

THE HON'BLE SRI JUSTICE M.GANGA RAO

W.P.NO.4547 OF 2006

ORDER:

This writ petition is filed under Article 226 of the Constitution of India questioning the proceedings of the Revenue Divisional Officer, Bodhan, Nizamabad District-5th respondent bearing No.A2/1322/2004, dated 06.01.2005, as confirmed by the Joint Collector, under the provisions of the A.P. Rights in Lands (Pattadar Passbooks) Act (for short 'the Act') as illegal, arbitrary and contrary to the provisions of the Act.

2. The brief facts of the case are that one Smt.Nimmalapudi Bullammai W/o.Sathi Raju, mother of the petitioner, had purchased various lands, mentioned below, during her lifetime through registered sale deed:

375/1A	Ac. 0.13 guntas
375/3	Acs.2-12 guntas
275/4	Ac. 0-15 guntas

	Acs.3-08 guntas

3. Her name was mutated in the revenue records. Thereafter, she died on 04.03.1993 leaving behind the petitioner as her legal heir and successor. The 1st respondent is the daughter of the petitioner. Her marriage was performed with one Chandra Sekhar about 18 years back. The father of the 1st respondent has got Acs.40.00 of land. The lands under dispute were given to the 1st respondent under "pasupu kumkuma" during the life time of his father and got mutated the

lands in the name of the 1st respondent with the consent of her parents. The land was mutated in the revenue records, vide ROR proceedings, bearing ROR/549/94, 550/94, 551/94, 552/94 and 553/94, dated 14.12.1994. The same was implemented in the revenue records and issued pattadar pass books and title deeds to the 1st respondent. Since 1994 the 1st respondent is in possession and cultivating the lands as absolute owner to the knowledge of the petitioner and respondents. The petitioner is not in possession and enjoyment of the lands under dispute. The 1st respondent paid all taxes including water tax, wealth tax and land cist to the revenue authorities. The petitioner filed appeal bearing Appeal No.A2/1322/2004 under Section 9 of the Act before the 5th respondent contending that after the death of her mother, original owner, against the mutation proceedings dated 14.12.1984, stating that when she applied for issuance of pattadar pass books in the year 2004, on 12.02.2004 she came to know that the name of the 1st respondent was entered in the revenue records and respondent Nos.2 to 4 issued the proceedings in the name of the 1st respondent without following the legal principles as required under the Act. As per the provisions of Section 17 of the Registration Act, if any land is conveyed as "pasupu kumkuma" and the value of the land is more than Rs.100/-, it has to be compulsorily registered. The 5th respondent, after elaborate enquiry in strict adherence to the provisions of the Act and Rules made thereunder and after considering the entire evidence on record, came to the conclusion that after the death of the original owner, mother of

the petitioner, on 04.03.1993, the lands in dispute were transferred to the 1st respondent under the provisions of the Act with due consent of the parents of the 1st respondent; for the reasons best known to the 1st petitioner created a cause of action stating that the petitioner approached the 2nd respondent for issuance of pahani patrika in the year 2004, on 12.02.2004 she came to know that the name of the 1st respondent was entered in the revenue records by the 2nd respondent contrary to the provisions of the Act and Rules made thereunder. The petitioner filed appeal before the 5th respondent only to sort out disputes with regard to the property of the husband of the 1st petitioner and 1st respondent and son of the petitioner. The appeal is barred by limitation under Section 5 of the Limitation Act. The appeal has to be filed under Section 5(3) of the Act within 60 days, if there is any delay along with the delay condonation petition under the provisions of Section 5 of the Limitation Act, duly explaining the reasons for the delay. No such application is filed before the 5th respondent. Hence the 5th respondent dismissed the appeal holding that the appeal is time barred. On 25.01.2006 the petitioner filed revision petition before the 6th respondent vide Revision Case No.112/06/2005 and the same was rejected confirming the order of the 5th respondent.

4. Heard the learned counsel for the petitioner, learned counsel for the 1st respondent and the learned Assistant Government Pleader for respondent Nos.2, 5 and 6, considered their submissions and perused the record.

5. The learned counsel for the petitioner would contend that the lands in dispute were originally purchased by petitioner's mother and as the petitioner is the only daughter, she alone is the successor and legal heir to her mother, original land owner. The mutation proceedings in favour of the 1st respondent were passed contrary to the provisions of the Act without notice. Learned counsel relied on *Chinnam Pandurangam vs. Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District and others*¹, *Veeramachaneni Ramchander Rao and another vs. Tahsildar, Chityal Mandal, Nalgonda District and another*² and *Gajula Ratnaji vs. Boppana Veera Prabhavathi and another*³ in support of his contention contending that ROR proceedings issued without notice, mutating the land in favour of the 1st respondent, are illegal; further contending that the 1st respondent had not produced any documentary evidence to show that the lands were given under "pasupu kumkuma", more so when the father of the 1st respondent and husband of the petitioner has no right to transfer the said lands in favour of the 1st respondent.

6. Per contra, the learned counsel for the 1st respondent would contend that the disputed lands were mutated in the year 1994 in favour of the 1st respondent after demise of her grand mother with consent of the parents of the 1st respondent. The petitioner filed appeal after nine years of mutation proceedings

¹ 2007 (6) ALT 134 (F.B.)

² 2009 (3) ALT 92

³ 2007 (1) ALT 312

with ulterior motive and at the instance of the petitioner's son only to deprive of her share in the properties acquired by her father. The appellate and revisional authorities dismissed the appeal and rejected the revision after due opportunity to the petitioner and based on the record passed reasoned order. The counsel for the 1st respondent relied on *Kosaraju Balaji vs. State of Telangana and others*⁴ in support of his contention that the appeal under Section 5(5) of the Limitation Act has to be filed within 60 days, if any delay Section 5 of the Limitation Act petition is to be filed. But the petitioner failed to file any such delay condonation petition under Section 5 of the Limitation Act.

7. On careful consideration of the submissions of the counsel and on perusal of the record, it is found that the mother of the petitioner Smt.Nimmalapudi Bullammai W/o.Sathi Raju was the owner and pattadar of the land to an extent of Acs.8.19 guntas situated in various survey numbers of the Varni Village, Nizamabad District. She died on 04.03.1993 leaving the petitioner alone as her legal heir and successor. Thereafter, the 2nd respondent mutated the lands in favour of the 1st respondent through proceedings in ROR Nos.549, 550, 551, 552 and 553 of 1994 dated 14.12.1994 and recorded the 1st respondent's name as pattadar and title deeds were issued with the consent of the parents. As per the pahanies extracted, the 1st respondent is in possession and enjoyment of the land. The petitioner filed appeal on 05.04.2004 against the proceedings of the Mandal Revenue

⁴ 2016 (3) ALD 360

Officer, Varni, dated 14.12.1994 before the 1st respondent under Section 5 (5) of the Act.

8. The appeal under Section 5(5) of the Act has to be filed within 60 days of the mutation proceedings and in case of any delay, along with a petition under Section 5 of the Limitation Act. The provisions of Sections 5, 12 to 24 of the Limitation Act have been made applicable by Section 12(2) of the Act. The law of limitation is envisaged to prevent the people from reviving stale claims. The petitioner filed petition under Section 5(5) of the Act after 9 years of passing the mutation proceedings dated 14.12.1994. The appellate authority, after giving due opportunity to the petitioner, held that the petitioner failed to produce any documentary evidence to the effect that she succeeded to the land and appeal is hopelessly time barred. Thereafter, the petitioner's revision petition was rejected by the 6th respondent-Joint Collector after due opportunity and considering the record. The learned counsel for the petitioner failed to convince this court about the enormous delay of nine years caused in initiating the appeal proceedings under Section 5(5) of the Act and no valid grounds have been advanced to set aside the impugned proceedings.

9. Therefore, the writ petition is dismissed. No order as to costs. Miscellaneous petitions pending, if any, shall stand closed.

M.GANGA RAO, J

25.01.2018
TSNR