

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.28387 OF 2016

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief:

“to issue appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the 3rd respondent in entertaining the appeal filed by the 5th respondent for cancellation of pattadar pass books and title deeds issued in favour of the petitioner in respect of the agricultural land situated in Sy.No.50 A/2 an extent of Ac.4.30 cents of Lingaladinne Villlage, Kowthalam Mandal, Kurnool District is illegal, arbitrary, without jurisdiction, contrary to the law laid down by this Hon'ble Court in WP.No.21689 of 1999 and in violation of Principles of Natural justice and in violation of Art.14 of the Constitution of India and consequently declare that the appeal filed by the 5th respondent for cancellation of pattadar pass books and title deeds issued in favour of the petitioner in respect of the agricultural land situated in Sy.No.50 A/2 an extent of Ac.4.30 cents of Lingaladinne Villlage, Kowthalam Mandal, Kurnool District as not maintainable in the interest of justice.”

2. I have heard the submissions of the learned counsel for the writ petitioners, of the learned Government Pleader for Revenue (A.P.), appearing for the respondents 1 to 4, and, of the learned counsel appearing for the 5th respondent. I have perused the material record.

3. The case of the writ petitioners, in brief, is this: - ‘An agreement of sale, dated 04.06.1996, was entered into between the 1st petitioner and the 5th respondent in respect of Ac.4.30 cents of land in Survey No.50 A/2 of Lingaladinne Village for the consideration stated therein. However, the 5th respondent postponed execution of a regular sale deed pursuant to the said agreement of sale and did not respond to the legal notice got issued by the petitioners. O.S.No.181 of 2015 is, therefore, filed on the file of the Principal Junior Civil Court, Adoni for specific

performance. An interlocutory application for a temporary relief was also filed in the said suit. While so, the 5th respondent filed an appeal in Rc.E.2642/2016 before the Revenue Divisional Officer, Adoni, the 3rd respondent herein, for cancellation of pattadar passbook issued in favour of the 2nd writ petitioner. The said appeal is not maintainable and therefore, it is not entertainable under facts and in law. Hence, the present writ petition is filed.'

4. It is to be noted that, on 26.08.2016, this Court, while admitting the writ petition, granted interim stay as prayed for in W.P.M.P.No.35151 of 2016. Thereafter, the 5th respondent filed a vacate petition along with his pleadings. His case, in brief, is this: - 'The institution of the afore-stated suit by the writ petitioners is admitted. On coming to know about the mutation of the property in favour of the 1st writ petitioner, the 5th respondent filed the subject appeal before the Revenue Divisional Officer seeking cancellation of pattadar pass book and title deed issued in favour of the 1st writ petitioner. Having received notice in the said appeal, the writ petitioners filed the present writ petition stating that there is no provision under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short, "the Act") for preferring such an appeal. The writ petitioners also stated that instead of filing appeal against the mutation entries made in favour of the 1st petitioner in 1(B) register, the subject appeal was erroneously filed by the 5th respondent in an improper form. However, this respondent filed a proper appeal, on 18.07.2017, before the 3rd respondent. The said appeal was filed under Section 5(5) of the Act along with a petition for condone delay. The mutation made in favour of the 1st writ petitioner in I(B) register and the consequential action of issuance

of pattadar passbook and title deed are liable to be set aside, as the same are in contravention of the provisions of law. The writ petitioners approached this Court with unclean hands. Hence, the writ petition is liable to be dismissed.'

5. Learned counsel for the petitioners and the learned counsel for the 5th respondent advanced arguments in line with the respective pleadings, which are stated supra.

6. Learned Government Pleader submitted that the pleadings of the official respondents are not yet filed.

7. However, at the hearing, learned counsel for the 5th respondent fairly stated that the appeal, which was earlier filed by the 5th respondent and which is the subject matter of the present writ petition, is not filed in proper form and that therefore, a regular appeal, under Section 5(5) of the Act, was filed requesting to set aside the entries made in I(B) register in favour of the writ petitioners in respect of the subject land; that the appeal papers were received by the appellate authority i.e., Revenue Divisional Officer, Adoni, on 18.07.2017, and that in view of the said subsequent event, the writ petition may be allowed, however, reserving liberty to the 5th respondent to prosecute the said appeal, which is subsequently filed, and directing the said appellate authority to entertain the said appeal, if it is otherwise in order, and dispose of the same on merits in accordance with the procedure established by law.

8. In view of the said submissions of the learned counsel for the 5th respondent, learned counsel for the writ petitioners submits

that the writ petition may be allowed and the question of the maintainability of the appeal now filed by the 5th respondent and the merits of the issues raised in that appeal be left open for consideration by the appellate authority, as the same are not the subject matter of the present writ petition.

9. Having regard to the facts and submissions and on the above analysis, the Writ Petition is allowed as prayed for. However, this order shall not preclude the 5th respondent from prosecuting the application for condonation of delay and the appeal filed under Section 5(5) of the Act before the Revenue Divisional Officer, Adoni, which is stated to have been instituted, on 18.07.2017, before the said appellate authority. It is made clear that notwithstanding this order, the said appellate authority shall entertain the said application for condonation of delay in the first instance and shall dispose of the same on its merit and in strict accordance with the procedure established by law; and, thereafter, depending upon the result of the application for condonation of delay, take up the appeal, if necessary, and shall dispose of the same on its merit and in strict accordance with the procedure established by law. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

JUSTICE M.SEETHARAMA MURTI

Date: 07.06.2018
AMD

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI



WRIT PETITION No.28387 OF 2016

DATE: 07.06.2018

AMD