THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.2358 OF 2019

O R D E R

In exercise of revisionary power under Section 9 of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (*for brevity*, 'the Act of 1971'), the Joint Collector, Jayashankar-Bhupalpally District, passed order dated 08.01.2019 setting aside the appellate order dated 18.05.2013 passed by the Revenue Divisional Officer, Manthani Division, Jayashankar-Bhupalpally District. Aggrieved thereby, respondents 1 and 2 in the revision, appellants 1 and 2 before the Revenue Divisional Officer, are before this Court by way of this writ petition.

Heard Sri Prabhakar Chikkudu, learned counsel for the petitioners, and Sri Varanasi Venkateswara Rao, learned counsel on caveat for respondents 6 and 7 herein, the revision petitioners before the Joint Collector and the respondents before the Revenue Divisional Officer.

The case of the petitioners, who are brothers, is as follows: They inherited the agricultural land admeasuring Acs.3.35 guntas in Survey No.206 of Kondampet Revenue Village, Malhar Rao Mandal, Jayashankar-Bhupalpally District. According to them, they went to the office of the Tahsildar, Malhar Rao Mandal, in June, 2012, to secure copies of the revenue records for availing an agricultural bank loan and found that the names of respondents 6 and 7 herein were entered in the pahanies from 1999-2000 onwards. Alleging that the said respondents had colluded with the revenue authorities and got their names entered in the records by tampering therewith, they preferred an appeal before the Revenue Divisional Officer, Manthani Division, under Section 5(5) of the Act of 1971. The said appeal was allowed on 18.05.2013. Aggrieved thereby, respondents 6 and 7 herein preferred a revision under Section 9 of the Act of 1971, resulting in the impugned order dated 08.01.2019.

Perusal of the appellate order dated 18.05.2013 passed by the Revenue Divisional Officer, Manthani Division, reflects as follows: The petitioners herein, being the appellants in the said appeal, claimed that they and their ancestors cultivated the subject land since many decades and no sale had ever been effected by them or their predecessors in respect thereof. They further asserted that no notice was ever issued to them by the Tahsildar, Malhar Rao Mandal, before effecting changes in the records and incorporating the names of the respondents therein. They stated that they came to know of these facts only on 29.06.2012, when they took the pahani extracts for the purpose of a bank loan and promptly filed an appeal on 05.07.2012. The appellate authority found that the name of Mulkala Rajaiah found mention in the pahanies from 1979-80 onwards till 1999-2000, when the names of the respondents in the appeal were incorporated. The pattadar pass book issued under the Act of 1971 also bore the name of Mulkala Chinna Rajaiah as the pattadar in relation to the subject land. Mulkala Chinna Rajaiah is the predecessor-in-title of the petitioners, the appellants in the appeal before the Revenue Divisional Officer. Respondents 6 and 7 herein, being the respondents in the appeal, produced a photocopy of an unregistered Sale Deed dated 05.04.1994, whereunder their father, Mulkala Mallaiah, was stated to have purchased an extent of Acs.3.12 guntas in Survey No.206 of Kondampet Village from one Cheerla Raji Reddy, S/o Lachi Reddy. They also produced another unregistered document bearing the date 21.05.1992 in favour of Cheerla Raji Reddy but there was no mention of the survey number therein. The appellate authority, having considered this material, opined that there was no basis for entering of the names of the respondents in the appeal in the revenue records while the pattadar pass book produced by the appellants clearly reflected that their father was the real owner and cultivator. As there were no valid sale deeds or regularization thereof according to law, the appellate authority held against the respondents and allowed the appeal. Consequently, the pattadar pass book and title deed issued to the respondents were cancelled and the appellants were directed to be issued pattadar pass book and title deed in relation to the subject land.

Per contra, the revisionary authority held that Respondents 6 and 7 herein, the revision petitioners, purchased the subject land under a simple sale deed dated 20.04.1988 from Mulkala Rajaiah and were put in possession. They filed an application in Form X on 25.09.1988 under Section 5-A of the Act of 1971 seeking its regularization and validation. The then Mandal Revenue Officer, Malhar Rao Mandal, conducted due enquiry and recorded entries in the Form I-B Register of Kondampet Village by mutating the names of the revision petitioners in the patta and cultivation columns in the pahanies from 1999-2000 onwards.

According to the revision petitioners, the then Mandal Revenue Officer had followed the due procedure contemplated under Section 5-A of the Act of 1971. They further alleged that the petitioners herein fabricated the pattadar pass book in favour of Mulkala Chinna Rajaiah so as to grab the property despite the sale thereof in favour of the revision petitioners on 20.04.1988 by Mulkala Rajaiah. The revisionary authority observed that the respondents before her, the appellants in the appeal, were not the owners and possessors of the subject land while the revision petitioners were in actual physical possession from the date of purchase. She found fault with the pattadar pass book relied upon by the Revenue Divisional Officer on the ground that it was tampered with. She further found that the word ‘Chinna’ was added in the pahani of the year 1995-96 and this version could not be accepted. Opining so, she held that the Revenue Divisional Officer, Manthani Division, had passed an erroneous order and accordingly set aside the same.

No counter-affidavit was filed in this writ petition despite the matter undergoing eight adjournments prior to orders being reserved.

The original record was produced by the learned Assistant Government Pleader for Revenue. The record was called for in the light of the controversy as to what was the nature of the appeal filed by the petitioners herein and as to whether there was any regularization of any unregistered sale deed under Section 5-A of the Act of 1971, as claimed by respondents 6 and 7 herein.

Perusal of the written arguments filed by the revision petitioners before the Joint Collector reflects that they reiterated therein that they had purchased the land under a simple Sale Deed dated 20.04.1988 from Mulkala Rajaiah and were put in possession of the said land. They further claimed that they filed an application in Form X on 25.09.1998 under Section 5-A of the Act of 1971 for regularization and validation of the said simple sale deed. They also stated that a copy of the said simple sale deed was filed therewith. Perusal thereof reflects that Mulkala Rajaiah was stated to have executed the same in favour of Mulkala Sammi Reddy and Mulkala Thirupathi Reddy, respondents 6 and 7 herein.

As per the written arguments filed in the revision by the petitioners in this writ petition, respondents 1 and 2 therein, they were the sons of Mulkala Rajaiah while respondent 3 therein, appellant 3 before the Revenue Divisional Officer, was his grandson through a pre-deceased son. As per the genealogy provided by them, respondents 6 and 7 are none other than their nephews, being the sons of Mulkala Mallaiah, son of Gouraiah - their father’s brother. They pointed out that the revision petitioners were resting their claim upon two separate versions. They claimed that there was a simple sale deed executed on 05.04.1994 in favour of their father by one Chirla Raji Reddy who had purchased the land from Lachamma and Sammaiah on 21.05.1992. As per this version, the father of the revision petitioners purchased the land in 1994 and the extent of the land purchased was only Acs.3.12 guntas and not Acs.3.35 guntas. The other simple sale deed is dated 20.04.1988 allegedly executed by Mulkala Rajaiah in favour of the revision petitioners themselves. They pointed out that as per the birth certificate obtained by them, the date of birth of Thirupathi Reddy, the second revision petitioner, was 01.01.1981 and therefore, he would have been only seven years at the time of the alleged purchase under the simple Sale Deed dated 20.04.1988. They asserted that the age of the second revision petitioner was deliberately manipulated so as to show him to be older. It is on this basis that they asked for dismissal of the revision.

The record also reflects that the appeal filed by the petitioners herein before the Revenue Divisional Officer was under Section 5 of the Act of 1971 and not one under Section 5-B thereof.

It is no doubt possible that the property could be purchased under a sadabainama in the name of a child but there is no clarity on the part of respondents 6 and 7 as to how they are claiming title, given the fact that there are two unregistered sale deeds under which they claim title, one executed in their favour and the other in favour of their father. In any event, the claim of respondents 6 and 7 based on these unregistered sale deeds cannot be accepted given the fact that the procedure prescribed under Section 5-A of the Act of 1971 and Rule 22 of the Telangana Rights in Land and Pattadar Pass Books Rules, 1989 (*for brevity,* 'the Rules of 1989'), as they then were, was never followed.

Section 5-A(1) states that where a person is an occupant by virtue of an alienation made otherwise than by way of a registered document, he may within the time prescribed apply to the Mandal Revenue Officer for a certificate declaring the alienation to be valid. Section 5-A(2) states that upon receipt of such an application, the Mandal Revenue Officer should make such enquiry as may be prescribed requiring the alienee to deposit in his office an amount equal to registration fees and the stamp duty that would have been payable had the alienation been effected by a registered document in accordance with the provisions of the Registration Act, 1908. The *proviso* thereto permits the Mandal Revenue Officer not to require the alienee to deposit the amount if he is satisfied that the alienation is not in contravention of the provisions of the Acts mentioned therein. Sub-section (3) of Section 5-A states that nothing contained in the earlier provisions shall be deemed to validate any alienation in contravention of the provisions of the Acts mentioned therein. Sub-section (4) of Section 5-A states that the Mandal Revenue Officer on deposit of the amount specified in sub-section (2) of Section 5-A shall issue a certificate to the alienee declaring that the alienation is valid from the date of issuance of the certificate and such certificate shall, notwithstanding anything contained in the Registration Act, 1908, be evidence of such alienation as against the alienor or any person claiming interest under him. The Recording Authority, as per sub-section (5) of Section 5-A, has to make an entry in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property upon production of the certificate issued.

Rule 22 of the Rules of 1989 deals with regularization of such alienations. Thereunder, the alienee is required to file an application in Form X before the Mandal Revenue Officer seeking validation of his unregistered title document. On receipt of such application, sub-rule (3) of Rule 22 requires the Mandal Revenue Officer to issue notice to the alienor in Form XI specifying the date and time at which he proposes an enquiry into the application. He is also required to issue a notice in Form XII to all persons believed to be interested in the land. Sub-rule (4) requires the Mandal Revenue Officer to hear all the parties and examine the documents and witnesses, if any, and take such further evidence as he may consider necessary to satisfy himself that the alienation is not in contravention of any of the provisions of the Acts referred to in Rule 9(1)(a)(iv). In terms of sub-rule (5)(i), after completion of the enquiry, the Mandal Revenue Officer shall require the alienee to deposit by way of a challan in the treasury an amount equal to the registration fee and stamp duty that would be payable had the alienation been effected by a registered document. As per Rule 22(5)(ii), upon the deposit of the amount through challan in the treasury, the Mandal Revenue Officer shall issue a certificate in Form XIII-B to the alienee declaring that the alienation or transfer is valid from the date of issue of the certificate. Rule 22(5)(iii) requires a copy of every such certificate to be communicated in Form XIII-C by the Mandal Revenue Officer to the Sub-Registrar having jurisdiction over the area in which the land is situated. Rule 22(6) requires the Recording Authority, upon production of the certificate issued, to make an entry in the Record of Rights in FormI-B to the effect that the person whose name has been recorded as an occupant is the owner of the property from the date of issue of the certificate. Rule 22(7) states that it is only thereafter, a title deed and a pattadar pass book should be issued to the occupant in the category of owner-pattadar.

In the light of the aforestated statutory scheme, it was incumbent upon respondents 6 and 7 to produce the validation certificate issued to them under Form XIII-B. Admittedly, no such certificate was ever produced, be it before the Revenue Divisional Officer or the Joint Collector. In the absence of such a document, it was not open to the Joint Collector to baldly assume that regularization was effected and that the so-called unregistered document of title of respondents 6 and 7 had been validated in accordance with the due procedure. All the more so, when two unregistered documents of title were relied upon by respondents 6 and 7 without any clarity as to which was the document under which they claimed title.

In any event, in the absence of any proof of validation of the unregistered document of title executed either in their favour or in favour of their father, the Joint Collector ought not to have held that this was a case where an appeal should have been filed under Section 5-B of the Act of 1971 and that the appellate order passed by the Revenue Divisional Officer in an appeal filed under Section 5(5) of the Act of 1971 was erroneous. No material was placed before the Joint Collector to support such a finding as the record reflects that no validation certificate in Form XIII-B was ever produced by respondents 6 and 7 before her. In the absence of this crucial document, the Joint Collector could not have given respondents 6 and 7 the benefit of doubt on the strength of the unregistered documents of title relied upon by them. The order of the revisionary authority therefore suffers from patent non-application of mind apart from being without valid reasoning, as mere entries in the pahanies were not sufficient in themselves to prove actual possession, but she held to that effect.

The writ petition is accordingly allowed setting aside the order dated 08.01.2019 of the Joint Collector, Jayashankar-Bhupalpally District, and restoring the order dated 18.05.2013 of the Revenue Divisional

Officer, Manthani Division. The respondents shall give effect to the order dated 18.05.2013 expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order, be it from whatever source.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR,J

25th MARCH, 2019

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