HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.12748 OF 2019

Date: 21 .08.2019

Between:

Ramaswamy Satyagoud S/o.Yella Goud,
Aged 42 yrs, Occu : Agriculture,
R/o.Faizabad village, Chilipiched Mandal,
Medak District.

…..Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Revenue Department
Secretariat Buildings, Hyderabad & others.

…..Respondents

The Court made the following:

HON'BLE SRI JUSTICE P NAVEEN RAO

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ORDER:

This writ petition is filed assailing the decision of the Joint Collector dated 15.4.2019 made in exercise of revisional jurisdiction under Section 9 of the Telangana State Rights in Land and Pattadar Passbooks Act, 1971 (for short the Act, 1971) setting aside the orders of Tahsildar granting certificate under Section 5-A (wrongly mentioned as Section 13-B) in favour of petitioner and the decision to mutate petitioner name in the revenue records on land to an extent of Ac.0.35 guntas in Survey No. 384/A, Faizabad village, Chilipched mandal, Medak district.

2. Heard learned counsel for writ petitioner, learned Government Pleader for Revenue and learned counsel representing 4th respondent.

3. Facts on record would show that petitioner claims that he purchased Ac.0.35 guntas of land , above mentioned, from the 4th respondent by way of unregistered sale deed dated 12.5.2000 by paying full sale consideration. Based on the said sale deed, he applied to the Tahsildar to mutate his name in the revenue records. After due enquiry, as required by Act, 1971, Tahsildar issued proceedings on 19.5.2007 validating the sale transaction under Section 5-A (certificate in Form 13-B certificate) and consequently on 25.6.2009 name of the petitioner was mutated in the revenue records and pattadar pass books and title deeds were also issued. Aggrieved thereby, 4th respondent herein preferred revision under Section 9 challenging the alleged issuance of certificate under Section 5-A, mutation of the name of the petitioner and issuance of pattadar pass books and title deeds. It was contended that petitioner did not sell the land and he was not put on notice before effecting change in the revenue records. Accepting the said contention of the revision petitioner/4th respondent herein, the impugned order is passed.

4. According to learned counsel for petitioner against issuance of certificate in Form 13-B and mutation of name in revenue records, remedy of appeal is available to an aggrieved person and if 4th respondent is aggrieved by the decision of Tahsildar to issue certificate under Section 5-A and to mutate his name in the revenue records, 4th respondent ought to have availed remedy of appeal. According to learned counsel, when remedy of appeal is available, same cannot be bye-passed to prefer revision directly and

on that ground alone, revision ought to have been dismissed. He would further submit that there is inordinate delay in preferring the revision, in as much as certificate under Section 5-A was issued on 19.5.2007 and mutation was effected on 25.6.2009, whereas, revision was preferred in the year 2017 and same ought not to have been entertained on the ground of delay and latches.

5. In support of his contentions, he placed reliance on the following decisions:

Bhupathi Varalamma Vs Joint Director, Krishna, Chilakalapudi, Machilipatnam, Krishna district and others[1] and **Yelangani Papaiah and another Vs Joint Collector, Ranga Reddy district and others**[2]**.**

6. Per contra, learned counsel for 4th respondent submitted that 4th respondent has no other remedy except to prefer revision as time limit prescribed to prefer appeal was exhausted long ago. He would further submit that if the order of the original authority is ex-facie illegal, a revision can be preferred and such erroneous order/ illegal decision can be corrected by the revisional authority at any time. Section 9 of the Act does not prescribe any limitation to prefer revision. He would further submit that the basis for alteration of revenue records in favour of petitioner was alleged certificate issued under Section 5-A on an application filed by petitioner relying on an unregistered sale deed, whereas, the Mandal Revenue Office does not have any record of issuance of such certificate. Therefore, as the very basis to alter the revenue records does not exist, the revisional authority has rightly granted relief. He would further submit that revisional authority, has only remitted the matter to the Tahsildar and petitioner can demonstrate before the Tahsildar his claim as against that of 4th respondent. He would further submit that 4th respondent never sold the property to petitioner, therefore, question of validating the unregistered sale transaction and mutating name of petitioner does not arise. At any rate the order of Tahsildar is not sustainable as it was made behind back of 4th respondent and without notice or opportunity to 4th respondent.

7. In support of his contentions, he placed reliance on the following decisions:

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[1] 2008 (5) ALD 676
[2] 2009 (1) ALD 297

Kola Satya Rao Vs Joint Collector, Vizianagaram District[3] **and T Santosh Kumar and another Vs Joint Collector, Mahabubnagar and others**[4]**.**

8. Before going into the aspect of delay and latches, it is necessary to ascertain the issue of certificate under Section 5-A. Title to a landed property may pass on by various methods, such as succession, gift, sale etc. Any sale of immovable property where value of sale consideration is more than .100/- has to be compulsorily registered. By introducing Section 5-A to Act, 1971 an exception is carved to validate transfer of property even if sale deed is not registered. A person claimed to have purchased the land on payment of full sale consideration but agreement of sale was not registered as required by the Registration Act, 1908, can apply to Tahsildar to issue certificate. However, to issue the certificate validating the sale six primary conditions required to be satisfied. Firstly, there must be an unregistered agreement of sale followed by possession; secondly, the transferee must make an application within time prescribed; thirdly, the Tahsildar must conduct enquiry; fourthly, the Tahsildar should direct transferee to deposit money towards stamp duty as admissible under the Stamp Act and the Registration Act; fifthly, the Tahsildar should issue certificate declaring the transfer of property as valid; and finally, the Tahsildar has to notify the certificate issued by him to the jurisdictional Sub-Registrar who is required to file the certificate in the relevant registration records and to index after collecting registration fee and stamp duty. Rule 22 of the 1989 Rules prescribes procedure to issue certificate under Section 5-A. On complying with all these stages, the Certificate issued under Section 5-A makes the vendee the owner of the land. Consequently, revenue records have to be updated reflecting the name of certificate holder.

9. As per the grounds urged in the revision petition and the decision of the revisional authority, it is apparent that the so called certificate under Section 5-A was not available in the records of Mandal Revenue Office. This was noted by the revisional authority. Neither in the counter affidavit before revisional authority nor in the writ petition, petitioner has urged that certificate under Section 5-A was issued and that certificate was available. As noticed by the revisional authority, even proof of payment of

[3] 2010 (3) ALT 281
[4] 2014 (6) ALT 51

stamp duty was not placed before him. Neither the agreement of sale nor the sale certificate are placed on record in this writ petition. In the absence of validly issued certificate under Section 5-A supported by Registration Office records, the entire edifice created by the petitioner to mutate his name in the revenue records falls to the ground.

10. Thus, there was no material to support the stand of the petitioner that there was an agreement of sale and said sale transaction was validated by the Tahsildar by following due procedure. It is apparent that an illegal decision was made to mutate the name of the petitioner in the revenue records affecting the right of 4th respondent to own and enjoy the property belonging to him without following the due procedure. Therefore, the same is not sustainable.

11. Section 9 of the Act, vests residuary power in the revisional authority who is superior by two stages in rank to that of Tahsildar and he is next only to the District Collector of the concerned district. In fact, he exercises most of the powers vested in the District Collector under various revenue laws. Thus, extraordinary residuary power is conferred on the revisional authority to correct illegalities committed by the subordinates affecting the rights of the individuals, more particularly, concerning the landed property. It was specific assertion of the revision petitioner/4th respondent that he was not put on notice before undertaking the exercise of revising the revenue records. No material is placed on record by petitioner to establish that due procedure was followed and that in spite of service of notice, 4th respondent has not responded, therefore Tahsildar passed appropriate orders. Further, claim of petitioner is based on an unregistered sale deed. Unless the Tahsildar grants certificate under Section 5-A validating the sale transaction, mutation in favour of such person can not be granted. Apparently, no such certificate was issued. In the absence of such certificate, the decision to mutate name of petitioner in revenue records is ex-facie illegal.

12. On the issue of preferring revision without availing remedy of appeal the decisions relied upon by the learned counsel for the petitioner do not come to the aid of petitioner. In **Bhupathi Varalamma** while dealing with the power of revision, learned single Judge of this Court has not ruled, as sought to be contended that revision is not maintainable when remedy of appeal is available. Learned single Judge held that

ordinarily if remedy of appeal is available, revision should not be entertained. However, learned single Judge held that in exceptional situations where the authority which passed the order patently lacked jurisdiction to pass order and to prevent abuse of power exercised by such an authority and miscarriage of justice being caused to the aggrieved party, revision can be entertained. **Kola Satya Rao** was also decided by learned single Judge who decided **Bhupathi Varalamma.** In the said case, revisional authority satisfied that it was not feasible or practicable to the aggrieved party to file an appeal or that the subordinate authority has passed an order, which is ex-facie contrary to the procedure prescribed under the Act or in violation of the principles of natural justice, it can exercise its revisional jurisdiction to step in and correct such procedural illegality or impropriety. Learned single further observed that "*If the facts of the case justify, an aggrieved party can be allowed to bypass the appellate remedy and seek intervention of the revisional authority.*" Said view of the learned single Judge is followed by another learned single Judge in **T Santosh Kumar.** Decision in **Yelangani Papaiah** is also on similar lines. On a plain reading of provision in Section 9 and as considered by this Court in several decisions, merely because a person has not availed remedy of appeal, it cannot be said that revision is not maintainable.

13. In the instant case, as the decision to mutate the name of the petitioner was made in the year 2009, appeal has to be preferred within 60 days. By the time revision was preferred, the statutory time to file appeal as prescribed in the Act expired and only remedy available to the 4th respondent was to prefer revision. Further, petitioner is a total stranger to the property. Thus, his name can be mutated in the place of existing patta holder only if there was a valid sale transaction passing on the title to the vendee. Unless, such sale transaction is established, the Tahsildar has no competence to mutate name of a stranger. There is no proof of alleged sale transaction taking place and certificate under Section 5-A was not issued validating unregistered sale transaction. Apparently, mutation proceedings were carried out behind the back of 4th respondent. Thus, the orders of Tahsildar mutating the name of petitioner is without jurisdiction, competence and ex-facie illegal. Thus, this is an eminently fit case for revisional authority to entertain revision to remedy the injustice caused by illegal action of the Tahsildar and to

restore name of 4th respondent in the revenue records. In the facts of this case the decision to entertain revision cannot be faulted.

14. The legislature in its wisdom did not prescribe limitation to prefer revision. However, as held by Supreme Court and this Court in catena of decisions, revisional jurisdiction has to be exercised within a reasonable time from the date of occurrence of event, even if no time limit is specified. What is reasonable time depends on facts of a given case.

15. While it was specific assertion of the 4th respondent that the mutation proceedings were taken up without notice or opportunity to him, said contention of the 4th respondent is not denied with cogent material to show that Tahsildar followed procedure prescribed by Act, 1971. The alleged certificate issued under Section 5-A apparently, does not exist and nothing is placed on record to show that 4th respondent was aware of the alleged decision made by the Tahsildar in granting certificate under Section 5-A and mutated the name of the petitioner in the revenue records. In the facts of this case, it cannot be said that there was unreasonable delay in availing the remedy under Section 9 of the Act. Further, 4th respondent is owner of the property. By illegal means his name was removed and name of petitioner was incorporated. Unless, revisional authority exercises the extra-ordinary reserve power to remedy the injustice it would result in miscarriage of justice.

16. Further, accepting the plea of petitioner and setting aside the decision of the revisional authority on the ground that there was inordinate delay in preferring revision would result in restoration of illegal order. In exercise of equitable jurisdiction under Article 226 of the Constitution of India, Court need not grant relief to petitioner, even when a case is made out, when granting the relief would be amounting to restoring the illegality earlier committed. In the instant case, accepting the prayer of the petitioner to set aside the order on the specious ground that there was inordinate delay in preferring the revision would amount to restoring the illegal order made by Tahsildar to mutate the name of petitioner even before certificate under Section 5-A was issued. Further, before revisional authority as well as in this writ petition, petitioner has not raised the plea of limitation but was only contending that as a remedy of appeal was available and without

exhausting the said remedy, 4th respondent could not have preferred revision. Thus, in the peculiar facts of this case, the said plea is stated to be rejected.

17. It is also appropriate to note that revisional authority has only remitted the matter and it is always open to petitioner to establish before the original authority that there was a valid sale transaction and in accordance with the provisions of Act, 1971 such sale transaction can be validated and certificate under Section 5-A can be issued. If petitioner satisfies the Tahsildar, on this aspect and issues Section 5-A certificate, he can apply to mutate his name in the revenue records. Such exercise has to be with prior notice and opportunity to 4th respondent. Thus, I do not see any error, much less patent error in the decision of revisional authority warranting interference.

18. For the aforesaid reasons, the writ petition is dismissed. Miscellaneous petitions, if any pending stand dismissed.

P NAVEEN RAO,J

DATE: 21-08-2019
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.12748 OF 2019

DATED : .08.2019

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