

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

* * * *

WRIT PETITION Nos.20585 and 20586 of 2013

Between:

C.Narendranath

....Petitioner

and

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue Department, A.P.Secretariat,
Hyderabad,
and others.

....Respondents

JUDGMENT PRONOUNCED ON

: 23.03.2018

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
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 SRI JUSTICE A.RAMALINGESWARA RAO**

+ WRIT PETITION Nos.20585 and 20586 of 2013

% 23.03.2018

C.Narendranath

...Petitioner

vs.

\$ The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue Department, A.P.Secretariat,
Hyderabad,
and others.

... Respondents

!Counsel for the Petitioner : Sri N.Subba Rao

^Counsel for the Respondents : GP for Revenue
Sri J.Ashvini Kumar

<Gist :

>Head Note :

? Cases referred

1. (2003) 10 SCC 121
2. 2014 (6) ALD 692 (DB)
3. 2014 (1) ALD 307
4. 2009 (5) ALD 97
5. (1996) 6 SCC 223
6. (2014) 2 SCC 269



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.20585 and 20586 of 2013

COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as the parties are common and the cause of action is also common.

Heard the learned Counsel for the petitioner, learned Government Pleader for respondent Nos.1 to 4 and the learned Counsel for respondent No.5.

The undisputed facts in the instant case are that one Sri Veera Mallaiah was the original owner of different extents of land situated in Survey Nos.196, 197 and 206 of Madeenaguda Village, Serilingampally Mandal, Ranga Reddy District. He died in the year 1975. The fifth respondent is the son of the said Veera Mallaiah. He appears to have applied for succession certificate in the year 1989, after lapse of 14 years from his father's death and the same was granted in File No.B/456/89 on 30.03.1989. He did not ask for implementation of the same immediately, but he sought implementation of the same by the fourth respondent and the fourth respondent issued a notice to the petitioner. The petitioner filed his detailed objections. When repeated notices were issued to the petitioner, petitioner filed W.P.No.11635 of 2009 and the same was disposed of at the admission stage on 23.06.2009 directing the fourth respondent

to pass appropriate orders after considering the objections filed by the petitioner. The fourth respondent accordingly passed an order in File No.B/371/2008, dated 30.01.2010, ordering mutation of the name of the fifth respondent in revenue records for the year 2009-2010 in respect of the land of an extent of Acs.7.00 in Survey No.196 and Acs.4.28 guntas in Survey No.197 totally admeasuring Acs.11.28 guntas of Madeenaguda Village. In the meanwhile, it appears that Smt. C.Laxmibai and two others, mother and sisters of petitioner, who purchased a part of the property from the vendee of Veera Mallaiah, applied for mutation and the same was ordered by the fourth respondent in File No.B/2568/2003, dated 26.05.2004, for an extent of land admeasuring Acs.4.23 guntas out of the total purchased land of an extent of Acs.5.27 guntas in Survey No.197 purchased under registered sale deed No.999 of 1979 dated 22.05.1979. The petitioner also obtained another mutation proceeding in respect of the land of an extent of Ac.0.10 guntas out of total purchased land of an extent of Ac.0.34 guntas situated in Survey No.197 purchased under registered sale deed No.961 of 1979 dated 18.05.1979 from one Sri Suryanarayana Raju and others, in proceedings No.B/2583/2003 dated 26.05.2004. When the petitioner noticed the name of the fifth respondent in column No.13 of pahani for the years 1982-1983, 1999-2000 and 2000-2001, he applied to the fourth respondent for deletion of the fifth respondent's name from the revenue records in respect of the land in Survey No.197 on 27.09.2006 and the fourth respondent

issued proceedings on 17.11.2006 ordering for deletion of the name of the fifth respondent. The said proceedings issued in favour of the petitioner disclosed that the entry in the pahanies of the name of the fifth respondent was with different ink by tampering the records. It was also recorded that the enquiry by the Mandal Revenue Inspector revealed that the land in Survey No.197 (part) was covered by compound wall and certain fruit bearing trees were existing in the site and the land was in possession of the petitioner and by the name of "Naren Garden".

It appears that the fifth respondent filed O.S.No.3129 of 2006 on the file of the learned Additional Junior Civil Judge, Ranga Reddy District, and filed I.A.No.4330 of 2006 seeking *ad interim* injunction against the petitioner herein in respect of the land in Survey No.197 admeasuring Acs.6.11 guntas situated at Madeenaguda Village and the said application was dismissed. Though he preferred C.M.A.No.280 of 2008 before the learned I Additional District and Sessions Judge, Ranga Reddy District, it was also dismissed on 11.09.2009. Thus, there is no injunction in favour of the fifth respondent. It is pertinent to notice that the crucial document of succession/mutation effected on 30.03.1989 was not filed by the fifth respondent in O.S.No.3129 of 2006 filed by him.

The petitioner along with his family members filed O.S.No.1726 of 2009 on the file of the learned III Additional Junior Civil Judge, Ranga Reddy District, seeking permanent

injunction against fifth respondent and others and temporary injunction was granted in their favour in I.A.No.1566 of 2010 in respect of the land in Survey No.197 admeasuring Acs.6.21 guntas situated at Madeenaguda Village and the same is in subsistence.

Since the name of the fifth respondent was mutated pursuant to an earlier order of succession granted on 30.03.1989, by proceedings in File No.B/371/2008 dated 06.01.2009 in respect of the land admeasuring Acs.11.28 guntas in Survey Nos.196 and 197 situated at Madeenaguda Village by the fourth respondent, ignoring the earlier orders, the petitioner preferred an appeal before the third respondent. The said appeal was dismissed by third respondent on 30.06.2012. Against the said order, the petitioner preferred a revision before the second respondent and the second respondent also dismissed the revision by order dated 04.05.2013 and relegated the parties to approach the competent civil Court in order to examine the validity and genuinity of the documents relied on by the parties and to approach the revenue authorities after obtaining appropriate orders from the competent Court. Challenging the same, the petitioner filed W.P.No.20585 of 2013.

Similarly, when mutation was effected in respect of the land of an extent of Ac.1.14 guntas in Survey No.206/1/A in favour of the fifth respondent on 15.05.2010 by the fourth respondent, the petitioner preferred an appeal to the third respondent and

the third respondent dismissed the said appeal by order dated 30.06.2012. When the petitioner preferred a revision against the said order, the second respondent dismissed the revision by order dated 18.05.2013 and relegated the parties to approach the civil court in order to examine the validity and genuinity of the documents relied on by the parties and to approach the revenue authorities for necessary changes to be carried out after obtaining appropriate orders from the competent Court. Challenging the same, the petitioner filed W.P.No.20586 of 2013.

The fourth respondent filed a counter affidavit stating that the File bearing No.B/456/89 containing the succession proceedings dated 30.03.1989 was not traceable. But, when the personal register of the concerned section was verified, it was noticed that the file was related to the sanction of succession under record of rights in respect of the land in Survey Nos.196 and 197 of Madeenaguda village.

The counter affidavit filed in W.P.No.20586 of 2013 by the fourth respondent is also to the same effect and it was asserted that the fourth respondent merely granted succession rights to the fifth respondent as he was the son of Sri Veera Mallaiah and the entries showed the name of his father. It was also stated that though it was alleged that the land of Sri Veera Mallaiah situated in Survey Nos.196, 197 and 206/1/A was purchased by various persons, none have approached the fourth respondent for mutation of their names.

The fifth respondent in both the Writ Petitions did not choose to file the counter affidavit.

This Court while admitting W.P.No.20585 of 2013 on 23.07.2013 directed maintenance of *status quo* with regard to the property in occupation of the petitioner in Survey No.197 of Madeenaguda Village, Serilingampally Mandal, Ranga Reddy District, pending further orders, and the said order has been in operation till today. A similar order was passed in W.P.No.20586 of 2013.

The petitioner filed I.A.No.1 of 2018 in both the Writ Petitions seeking a direction to respondent Nos.2 to 4 to initiate appropriate proceedings for perjury against the fifth respondent for filing fabricated documents and obtaining an order by playing fraud. The petitioner also filed I.A.No.2 of 2018 in both the Writ Petitions by filing a copy of the Memo along with the inward register obtained under the Right to Information Act showing the file under which the succession alleged to have been granted does not relate to the fifth respondent at all but relates to some third parties of Miyapur village.

Learned Counsel for the petitioner submitted that the fifth respondent played fraud by producing a fake document dated 30.03.1989 granting succession in his favour and, in fact, there is no such proceeding as could be seen from the copy of the memo and inward register obtained under the Right to

Information Act and filed in I.A.No.2 of 2018. He further submitted that since proceedings were issued by the fourth respondent and confirmed by the third respondent based on the said fake document, the proceedings of respondent Nos.3 and 4 are *non est* in law. He further submitted that when the second respondent is supposed to examine the validity of the orders passed by respondent Nos.3 and 4, he abdicated his responsibility by relegating the parties to the Civil Court, which he was not supposed to do. He also submitted that the disputed property is not at all an agricultural land so as to maintain revenue record and mutate the entries in the revenue records. It is also stated that the petitioner is in possession of Acs.27.00 of land situated in Survey Nos.203, 205, 206, 207, 197 and 196 of Madeenaguda village, having purchased the same under valid registered documents. The same was also informed to the Income Tax Department. The petitioner is a regular assessee of Income Tax and Wealth Tax and that he gave Acs.5.32 guntas for development where 540 flats were constructed. He gave another extent of Acs.9.5 for development. He also constructed one AC and one Non-AC function hall along with guest house on Acs.5.00 of land more than 15 years back and the same is evident in the ground position as well as in the records.

The Government Pleader did not point out anything, except relying on the averments in the counter affidavit.

Learned Counsel for the fifth respondent, on the other hand, submitted that the petitioner failed to file even a single document in support of his case either for mutation of his name or opposing the name of the fifth respondent before the respondents 2 to 4.

In view of these rival contentions, this Court directed the learned Government Pleader to produce the record of proceedings dated 30.01.2010 and 30.06.2012 by order dated 22.02.2018 and even after granting two adjournments, the record was not produced. In fact, as stated above in the counter affidavit filed by the fourth respondent, it was categorically stated that the file relating to proceedings bearing No.B/456/89 dated 30.03.1989 was not available. This Court also noticed that way back on 16.07.2013 this Court directed the learned Government Pleader to produce the record. Thus, the relevant record is not made available. When the fifth respondent was asked to produce a copy of the order dated 30.03.1989 he produced a photostat copy of the same, which was exhibited as Ex.D-18 in O.S.No.1726 of 2009 on the file of the learned I Additional Junior Civil Judge, Ranga Reddy District, on 16.09.2016. A perusal of the order shows that the fifth respondent did not file any application for incorporating his name in respect of any specific extent of land and in spite of the same, the order was issued stating that the name of the fifth respondent was incorporated in respect of the land of an extent

of Acs.9.00 in Survey No.196 and an extent of Acs.14.09 guntas in Survey No.197/A.

He pressed the said document into service after 2009 while making an application for implementation of succession. At this stage, the observations of the trial Court in I.A.No.4330 of 2006 in O.S.No.3129 of 2006 while dismissing the application of the fifth respondent and considering the objection of the petitioner herein on the genuineness of the documents filed by the fifth respondent are required to be noticed, and they are as follows:

“During the course of arguments, the learned counsel for the petitioners strongly argued that the truth or otherwise of manipulation can be enquired into at the stage of trial by summoning the original records from the office of the Mandal Revenue Office and till that time, as the petitioners had made out a prima facie case, they are entitled for injunction. I could not accept the said contention. If the 1st petitioner is not responsible for the deputed (sic.disputed) allegations, he can summon the original records, even at that stage and it need not be postponed till the trial commences. Thus the documentary evidence prima facie shows that there are manipulations in the revenue records to the benefit of the 1st petitioner and consequently it can be said that they have not approached the court with clean hands. Similarly the petitioners cannot take aid of the Adangal Pahani for the year 2003-04 as admittedly it was issued by the Village Assistant of Chandanagar, though the property is situated at Madinaguda Village. Thus this document is also not free from suspicion and manipulation. Now the documents filed on behalf of the respondent go to show that he is holding an extent of Ac.4.23 gts in Sy.no.197/A and Ex.R9 is the order passed by the Mandal Revenue Officer, Serilingampally (m), dt.26-05-2004 for mutation of entries in the name of mother of the respondent and sisters of the respondent. The respondent also filed Ex.R16 electricity bills and receipts to show that he is maintaining a farm house and the garden in the schedule property.”

This clearly shows that the crucial document of 30.03.1989 was not available to the fifth respondent when he filed O.S.No.3129 of 2006, but it was filed before the trial Court in

the suit filed by the petitioners in O.S.No.1726 of 2009 on 16.09.2016. Hence, the said document must have come into existence after 2006, but before 2016. Now, the Government stated that the record itself is not available. Hence, the basic document granting succession/mutation in favour of the fifth respondent in File No.B/456/89 in respect of the land of an extent of Acs.9.00 in Survey No.196 and Acs.14.09 guntas in Survey No.197/A is highly doubtful and requires to be examined by the higher authority like the second respondent.

The Interlocutory Applications filed by the petitioner in these Writ Petitions show that the Information Officer vide his Memo dated 19.01.2018 informed that File No.456 relates to the rectification of pahani records for Survey No.118 of Miyapur Village and an application was made by Sri P.S.Babu and Sri Rama Raju on 13.03.1989 but not by the fifth respondent. But, the proceedings in File No.B/456/89 dated 30.03.1989 was allegedly issued in respect of the land situated in Survey Nos.196 and 197 of Madeenaguda Village with which the above applicants have nothing to do.

The fourth respondent, pursuant to the alleged application filed by the fifth respondent on 02.02.2008 passed an order on 30.01.2010 to implement the succession orders granted on 30.03.1989 by restricting the area to Acs.7.00 in Survey No.196 and Acs.4.28 guntas in Survey No.197 for making entries in the revenue records for the years 2009-2010. The variation in the

extent of land in proceedings dated 30.01.2010 from that of the proceedings in 30.03.1989 is another circumstance to show that the proceedings dated 30.03.1989 was of doubtful character. When an appeal was preferred against the said order to the third respondent, the third respondent set aside the proceedings of mutation obtained by the petitioner in File Nos.B/2568/03 dated 26.05.2004 and B/2583/2003 dated 26.05.2004 without anyone asking for the said relief and without examining the validity of the order passed by the fourth respondent on 30.01.2010. When the revision was filed before the second respondent, he extracted the pleadings of the parties in 22 pages while observing that the proceedings dated 30.03.1989 were issued after due enquiry (obviously without looking into the record) and held that the proceedings dated 19.11.2006 (sic. 17.11.2006) issued in favour of the petitioner in File No.B/582/2006 has no sanction of law. Ultimately, he held that it was not desirable for him to decide the civil disputes among the *inter se* parties by observing as follows:

“Therefore the parties herein to approach the competent civil court, which is competent to examine the validity and genuinity of the documents relied upon by the parties and after obtaining the necessary orders from the competent Court, they can approach the revenue authorities for necessary changes to be carried out in accordance with law.

In the result, with the above observations, the Revision Petition is dismissed accordingly.”

In the light of the above facts, this Court purposely refrained from referring to the merits of the case as the enquiry is confined to record of entries in the revenue records but not

deciding the title of the parties. Unfortunately, the respondents 2 to 4 resorted to the decision on title of the parties ignoring the earlier orders in favour of the petitioner.

It is well settled in law that this Court is concerned with the decision making process, but not with the decision itself. This position was reiterated in **State of A.P v. P.V.Hanumantha Rao**¹ as follows:

“True it is that remedy of writ petition available in the High Court is not against the “decision” of the subordinate court, tribunal or authority but it is against the “decision making process”. In the “decision making process”, if the court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Articles 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining.

In the case of **Surya Dev Rai v. Ram Chander Rai** ((2003) 6 SCC 675) while examining the nature and ambit of power of the High Court to issue Writs under Articles 226 or 227 of the Constitution, the above-stated legal position has been recognised by observing thus: (SCC p.696, para 39)

"39.Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. ... At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge."

This Court has recognised the right of the High Court to interfere with orders of subordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby."

¹ (2003) 10 SCC 121

This Court, speaking through a Division Bench, in **Peruri Venkata Chinna Krishnnaiah v. Joint Collector, Kakinada, East Godavari District**² while repelling the contention of the appellant therein that the authorities are not entitled to decide the issue when an identical issue is pending before the civil Court, held that the power of the appellate authority under Rule 9(1)(c)(ii) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989, would not oust his power and is available at the time of altering register by the Mandal Revenue Officer. Hence, the second respondent ought not to have relegated the parties merely because complicated questions were involved. He also committed another error by relegating the parties while upholding the orders passed by respondent Nos.3 and 4 causing detriment to the interest of the petitioner. This position was clarified by a learned single Judge of this Court in **Moku Narayana Reddy v. Joint Collector, Warangal, Warangal District**³ as follows:

“In my opinion, respondent No.1 has committed a serious jurisdictional error in dismissing the revision petition on the ground of non-maintainability. Under Section 5 of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short ‘the Act’), against every order passed under Section 5(5) of the Act, the aggrieved party is entitled to file a revision petition. Therefore, it is imperative for the revisional authority to dispose of the revision petition on merits. After discussing the merits of the case, the revisional authority has to affirm the order of the appellate authority or reverse the same. If the revisional authority is of the opinion that the nature of the facts of the case is such that the dispute needs to be decided by a Court of competent civil jurisdiction, it can relegate the parties to the civil Court after discussing the facts. The petitioners cannot be left in lurch after the appellate

² 2014 (6) ALD 692 (DB)

³ 2014 (1) ALD 307

authority has set aside the pattadar passbooks and title deeds issued in their favour. If respondent No.1 has felt that the dispute needs to be adjudicated by the civil Court, the same reasoning will apply to respondent No.2 also. But to the misfortune of the petitioners, respondent No.2 has interfered with grant of pattadar passbooks and title deeds issued to them. By declining to adjudicate the revision petition on merits, respondent No.1 failed to exercise the jurisdiction vested in him.”

The second respondent should not have relegated the parties to the civil Court without giving his opinion with regard to the entries in the revenue records. If the parties are aggrieved by his decision, they would approach either this Court or the competent civil Court under Section 8(2) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, challenging such decision as held by this Court in **Airabelli Prabhakar Rao v. Emmadi Koteswar**⁴.

It is settled law that the mutation of name in the revenue records does not create or extinguish title nor has any presumptive value on title, but only enables the person to pay the land revenue as held by the Supreme Court in **Sawarni (Smt) v. Inder Kaur (Smt)**⁵. The said legal position is not altered and it was reiterated in **Union of India v. Vasavi Cooperative Housing Society Limited**⁶.

The provisions of Telangana Rights in Land and Pattadar Pass Books Act, 1971 and the rules made thereunder enable the competent authorities to decide the issues arising out of the

⁴ 2009 (5) ALD 97

⁵ (1996) 6 SCC 223

⁶ (2014) 2 SCC 269

claims for recording entries in the revenue records but not for deciding title.

Respondent Nos.3 and 4 travelled beyond their jurisdiction in dealing with the matters of title without confining their enquiry to the claim of entries in the revenue records. This Court noticed the following errors apparent on the face of the record:

- (i) There is no reference to the order passed by the fourth respondent in favour of the petitioner on 17.11.2006 observing that the entries in pahanies showing the name of fifth respondent for the years 1982-1983, 1999-2000 and 2000-2001 were with different ink and by tampering records.
- (ii) Even in the absence of any challenge by any one to the proceedings dated 26.05.2004 and 28.05.2004 in favour of the petitioner, they were set aside.
- (iii) The order of the fourth respondent dated 30.01.2010, though refers to the objections filed by the petitioner and one Chaitanya Educational Committee, they were not dealt with properly.
- (iv) The orders do not state whether any notice was issued at the time of granting succession in 1989 when the petitioner claimed to have purchased the property in 1979 itself.

- (v) No one noticed whether the request for mutation survives after the land came within the purview of Greater Hyderabad Municipal Corporation.

Coming to the relief to be granted in the instant case, in view of the above infirmities noticed in the orders of respondent Nos.2 to 4, more particularly in abdication of the power by respondent No.2 in deciding the person who is entitled for an entry in the revenue record, this Court has no option except to remand the matter to the second respondent, as such an error is manifest and apparent on the face of the proceedings. The second respondent caused great injustice to the petitioner in affirming the orders passed in favour of the fifth respondent by respondent Nos.3 and 4 but not deciding the revision filed by the petitioner.

Hence, the Writ Petitions are allowed by setting aside the orders of the second respondent dated 04.05.2013 and 18.05.2013 and they are remanded to the second respondent for considering the following points:

- i) Whether the proceedings of succession/mutation issued in favour of the fifth respondent in File No.B/456/89 are genuine, valid and create any right for mutation in favour of the fifth respondent?
- ii) In view of the change of nature of the land consequent to the expansion of the city, whether the applications of the fifth respondent can be considered for

mutation of his name in the revenue records in the light of detailed objections filed by the petitioner?

iii) Whether the application of the fifth respondent can be considered, in the light of the earlier orders passed by the fourth respondent in favour of the petitioner in File Nos.B/2568/2003 and B/2583/2003 dated 26.05.2004 and 28.05.2004 which have become final?

Since there is scramble for possession and the civil suits are pending for injunction, it is desirable that the second respondent shall pass appropriate orders in accordance with law under the provisions of the Telangana Rights in Land and Pattadar Pass books Act within a period of three months from the date of receipt of a copy of this order after hearing the petitioner and the fifth respondent. The second respondent shall pass orders after perusing the records, uninfluenced by any observations made in this order, but strictly in accordance with the provisions of Telangana Rights in Land and Pattadar Pass Books Act, 1971. In view of this order of remand, the order of *status quo* granted by this Court earlier on 23.07.2013 shall continue till orders are passed by the second respondent.

The Writ Petitions are, accordingly allowed as above. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

23.03.2018
vs