

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.18147 OF 2006

ORDER:

This writ petition is filed challenging the order of the Joint Collector, Vizianagaram, respondent No.2 herein, in D.Dis.No.1765/2006, dated 25.06.2006, directing the Mandal Revenue Officer, Vizianagaram Mandal, Vizianagaram, respondent No.3 herein, to issue pattadar passbook and title deed in favour of respondent No.4 in respect of land admeasuring Ac.4-86 cents in Sy.No.170 (old)/Town Survey No.812 of Dasannapeta, Vizianagaram District and the consequential order of respondent No.3 in Rc.No.121/06/A, dated 07.07.2006.

2. The present writ petition arises under provisions of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short, the Act). The case runs around Section 9 of the Act which deals with revision power and the proviso to it.

3. The facts of the case are that one Smt. Gundala Venkata Challamma was the life estate holder of land admeasuring Ac.4-86 cents in Sy.No.170 (old)/Town Survey No.812 of Dasannapeta, Vizianagaram District having succeeded the same from her father under a gift deed in the year 1908. Thereafter she leased the said land to Bura family under a lease deed dated 22.03.1926, including the father of the petitioners, by name Bura Narayudu. He died on 02.01.1992. Thereafter, Smt.Gundala Venkata Challamma sold the subject land to one Panchadi Papayya (father of respondent No.4) under a registered sale deed dated 19.06.1949. Thereafter,

Panchadi Papayya filed a suit in O.S.No.298 of 1952 on the file of the Court of the District Munsiff at Vizianagaram (for short, the trial Court) against the father of the petitioners and other tenants seeking recovery of possession and the same was decreed by judgment and decree dated 29.11.1955. Aggrieved by the same, the father of the petitioners and other tenants filed an appeal in A.S.No.173 of 1956 on the file of the Court of Subordinate Judge, Vizianagaram (for short, the lower appellate Court) and the same was dismissed. Challenging the said order, they filed a second appeal before this Court and this Court allowed the second appeal and remanded the matter to the lower appellate Court, for fresh disposal. On remand, the lower appellate Court, by judgment and decree dated 03.12.1963, dismissed the appeal, confirming the judgment of the trial Court. They again filed a second appeal in S.A.No.46 of 1964 and this Court, by judgment and decree dated 15.11.1967, allowed the same and dismissed the suit. In pursuance of the judgment dated 15.11.1967, the petitioners have been in possession and enjoyment over the subject land. Thereafter, no appeal was filed against the said order and it has become final.

4. While so, the father of the petitioners died in the year 1992. Before his death, he executed a Will dated 17.01.1991 bequeathing the subject land in favour of the petitioners. On the strength of the said Will, after the death of their father, the petitioners obtained pattadar passbooks and title deeds from respondent No.3 on 31.08.1995. Thereafter, the petitioners sold an extent of land

admeasuring Ac.3-03 cents out of Ac.4-86 cents to 30 persons during the period from 26.02.2003 to 16.03.2006 under different registered sale deeds.

5. While so, respondent No.4 represented before respondent No.2 that he has purchased the subject land through registered sale deeds; that Burra family members are in possession of the subject land under the capacity of tenants; that they are refusing to vacate the lands and that requested to issue pattadar passbook and title deeds in his favour by canceling the pattadar passbooks and title deeds issued in favour of the petitioners. Respondent No.2, after obtaining a report from respondent No.3, by order dated 25.06.2006, directed respondent No.3 to issue pattadar passbook and title deed in favour of respondent No.4 in respect of the subject land and cancelled the pattadar passbooks and title deeds of the petitioners. In pursuance of the said order, respondent No.3, by order dated 07.07.2006, has issued pattadar passbook and title deed in favour of respondent No.4. Thereafter, respondent No.4 sold subject land to respondent Nos.6 to 13 under a registered sale deed dated 15.07.2006. They filed O.S.No.575 of 2006 against the petitioners and their family members on the file of the Court of Principal Junior Civil Judge at Vizianagaram seeking to restrain them from interfering over the subject land. In the said suit, respondent Nos.6 to 13 also filed an interlocutory application seeking a temporary injunction as against the petitioners. The petitioners filed their counter stating the aforestated facts. Challenging the order of respondent No.2 dated 25.06.2006 and the

consequential order of respondent No.3, the present writ petition is filed.

6. Respondent No.14 to 35 herein are subsequent purchasers of respondent No.4. Respondent No.14 is a developer and it has purchased the subject agricultural land in square yards and paid substantial money towards consideration and got the sale deed registered on 30.06.2016.

7. This Court, by order dated 04.09.2006, disposed of the present writ petition at the admission stage by setting aside the order of respondent No.2 and remanded the matter to him for fresh disposal. Aggrieved by the same, respondent Nos.6 to 13 herein filed W.A.No.966 of 2006 on the ground that the writ petition was disposed of without giving them the opportunity of hearing. A Division Bench of this Court disposed of W.A.No.966 of 2006 and remanded the present writ petition for adjudicating afresh. Consequent to the remand, on 20.11.2006, the writ petition was admitted and interim suspension was granted in WPMP.No.22784 of 2006. Challenging the interim suspension order, respondent Nos.6 to 13 filed another writ appeal in W.A.No.1283 of 2006 and a Division Bench of this Court disposed of the same, by order dated 08.12.2006, by modifying the interim suspension order as an order of *status quo* to be maintained by both the parties in respect of the subject land.

8. Both sides have relied upon their title deeds and contended that they are in possession of the subject land. In addition to the

disputed facts, the legal argument advanced by the learned counsel for the petitioners is that the order dated 25.06.2006 of respondent No.2 and the consequential order dated 07.07.2006 of respondent No.3, were being passed without issuing any notice and without affording any opportunity to the petitioners. Counsel for the petitioners also relied on Section 9 of the Act and the proviso to it and contended that the revisional authority can exercise its powers only after giving opportunity to the affected parties, but in the present case, the revisional authority did not do so. Apart from the same, the impugned orders were passed without any reason and without application of mind. He relied upon the decisions in **J & K Housing Board v. Kunwar Sanjay Krishan Kaul**¹ and **Gujrat Electricity Board v. Girdharlal Motilal**² and argued that in view of the ratio laid down in the above cases, the impugned orders should be set aside.

9. Learned counsel for the respondents submitted that according to Section 2(4) of the Act, 'land' means land which is used or is capable of being used for purposes of agriculture, including horticulture but does not include land used exclusively for non-agricultural purposes. He contended that technically the orders passed by respondent Nos.2 and 3 are contrary to law, since the subject land is no longer agricultural lands and they have been plotted and alienated in favour of different purchasers by way of registered sale deeds. Learned counsel for the petitioners also concurred with the above argument. Learned counsel for the

¹ (2011) 10 SCC 714

² (1969) 1 SCR 589

respondents also relied upon a decision in **Amulya Minerals v. Kandimalla Haranadha Babu**³ and argued that as the State is not made as a party and hence, the present writ petition is liable to be dismissed.

10. Without going into the disputes questions of fact and merits of the case with regard to the right, title and possession of the respective parties, it is apparent from the orders of respondent Nos.2 and 3 that they are in clear violation of the doctrine of *audi alteram partem* for not giving the opportunity to the petitioners and the orders were passed unilaterally. When the official respondents were put to knowledge that the subject land has travelled throughout a lengthy litigation and there are several persons involved, there was a duty cast upon them to give the opportunity to the affected parties before passing the orders. On the other hand, in view of the agricultural lands being plotted, layouts have been made and the individual sale deeds have been executed, the subject lands are no longer agricultural lands, as stated supra. With regard to the objection of not making the State as a party to this writ petition, taking such technicality at this juncture, will not meet the ends of justice, except prolonging the litigation.

11. In view of the same, the order of respondent No.2 dated 25.06.2006 and the consequential order of respondent No.3 dated 07.07.2006, are liable to be set aside and the same are accordingly set aside. The parties are at liberty to workout their remedies

³ 2015 (2) ALT 662 (D.B.)

available to them under law with regard to their title and possession over the subject land, as the disputed questions of facts cannot be gone into in this writ petition under Article 226 of the Constitution of India.

12. Accordingly, the writ petition is disposed of. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: -02-2018
TJMR

T.AMARNATH GOUD, J

