THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.7980 & 26483 of 2016

Dated : 28-03-2018

W.P.No.7980 of 2016:

Between:

Mashetty Gopal, s/o. Chandraiah, Aged 51 years,
Occu: Employee, r/o.Qtr.No.4035, ODF Estate,
Yeddumailaram village, Sangareddy Mandal,
Medak district and another.

.... Petitioners

And

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

.... Respondents

The Court made the following order:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.7980 & 26483 of 2016

COMMON ORDER:

Heard learned counsel for petitioners' Sri A Ravinder Reddy, learned Government Pleader for Revenue (TS) and learned counsel for respondents 5 to 8 Sri N Sreedhar Reddy.

2. These writ petitions are filed challenging the order of Tahsildar, Sangareddy dated 30.1.2016 where under, direction was issued to Village Revenue Officer, Indrakaran village to rectify the revenue records by reflecting names of persons mentioned in tabulated form against respective survey numbers and extents of land.

3. Based on the pleadings on record, briefly averments of contesting parties are as under:

(i) Petitioners claim to be the owners of respective extents of land in sub survey numbers of survey No. 25 of Indrakaran Village mentioned in paragraph 2 of the affidavit filed in support of the writ petition. According to petitioners, by proceedings impugned herein, the Tahsildar unilaterally added extents of land i.e., an extent of Ac.3.15 guntas to Katike Balaji in survey No.25/A4; in the name of M.Madhavi to an extent of Ac.3.20 guntas in Survey No.25/A5; in the name of Ram Kumar to an extent of Ac.1.00 guntas in survey No.25/A6; in the name of Naikoti Kistaiah to an extent of Ac.0.20 guntas in survey No.25/A7. Survey No.25 comprises of Ac.18.29 guntas. Petitioners' names have been shown in the revenue records continuously as pattedars and possessors to the extent of land owned by them in survey No.25. The impugned proceedings, while reflecting land in the name of unofficial respondents 5 to 8, does not reflect correct extent of land of petitioners and how their extent is reduced. Whereas, resurvey was conducted in Indrakaran village in the year 1955 and new survey numbers were assigned. The resurvey was implemented showing the pattedars and possessors and extent of land in respective survey numbers.

(ii) According to respondents 5 to 8, because of incorrect entries in the revenue records and mismatch on ground, law and order problem arose in the village leading to invoking provision in Section 145 of Cr.P.C. 6th respondent filed an application to the Tahsildar stating that revenue records concerning survey nos.25 and 26 are not properly maintained and do not reflect factual position on ground and requested to carry out corrections. Based on that application, process was initiated by the Tahsildar. Vadde family owned land to an extent of Ac.13.30 in the disputed survey numbers. Three persons succeeded to the said land. In the year 1975, family sold Ac.5.00 in favour of Chakali Rangaiah and others; petitioners sold Ac.4.10 to Mashetty Gopal and Mashetty Aruna. After those two sale transactions, family was left with Ac. 3.33 guntas only. While so, petitioners are claiming larger extent of land. It is further contended that Ac.13.03 was in old survey no.471. After resurvey, survey no.471 was divided into three survey numbers i.e., survey Nos.25, 97 and 98. Ac.3.33 left with vadde family is falling in survey Nos. 25/A1, 25/A4, 25/A5 and 25/A8. According to unofficial respondents, fifth respondent purchased Ac.2.00 of land on 21.4.1998 from Masangari Ramaiah, which land was sold to sixth and seventh respondents. Eighth respondent purchased Ac.3.00 from Masanagari Ramaiah. He sold Ac.2.20 to fifth respondent retaining Ac.0.20 guntas. Masanagari Ramaiah who was vendor of respondents 5 to 8 was holding land in survey no.25 till 1991-92. In the year 1992-93 his name was wrongly shown in respect of land in survey no.26 leading to confusion. According to unofficial respondents as per purchases made by them, their land should have been reflected in survey no.25 but as per documents they were positioned in survey no.26. Similar such mistakes occurred in revenue records. To rectify those defects resurvey was conducted in the year 2015. The present order of the Tahsildar is based on resurvey report.

4.1. According to learned counsel for the petitioners, in 1955 resurvey was conducted and the new survey numbers are reflected in the revenue records and names of the petitioners are shown in the revenue records for a long time in tune with updating revenue records consequent to resurvey, therefore Tahsildar is not competent to undertake redistribution of the land in various survey numbers as is done by the order impugned.

4.2. According to learned counsel, Tahsildar has no power/ competence to undertake such exercise. Power is not traceable either to A.P. Rights in Land & Pattadar Pass Books Act, 1971 or to A.P.(TA) Land Revenue Act, 1317 Fasli (for short Act, 1317 Fasli) and that circular instruction of Chief Commissioner of Land Administration (CCLA) referred to in the order impugned also has no application.

4.3. According to learned counsel, if there is dispute on possession and ownership aggrieved party must avail appropriate civil law remedy. Section 8 of the Act, 1971 also envisages resolution of disputes by resorting to civil law remedy. Under Act, 1971, limited power available to Tahsildar is to carry out clerical errors in passbooks but not in the revenue records. Thus, the order impugned is ex-facie illegal, without jurisdiction and competence. The Tahsildar cannot enter into disputed questions of fact involving ownership and possession, whereas the order would reflect that he was undertaking exercise of redistribution of extent of land and assigning huge extent of land in favour of unofficial respondents and deleting their land.

5.1. Learned counsel for unofficial respondents would submit that illegally petitioners are claiming larger extent of land than what they are entitled to own. After earlier sale of land on two occasions by the family of petitioners, they have only Ac.3.33 whereas larger extent of land is reflected in the revenue records. Wrong entries were made in the revenue records contrary to the entitlement and ground position and same can be classified as clerical error and therefore the Tahsildar is competent to rectify such errors.

5.2. According to learned counsel Section 87 of the Act, 1317 Fasli also enables competent authority to carry out clerical errors and other errors admitted by all parties. He would further submit that under Section 92 of the same Act, the Collector is competent to fix boundaries according to village records and/or physical occupation. Therefore, power is traceable to Act, 1317 Fasli in addition to power under the Act, 1971 and said power is validly exercised.

5.3. According to learned counsel, revenue records should correctly reflect ownership and possession and any wrong reflection would only lead to avoidable fissures as happened in the instant case forcing the competent authority to invoke provision under Section 145 of Cr.P.C. to maintain law and order.

5.4. When the errors are apparent and palpable, the parties need not resort to civil law remedy and it is permissible for the revenue authorities to correct those errors.

6. Before appreciating respective submissions, it is appropriate to note the averments of unofficial respondents in paragraph 5 of the counter affidavit. According to unofficial respondents, till 1991-92 name of Masanagari Ramaiah was reflected in survey number 25 but from 1992-93 his name was wrongly shown in survey no.26. According to unofficial respondents, fifth respondent purchased Ac.2.00 on 21.4.1998 and eighth respondent purchased Ac.3.00 in the year 1992-93 from Masanagari Ramaiah. If what is stated in paragraph 5 is true, petitioners ought to have been aware that even by the time they purchased, land belonging to Masanagari Ramaiah was shown in survey number 26. If that is so, with eyes wide open they purchased land from Masanagari Ramaiah reflecting it as in survey no.26. Neither their vendor nor they took steps immediately to seek correction, assuming it was a clerical error and it is permissible to carry out such error. Apparently, request to carry out resurvey for correction in revenue records was made in the year 2015 or later. In other words, unofficial respondents allowed those entries in the revenue records continued to be reflected for all those years. No explanation is

made in their affidavit as to why they kept quiet for such a long time.

7. Act 1971 has not provided contingency as in the present case vesting power in the Revenue Authorities to undertake such corrections. Under Section 5(6) Act, 1971 clerical errors can be carried out only in passbooks.

8.1. In **G.Prabhakar v. State of Telangana and others**[1]**,** scope of power vested in Tahsildar under the Act, 1971 was considered.

8.2. This court held:

> "2. It is the case of the petitioner that the family of Syed Miya were issued pattadar pass books and in which the land in Sy. No. 490 was recorded as a patta land and whereas in the year 2003 a mistake has crept and the nature of the land was recorded as 'Lavani Patta' instead of 'Private Patta' and the same is being continued as such. Bringing this fact to the notice of the 3rd respondent, petitioner had submitted an application on 04.10.2012 to the 2nd respondent vide complaint No. 26346, requesting him to correct the entries in the revenue records.....
>
> xxxx
>
> 4. A perusal of Sections 3 to 5 and 9 of the Act leave no manner of doubt that the Tahsildar is not vested with any powers to make corrections either suo motu or on an application except at the time of making entries for the first time in terms of the notification issued under Sections 3(1), 3(2) of the Act. Any corrections in relation to the entries could be made in the given circumstances satisfying Section 3(3) of the Act within one year. If the case requiring corrections of the revenue records beyond the time limit of one year, necessary orders can be passed only by the District Collector in exercise of the revisional powers and the Tahsildar is not vested with any such power. "

9. Section 87 of the Act, 1317 Fasli has limited scope. According to opening part of Section 87, the Director of Settlement or the District Collector at any time correct or cause to be

[1] 2015 (4) ALD 427

corrected any clerical errors admitted by the party concerned. According to second limb of the provision, he should hear all applications made within two years after introduction of the settlement for correction of any wrong entry of pattedar's name and after making the assessment as required by the provision can carry out corrections. As noted from the facts in this case, the settlement was done long ago and within the time granted, no such application was made. No person has accepted clerical error in the revenue records to rectify the mistakes. This provision is not attracted to the case on hand.

10. Learned counsel also placed reliance on Section 92 of the Act, 1317 to support the decision of Tahsildar. Assuming Section 92 is attracted to the case on hand, reading of Section would make it clear that power under Section 92 can be exercised by the Survey Officer or the District Collector and not the Tahsildar or Revenue Divisional Officer. Thus, even this provision does not come to the rescue of unofficial respondents.

11. Though learned counsel for unofficial respondents sought to contend that what is done by the Tahsildar is only reflection of respective extents of land in new survey numbers in place of old survey numbers as per resurvey conducted earlier and affirmed in the year 2015 survey, on a reading of the order impugned, said assertion has no merit. The Tahsildar has undertaken extensive revision of ownership claims of parties before him and reassigned sub division numbers with extents and apportioned land to the parties. He holds that there was forgery of documents and wrong names are reflected in the revenue records and larger extent of

land is reflected than a person is entitled and therefore directs the Village Revenue Officer to correct the revenue records as per the tabulated statement enclosed. It is not mere reflection of correct survey numbers, assuming that would amount to carrying out clerical errors and that he is competent, whereas there was a wholesale exercise undertaken by him trenching into disputed claims, which power is not available to him. Power to undertake such exercise is neither traceable to Act, 1971 nor to Act, 1371 Fasli and is thus without competence.

12. It is also appropriate to note, even according to unofficial respondents, vadde family owned land to an extent of Ac.3.33 whereas in the exercise undertaken by the Tahsildar, less extent of land is shown, and no mention is made as to what happened to the balance extent of land owned by vadde family.

13. The Tahsildar should be aware of the provision in Section 8 of Act, 1971. According to sub section 2 of Section 8, if any person is aggrieved as to any rights on which he is in possession by an entry made in any record of rights, he can institute suit against any person denying or interested to deny his title to such right and only if a decree is granted, the entry in the revenue records can be amended. Thus, Tahsildar could not have undertaken the exercise of determining the respective rights, as is apparent from the reading of the order.

14. Learned counsel for unofficial respondents alternatively submit that even assuming the order of Tahsildar is not sustainable, an aggrieved party can request the District Collector to invoke provision in Section 92 of the Act and unofficial

respondents be given remedy of submitting representation to the Collector to exercise power under Section 92 of the Act.

15. As the order impugned is not made under Section 92 of the Act and there are no pleadings on the scope of application of Section 92 of the Act, Court is not expressing any opinion on the request made by learned counsel for unofficial respondents and it is for unofficial respondents to work out their remedies as available in law.

16. For the above aforesaid reasons, the order impugned is not sustainable and is accordingly set aside. Writ Petitions are accordingly allowed. Pending Miscellaneous petitions stand closed.

17. It is made clear that this order does not come in the way to the unofficial respondents to work out such remedy as available in law on the issue of wrong reflection of survey numbers and extent of land owned by them respectively vis-à-vis the petitioners. The discussion in this judgment is on scope of exercise of power by the Tahsildar vis-à-vis the relevant provisions of the Act,1971 and Act,1317 Fasli and there is no expression of opinion on respective claims to ownership of subject lands. Parties are at liberty to raise all pleadings as available in law.

JUSTICE P.NAVEEN RAO

Date : -03-2018
Tvk/kkm

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.7980 & 26483 of 2016

Dated : 28-03-2018

Tvk/kkm