* THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

+ Writ Petition No. 19748 of 2005

% 30.08.2018

Kannamlla Krupamma

...Petitioner

Vs.

$ The Joint Collector,
Karimnagar District and others

...Respondents

!Counsel for the Petitioner : Sri T. Venkat Reddy

^ Counsel for the Respondents 1 to 3 : GP for Revenue
Counsel for Respondents 4 to 6 : Sri V. Ravi Kiran Rao

<Gist :

>Head Note :

? Cases referred:
1. 2009(1) ALD 248
2. 2015(3) ALD 487
3. 2008(2) ALT 429
4. AIR 1966 SC 828
5. 2000 AIR 2783 = 2000 (7) SCC 529
6. (1996) 3 SCC 364

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No.19748 of 2005

Between

Kannamlla Krupamma

....Petitioner

And

The Joint Collector,
Karimnagar District and others

.. Respondents.

JUDGMENT PRONOUNCED ON : 30.08.2018

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : No

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes

3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.19748 of 2005

Order:

This Writ Petition is filed questioning the orders passed by the Joint Collector, Karimnagar, in File No.D1/1294/2001, dated 25.07.2005, wherein he confirmed the orders passed by the Revenue Divisional Officer, Peddapally, in File No.H/1673/99, dated 05.02.2001, as illegal and arbitrary.

The brief facts of the case, according to the petitioner, are that her husband purchased the land in Survey No.915, admeasuring Ac.0.05 gts., situated at Sultanabad Village and Mandal by way of unregistered sale deeds dated 05.05.1961 and 05.01.1962 and that since then they have been in continuous possession of the same; in the year 1981 when the 4th respondent and her husband who are the neighbouring land owners tried to interfere with their possession, the husband of the petitioner filed OS No.63 of 1981 on the file of the District Munsif, Sultanabad, seeking perpetual injunction and the said suit was decreed in their favour on 30.01.1985; in the written statement filed by the 4th respondent herein in the said suit she has admitted that she sold the said land to the husband of the petitioner; the petitioner and her husband also filed another suit when the unofficial respondents tried to interfere with their possession and the same was dismissed; against the dismissal of the suit, they have filed an appeal before the learned Senior Civil Judge, Peddapally and the same is pending; the petitioner filed an application before the 3rd respondent – Mandal Revenue Officer, under Section 5-A of the AP Rights in Land and Pattadar Passbooks Act, 1971 (for short 'the Act'), seeking regularization of the said land; the Mandal Revenue Officer, after due enquiry, issued 13-B and 13-C certificates vide proceedings dated 18.04.1998; the 4th respondent filed a petition before the 1st respondent - Joint Collector questioning the issuance of certificates and he forwarded the same to the 2nd respondent - Revenue Divisional Officer to enquire into the matter and to submit a report; as seen from the orders, the Mandal Revenue Officer was requested by the Revenue Divisional Officer to send a factual report along with the connected records; the Revenue Divisional Officer basing on the report submitted by the Mandal Revenue Officer to the effect that the certificates were issued by mistake of fact, cancelled the said certificates by his orders dated 05.02.2001; the said report was prepared behind their back; aggrieved by the said order dated 05.02.2001 a revision was filed before the Joint Collector and the Joint Collector confirmed the order of the Revenue Divisional Officer; regularization of the unregistered sale deeds under Section 5-A of the Act was sought on the basis of the decree of perpetual injunction.

During the pendency of the Writ Petition the 4th respondent died, therefore her legal representative was brought on record as respondent No.6.

A counter affidavit has been filed by the 6th respondent stating, *inter alia*, that the alleged unregistered sale deeds are fabricated; the petitioner and her husband were never in possession of the subject land; the husband of the petitioner filed a suit in OS No.63 of 1981 on the file of the District Munsif, Sultanabad against his mother Akula Gouramma and her second husband by name Tirupathi for grant of perpetual injunction; the said suit was decreed in favour of the husband of the petitioner on 30.01.1985; his mother could not prefer any appeal against the said judgment and decree as they were not affected by the same; the advocate engaged by his mother, without taking any proper instructions, prepared the written statement though she did not instruct him as mentioned in the written statement and the filing of the written statement was forfeited by the learned District Munsif, Sultanabad for non-payment of costs; the petitioner and others have filed a suit in OS No.67 of 2000 on the file of the Junior Civil Judge, Sultanabad against him, his brothers and sister for perpetual injunction in respect of the same property admeasuring 0.05 gts., and the said suit was dismissed on 21.03.2005; the petitioner filed an Appeal in AS No.11 of 2005 against the said judgment in OS No.67 of 2000 and the said appeal was also dismissed on merits on 23.02.2015. The petitioner's husband died on 15.08.1988, but the petitioner filed the petition on his name before the District Collector in the year 1997 and got the same forwarded to the Mandal Revenue Officer for validation of unregistered sale deeds; instead of submitting the unregistered sale deeds, the petitioner enclosed the copies of judgment and decree dated 30.01.1985 passed in OS No.63 of 1981 on the file of the Junior Civil Judge, Sultanabad; the Mandal Revenue Officer, without conducting any enquiry and without issuing any notice, treated the said decree for perpetual injunction as a decree for declaration of title and regularized the unregistered sale deeds; the challan was submitted on the name of a dead person and the signatures were subscribed by the petitioner and others on the said challan, even though the petitioner's husband died in the year 1988 itself; the Mandal Revenue Officer has no authority to regularize the land in the name of a dead person; his mother filed a petition before the Joint Collector questioning the issuance of 13-B and 13-C certificates, under Section 5-A of the Act; the Joint Collector forwarded the said petition to the Revenue Divisional Officer and the

Mandal Revenue Officer to take necessary action; the Mandal Revenue Officer, vide letter dated 08.11.2000, has submitted a report stating that by mistake he treated the judgment and decree dated 30.01.1985 passed in OS No.63 of 1981 for injunction as a "sale of the property"; after receipt of the said report the Revenue Divisional Officer passed the orders canceling the 13-B and 13-C certificates issued in favour of the husband of the petitioner; aggrieved by the same, the petitioner filed a revision before the Joint Collector and the said revision was also dismissed; as on today the land in Survey No.915 is covered by houses which are constructed by him and his brothers; the Gram Panchayt has also assigned house numbers viz., 3-22, 3-22/1, 3-21 and 3-21/2; his mother executed a gift deed and he constructed a house after obtaining valid permission from the Gram Panchayat.

A counter affidavit has also been filed by the Revenue Divisional Officer admitting the report of the Mandal Revenue Officer dated 08.11.2000 and stating that the Mandal Revenue Officer treated the said decree of perpetual injunction "as a sale" by mistake and issued the certificates to the husband of the petitioner and that the Mandal Revenue Officer himself recommended for cancellation of the 13-B and 13-C certificates.

No reply affidavit has been filed denying the averments of the counter affidavits.

Heard learned counsel for the petitioner, learned counsel for the unofficial respondents and learned Assistant Government Pleader for respondents 1 to 3.

The main contention of the learned counsel for the petitioner is that if the unofficial respondents are aggrieved by issuance of certificates by the Mandal Revenue Officer they should have filed a statutory appeal under Section 5-B of the Act or a civil suit under Section 8(2) of the Act before the competent Civil Court and admittedly they did not file the appeal in a proper form and that since the petition filed by them to enquire into the matter and take necessary action is not in the form of an appeal, the respondents 1 and 2 have no jurisdiction to pass the impugned orders, hence the same are liable to be set aside. In support of his contention that the appeal which is not in proper form should be rejected, he placed reliance on the judgments reported in Thripuravaram Krishna Reddy v. Joint Collector, Cuddapah[1] and Kencharayappa v. State of Andhra Pradesh[2].

On the other hand, learned counsel for the unofficial respondents, contends that the husband of the petitioner filed O.S.No.63 of 1981 on the file of the District Munsif, Sultanabad, for perpetual injunction and that the said recital in the written statement was made without any authority to his advocate and the said written statement was not taken into consideration at the time of disposal of the said suit and filing of the written statement was forfeited by the learned District Munsif for non-payment of costs. He mainly contends that the certificates issued under Section 5-A of the Act shows that the said property was purchased from Akula Gouramma, but the sale deeds which have been relied upon by the petitioner shows the name of Akula Tukkaiah. He also submits that the date of the sale deeds is also not mentioned in the said certificates and that the certificates were issued under Section 5-A of the Act without issuing any notice to the unofficial respondents and without conducting any enquiry. He further contends that when the sale deeds contain a

[1] 2009 (1) ALD 248
[2] 2015 (3) ALD 487

different name i.e., Akula Tukkaiah, the Mandal Revenue Officer ought not to have shown the name of Akula Gouramma. He also contends that the suit filed by the petitioner in OS No.67 of 2000 on the file of the Junior Civil Judge, Sultanabad, for perpetual injunction in respect of property in Survey No.915, an extent of Ac.0-05 gts., situated in Sultanabad village was dismissed on merits on 21.03.2005 and the Appeal No.11 of 2005 was also dismissed on 23.02.2015 and submits that the possession was never with the petitioner herein and they failed to prove possession and prima facie title. He contends that the petitioner alongwith others got filed the petition in the name of a dead person in the year 1997 before the District Collector and got the same forwarded to the then Mandal Revenue Officer for validation of the unregistered sale deeds and the Mandal Revenue Officer, without conducting any enquiry and without giving any notice to the parties, regularized the sale deeds. He contends that the Mandal Revenue Officer committed a mistake in relying upon the sale deeds which were executed by one Akula Tukkaiah and also on the decree in an injunction suit. He also contends that the Mandal Revenue Officer himself realized his mistake and submitted a report to the Revenue Divisional Officer stating that by mistake he relied upon the decree in a suit for injunction and issued the said certificates. He further submits that no useful purpose would be served in remanding the matter to the Mandal Revenue Officer because the Mandal Revenue Officer himself submitted a report and recommended for cancellation of the said certificates. He also submits that the unofficial respondents obtained permission in 2005 and constructed houses on the said property.

Learned Assistant Government Pleader also submits that the decree in a suit for injunction is not at all relevant for issuance of certificates under Section 5-A of the Act and that the Mandal Revenue Officer has committed a mistake in issuing the said certificates and he supports the orders of the Revenue Divisional Officer and the Joint Collector.

As seen from the papers, the husband of the petitioner died on 15.08.1988, and the petitioner filed an application in her husband's name before the District Collector in 1997, who in turn forwarded the same to the Mandal Revenue Officer for validation of unregistered sale deeds of 1961-62, enclosing the decree, dated 30.01.1985, passed in O.S.No.63 of 1981 by the District Munsif, Sultanabad. The said suit is for perpetual injunction and not a declaratory suit. But, the validation certificates were issued by the Mandal Revenue Officer without even verifying in whose name the sale deeds are. The said validation certificates dated 18.04.1998 show the name of the 4th respondent Akula Gouramma, but the unregistered sale deeds filed along with the writ petition show the name of Akula Tukkaiah as the vendor under the said sale deeds. Without even verifying the name of the Vendor, the Mandal Revenue Officer validated the sale deeds, showing the name of the 4th respondent herein, as the Vendor, without conducting any enquiry and without giving any notice to the parties. The said certificates also do not have any details whatsoever with regard to the date of sale deeds. Questioning the same, the unofficial respondents filed a petition before the Joint Collector. The same has been forwarded by him to the Revenue Divisional Officer to enquire into the matter. The Revenue Divisional Officer in turn requested the Mandal Revenue Officer to send his report to the same. The Mandal Revenue Officer in his report dated 08.11.2000 categorically stated that by mistake he treated the decree for perpetual injunction as a 'sale decree' and issued the certificates and he himself recommended for cancellation of the said certificates. The decree in OS No.63 of 1981 is only a suit for perpetual injunction. Apart from that, the petitioner and others have also filed the suit in OS No.67 of 2000 on the file of the Junior Civil Judge, Sultanabad, against the unofficial respondents and others for perpetual injunction in respect of the very same property and the said suit was dismissed on 21.03.2005. In the said suit the defendants therein who are children of respondent No.4 herein took a specific stand that they are in possession of the said land since more than 20 years. In the said suit it was categorically observed that the petitioner herein failed to establish the *prima facie* lawful possession over the suit property at any point of time since 1961 till the date of filing of the suit, except relying on the decree of perpetual injunction in OS No.63 of 1981. The petitioner also filed an Appeal i.e., AS No.11 of 2005 challenging the said judgment in OS No.67 of 2000 and the said Appeal was also dismissed on merits on 23.02.2015 which itself shows that the petitioner could not prove her possession over the said property. The unofficial respondent No.4 filed a petition stating that the certificates under Section 5-A of the Act were issued behind their back and without any notice whatsoever and without conducting any enquiry basing on a decree for perpetual injunction. The Joint Collector directed the Revenue Divisional Officer to enquire into the matter and in the enquiry the Mandal Revenue Officer himself admitted that due to mistake he has issued the said certificates and recommended for cancellation of the same. The Revenue Divisional Officer in his order categorically observed that the procedure under Section 5-A of the Act has not been followed by the Mandal Revenue Officer. According to Section 5-A(2) of the Act, the Mandal Revenue Officer shall conduct an enquiry before issuing the validation certificates. It is under these circumstances, the impugned orders came to be passed. When the Mandal Revenue Officer himself recommended for cancellation of the certificates, no useful purpose would be served by remanding the matter to the Mandal Revenue Officer and asking him to conduct an enquiry and pass appropriate orders. The main documents basing on which the Mandal Revenue Officer issued validation certificates are the decree and judgment passed in an injunction suit and the unregistered sale deeds which are in the name of a different person i.e., Akula Tukkaiah. Both these reasons are found to be not correct for issuance of certificates under Section 5-A of the Act. In fact, the Mandal Revenue Officer also did not follow the procedure prescribed under Section 5-A(2) of the Act and he issued the certificates without conducting any enquiry whatsoever. The Joint Collector, after taking into consideration the mistake committed by the Mandal Revenue Officer in issuing the certificates by relying on the judgment and decree passed in OS No.63 of 1981, dated 30.01.1985, has rightly come to a conclusion that the Mandal Revenue Officer has not followed the procedure prescribed under the Act and confirmed the order of the Revenue Divisional Officer.

The learned counsel for the petitioner relied on Thripuravaram Krishna Reddy's case (supra) and submits that as the appeal filed by the unofficial respondents is not in the proper form, it has to be rejected. In that case, the powers of the Revenue Divisional Officer under Section 5(5) of the Act and the procedure to be followed under Rule 21 of the Rules framed under the Act were discussed. As the Appeal was not filed in accordance with Rule 21 of the Rules and within the time stipulated under Section 5(5) of the Act with a condone delay petition, it was held that the Revenue Divisional Officer does not have powers akin to the power of the Collector under Section 9 of the Act.

The other case relied upon by the petitioner is Kencharayappa's case (supra). In that case it was held that "If the case requiring corrections of the revenue records beyond the time limit of one year, necessary orders can be passed only by the District Collector in exercise of the revisional powers and the Tahsildar is not vested with any such power". The said case does not apply to the facts of the present case, as it dealt with *suo motu* appeal powers of the Revenue Divisional Officer.

A Division Bench of this Court in M. Govinda Rao v. A.P. State Wakf Board[3], relying upon the judgments of the Hon'ble Supreme Court reported in Gadde Venkateswara Rao v. Government of Andhra Pradesh[4] and Aligarh Muslim University v. Mansoor Ali Khan[5], held that "Rules of natural justice can have no application where quashing of an order passed contrary thereto would result in revival of an earlier illegal order".

In *State Bank of Patiala v. S.K. Sharma*[6], the Hon'ble Supreme Court held that any and every violation of a facet of natural justice or of a rule incorporating such facet may not make the final orders altogether void.

In the peculiar facts of this case, if the order of the Joint Collector and the Revenue Divisional Officer are set aside, on the ground that the appeal before the Revenue Divisional Officer is not in proper form, it will result in revival of an earlier illegal order of the Mandal Revenue Officer, validating the unregistered sale deeds, without following the procedure,

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[3] 2008(2) ALT 429
[4] AIR 1966 SC 828
[5] 2000 AIR 2783 = 2000 (7) SCC 529
[6] (1996) 3 SCC 364

without notice to the affected parties and contrary to the documents. Hence, in the peculiar facts and circumstances of this case, I do not see any reason to exercise the discretionary jurisdiction under Article 226 of the Constitution of India and interfere with the orders passed by the Revenue Divisional Officer and the Joint Collector.

The Writ Petition is, accordingly dismissed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 30th August 2018
Nsr

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

<u>Writ Petition No.19748 of 2005</u>

<u>Date: 30th August 2018</u>

Nsr