

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.1775 OF 2017

ORDER:

The virasat proceedings issued by the Tahsildar, Kothapally Mandal, Karimnagar District – 3rd respondent herein, vide proceedings No.B/738/2016, dated 24.03.2016, wherein mutation was granted in favour of the respondents 4 to 6 in respect of the land in Survey No.84/C over an extent of Acres 3.10 guntas situated at Kamanpur Village of Kothapally Mandal, Karimnagar District, is under challenge in the present writ petition.

2. It is the case of the petitioners that they have filed a civil suit bearing O.S.No.136/2015, before the court of District Judge, Karimnagar, against the respondents 4 to 6 seeking declaration of title and perpetual injunction over the subject property. It is further submitted that without notice to the petitioners, mutation was granted in favour of the respondents 4 to 6. They further asserted that when the pendency of the suit was brought to the notice of the Tahsildar, vide proceedings dated 16.07.2016, the 3rd respondent requested the 2nd respondent to cancel the virasat sanctioned, vide the office proceedings dated 24.03.2016, in favour of the respondents 4 to 6. In spite of the same, neither the 2nd respondent nor the 3rd respondent have taken any further steps.

3. A counter affidavit is filed on behalf of the respondents 4 to 6, along with the proceedings of the 2nd respondent as well as the revisional authorities order. It is the contention of the respondents that in the earlier round of litigation before the revenue authorities, the petitioners revision came to be dismissed and as such, there is no merit in the claim of the petitioners and the same is liable to be dismissed. It is further asserted that the petitioners had suppressed the facts and they did not disclose the revenue proceedings in the writ petition and at any rate, the action of the Tahsildar – 3rd respondent is nothing but abuse of powers vested on him and is contrary to law. In as much as the petitioners have claimed that a civil suit bearing O.S.No.136 of 2015 is pending on the file of District Judge, Karimnagar, unless and until the said suit is adjudicated and the petitioners succeed therein, their claim cannot be considered. In the counter affidavit, they also mentioned with respect to the proceedings of the respondents 2 and 3. In those circumstances, they prayed for dismissal of the writ petition.

4. Learned Government Pleader for Revenue submits that in the light of the orders of the Revenue Divisional Officer, which were confirmed by the Joint Collector, this Court may pass appropriate orders.

5. The facts on record clearly disclose that at earlier point of time the 2nd respondent – Revenue Divisional Officer, vide his

proceedings in Appeal No.D1/2271/2015, had observed as follows:

“ Hence in view of the above, the ROR proceedings i.e., ROR/4617/1989, dated 14.11.1995 stands cancelled. As such the subsequent sale transaction vide Regd. Documents No.1615 of 1999 and 1060 of 2005 cannot be treated as valid. However, this Court has no jurisdiction to take any action on the Registered sale deeds. In PPBs of R1, R2 the extent in 84/C is recorded as Acres 1.25 guntas each. As per 1998-1999, 1999-2000, 2000-2001, 2004-2005 pahanies, their extent is recorded as 0.32½ guntas each. It is put to question as to why the extent is not rectified by the Tahsildar, Karimnagar. Though the pattedar is recorded as Abdul Nabi, the occupants changed from time to time and hence the plea of the appellants to delete the names of Respondents 1 and 2 and substitute them by the names of the appellants cannot be considered.

In view of the above, the appeal is partly allowed. The Tahsildar, Karimnagar directed to record the name of the pattedar as Abdul Nabi S/o. Shaik Imam and respondents as occupants to an extent of Ac.1.25 gts each in the current year pahani. Both parties are requested to approach competent Civil Court and settle their dispute of title over the land.”

6. The revisional authority confirmed the orders passed by the Revenue Divisional Officer. In other words, in terms of the orders of the 2nd respondent - Revenue Divisional Officer, the names of the petitioners as well as the respondents to the extent of Acres 1.25 guntas are required to be entered into the pahani and for the balance extent, the matter is required to be

settled in the competent civil court. While the things stood thus, in the impugned order dated 24.03.2016, though there was a reference of giving notice to all the interested parties on 16.02.2016, it is not discernable from the same to whom the notices were issued and particularly, the petitioners. It may also be noted that the impugned proceedings came to be passed immediately on 24.03.2016 to the total extent of Acres 3.10 cents. The 3rd respondent whose orders came to be challenged before the 2nd respondent, which orders subsequently further subject matter of revision before the Joint Collector, cannot plead ignorance of the said proceedings. In other words, there is a duty cast on the 3rd respondent to serve notices on the petitioners, who were parties to the revision before the revisional authority. Even assuming, the petitioners had not appeared, the 3rd respondent could not have passed orders contrary to the proceedings of the 2nd respondent dated 15.06.2015. Addressing of the letter dated 16.07.2016 only confirms that the 3rd respondent had made a mistake in issuance of proceedings dated 24.03.2016. However, under the Act, 3rd respondent is not vested with the power to review his own orders. The limited power vested in him is only to correct clerical errors exercising power under Section 5(6) of the Act. In as much as, the order passed by the 3rd respondent is in violation of the provisions of the Act besides being in violation of the principles of natural justice, the same are liable to be set aside.

7. Accordingly, the impugned proceedings are set aside, leaving it open to the parties to work out their remedies in accordance with law as the order of the revisional authority dated 15.06.2015 has become final.

8. With the above observations, this writ petition is allowed. Miscellaneous petitions pending consideration, if any, in this case shall stand closed as a consequence. There shall be no order as to costs.

04.01.2018
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CHALLA KODANDA RAM, J

