THE HON'BLE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.507 of 2019

JUDGMENT: *(Per Hon'ble Dr.Justice Shameem Akther)*

This appeal, under Clause 15 of Letter Patents Act, is filed aggrieved by the order dated 09.04.2019 passed by a learned Single Judge of this Court in Writ Petition No.3464 of 2019.

2. The appellant herein is respondent No.4 in the writ petition, respondent No.1 herein is petitioner in the writ petition and respondents 2 to 5 herein are respondents 1, 2, 3 and 5 respectively in the writ petition.

3. The facts in brief, leading to filing of this appeal, are that respondent No.1/writ 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, having purchased the same under registered sale deed dated 07.03.2006, bearing Document No.732/2006, from respondent No.5. According to respondent No.1/writ petitioner, the appellant/respondent No.4 inherited the subject land from his father and sold it to respondent No.5 under unregistered sale deed dated 11.02.1991. Thereafter, on an application filed by respondent No.5 for regularization and validation, the Tahsildar, Soan Mandal, Nirmal District, validated the said unregistered sale deed dated 11.02.1991 and issued a certificate in Form XIII(B) on 25.08.1993 and the name of respondent No.5 was mutated in the revenue records and was issued a pattadar pass book and title deed. After due enquiries with the

revenue authorities, the respondent No.1/writ petitioner purchased the subject land from respondent No.5 under the registered sale deed dated 07.03.2006 and his name was also mutated in the revenue records and was issued pattadar pass book and title deed.

4. In the year 2008, the appellant/respondent No.4 approached the Revenue Divisional Officer, Nirmal Division, by way of an application, seeking rectification of the revenue records, but the Revenue Divisional Officer, Nirmal Division, *vide* Memo dated 14.11.2008, directed the appellant/respondent No.4 to seek redressal in the competent civil Court. Since the appellant/ respondent No.4 was interfering with the possession of respondent No.1/writ petitioner over the subject land, the respondent No.1/writ petitioner along with respondent No.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 appellant/respondent No.4. During pendency of the suit, with the intervention of the elders, appellant/respondent No.4 promised that he would not interfere with the subject land as he had no claim over the same. In the light of this compromise, respondent No.1/writ petitioner claims that he did not pursue the suit-O.S.No.69 of 2008 and the same was dismissed for default on 25.02.2013. Thereafter, the appellant/respondent No.4 again approached the Revenue Divisional Officer, Nirmal Division, by way of representation dated 21.12.2017, seeking cancellation of entries made in favour of respondent No.5 in the revenue records and to restore his name therein. Treating the said representation as an appeal under Section 5-B of Record of Rights in Land and Pattadar Passbooks Act, 1971 (for short' ROR Act, 1971'), the Revenue Divisional Officer issued

notices to respondent No.1/writ petitioner and respondent No.5. Though, the respondent No.1/writ petitioner contested the claims put-forth by appellant/respondent No.4 and also raised the issue of maintainability of the appeal on the ground of delay and laches and the appeal not being in accordance with the procedure laid down in the ROR Act, 1971, the Revenue Divisional Officer, Nirmal Division, allowed the appeal by order dated 31.01.2019. Aggrieved by the order dated 31.01.2019 passed by the learned Revenue Divisional Officer, respondent No.1/writ petitioner filed the impugned Writ Petition No.3464 of 2019 and the learned Single Judge having examined the record was pleased to set aside the order of the learned Revenue Divisional Officer dated 31.01.2019 by allowing the contentions raised on behalf of the respondent No.1/writ petitioner. Aggrieved by the order dated 09.04.2019 passed by the learned Single Judge in W.P.No.3464 of 2019, the present writ appeal is filed.

5. Heard Sri MD.Sultana Basha, learned counsel for appellant; Sri Vedula Venkata Ramana, learned Senior Counsel for Sri C.Naresh Reddy, learned counsel for respondent No.1/writ petitioner; learned Government Pleader for Revenue for respondent Nos.2 to 4 and perused the record.

6. Learned counsel for the appellant/respondent No.4 would contend that the impugned order passed in the writ petition is contrary to law and the material placed on record. No sale deed was executed by the appellant/respondent No.4 in favour of respondent No.5 on 11.02.1991. It is a forged and fabricated document. The learned Tahsildar erroneously validated the said sale deed without notice. The learned Revenue Divisional Officer on a representation

dated 21.12.2017 rightly cancelled the entries made in favour of respondent No.5 and directed the authorities concerned to restore the name of the appellant/respondent No.4. The order passed by the learned Revenue Divisional Officer dated 31.01.2019 is in accordance with law. The learned Single Judge had erroneously set aside the same. There is no delay and laches on the part of appellant/respondent No.4 in making representation dated 21.12.2017, and ultimately prayed to set aside the impugned order dated 09.04.2019 passed in the subject writ petition.

7. On the other hand, Sri Vedula Venkata Ramana, learned Senior Counsel for the respondent No.1/writ petitioner would submit that the learned Revenue Divisional Officer erred in acting upon the representation dated 21.12.2017 and passing the order dated 31.01.2019. The representation cannot be construed as appeal as required under Section 5-B of ROR Act, 1971 and the Rules made therein. The simple sale deed dated 11.02.1991 entered in between respondent No.5 and the appellant/respondent No.4 was validated and certificate in Form XIII(B) was issued on 25.08.1993. Furthermore, the appellant/respondent No.4 has knowledge with regard to the filing of suit in O.S.No.69 of 2008 before the learned Junior Civil Judge, Nirmal. There is no application to condone the delay before the learned Revenue Divisional Officer. The learned Revenue Divisional Officer adopted the procedure unknown to law. The memo dated 14.11.2008 was rightly issued to the appellant/respondent No.4 to seek remedy before a competent Civil Court. Therefore, the leaned Single Judge, rightly set aside the order passed by the learned Revenue Divisional Office dated 31.01.2019 and ultimately prayed to dismiss the appeal.

8. In view of the submissions made by both sides, the point for determination is:

> *"Whether the impugned order dated 09.04.2019 passed in Writ Petition No.3464 of 2019 by the learned Single Judge is liable to be set aside?"*

9. POINT: In view of the submissions made by both parties, it is pertinent to state that the learned Single Judge observed that the original record produced by the learned Assistant Government Pleader demonstrates that the representation dated 21.12.2017 made by appellant/respondent No.4 was, in fact, titled 'APPEAL UNDER ROR ACT'; that significantly, appellant/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 ROR Act, 1971; it is established beyond doubt that the Revenue Divisional Officer, Nirmal Division, exercised appellate power under Section 5-B of the ROR Act, 1971; it is well settled law that jurisdiction cannot be created by consent of the parties and if jurisdiction is inherently lacking, it cannot be cured by submission of the parties, knowingly or unknowingly, to such jurisdiction. The learned Single Judge further observed that an appeal under Section 5-B of the ROR Act, 1971 has to be filed in accordance with the procedure prescribed in Rule 22-A of the Rules of 1989 and such an appeal has to be in writing and should set forth concisely the grounds thereof and it shall also bear a Court fee stamp of Rs.5/-; the representation dated 21.12.2017 filed by appellant/respondent No.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. The learned single Judge further observed that Rules 32 and 13(2) of the Rules of 1989 relied upon by appellant/respondent No.4 have no application. By observing as above, the learned Single Judge held that the appeal filed by appellant/respondent No.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 and set aside the order dated 31.01.2019 and also all consequential proceedings pursuant thereto.

10. It would also be further relevant to state that as per the record and submissions made, in the year 2008, the appellant/respondent No.4 approached the Revenue Divisional Officer, Nirmal and filed an application for correction of revenue records, in respect of the subject land and the learned Revenue Divisional Officer vide Memo dated 14.11.2008 directed the appellant/respondent No.4 to seek redressal in a competent Civil Court. Further, as per the records, a suit in O.S.No.69 of 2008 was filed by the respondent No.1/writ petitioner before the Junior Civil Judge, Nirmal. As per the submissions made on behalf of respondent No.1/writ petitioner, the appellant/respondent No.4 entered into an oral compromise, so the said suit was allowed to be dismissed for default. The dismissal of the suit for default on 25.02.2013 would not alter the situation. The representation dated 21.12.2017 made by the appellant/respondent No.4 before the learned Revenue Divisional Officer is not in compliance with Section 5-B of the ROR Act, 1971 and the Rules made therein. No prescribed fee as required was paid. Furthermore, the challenge was to set aside the certificate issued under Form XIII(B) of ROR Act, 1971 dated 25.08.1993 and there is no

application to condone the delay. Furthermore, there are no reasons stated in approaching the learned Revenue Divisional Officer belatedly. Further, in the circumstances of the case, Rules 32 and 13-B of ROR Rules, 1989 have no application. When there is a memo dated 14.11.2008 in respect of subject land pending before the parties, wherein the appellant/respondent No.4 was driven to seek redressal in a competent Civil Court, the learned Revenue Divisional Officer ought not to have entertained the representation dated 21.12.2017 and passed the order dated 31.01.2019 vide proceedings No.D/35/2018. The said order dated 31.01.2019 passed by the Revenue Divisional Officer at Nirmal, is patently illegal and without jurisdiction.

11. Under these circumstances, the impugned order dated 09.04.2019 passed in Writ Petition No.3464 of 2019 by the learned single Judge is inconsonance with the provisions made under ROR Act, 1971. There is no infirmity or illegality to interfere with the order under appeal.

12. The Writ Appeal is devoid of merits and is accordingly dismissed. Pending Miscellaneous Petitions, if any, shall stand closed. No order as to costs.

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RAGHVENDRA SINGH CHAUHAN, ACJ

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Dr. SHAMEEM AKTHER, J

Date: 17.06.2019
grk/scs