

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**WRIT PETITION No.31264 OF 2018**

**ORDER :**

This writ petition is filed challenging the action of the 4<sup>th</sup> respondent in creating rights to the unofficial respondents with regard to the land to an extent of Ac.2.5 in Survey No.294/A, in Kaminahal Village, Halaharvi Mandal, Kurnool District, by way of adangal pahani even without notice to the petitioners and while the petitioners names are reflected in the ROR record and to set aside the same.

The case of the petitioners is that they are the owners and possessors of the land to an extent of Ac.13.64 in Survey No.247 and Ac.2.50 in Survey No.249 A in Kaminahal Village. Originally, late H.T.Sankara Reddy, S/o.H.T.Ramakrishna Reddy of Hardageri Village, was in exclusive possession and enjoyment of the said lands as owner having purchased same from Mallaiah, Chinna Durgudu, Gadeppa and Pedda Durgudu, who are the sons of Pedda Lingappa, under a registered sale deed dated 24.04.1961 for Rs.5,000/-. Since then H.T.Sankara Reddy was in exclusive and uninterrupted possession and enjoyment of the said lands and paid land revenue to the Government. He also filed declaration form before the Land Reform Tribunal showing the above said lands and other lands as owned and possessed by him. The Land Reforms Tribunal, Adoni-2 passed an order on

26.09.1977 including the above said lands and other lands in his holding. H.T.Sankara Reddy has three sons namely H.T.Parthasaratha Reddy, H.Sudhakar Reddy and H.Suresh Kumar and that they have jointly and individually availed loan from various financial institutions on various dates by mortgaging the above said lands and other lands as detailed in E.C. dated 19.07.2018 obtained from Sub-Registrar, Alur. The revenue officials have also issued pattadar pass books and land title deeds in respect of the aforesaid land to H.T.Sankara Reddy. After his death, pattadr pass books and land title deeds were also issued in the name of his sons. First petitioner is daughter-in-law of H.T.Sankara Reddy and wife of late H.T.Parthasaratha Reddy who is the first son of H.T.Sankara Reddy. The 2<sup>nd</sup> and 3<sup>rd</sup> petitioners are sons of H.T.Sankara Reddy. In the adangals for the years 2010 to 2017 obtained from web land it is shown the name of H.T.Sankara Reddy as pattadar and his sons and daughter-in-law names shown as possessors in respect of the above said lands. All of a sudden in the year 2018 adangal obtained from web land the names of K.Yerri Swamy, s/o.late Durganna and Kattubadi Thimmappa, s/o.late Gadenna are found and their names were entered illegally without any basis. The Khatha numbers mentioned in 2018 adangal of the above said two persons are not tallying with Khatha numbers mentioned in 1 B Namuna (ROR).

It is submitted that the above said K.Thimmappa and one K.Mareppa brother of Yerri Swamy whose name is mentioned in 2018 adangal, filed a suit in OS.No.122/2010 on the file of the Senior Civil Judge, Adoni for grant of permanent injunction against the petitioners. They also filed IA.No.506/2010 and obtained ex-parte interim injunction orders against the petitioners on 30.04.2010 and the same was dismissed by the learned Senior Civil Judge, Adoni on contest by the petitioners. Subsequently, on 22.12.2014 the above said K.Thimmappa and K.Mareppa withdrew the suit filed by them. But, the present Tahsildar, Halaharvi without verifying the previous revenue records, without following the due procedure prescribed in Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 and rules made there under and without notice to the petitioners, mutated the names of K.Yerri Swamy, s/o.late Durganna and Kattubadi Thimmappa, s/o.late Gadenna as pattadars and possessors. The act of the Tahasildar, Halaharvi is against law and without any basis. The Revenue Divisional Officer, Adoni also passed orders on 30.10.2011 dismissing the claim of the unofficial respondents, thereby stating that they have no right to enter into the petitioner's lands.

It is also submitted that when petitioners verified the online adangal pahani dated 18.07.2018, it reflected the petitioners' names and on the same date for the same lands

reflected the name of the unofficial respondents. In fact upto the year 2017 the petitioners are shown in the adangal pahani but in 2018 the unofficial respondents are shown as the pattadars. Thereafter, the petitioners issued a legal notice on 23.07.2018 to the Tahasildar along with the entire record to establish their case. But, till date, the Tahasildar has not amended the records, although, the petitioners' pattadar pass books are still in force and have not been cancelled. Aggrieved by the same, present writ petition is filed.

The 4<sup>th</sup> respondent filed counter affidavit stating that the contention of the petitioners that they have been in exclusive possession and enjoyment of lands in Survey No.247, admeasuring 13.64 and Survey No.249/A, admeasuring 2.50 acres of Kaminihal Village of Halaharvi Mandal is not based on recorded evidence; that in fact the lands in question are Kattabadi Service Inam; that the then British Government issued a title deed for an extent of 35.80 acres in the Village of Kaminihal and that the inam is confirmed in favour of 'Durugadu' in No.1319, dated 28.10.1886. It is also stated that the extent claimed by the respondents is stated to have been included in the above total extent of 35.80 acres as there were no survey numbers formed in respect of inam lands; that no records are available in the office about issue of Rytwari Pattas in respect of these lands under Section 7 of the A.P.Inams (A & C into R) Act,

1956; that the petitioners have also not produced the Rytwari Pattas granted to them and as per clarification issued in CSS & LRS, Ref.No.ROR/A/161/1989, dated 01.06.1989, it is for the occupants to get a Ryotwari Patta under the Inams Abolition Act; that the survey numbers in question were not indicated in the title deed; and that the respondents have been under possession and enjoyment of the lands as per old ROR prepared in the year 1978 and as per the Adangal for fasali 1427 (2017) and the receipts issued in the year 2005. It is also confirmed, on enjoyment of the respondents through the statements filed by adjoining pattadrs of the lands in question. With the above documentary evidence it is observed that the respondents have been occupations of the lands. But the petitioners have produced the extract of the Adangal for 1992-1993 and for the year 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 to the effect that they have been in occupation of the land in question.

As regards ownership of the land Sri H.T.Sankar Reddy, father of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners and father-in-law of 1<sup>st</sup> petitioner has claimed ownership of the lands in question through a registered sale deed No.464/1961, dated 24.04.1961 which was executed by the legal heirs of the respondents. The contention of the petitioners that the lands were included in the declaration filed under the A.P.Land reforms (COAH) Act as owner of the property is correct. The



then Tahsildar has issued Pattadar Pass Book & Title Deed books in favour of the father of the petitioners 2 and 3. The petitioners have got mutated their names in the pass books and title deeds after demise of H.T.Sankar Reddy and they have not been cancelled in the year 2018. The names of the respondents have been mutated in the adangal for the year 2018 and the E-title deed-cum-pattadar pass book was issued replacing the old pattadar pass book and title deed, after enquiry and based on possession of the lands. Possession is an important factor for issue of Pattadar Pass Book as clarified in CSS & LR Ref.No.ROR/D/1631/1989, dated 15.12.1989 of the Commissioner of S&LRS, Hyderabad and as the respondents have been in possession on the date of issue of Pattadar Pass Book, the old Pattadar Pass Book was replaced with the E-title deed cum pattadar pass book. The contention that the Khata Numbers are not tallying in Adangal and in 1 B is not correct. The Khata Numbers mentioned in 2018 Adangal & 1 B are 538 in respect of K.Yerriswamy and 651 in respect of K.Thimmappa, as separate Khata numbers have to be issued pattadar wise. It is also stated that the names of the respondents have been mutated in respect of the subject land in the revenue records by following due procedure and sought for dismissal of the writ petition.

Reply is filed by the petitioners reiterating the averments in the writ affidavit and also specifically denying about service of notice before taking the impugned action by the respondents. It is submitted that the issuance of the legal notice on the petitioners and the documents filed along with the counter affidavit are completely denied stating that it is only an after thought and concocted documents which in fact amounts to perjury by the respondents. It is submitted that the notices dated 06.08.2018 and undated notice issued under Rule 19(1) at page 120 are created as there is no dispatch number nor any proof of service of the notice and that the signature dated 21.09.2018 by the recording authority is different from the signature at the bottom of the same sheet. The same notice at page 121 of the counter affidavit is different from the notice at page 120 of the counter affidavit.

Learned counsel for the petitioner submits that the impugned decision is taken without issuing any notice and as envisaged under Rule 29 of the Telangana Rights in Land and Pattedar Pass Books 1971, if notice is not served on the petitioner and if it is not practicable to serve notices on the registered land owners, the same has to be sent by certificate of posting. The said procedure has not been followed. He also submits the father of the petitioners purchased subject lands through registered documents in the year 1961 and he also

filed declaration which was enquired by the Land Reforms Tribunal, which fact is also admitted by official respondent No.4 in the counter affidavit. Further the suit filed by the unofficial respondents in OS.No.164/2007 for declaration of title and recovery of possession, was withdrawn and the same has become final. Further, in the suit filed against the petitioners in O.S.No.122 of 2010 for injunction, though initially interim injunction was granted ex parte, after contest it was dismissed and eventually, the suit was dismissed as withdrawn. Therefore, he contends that mutating the name of the unofficial respondents and deleting the names of the petitioners, without any basis and without issuing notice, is in violation of the principles of natural justice. He submits that though notice was served on respondents 5 and 6, there is no appearance on their behalf.

Heard learned Assistant Government Pleader for Revenue who submits that the petitioner has alternate remedy in the matter, as such, the writ petition cannot be entertained.

In this case it is to be seen that the assertions in the writ affidavit as referred to above goes to show that the subject land was purchased by the father of the petitioners through registered sale deed and the same is not disputed in the counter affidavit filed by the 4<sup>th</sup> respondent. The fact that the father of the petitioner filed declaration before Land



Reforms Tribunal and that the Tribunal accepted the same, is not disputed in the counter affidavit file by official respondent No.4. On what basis the names of unofficial respondents have been entered in the revenue records is not stated in the counter affidavit of respondent No.4 and the averments in this regard are very vague. Along with the counter affidavit, 4<sup>th</sup> respondent filed notice, which is stated to have been refused by the petitioners. Assuming that the petitioners have refused to receive the same, then the official respondent No.4 has to follow the procedure contemplated under Rule 29 of the Rules, which reads as under:

“29. The service of any notice, intimation of any decision and the communication of any order under the provisions of the Act or these rules shall be effected by giving or tendering a copy of such notice, intimation or order to the person concerned or an adult member of his family or where this is not practicable by sending it to him under certificate of posting.”

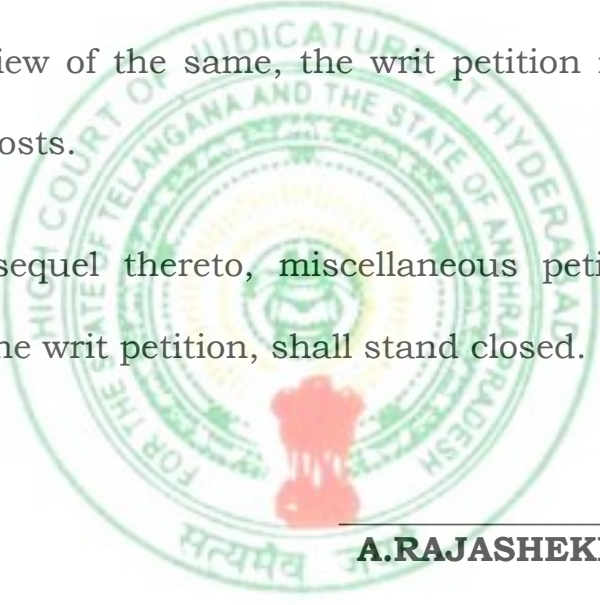
The above procedure contemplates service of notice by way of certificate of posting. The said procedure has not been followed. As such it is clear that the impugned action taken of entering the names of unofficial respondents, is in violation of principles of natural justice. When there is violation of principles of natural justice, there is no bar for entertaining the writ petition, even though an alternative remedy is available. Further, the fact remains that even after service of

notice on unofficial respondents 5 and 6, they did not choose to represent through counsel or in person. This goes to show that the assertions made by the writ petitioner in his affidavit have to be taken as true and respondents 5 and 6 have not chosen to dispute or deny the same.

In view of the facts and circumstances, the impugned action of the official respondents in entering the names of the unofficial respondents 5 and 6 in respect of the subject land, is arbitrary and illegal and in violation of principles of natural justice. In view of the same, the writ petition is allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

30.10.2018  
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**A.RAJASHEKER REDDY, J**