that aspect into consideration, has allowed the revision.

7. Learned Assistant Government Pleader for Revenue would contend that the Joint Collector has rightly entertained the appeal against the order of the Revenue Divisional Officer and that the appeal is maintainable. In support of his contention, he relied upon

the judgment of the Apex Court in '*Joint Collector, Ranga Reddy District vs. D.Narsing Rao*[1]' and submits that the *suo motu* enquiry for correction of records cannot be invoked when there is a *bona fide* dispute of title and that liberty has to be given to the aggrieved party to workout his remedy by way of civil suit. Learned counsel for the petitioner submits that the said observation wass made while discussing the powers of *suo motu* revision and that it has no application to the facts of the present case.

8. Learned counsel for the petitioner also relied upon the judgment of the Supreme Court in '*Kiran Singh vs. Chaman Paswan*[2]' for the proposition that a decree passed by a Court without jurisdiction is a nullity. The said judgment does not apply to the facts of the case on hand, because, it is not the case of the writ petitioner that the appeal is not maintainable against the orders of the Revenue Divisional Officer under the ROR Act. His contention is that in view of the fact that the Mandal Revenue Officer has decided the issue pursuant to the remand by the Revenue Divisional Officer, the appeal is not maintainable. Admittedly, when there is a statutory appeal contemplated under the ROR Act against the orders of the Revenue Divisional Officer, it cannot be taken away by the Mandal Revenue Officer by passing an order giving effect to the orders of the Revenue Divisional Officer. The Joint Collector passed an order stating that after a gap of 24 years, it is not open to the revenue authorities to exercise their jurisdiction to modify the record. He categorically allowed the

[1] (2015) 3 SCC 695
[2] AIR 1954 SC 340

appeal observing that the aggrieved party may approach the civil Court under Section 8(2) of the ROR Act.

9. Even according to the affidavit of the petitioner filed along with the writ petition, he has categorically stated that the name of the father of the 4th respondent was entered in the record records pursuant to an *ex-parte* decree obtained by the father of the 4th respondent, by impleading Smt. Mahabub Bee, who is none other than the grand mother of the petitioner, in the year 1967. His only plea is that the said decree is not binding either on himself or on his father. Even according to the writ petitioner, no appeals have been preferred against the said *ex-parte* decrees in OS No.28 and 79 of 1967. The writ petitioner further stated in his affidavit that the judgments in OS No.40 of 1967 and OS No.93 of 1968 also do not affect the rights of either the petitioner or his father. Admittedly, the copies of the judgments and decrees in OS No.28 of 1967, OS No.79 of 1967, OS No.40 of 1967 and OS No.93 of 1968 are not filed by the petitioner along with the writ petition and no details whatsoever have been given with regard to these suits except saying that they are not binding on the petitioner or his father. This itself shows that they have become final and no appeals whatsoever have been filed against them.

10. The petitioner also admitted in the affidavit with regard to the part of the land in Sy.Nos.10 and 11, an award was passed on 06.11.2002 and as the petitioner's claim was not considered, he filed writ Petition in WP No.8472 of 2003 and that pending the writ

petition, the Land Acquisition Officer has referred the matter to the civil Court for adjudication under Sections 30 and 31 of the Land Acquisition Act. No details have been given even with regard to the said references under Sections 30 and 31 of the Land Acquisition Act. In the affidavit, the petitioner specifically stated that 'thus question of title to the said land is yet to be decided by the civil Court'. Admittedly, the suits, wherein the alleged *ex-parte* decrees were obtained, were of the year 1967 and 1968 i.e., OS No.28 of 1967, OS No.79 of 1967, OS No.40 of 1967 and OS No.93 of 1968. In the entire affidavit, the petitioner does not even say as to how much extent of land, in those survey numbers was in possession of the father of the petitioner.

11. Further, even according to the petitioner, he gave his first application for correction of the entries to the Mandal Revenue Officer on 02.02.1989 and the proceedings started before the Mandal Revenue Officer on 25.06.2002. In view of the abnormal delay in asking for correction of entries, the Joint Collector observed that 'it is not open to the revenue authorities to exercise their jurisdiction for correction of the revenue records'. Observing thus, the Joint Collector has rightly set aside the order of the Mandal Revenue Officer dated 24.06.2003 and allowed the appeal filed by the 4th respondent. The Joint Collector further observed that 'the aggrieved party may approach the civil Court under Section 8(2) of the ROR Act'.

12. Section 8(2) of the ROR Act reads as under:

> "Section 8(2) – if any person is aggrieved as to any rights of which he is in possession by an entry made in any record of rights he may institute a suit against any person denying or interested to deny his title to such right for declaration of his right under Chapter VI of the Specific Relief Act, 1963 and the entry in the record of rights shall be amended in accordance with any such declaration."

13. In view of Section 8(2) of the ROR Act, the petitioner has to approach the civil Court for the correction of entries made in the revenue record in accordance with law and the 1st respondent-Joint Collector has rightly allowed the revision filed by the 4th respondent and this Court find no reason to interfere with the impugned order.

14. Having regard to the facts and circumstances explained above, the Writ Petition fails and is, accordingly, dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand closed.

KONGARA VIJAYALAKSHMI, J

Date: 20.07.2018
BSS

HON'BLE SMT. KONGARA VIJAYALAKSHMI

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