HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1566 of 2015

Date: 02.04.2018

Between :

B.Venkateshwar Reddy s/o. Krishna Reddy, Aged 51 years, R/o Plot No.55, Road No.2, Sangh Society, Banjara Hills, Hyderabad, presently residing in USA, rep.by his Power of Attorney Holder, P.Venkat Narayana, s/o. Venkatapathi, Aged 56 years, occu: Business, r/o.Bellary, Karnataka State, presently residing at H.No.125, Kamalapuri Colony, Phase-I, Srinagar Colony, Hyderabad.

.... Petitioner/respondent No.1

And

The State of Telangana, rep.by its Principal Secretary, Revenue Department, Secretariat, Hyderabad and others.

.... Respondents/revision petitioner/ respondents

This Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1566 of 2015

ORDER:

Heard Sri M.Achuta Reddy, learned counsel for petitioner, learned Government Pleader for Revenue (TG) for respondents 1 and 2, Sri N.Vasudeva Reddy, learned counsel appearing for Sri K.L.N.Raghavendra Reddy, counsel on record for respondent no.3.

2. In this writ petition, petitioner challenges the order of Joint Collector, Mahabubnagar, on the revision preferred by 3rd respondent under Section 9 of the A.P.Rights in Land and Pattadar Pass Books Act, 1971 (for short, Act, 1971) against the order of Tahsildar, Farooqnagar recording the name of father of petitioner - late Krishna Reddy in the record of rights on land to an extent of Ac.9.09 guntas in Sy.No.14 and Ac.0.15 guntas in Sy.No.252/EE of Annaram village.

3. According to petitioner, father of petitioner late B.Krishna Reddy, father of 3rd respondent late Mr. Raghunath Reddy, father of respondents 4 and 5 Mr. Pratap Reddy and Mr. Satyanarayana Reddy are all brothers and constituted joint family having equal share holding in all the joint family properties, which include two extents of land mentioned above. According to petitioner, in the absence of his father, who was residing in Hyderabad, three brothers of his father mutated their names in the revenue records, based on unregistered partition deed dated 15.03.1989 drawn by those three persons, without knowledge and behind back of his father. However, two extents of land mentioned above were shown as allotted to the father of petitioner. Though his father protested, he was persuaded to accept the small extent of land given to him.

4. According to petitioner, even prior to this illegal settlement, his father was in possession and enjoyment of those two extents of land and after his demise, he has been in possession and enjoyment. According to petitioner, though he is residing in United States of America since 1996, but he continued to cultivate the land and in possession. Name of his father was mutated in revenue records and after his death, his name was mutated.

5. While so, 3rd respondent filed revision under Section 9 of the Act, 1971 praying to correct the entries in the revenue records to incorporate his name in the place of petitioner. It was contended on behalf of revision petitioner that after family settlement deed on 23.09.1989 by relinquishing the above two extents of land in favour of his three brothers and three brothers, in turn, have executed family settlement deed on 19.01.1996, where under subject land was relinquished by other two brothers in favour of father of 3rd respondent. Ignoring the plea of petitioner and accepting the contention of 3rd respondent, Revisional Authority allowed revision and directed to record the name of 3rd respondent in the revenue records.

6. By order dated 30.01.2015, Court granted interim suspension of order of revisional authority and further directed that entries made in the revenue records after the order of revisional authority should not be used for any purpose. In the WVMP filed by unofficial respondents, by order dated 15.03.2017, while adjourning the petition by four weeks, this court directed the writ petitioner not to alienate the property, which is subject matter of dispute in the writ petition. This order was subsequently

extended until further orders. Court further clarified that neither the petitioner nor his agent should alienate the subject property in dispute. When the vacate petition was taken up for consideration, learned counsel agreed for final disposal of writ petition.

7. Three crucial documents, which have bearing on rival claims, are; 1) partition deed dated 15.03.1989 between Prathap Reddy, Satyanarayana Reddy and Ramachandra Reddy; 2) settlement deed dated 23.09.1989 written by B.Krishna Reddy and 3) settlement deed dated 19.01.1996 signed by Prathap Reddy and Ramachandra Reddy, where under B.Krishna Reddy was a witness.

8. By settlement deed dated 15.03.1989, three brothers divided the land standing in joint family into three portions in various survey numbers of village. This settlement deed also mentions apportionment of land to an extent of Ac.9.09 guntas in the name of B.Krishna Reddy. Further in Sy.No.252 family owns Ac.1.02 guntas and all four family members were entitled to $1/4^{th}$ share. The dispute is on two extents of land earmarked to B. Krishna Reddy. On 23.09.1989, i.e., few months after the earlier partition, late B.Krishna Reddy executed an agreement, relinquishing his right in the above two extents of land in favour of his three brothers and agreed for deletion of his name in the revenue records. He also stated that while giving declaration under the Urban Land (Ceiling and Regularization) Act, 1976 (Act, 1976), he only included the properties located in Hyderabad district and he had not given any declaration of land in Annaram village. He goes on to say that as not declaring the land is not valid in law, he has

no right in these properties. In the third document, the relinquishment by late Krishna Reddy was noted. Further, the other two brothers, Prathap Reddy and Satyanarayana Reddy also relinquished their rights in land in Sy.No.14 in favour of Ramachandra Reddy. This document was witnessed by three persons including Krishna Reddy. Be noted that all three documents were not registered. Respondent No.3 claims that in view of categorical statement of late Krishna Reddy, relinquishing his right in the above two extents of land and being a witness to further settlement in the family, his son could not have asked for recording his name in the revenue records and the entry made in the revenue records reflecting the name of Sri P.Venkateshwar Reddy was erroneous. The 3rd respondent, therefore, supports the decision of Joint Collector in allowing the revision and issuing orders to delete the name of Venkateshwar Reddy. *Per contra,* it is the stand of petitioner that these documents were unregistered, not genuine and they were created only to deny the claim of petitioner and that his father never executed such relinquishment deed nor was a party to further relinquishment deed dated 19.01.1996. Both parties claim that they are in possession and enjoyment of subject properties.

9. Petitioner makes serous allegations of forgery, tampering and creation of fraudulent documents to grab the properties belonging to him. It appears, in addition to these two extents of land, there is dispute inter-parties on other lands where similar allegations are made. Petitioner lodged complaint to Police making scathing attack on 3rd respondent (FIR No.641 of 2016 in Shadnagar P.S.). After investigation into the allegations in the complaint filed by

petitioner, Police filed charge sheet. The trial Court took cognizance of the charges under Sections 417, 420, 465, 468 and 471 of IPC and case is registered as C.C.No.169 of 2017 by Additional Judicial Magistrate of First Class, Shadnagar. The criminal case is pending trial before competent Court and it is for the prosecution to establish charges levelled against accused.

10. Further, 3rd respondent filed O.S.No.13 of 2016, pending on the file of Court of Senior Civil Judge, Shadnagar, praying to declare him as owner, to grant decree of perpetual injunction and to declare deed of exchange as null and void concerning suit schedule land, which includes land on which C.C.No.169 of 2017 is pending.

11. Though, serious allegations are made in the reply affidavit and filed several documents to support allegation of fraud, forgery and tampering of record, no such allegations were made in the affidavit filed in support of writ petition.

12. Before the Joint Collector, brief written arguments were filed. It was contended that the subject property had fallen to the share of his father and after his demise, petitioner succeeded. He denied existence of family partition and agreement. There was no serious opposition to the claim of 3rd respondent. It does not contain details of allegations now made in the reply affidavit.

13. Based on the material placed before Joint Collector, issue for consideration was whether mutation of petitioner name in the revenue records was contrary to Act, 1971?

14. It is seen from the record of Joint Collector, before accepting the plea of petitioner to mutate his name in the revenue records, Tahilsdar did not issue notice to 3rd respondent and there was no opportunity to present his case. The entries in Adangal/pahani filed by petitioner and 3rd respondent would show that against subject property, name of 3rd respondent was reflected in ownership and possession column from the year 1996-97. Thus, before deleting his name and recording name of petitioner, 3rd respondent ought to have been heard. Section 5 (1) to (3) of the Act, prescribes procedure to accept plea to alter/correct revenue records. Apparently, this procedure was not followed. Revisional Authority noted the same in his order.

15. In the grounds urged in support of prayer in this writ petition, there are no averments denying this conclusion of Joint Collector. No material is placed on record to show that 3rd respondent was put on notice. Thus, order of Tahsildar, against which revision was preferred, is unsustainable on this ground alone.

16. It is contended that Joint Collector erred in relying on unregistered relinquishment deeds to allow the revision. For the first time in this writ petition, serious allegations of forgery, fraud and tampering are made. Before the Joint Collector, no such allegations were made. In the absence of serious contest by petitioner and when other coparceners were supporting 3rd respondent *prima facie,* no error can be found in the way issue was considered by the Joint Collector. Moreover, the revenue records reflected the name of 3rd respondent from the year 1996-97.

17. It is therefore necessary to consider whether the decision of Joint Collector is vitiated on any of the parameters of judicial review of decisions made by quasi-judicial authorities.

18. In the following decisions, the parameters of judicial review of administrative decisions are codified.

18.1. In ***Tata Cellular* v. *Union of India*[1],** Supreme Court held:

> "**73.** Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the *court's ability* to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.
>
> ……
>
> **77.** The duty of the court is to confine itself to the question of legality. Its concern should be:
>
> 1. Whether a decision-making authority exceeded its powers?
> 2. Committed an error of law,
> 3. committed a breach of the rules of natural justice,
> 4. reached a decision which no reasonable tribunal would have reached or,
> 5. abused its powers.
>
> Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. **Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:**
>
> (*i*) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
> (*ii*) **Irrationality**, namely, Wednesbury unreasonableness.
> (*iii*) Procedural **impropriety**.
>
> The above are only the broad grounds but it does not rule out addition of further grounds in course of time."
>
> (emphasis supplied)

[1] (1994) 6 SCC 651

18.2. In **Reliance Airport Developers (P) Ltd. v. Airports Authority of India**[2], one of the issues considered was scope of judicial interference in matters of administrative decisions. Supreme Court elaborated on these three parameters. Supreme Court observed:

> "**57.** The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinise the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality" and the third "procedural impropriety". ………….
>
> **58.** ***The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.***
>
> **62.** Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.
>
> 65. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.
>
> ***66. In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself.*** (See *Indian Rly. Construction Co. Ltd.* v. *Ajay Kumar* [(2003) 4 SCC 579: 2003 SCC (L&S) 528].
> ……………

[2] (2006) 10 SCC 1

> **73.** While exercising power of judicial review courts should not proceed where two views are possible and one view has been taken. In such a case, in the absence of mala fide taking one of the views cannot be a ground for judicial review. ….
>
> (emphasis supplied)

19. Guided by the above principles on scope of judicial review, considering the facts of the case and material on record, the impugned decision cannot be characterized as arbitrary. The decision arrived at cannot be said as 'so outrageous' as to be in total defiance of logic or moral standards (**Reliance Airport Developers (P) Ltd).** It is not the case of petitioner that Joint Collector does not have jurisdiction. The material and contentions placed on record in this writ petition was not placed before the Joint Collector. Petitioner was afforded opportunity of hearing. He filed written submissions. Thus, it cannot be said that he ignored the material placed on record and came to wrong conclusion. In the facts of this case, his decision cannot be said as perverse. Process of decision making is not vitiated on grounds of **Illegality**, **Irrationality** and Procedural **impropriety**.

20. The issues now projected in this writ petition are serious and can be adjudicated upon only by competent Court. A Joint Collector cannot be expected to go into the admissibility, legality and validity of a document. Whether unregistered partition deeds/ settlement deeds are valid cannot be gone into by such authority. They cannot indulge in adjudication of disputed questions of fact. Thus, if petitioner disputes on authenticity of unregistered partition deeds/ settlement deeds, admissibility and legality of such documents to confer title to a property, he must agitate in appropriate civil proceedings. Merely because entries in revenue

records reflect name of 3rd respondent, petitioner is not remediless. Learned counsel for 3rd respondent also fairly submits that it is open to petitioner to work out civil law remedies. Leaving it open to petitioner to work out his remedies as available in common law, for a period of twelve weeks from the date of receipt of copy of this order, the parties shall not create third party interest in any manner on the subject properties.

21. Writ petition is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 02.04.2018
Kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1566 of 2015

Date: 02.04.2018

kkm