

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.18186 of 2016

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner to issue a writ of Certiorari and set aside the proceedings in D.Dis.No.(E4)6335/2015, dated 09.05.2016, passed by the 1st respondent – Joint Collector, Chittoor, since illegal, arbitrary, unconstitutional, after calling for the records related to the said proceeding.

2. I have heard the submissions of Sri Rajendra Bussa, learned counsel appearing for the writ petitioner, of the learned Government Pleader for Registration & Stamps appearing for the respondents 1 to 5, and of Sri T. Vijay Hanuman Singh, learned counsel appearing for the 6th respondent. I have perused the material record.

3. The case of the petitioner, in brief, is this:

He is the son-in-law of the 6th respondent. The 7th respondent is the younger daughter of the 6th respondent. 8th respondent is the husband of the 7th respondent. 6th respondent purchased Ac.3.00 cents in Sy.No.19/1 of Mothagunta Village of Bangarupalem Mandal, under a registered sale deed, dated 26.12.1974. The petitioner developed the said land and made it fit for cultivation by borrowing huge amounts. He has taken care of the 6th respondent and his sister-in-law - 7th respondent being the elder son-in-law. The 6th respondent executed a gift settlement deed in his favour, on 31.03.1999, for the land of Ac.2.00 cents out of Ac.3.00 cents mentioned above. The 6th respondent also executed a gift settlement deed for an extent of Ac.1.00 cents

in favour of the 7th respondent. The petitioner performed the last rites of his father-in-law. He also performed the marriage of the 7th respondent. He has applied to the 4th respondent – Tahasildar, for grant of pattadar pass book and title deed document and the same were granted to him in the year 2000. He also availed crop loans from banks. While so, on 06.05.2013, the 6th respondent submitted a representation to the 4th respondent to cancel the pattadar pass book and title deed document issued to the petitioner. The 4th respondent, without the knowledge of the petitioner, made recommendations to the 3rd respondent – RDO. The 3rd respondent entertained *de novo* enquiry and treated it as an appeal after lapse of more than 13 years. In-fact, 6th respondent has not filed any appeal before the 3rd respondent. Respondents 7 & 8 misled the respondents 3 & 4 in the matter. From the date of the gift settlement deed, the petitioner is in possession and enjoyment of Ac.2.00 cents of land under the said deed and the said land, which in his possession and enjoyment, is a mango garden/orchard. While so, the 3rd respondent passed orders in reference No.(G)5786/2013, dated 07.01.2014, canceling the pattadar passbook and title deed document issued to the petitioner and directed the 4th respondent to restore the land to the 6th respondent. Against the said orders of the 3rd respondent, this petitioner filed revision petition along with an application for grant of stay before the 1st respondent – Joint Collector. When the 1st respondent has not disposed of either the application for grant of stay or the revision petition, the petitioner approached this Court and filed WP.No.19563 of 2014. This Court, by orders, dated 24.07.2014, disposed of the said writ petition directing the 1st respondent to hear and dispose of the revision petition or at-least the interlocutory application for grant of stay. On

02.09.2014, the 1st respondent passed orders in D.Dis.No.D4/480/2014 in favour of the petitioner. Against the said orders of the 1st respondent, the 6th respondent has not preferred any review petition before the Government of Andhra Pradesh. Suddenly, on 30.5.2016, the petitioner was served with the order, dated 09.05.2016, whereby the 1st respondent without jurisdiction, reversed the orders passed, on 02.09.2014. In the revision petition filed by the 6th respondent, this petitioner is not served with any notice and he was only served with the copy of the order, on 30.05.2016. Further, the order impugned of the 1st respondent, which is dated 09.05.2016, states that this petitioner was issued notices on 17.10.2015, 05.12.2015, 26.12.2015, 23.01.2016 and finally on 30.01.2016. The said averment is not correct. This petitioner never received any notices in the revision petition filed by the 6th respondent. His advocate also has not received any notice, subsequent to the disposal of this petitioner's revision by an order, dated 02.09.2014. Thus, the 1st respondent allowed the revision of the 6th respondent and passed the impugned orders directing the 4th respondent to restore the pattadar pass book and title deed to the 6th respondent and observed in the said orders that an appeal lies to the Chief Commissioner of Land Administration, A.P., Hyderabad. In the peculiar circumstances stated, this petitioner is not in a position to prefer any appeal or revision before the Commissioner of Land Administration, A.P. Hyderabad, and is, therefore, constrained to invoke the jurisdiction of this Court and file this writ petition. The impugned order is served on this respondent on 30.05.2016, but the 6th respondent issued notice to the Sub-Inspector of Police, Bangarupalem on 18.5.2016 requesting to provide police protection to the 6th respondent to harvest the mango crop.

4. On 10.06.2016, this Court passed the following order:

“The case of the petitioner is that Revision filed by the 6th respondent was allowed without notice to the petitioner.

Heard learned counsel for the petitioner.

Learned Asst.Govt.Pleader for Revenue seeks time for getting instructions.

Post after one week in motion list.

Till then, *status quo* obtaining as on today shall be maintained.”

The said order is being extended from time to time.

5. Requesting to vacate the said interim orders, official respondents 1 to 5 filed WVMP.No.3201 of 2017; and, the non official 6th respondent filed WVMP.No.3392 of 2016.

6. At the hearing, a joint request is made that instead of the vacate petitions, the writ petition may be heard and disposed of.

7. The case of the official respondents, as stated in the counter affidavit filed by the 4th respondent – Tahasildar, Bangarupalem, in brief, is this:

As per the records available in the office, the land measuring an extent of Ac.7.00 cents in S.No.19/1 of Mothakunta village was classified as Assessed Waste Dry [AWD]. Out of the said extent, an extent of Ac.3.00 cents was subdivided as 19/1A and assigned to Syed Hussain, S/o.Abdul Khadar Sahib @ Jani Saheb. The said land was purchased by Ajimunnisa – 6th respondent herein, under a registered sale deed, dated 26.12.1974. The land was in her possession and enjoyment. The same was regularized in favour of the 6th

respondent under the provisions of Section 3(5) of A.P. Assigned Lands (Prohibition of Transfer) Act, 1977, as she was a landless poor person and she purchased the land in the year 1974 in good faith. Pattadar passbook and title deed document were also issued to her under khata no.3 of Mothakunta village, on 15.05.1995. She is having two married daughters viz., Waheeda and Sardanee – 7th respondent. Syed Noor, the writ petitioner, is the eldest son-in-law. He created false and unregistered gift settlement deed purported to have been executed by the 6th respondent and misrepresenting the fact of assignment of the subject land, he got the Record of Rights altered for an extent of Ac.2.00 cents out of Ac.3.00 cents assigned to his mother-in-law – 6th respondent and obtained pattadar pass book and title deed document under khata no.66 in the year 2004. Therefore, the 6th respondent made a representation, on 18.02.2013, to the authority informing that her son-in-law, the writ petitioner, obtained pattadar pass book for Ac.2.00 cents of land out of Ac.3.00 cents of land, which was assigned to her, without her knowledge and requested to cancel the same and restore entries in the records in her favour. 3rd respondent – RDO cancelled the pattadar pass book issued to the writ petitioner and directed to restore the Record of Rights in the name of the 6th respondent *vide* proceedings, dated 07.01.2014. Aggrieved thereof, the writ petitioner filed a revision under ROR Act before the 1st respondent - Joint Collector. He had set aside the order of the 3rd respondent afore-stated, *vide* his proceedings, dated 02.09.2014. Aggrieved of the said order, the 6th respondent filed a revision before the Commissioner of Appeals on 10.12.2014. It was returned *vide* CCLA's reference no.LR.II/(2)/ROR1/377/2014, dated 29.04.2015, stating that the revision before the Commissioner (Appeals) under the A.P. Rights in Lands &

Pattadar Pass Books Act, 1971 is not maintainable. Again, on 03.07.2015, the 6th respondent filed a revision before the Commissioner of Appeals, under the provisions of the Assignment of Government Lands Rules. The same was also returned vide CCLA's reference No.BCW2/111/2015, dated 10.07.2015, stating that the revision before the Commissioner (Appeals) is not maintainable under the said Act. Hence, the 6th respondent filed a petition before the 1st respondent to take her case as a petition under 'mistake of fact and misrepresentation' under the Assignment rules, which is to be dealt under the provisions of BSO 15(18) read with G.O.Ms.No.912, dated 02.08.1985; and, the same was taken on file by the 1st respondent, having noted that the matter falls under the purview of the Act of 1977. By orders, dated 09.05.2016, the 1st respondent directed the 4th respondent – Tahasildar to restore the pattedar pass book and title deed issued to the original assignee. The said order is impugned in the writ petition. In the facts and circumstances of the case, the said order is sustainable for the reasons mentioned therein. After passing the orders, which are impugned in this writ petition, the 6th respondent gave a report to the Station House Officer, Bangarupalem Police Station through her counsel for providing protection to cut and remove the mango crop anticipating high handed objection by the petitioner. There is no irregularity or illegality in the impugned order passed by the 1st respondent.

8. The case of the 6th respondent, in brief, is this: - 'The writ petitioner is her son-in-law. Taking advantage of her old age and illiteracy, he has taken her thumb impressions on a gift settlement deed. She, having gained knowledge about the fraudulent action of the petitioner, made representation to the 4th respondent – Tahasildar. The said authority, after due enquiry, appraised the

3rd respondent – RDO of the facts. The 3rd respondent has issued notice to the writ petitioner and passed necessary orders as per the powers vested under Rule 13(2) of A.P Rights in land & Pattadar Pass Books Rules, 1989. The subject lands, covered by mango garden, are in possession of this respondent, who is the assignee. Under the provisions of Act 9 of 1977, transfer includes a gift with or without possession. Immediately on coming to know of the fraudulent acts of the petitioner, this respondent initiated steps to get the Record of Rights altered and restored in her favour. The 3rd respondent, who is vested with *suo motu* powers called for the record and passed appropriate orders. If any order or alteration of entries in revenue record is obtained by fraud, the same can be challenged as fraud avoids all judicial acts ecclesiastical or temporal. The entries made in favour of the writ petitioner are against the provisions of ROR Act and provisions of Act 9 of 1977. Hence, the subsequent entries and transactions are also invalid in the eye of law. If the plea of the petitioner with regard to non issuance of notice to the petitioner before passing the impugned order by the 1st respondent is accepted, the 6th respondent suffers irreparable loss and it amounts to double jeopardy. The order impugned is sustainable.

9. The main contention of the writ petitioner is that the impugned order is passed in a revision entertained a second time by the 1st respondent – Joint Collector and that though in the impugned order it is stated by the 1st respondent that this petitioner was issued notices on 17.10.2015, 05.12.2015, 26.12.2015, 23.01.2016 and finally on 30.01.2016, no such notices were ever served on the petitioner and that the impugned order was passed without any notice to the petitioner and that he has not received any notice in the revision

petition said to have been filed by the 6th respondent and that he was only served with the copy of the impugned order on 30.05.2016 and that on that sole ground alone, the order impugned is liable to be set aside.

10. Learned counsel for the 6th respondent submitted that since the earlier order was passed under provisions of a different enactment notwithstanding the fact that the land is an assigned land and was assigned to the 6th respondent and that as the impugned order is passed invoking the correct provisions of law, the order impugned is sustainable as the gift of the assigned land, which amounts to a transfer is *void ab initio* and as the consequential actions pursuant to such void transfer do not have any validity or legal sanction.

11. During the course of hearing, learned Government Pleader fairly stated that from the records it appears that the petitioner was not served with any notice before the impugned order was passed by the 1st respondent. Not only the statute but also the principles of natural justice require service of notice before any order of the present nature is passed. In that view of the matter, this Court is of the considered view that the writ petition can be disposed of with appropriate directions.

12. In the result, without going into the merits of the matter, the Writ Petition is disposed of setting aside the order, dated 09.05.2016, of the 1st respondent in proceedings in D.Dis.No.(E4)6335/2015; and, accordingly, the said case is remitted to the said authority for disposal afresh, in strict accordance with the procedure established by law, after giving an opportunity of hearing to both the parties and other stake holders, if any. The 1st respondent shall dispose of the above remitted case as expeditiously as possible

and in any event within two months from the date of receipt of a copy of this order and communicate the order passed by him to all the concerned within a week thereafter.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

26.09.2018

Vjl

