THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.26377 OF 2007

ORDER:

This writ petition is filed challenging the order passed by the Joint Collector in No.D2/1018/2007 dated 22.10.2007 confirming the proceedings of the Revenue Divisional Officer dated 06.03.2007 in A2/31/2007, as illegal and arbitrary.

Case of the petitioner is that her husband Byagari Basavaiah, resident of Bichkunda Mandal, Nizamabad District, was the owner of agricultural dry land in survey Nos.27, 37, 8, 112 and 115 of Gopanapalli Village and since more than twelve years his whereabouts were not known. As such, after waiting for more than twelve years, she made an application before the then Mandal Revenue officer, Bichkonda Mandal, for grant of pattadar pass books in her name in respect of the lands owned by her husband. The Mandal Revenue Officer, after thorough enquiry, issued paper publication in No.A/17/2000 and called for objections from the interested persons in the property and ultimately vide proceedings No.18/2005 dated 14.09.2005 granted pattadar pass book and title deeds in favour of the petitioner. At that time, the sister of Byagari Basavaiah filed O.S.No.9 of 2003 on the file of the Junior Civil Judge's Court, Bitchkunda, seeking partition and separate possession of $1/4^{th}$ share in the property and the said suit was dismissed as not pressed on 24.08.2005. Likewise, another sister of husband of the writ petitioner also filed O.S.No.8 of 2003 before the same Court and the same was also dismissed as not pressed on the same day. Thereafter, they both jointly filed O.S.No.8 of 2006 before the Senior Civil Judge's Court, Bodhan, for declaration of death of their brother i.e. husband of the writ petitioner and also to declare that the plaintiffs are entitled for suit schedule property and also for recovery of possession. While so, the fourth respondent, who claims to be the husband of the petitioner B.Basavaiah, got issued a legal notice through Syed Nabi, Advocate, under Section 80 of the Code of Civil Procedure to the Revenue Divisional Officer, Bodhan, stating that proper enquiry was not conducted before passing mutation proceedings in favour of the writ petitioner and thereby requested to cancel the proceedings of the Mandal Revenue Officer, Bitchkunda, dated 14.09.2005. Basing on the same, the Revenue Divisional Officer, without conducting any enquiry and based on the report of the Tahasildar, Bitchkunda, cancelled the pattadar pass books and title deeds issued in favour of the writ petitioner. Aggrieved by the same, she preferred a revision before the Joint Collector and the same was dismissed by the Joint Collector on 22.10.2007 vide proceedings No.D2/1018/2007 against which the present writ petition came to be filed.

Though the writ petition was admitted on 11.12.2007, no counter is filed till date.

Heard both sides and perused the material on record.

Ms.M.Rajeshwari, learned counsel appearing for Sri K.Durga Prasad, learned counsel for the petitioner, would contend that the Revenue Divisional Officer as well as the Joint Collector grossly erred in believing the version of the fourth respondent that no proper enquiry was conducted before issuing pattadar passbooks and title deeds in favour of the petitioner herein. She would further submit that, on legal notice being issued by the fourth respondent herein to the Revenue Divisional Officer, Bodhan, orders dated 06.03.2007 were issued by the Revenue Divisional Officer cancelling the patta mutation orders issued by the Mandal Revenue Officer, Bichkunda, and also directing to take consequential action for restoration of the entry of the name of the fourth respondent herein in revenue records, without conducting proper enquiry and in the absence of any appeal being filed by the fourth respondent as required under Section 5 (5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short 'ROR' Act), which is illegal. In revision filed by the petitioner herein under Section 9 of the ROR Act, the Joint Collector dismissed the same on erroneous appreciation of law and fact and without proper identification of the fourth respondent, who claims to be the husband of the petitioner herein and without therebeing any proper evidence on record to that extent.

Sri Venkata Raghu Ramulu, learned counsel appearing for the 4th respondent, would contend that on application of the petitioner for mutation of the subject land, the Tahasildar, Bichkonda, without proper enquiry, passed mutation orders dated 14.09.2005 and issued pattedar passbooks and title deeds to the petitioner. The Mandal Revenue Officer, based on the legal notice, submitted a report stating that the 4th respondent is alive and returned back to his house. Hence, he recommended for cancellation of mutation order, which was passed earlier on 14.09.2005. Based on said recommendations of the Mandal Revenue Officer, the Revenue Divisional Officer cancelled the pattedar passbooks and directed the Mandal Revenue Officer to take action for restoration of the entries in the name of

4th respondent in revenue records. The revision petition filed by the petitioner was dismissed on 22.10.2007 by reasoned order. Hence, there is no illegality or irregularity in passing the impugned order. Therefore, the Writ Petition is liable to be dismissed.

In the facts and circumstances of the case, this Court is of the considered view that the Revenue Divisional Officer grossly erred in entertaining the legal notice dated 13.12.2006 issued at the instance of the fourth respondent under Section 80 of the Code of Civil Procedure and basing on the same cancelling the mutation proceedings dated 14.09.2005 made in favour of the petitioner herein. The Revenue Divisional Officer, without therebeing any evidence available on record establishing the identity of the fourth respondent, accepted his version that he is Byagari Basavaiah. The same was confirmed by the Joint Collector, on revision being filed by the petitioner under Section 9 of the ROR Act. Without therebeing any proper appeal under Section 5 (5) of the ROR Act as required under Rule 26 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1971, no appeal could be maintainable. Further, there is enormous delay on the part of the fourth respondent in approaching the Revenue Divisional Officer against the order passed by the Mandal Revenue Officer on 14.09.2005. When the fourth respondent has not filed any evidence and also not adduced any evidence in support of his claim that he is Byagari Basavaiah, the Revenue Divisional Officer erred in cancelling the mutation proceedings issued in favour of the petitioner herein, that too in the absence of any proper appeal.

For the reasons stated above, this Court is of the considered view that the orders passed by the Revenue Divisional Officer dated

06.03.2007 and the Joint Collector dated 22.10.2007 are liable to be set aside and the same are accordingly set aside.

Accordingly, the Writ Petition is allowed. However, liberty is given to the fourth respondent to approach competent Civil Court and establish his identity and title to the lands claimed by him. Based on the civil court judgment and decree, the parties are at liberty to approach the Mandal Revenue Officer for mutation of the lands in their favour.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

27th April, 2018
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