IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NO.3464 OF 2019

Between:

Sri Venkat Raja Reddy Nagula ...Petitioner

and

State of Telangana rep by its Principal
Secretary, Revenue Department
and others ...Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 9th APRIL, 2019

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

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SANJAY KUMAR, J

* THE HONOURABLE SRI JUSTICE SANJAY KUMAR

+ WRIT PETITION NO.3464 OF 2019

% DATED 9th APRIL, 2019

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<Gist:

>Head Note:

! Counsel for petitioner : Sri C.Naresh Reddy

^ Counsel for respondents 1 to 3 : Asst. Govt. Pleader for Revenue

^ Counsel for respondent 4 : Sri K.Jaya Kumar and
Sri Md.Sultan Basha

^ Counsel for respondent 5 : --

? CASES REFERRED:

1. 2014 (4) ALD 205
2. 2003 (1) ALT 688 (D.B.)

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.3464 OF 2019

O R D E R

The order dated 31.01.2019 passed by the Revenue Divisional Officer, Nirmal Division, Nirmal District, in exercise of appellate power under Section 5-B of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (*for brevity*, 'the Act of 1971'), is presently called in question. The petitioner was the second respondent in the said appeal, filed by respondent 4 herein.

By order dated 27.02.2019 passed in this writ petition, *status quo* obtaining as on that date was directed to be maintained in relation to entries in the revenue records.

Heard Sri C.Naresh Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Revenue for respondents 1 to 3, and Sri K.Jaya Kumar, learned counsel appearing for Sri Md.Sultan Basha, learned counsel on caveat for respondent 4. Respondent 5 sails with the petitioner and is therefore a *proforma* party.

The petitioner claims to be the absolute owner and possessor of the land admeasuring Ac.0.30 guntas in Sy.No.70/3 of Shakari Village, Soan Mandal, Nirmal District. He purchased the said land under registered sale deed dated 07.03.2006, bearing Document No.732/2006, from respondent 5 herein, the first respondent in the appeal before the Revenue Divisional Officer, Nirmal Division, Nirmal District. According to the petitioner, respondent 4 inherited the subject land from his father and sold it to respondent 5 under unregistered sale deed dated 11.02.1991. Thereupon, respondent 5 applied for regularization and validation of the said unregistered sale deed under Section 5-A of the Act of 1971. The Tahsildar, Soan Mandal, Nirmal District, followed the due procedure and validated the said unregistered sale deed dated 11.02.1991 by collecting the requisite stamp duty and registration charges and issued a certificate in Form XIII(B) on 25.08.1993. Basing on this validation, the name of respondent 5 was mutated in the revenue records and she was issued a pattadar pass book and title deed. After making due enquiries with the revenue authorities, the petitioner purchased the subject land from respondent 5 under the registered sale deed dated 07.03.2006. His name was also mutated in the revenue records and he was issued a pattadar pass book and title deed.

While so, in the year 2008, respondent 4 approached the Revenue Divisional Officer, Nirmal Division, by way of an application, seeking rectification of the revenue records. The same was taken on file as Case No.B/1075/2008, but the Revenue Divisional Officer, Nirmal Division, *vide* Memo dated 14.11.2008, directed respondent 4 to seek redressal in the competent civil Court. As respondent 4 was interfering with his possession over the subject land, the petitioner along with respondent 5, his vendor, filed O.S.No.69 of 2008 before the learned Junior Civil Judge, Nirmal, seeking declaration of title and a perpetual injunction against respondent 4. During the pendency of the suit, elders intervened and respondent 4 promised before them that he would not interfere with the subject land as he had no claim over the same. In the light of this compromise, the petitioner claims that he did not pursue the suit and O.S.No.69 of 2008 came to be dismissed for default on 25.02.2013.

At this stage, respondent 4 again approached the Revenue Divisional Officer, Nirmal Division, by way of representation dated 21.12.2017, praying that she should cancel the entries made in favour of respondent 5 in the revenue records and restore his name therein. Treating this representation as an appeal under Section 5-B of the Act of

1971, the Revenue Divisional Officer issued notices to the petitioner and respondent 5. Despite the petitioner contesting the claims put forth by respondent 4 and also raising the issue of maintainability of the appeal on the ground of delay & laches and the appeal not being in accordance with the procedure laid down in the Act of 1971, the Revenue Divisional Officer, Nirmal Division, allowed the appeal, *vide* the order dated 31.01.2019. Aggrieved thereby, the petitioner is before this Court.

In his counter-affidavit, Respondent 4 asserted that the petitioner had not approached this Court with clean hands and therefore, the writ petition was liable to be dismissed. He stated that the following question of law would arise for consideration in this case:

> 'Whether a person, who attended the proceedings before the authorities without being raising any plea, in the first instance such as *'Appeal does not lie only Revision lies'*, (i.e., in the year 2008), adhered to Revenue Divisional Officer proceedings MEMO dated 14.11.2008 and accordingly approached Civil Court vide O.S.No.69 of 2008 on the file of Junior Civil Judge, Nirmal for the declaration of title and for permanent injunction in his favour against the 4th Respondent, when the same was dismissed for default and attained the finality in favour of 4th Respondent, whether the writ petitioner can *canvas* and *take advantage* of 'Appeal does not lie only Revision lies' in the year 2019 barred by 'law of estoppel' or not?'

According to respondent 4, his father, Adapa Pedda Sayanna, was the owner of the subject land and after his demise, he inherited the same. He alleged that his name was also entered in the pahanis as the pattadar and possessor thereof. He alleged that respondent 5, in collusion with the revenue officials, got her name included in the pahanis as the possessor of the subject land. According to him, there was no unregistered sale deed dated 11.02.1991. He pointed out that the said document was not filed in O.S.No.69 of 2008 before the learned Principal Junior Civil Judge, Nirmal. He claimed that after coming to know of the wrong entries made in the pahanis, he filed an application for rectification of the wrong entries. However, the Revenue Divisional Officer issued notices to both parties and after hearing them on 14.11.2008, he issued Memo No.3/1075/2008 dated 14.11.2008 advising him to seek redressal in the competent civil Court. He pointed out that the petitioner and respondent 5 filed O.S.No.69 of 2008 before the learned Junior Civil Judge, Nirmal, for declaration of their title but allowed the said suit to be dismissed for default on 25.10.2013. He said that he then filed representation dated 21.12.2017 under Rule 32 of the Telangana Rights in Land and Pattadar Pass Books Rules, 1989 (*for brevity*, 'the Rules of 1989'), to take further steps in the matter. He stated that the representation was erroneously shown as an appeal, whereupon the Revenue Divisional Officer issued notices to the parties and after hearing submissions on merits, she passed the impugned order dated 31.01.2019. He asserted that the petitioner submitted to the jurisdiction of the Revenue Divisional Officer and attended the proceedings before her without raising any plea to the effect that the appeal was not maintainable. He claimed that the law of estoppel would bar the petitioner from raising the issue before this Court at this stage. He concluded by stating that as no unregistered sale deed was produced by respondent 5, the Revenue Divisional Officer exercised power under Rule 13(2) of the Rules of 1989 and directed the Tahsildar, Soan Mandal, to make necessary corrections in the record of rights. He asserted that there were no merits in the writ petition and that the same was liable to be dismissed for suppression of true and correct facts.

Though Sri K.Jaya Kumar, learned counsel, would reiterate that respondent 4 never filed an appeal under Section 5-B of the Act of 1971 and that it was only a representation, perusal of the impugned order dated 31.01.2019 demonstrates in no uncertain terms that the Revenue

Divisional Officer treated the case before her as an appeal filed under Section 5-B of the Act of 1971 and acted accordingly. In any event, the Revenue Divisional Officer, Nirmal Division, had no authority under the Act of 1971 to act upon a representation in relation to regularization of an unregistered sale deed under Section 5-A thereof. It may be noted that the Revenue Divisional Officer is neither the primary authority nor the revisionary authority in the scheme of the Act of 1971. Unless an appeal is brought before the said officer in the manner prescribed under the Act of 1971, the said officer cannot entertain or adjudicate upon a dispute. (*see* VUTUKURU SUBBA RAO V/s. STATE OF ANDHRA PRADESH[1]). Further, perusal of the original record produced by the learned Assistant Government Pleader demonstrates that the so-called representation dated 21.12.2017 made by respondent 4 was, in fact, titled 'APPEAL UNDER ROR ACT'. In the said representation, he stated as follows:

> 'I submit that as I am the pattedar of agril. land bearing sy.no.70/3 Ext.0.30 gts. situated at Shakari Village of Nirmal mandal. Further I submit that without my consent the then Tahsildar, Nirmal has transferred the patta rights in favour of Smt.Gangishetty Rajamani W/o. Ramkishan r/o Nirmal during the year 1991-92 on the created sada binama.
>
> In this connection, I state that while rounding my name in possession column against sy.no.70/4 Ext.0.30 written in the name of one Smt.Gangishetti Rajamani W/o. Ramkishan during the year 1992-92 and subsequent year i.e. 1992-93 my name was replaced with Smt.Gangishetti Rajamani W/o Rajamani in pattedar column while recording sy.no.70/3 Ext.0.30 gts and later on it was recorded as sy.no.70/4 Ext.0.30 gts the sub number changed year by year.
>
> Further I submit that the matter has been taken up in an appeal before the authority and the same is pending still now owing to pending of O.S.No.69/2008 of Senior Civil Judge's Court, Nirmal and the same has been disposed off in default as the petitioner is failed to proceed the case in her defense before the Civil Court.

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[1] 2014 (4) ALD 205

> In view of the above, I request kindly to cancel the entries made in favour of Smt.Gangishetti Rajamani W/o Ramkishan in respect of sy.no.70/3 Ext.0.30 gts situated at Sakhari village of Nirmal mandal and pas order to restore my name as pattedar in the above landed property.'

Significantly, respondent 4 did not even advert to Rule 32 of the Rules of 1989 and on the other hand, captioned the representation as an appeal under the Act of 1971. The impugned order dated 31.01.2019 begins with the words: 'This is an appeal filed under Section 5-B….' and refers to the regularization under the provisions of Section 5-A during the year 1993 as the subject matter thereof. It is therefore established beyond doubt that the Revenue Divisional Officer, Nirmal Division, exercised appellate power under Section 5-B of the Act of 1971 when she set aside the Form XIII(B) certificate of 1993.

In this regard, Sri C.Naresh Reddy, learned counsel, would point out that the right of appeal under Section 5-B of the Act of 1971 was created only with effect from 31.10.1993, by way of Amendment Act No.9 of 1994, and contend that such right of appeal would not be available as against regularization of an unregistered sale deed by the Tahsildar, Soan Mandal, on 25.08.1993. He would argue that as on 25.08.1993, when the Form XIII(B) Certificate was issued to respondent 5, there was no right of appeal provided in the statute against such regularization, be it under Section 5-A of the Act of 1971 or any other provision. He would assert that in consequence, the Revenue Divisional Officer, Nirmal Division, could not have entertained an appeal under Section 5-B of the Act of 1971 in the year 2017 in relation to the Form XIII(B) Certificate dated 25.08.1993.

Per contra, Sri K.Jaya Kumar, learned counsel, would argue that the petitioner did not raise this issue before the Revenue Divisional Officer, Nirmal Division, and he is therefore estopped from doing so at this stage. He would contend that fraud would vitiate everything and assert that exercise of power under Section 5-A of the Act of 1971 by the Tahsildar, Soan Mandal, was utterly fraudulent as no unregistered sale deed was available before him. He would further contend that this Court should not consider the issue only on technicalities and look beyond.

Superficially attractive, the argument of Sri K.Jaya Kumar, learned counsel, is fundamentally specious. Fraud, no doubt, has a vitiating effect but it must be pleaded and proved in a duly constituted proceeding before a jurisdictional authority. It is however well settled in law that jurisdiction cannot be created by consent of the parties. If jurisdiction is inherently lacking, it cannot be cured by submission of the parties, knowingly or unknowingly, to such jurisdiction. In the light of the Division Bench judgment in M.B.RATNAM V/s. REVENUE DIVISIONAL OFFICER, R.R. DISTRICT, EAST DIVISION AT HYDERABAD[2], it is patently clear that a right of appeal is not a mere matter of procedure but is a substantive and vested right. In the context of the right of appeal under Section 5-B of the Act of 1971, the Division Bench observed that Amendment Act 9 of 1994 was given effect only from 31.10.1993 and prior to Section 5-B coming into operation on that date, the Act of 1971 did not provide any right of appeal or revision against the orders passed by the Mandal Revenue Officer under Section 5-A of the Act of 1971. As in that case, the order under Section 5-A was dated 06.02.1990, the Division Bench held that there was no right of appeal provided under the Act of 1971 against the said order. The Division Bench further held that a right of appeal is only a creature of the statute and once it is created, it becomes a vested right, but there is no automatic right of appeal unless it is provided by the statute itself. It was further observed that the crucial

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[2] 2003 (1) ALT 688 (D.B.)

test would be to see whether there was a right of appeal when the proceedings were initiated and the orders were passed and the Division Bench pointed out that it was a case of patent and inherent lack of jurisdiction in the Revenue Divisional Officer to entertain an appeal against the order dated 06.02.1990 passed by the Mandal Revenue Officer under Section 5-A of the Act of 1971.

The aforestated judgment is therefore a complete answer to all the questions raised by Sri K.Jaya Kumar, learned counsel.

As already stated *supra*, jurisdiction cannot vest in an authority which inherently lacks it even if the parties consent to it or submit, wittingly or otherwise, to its jurisdiction. Further, as it is the statute which creates a right of appeal, there can be no estoppel against the statute. The failure on the part of the petitioner to raise this jurisdictional issue in specific terms before the Revenue Divisional Officer, Nirmal Division, therefore does not bind him or estop him from questioning the validity of the appellate order passed by the said Revenue Divisional Officer on that ground at this stage.

Even otherwise, it may be noted that an appeal under Section 5-B of the Act of 1971 has to be filed in accordance with the procedure prescribed in Rule 22-A of the Rules of 1989. Such an appeal has to be in writing and should set forth concisely the grounds thereof. It shall also bear a Court fee stamp of Rs.5/-. The representation dated 21.12.2017 filed by respondent 4 under the caption 'Appeal under ROR Act' does not conform to the requirements of Rule 22-A, as no grounds were set out therein, concisely or otherwise, and it did not bear any Court fee stamp.

Rule 32 of the Rules of 1989, relied upon by respondent 4, would also have no application to the case on hand as that rule pertains to Section 8(2) of the Act of 1971 and requires every person proceeding under the said statutory provision to intimate to the Mandal Revenue Officer concerned the particulars of the suit. In the case on hand, respondent 5 already got her unregistered sale deed regularized by the Mandal Revenue Officer concerned and secured a Form XIII(B) Certificate. A photocopy of the Form XIII(B) Certificate dated 25.08.1983 is also available in the original record along with challans, evidencing payment of money by respondent 5 into the treasury on the said date. It was against this action that respondent 4 initially approached the Revenue Divisional Officer in the year 2008 and was relegated to the competent civil Court. However, it was not respondent 4 who chose to approach the civil Court but the petitioner and respondent 5 herein. Be it noted that they did not file the suit in relation to the revenue records as respondent 5 had already regularized her unregistered sale deed. According to the petitioner, they filed the suit because of the interference by respondent 4, but owing to the compromise arrived at during the pendency of the suit, they allowed it to be dismissed for default. There was therefore no judgment in favour of respondent 4 for him to take steps under Rule 32 of the Rules of 1989.

Similarly, Rule 13(2) of the Rules of 1989 also has no application. Section 3 of the Act of 1971 deals with preparation of the Record of Rights and Section 3(1) speaks of preparation of the draft thereof. Rule 10 of the Rules of 1989 provides that the Recording Authority shall publish a notice after preparation of the draft Record of Rights for the village for the first time. Rule 11 provides for the Recording Authority rectifying any error or omission in the draft Record of Rights so published. Rule 13(1) states that after completion of the enquiry referred to in Rule 11, the Recording Authority shall confirm the draft Record of Rights subject to the alterations, if any, made pursuant to the orders passed in Rule 11 or 12 and the draft Record of Rights so confirmed shall be the Record of Rights in the lands in the village. Rule 13(2) provides that the Mandal Revenue Officer, the Revenue Divisional Officer etc., in exercise of their general powers of supervision, shall be competent, *suo motu*, to test and revise the entries in the confirmed Record of Rights provided that no revision shall be made without giving an opportunity to any person whose name is entered therein. Section 3(3) of the Act of 1971 however makes it clear that a person aggrieved by an entry in the Record of Rights must seek rectification within one year from the date of notification of the draft. Therefore, power under Rule 13(2) of the Act of 1971, being subservient to Section 3 of the Act of 1971, must be construed accordingly and would be relatable to the time frame of the confirmation of the Record of Rights and immediately thereafter and not for all times to come. A contrary interpretation would render the limitations prescribed in the Act of 1971 superfluous. In any event, the order dated 31.01.2019 does not profess to having been passed under Rule 13(2) of the Rules of 1989.

On the above analysis, it is clear that the appeal filed by respondent 4 in relation to the regularization made on 25.08.1993 and entertained by the Revenue Divisional Officer, Nirmal Division, was not maintainable for want of jurisdiction. The order dated 31.01.2019 passed in the said appeal therefore has no legs to stand upon and is accordingly set aside. All consequential proceedings and steps taken pursuant to the order dated 31.01.2019 shall also stand set aside.

The writ petition is accordingly allowed.

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

SANJAY KUMAR,J

9th APRIL, 2019
<u>Note:</u> L.R. copy to be marked.
B/o PGS