

HON'BLE SRI JUSTICE S.V. BHATT

W.P. Nos.3244, 7787 OF 2015 AND 36124 OF 2016

COMMON ORDER:

Heard Mr.K.Staram for petitioner in W.P. No.3244 of 2015 and W.P. No.36124 of 2016 and Mr. V.CH. Naidu for petitioner in W.P. No.7787 of 2015.

For convenience the parties as arrayed in W.P. No.36124 of 2016 is referred.

W.P. No.36124 of 2016:

Thogaru Srinivasa Rao/petitioner prays for Mandamus declaring the action of respondents in not issuing Pattadar Pass Book and Title Deed to petitioner in pursuance of proceedings D.Dis.C/2865/2008 dated 08.11.2010 and also the decree and judgment in O.S. No.353 of 2008 dated 17.06.2016 on the file of Principal Junior Civil Judge, Chirala, as illegal, arbitrary and contrary to A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'). The petitioner prays for consequential direction to respondents to issue Pattadar Pass Book and Title Deed to petitioner in Survey No.544/7 of Chinaganjam Village and Mandal, Prakasam District.

The petitioner and the 6th respondent are parties before the Revenue Divisional Officer, Ongole in the enquiry initiated under the Act. The petitioner filed appeal before the Revenue Divisional Officer, Ongole/respondent No.4 against the issuance of Pattadar Pass Book and Title Deed in favour of 6th respondent. Respondent

No.4 through proceedings D.Dis.No.C/2865/2008 dated 08.11.2010 held as follows:

“On considering the facts and evidence on record I feel that it is a fit case to cancel the pattadar pass book and title deed issued in favour of the respondents 1 to 3 as they are not in possession and enjoyment. In the circumstances, pattadar Pass Books and Title Deeds of R1 to R3 are hereby cancelled and the Tahsildar, Chinaganjam is directed to issue PPB and TD in favour of the appellant duly following the procedure prescribed under the Act.”

The 6th respondent and the petitioner are arrayed as plaintiff and defendant in O.S. No.353 of 2008 on the file of Principal Junior Civil Judge, Chirala. The suit for declaration of title and possession filed by 6th respondent is pending decision, the proceedings dated 08.11.2010 were issued by 4th respondent. It is undisputed and also matter of record that on 17.06.2016 the suit filed by 6th respondent was dismissed. Respondent No.6 filed W.P. No.7787 of 2015 challenging the order of 4th respondent in proceedings D.Dis.C/2865/2008 dated 08.11.2010 principally, on the ground that the 4th respondent does not have jurisdiction to entertain the appeal against mere issuance of Pattadar Pass Book/Title Deed and issue proceedings dated 08.11.2010. The above undisputed circumstances are common in all the writ petitions.

Mr.V.CH. Naidu contends that the proceedings dated 08.11.2010 are without jurisdiction and illegal and relies on the decision of this Court in Patnamma v. Revenue Divisional Officer,

Dharmavaram, Anantapur District¹ and contends that the proceedings dated 08.11.2010 are liable to be set aside.

Mr. Staram limits his submissions only to the prayer in W.P. No.36124 of 2016. In response to Mr. Naidu's contention he submits that the consideration of this Court on the legality or otherwise of the order dated 08.11.2010 is merely academic, for the suit filed by 6th respondent ended in dismissal, whereunder the title claimed by 6th respondent is negatived. With the result, Section 8 of the Act comes into operation either for the maintenance or continuation of entries in 1B Register, and these entries are entered or maintained in accordance with the decision of the civil Court. He further submits that the prayer in W.P. No.3244 of 2015 is rendered ineffective in view of the subsequent developments. In short, he prays for dismissing W.P. Nos. 3244 of 2015 and 7787 of 2015 and for passing appropriate orders in W.P. No.36124 of 2016. Mr. Staram relies on the decision of this Court in *Musku Mallaiah v. State of Andhra Pradesh, Revenue Department*² Paragraphs 9 and 10 which read thus:

"9. It was contended that once the civil Court grants declaration of title, there is no other requirement for implementing the same by making entry in the record of rights and its amendment in accordance with such declaration. There is no requirement of payment of any registration fee or stamp duty on the value of the land. It is the impugned Rule which is subordinate to the provisions of the Act that requires such payment and therefore, the Rule is ultra vires.

¹ 2015 (6) ALD 609 (DB)

² 2004 (6) ALT 155 (DB)

10. The submission, in our considered opinion, is totally misconceived. A close analysis of [Section 8\(1\)](#) and (2) of the Act makes it abundantly clear that it bars suits against the Government or any Officer of Government in respect of a claim to have an entry made or in relation to entry made in record of rights. It means no Government Officer cannot be sued for the action taken to have an entry made or in relation to any entry made in record of rights. No suit shall lie against the Government or its Officers in that regard. [Section 8\(2\)](#) of the Act provides for institution of a suit by an aggrieved person against any person denying or interested to deny his title in respect of an entry made in any record of rights. The right to file suit presupposes the person holding rights traceable to an entry made in any record of rights. He must be in possession of rights in respect of an entry made in any record of rights. Whenever such a right is sought to be denied, the person in possession of right based on entry made in any record of rights may file suit against such person denying or interested to deny the title to such right and seek declaration of his right under Chapter VI of the Specific Relief Act, 1963. [Section 8\(2\)](#) in no manner deals with the suits for declaration of title simpliciter in respect of the lands. The declaration contemplated is a declaration of one's title to such right to which one is in possession by an entry made in the record of rights. The declaration is in relation to an entry that is already made in any record of rights. [Section 8\(2\)](#) deals with possession of rights of an entry made in any record of rights. Whenever such a right is infringed, the person in possession of such right based on entry made in any record of rights is entitled to file suit for declaration of his right to possess entries made in record of rights. Any alteration in the record of rights at the instance of person denying such right is required to be amended in accordance with the declaration of right by a competent Court of civil jurisdiction under Chapter VI of the Specific Relief Act, 1963. [Section 8\(2\)](#) in no manner contemplates amendments or updating of the records based on decree for declaration of title in respect of any land. [Section 8\(2\)](#) does not deal with any rights in land. It deals with

possession of right of an entry made in any record of rights and the remedy whenever such right is invaded or denied by other person.”

Let me first take up the objection raised by Mr.V.CH.Naidu against proceedings dated 08.11.2010. The objection against the proceedings dated 08.11.2010 is that the appeal filed by Thogaru Sinivasa Rao is not maintainable in view of the principle laid down by this Court in Ratnamma case (1 supra). Hence prays for setting aside the proceedings dated 08.11.2010.

There is no difficulty in appreciating the legal objection raised by Mr.V.CH. Naidu. The effect of the decision in Ratnamma case (1 supra) is that the appeal before the Revenue Divisional Officer under Section 5(5) of the Act against mere issue of pattadar pass book/title deed is not maintainable. Appeal is maintainable under Section 5(5) of the Act if mutation is effected pursuant to a proceeding. In the case on hand, while the proceedings under the Act were pending before R.D.O., the parties were agitating their rights before the civil Court. The civil Court has denied the relief of declaration of title and possession claimed by 6th respondent. No doubt, the decree and the judgment are subject matter of appeal before appellate Court. Therefore, for the present, the maintenance and continuation of record of rights ought to be as decided by the civil Court. Hence, even assuming that the proceedings dated 08.11.2010 are liable to be set aside as without jurisdiction, still the maintenance and continuation of record by the Tahsildar shall be in accordance with the adjudication of the civil Court. This Court is not persuaded to interdict the proceedings of

the Revenue Divisional Officer dated 08.11.2010 for academic purpose particularly, keeping in view the dismissal of O.S. No.353 of 2008. Therefore, the writ of Mandamus prayed by Sayani Srinivasa Rao/6th respondent cannot and could not be considered by this Court at this stage of the matter.

W.P. No.36124 of 2016:

The petitioner prays for direction to issue Pattadar Pass Book/Title Deed or maintaining the entries in 1B Register in accordance with the proceedings dated 08.11.2010 and the decree and the judgment in O.S. No.353 of 2008 dated 17.06.2016. As already referred, this Court in Musku Mallaiah case (2 supra) has explained the scope and ambit of Section 8 of the Act and how the entries are maintained pursuant to decision by competent Court. Therefore, the petitioner is given liberty to represent to Tahsildar/5th respondent for maintenance of 1B Register in accordance with the adjudication of the civil Court within four weeks from today. The 5th respondent examines the request and takes steps as are warranted in the maintenance and continuation of entries in 1B Register for Survey No.544/7 of Chinaganjam Village expeditiously.

For the above reasons, W.P. No.36124 of 2016 is disposed of and W.P. Nos.3244 and 7787 of 2015 are dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 02.04.2018
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