

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.594 of 2019

Date: 19.08.2019

Between:

The Principal Secretary and
four others.

... Appellants

And

M/s. Pratap Jungle Resorts Private Limited
and two others.

...Respondents

Counsel for the Appellants : The Advocate General

Counsel for Respondents : Sri D.Prakash Reddy, Sr. Counsel

The Court made the following:

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

This appeal, under Clause 15 of Letter Patent, is filed by the appellants-official respondents, aggrieved by the order of this Court dated 21.06.2019 passed in W.P.No.10766 of 2019, wherein the learned Single Judge allowed the writ petition declaring the notification dated 26.09.2013 and directed the Tahsildar, Gandipet Mandal, Ranga Reddy District, to consider afresh the application made by the respondents-writ petitioners for issuance of e-pattadar pass books on the strength of the regular pattadar pass books issued to them under the provisions of the Act of 1971, without reference to the notification dated 26.09.2013, expeditiously, not later than four weeks for the date of receipt of a copy of that order.

2. Heard Sri B.S.Prasad, learned Advocate General for the appellants-official respondents and Sri D.Prakash Reddy, learned Senior Counsel representing Ms.Sneha Bhogle, learned counsel for respondents-writ petitioners and perused the record.

3. The facts that led to filing of this appeal are that the respondents-writ petitioners claim to be the owners and possessors of an extent of land admeasuring Acs.20.00 guntas in Sy.Nos.65/16/E, 65/16/A and 65/16/AA of Khanapur Village, Gandipet Mandal, Ranga Reddy District, having purchased the same under registered sale deeds. The respondents-writ petitioners state that mutation was effected in the year 1998-1999 and pattadar pass books and title deeds were also issued under the provisions of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for brevity, 'the Act of 1971'). While so, the Joint Collector, Ranga Reddy District, issued order dated 25.08.2005 to the effect that the lands in Sy.Nos.65/1 to 65/33 of Khanapur Village, Gandipet Mandal, belonged to the

Government and directed the Tahsildar, Gandipet Mandal, Ranga Reddy District, to rectify the entries in the revenue records by exercising power under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli and to record the land as 'Kharij Khata Sarkari'.

4. W.P.No.20104 of 2005 and batch was filed assailing the afore-stated order by the affected landowners. The said batch of writ petitions was allowed on 02.07.2008 quashing the order dated 25.08.2005 passed by the Joint Collector, Ranga Reddy District. Despite the same, no efforts were made to restore the names of the landowners in the revenue records. The writ petitioners filed W.P.No.10679 of 2012 and by order dated 11.09.2012 passed therein, the erstwhile High Court of Andhra Pradesh directed the revenue authorities to do the needful and restore the entries in the revenue records as they existed before the order dated 25.08.2005 was passed by the Joint Collector, Ranga Reddy District. In the meanwhile, the authorities preferred W.A.No.1103 of 2008 against the common order dated 02.07.2008 passed in W.P.No.20104 of 2005 and batch. The said writ appeal was dismissed on 29.11.2013 reserving liberty to the authorities to pursue their remedies before the competent civil Court. Even before passing of the order in the writ appeal, the Collector, Ranga Reddy District, issued a list of prohibited properties, wherein he notified the lands of the writ petitioners also under Section 22-A of the Registration Act, 1908 (for brevity, 'the Act of 1908'). This notification was issued by the Collector on 26.09.2013, while the writ appeal was dismissed on 29.11.2013.

5. The respondent-writ petitioners applied for issuance of e-pattadar pass books with regard to the subject lands in terms of

the present policy of the Government. The Tahsildar, Gandipet rejected their request stating that the lands were entered in the list of prohibited properties vide notification dated 26.09.2013. For de-notification of their lands, the writ petitioners submitted representation dated 22.09.2017 to the Principal secretary for Revenue, Government of Telangana and the Principal secretary addressed memo dated 10.10.2017 to the District Collector calling for a report. The Girdawar of Gandipet Mandal undertook spot inspection and submitted a report dated 20.01.2018 recording that the writ petitioners were in possession of the subject lands. Thereafter, the Tahsildar, Gandipet Mandal issued memo dated 16.02.2018 directing the Mandal Surveyor to demarcate the lands and accordingly the Mandal Surveyor submitted his report to the Tahsildar, Gandipet Mandal on 04.06.2018. The Tahsildar thereupon addressed letter dated 21.07.2018 to the R.D.O, Rajendranagar Division, Ranga Reddy District to consider the writ petitioners' representation. The R.D.O sought a clarification from the Tahsildar as to whether any appeal had been filed against the dismissal order in W.A.No.1103 of 2008. The Tahsildar clarified vide letter dated 08.11.2018 that no appeal had been preferred. The R.D.O thereupon addressed letter dated 02.02.2019 to the District Collector, Ranga Reddy District, recommending consideration of the writ petitioners' request for de-notification of their lands. The grievance of the respondents-writ petitioners before the learned Single Judge was that despite this exchange of correspondence resulting in a favourable recommendation, the authorities have not taken steps to de-notify their lands so that they could ask for issuance of e-pattadar pass books as per the present policy of the Government. The learned Single Judge, allowed the writ petition declaring the notification

dated 26.09.2013 to be *no nest* in the eye of law and directed the Tahsildar, Gandipet Mandal, Ranga Reddy District to consider afresh the application made by the writ petitioners for issuance of e-pattadar pass books on the strength of the regular Pattadar pass books issued to them under the provisions of the Act of 1971, without reference to the notification dated 26.09.2013 which has been declared to be void in the eye of law. Hence, this writ appeal by the appellants-official respondents.

6. The main contention of the learned Advocate General is that as per the entries in the kasara pahani and as per Sethwar 1322-Fasli (1912 AD) the land in Sy Nos. 65, 66 and 67 admeasuring Ac.5.30 gts, Ac.3-38 gts and Ac.7-17 gts are classified as poramboku sarkari. As per the village map 1322 (1912 AD) Fasli, the total survey numbers in the village are 296 only and the area covered is Ac.958-17 gts. The khasara pahani was tampered and illegal entries were made in respect of land measuring Ac.547.27 gts in Sy.No.65 as 65-1 to 65-33. The Government has filed a suit O.S.No.626 of 2019 on the file of Principal District Judge, Ranga Reddy District, for declaration of possession and injunction and the same is pending consideration. Since there is a dispute with regard to the title and entitlement of possession, in respect of subject land, the learned Single Judge ought not to have passed the impugned order directing the appellants-official respondents to issue e-Pass Books in favour of the respondents-writ petitioners. It is also contended that the issuance of e-pass books in favour of the respondent-writ petitioners in respect of the subject land, would amount to conceding the title of the writ petitioners by the Government and it would be prejudicial to the interest of the Government. Further, it will have adverse bearing in

the pending suit and ultimately prayed to set aside the impugned orders.

7. On the other hand, learned counsel for the respondent-writ petitioners submits that there is ample record to support the title and possession of the respondents-writ petitioners over the subject land. The respondents-writ petitioners and their predecessors were issued pattadar pass books, title deeds in respect of the subject land. Further, in view of the change of regulations, the Tahsildar is bound to issue e-pass books in favour of the respondents-writ petitioners. The issuance of e-pass books would not alter or affect the right and title and interest of the Government in respect of subject property. The dispute with regard to title and lawful possession over the subject property is subjudice in O.S.No.626 of 2019 pending on the file of Principal District Judge, Ranga Reddy District and ultimately prayed to dismiss the appeal.

8. In view of the submissions made on both sides, the issue that arises for determination is as follows:

“Whether the impugned order dated 21.06.2019 passed in W.P.No.10766 of 2019 by the learned Single Judge is liable to be set aside?”

9. It is pertinent to state that time and again the respondent-writ petitioners were issued pattadar pass books and title deeds in respect of the subject land. Now the rules are changed substituting e-pattadar pass books in the place of pattadar pass books and title deeds. The appellants-revenue authorities have raised serious dispute alleging tampering of revenue records and also contending that the subject land is the Government land. The Hon’ble Division Bench of erstwhile High Court of Andhra Pradesh was pleased to

pass an order in W.A.No.1103 of 2008 on 28.11.2013 and paragraphs 6 and 7 of the said order reads as follows:

“6. When the learned trial Judge has decided that exercise of jurisdiction of the Joint Collector is not proper and unwarranted, therefore, his factual findings and observations cannot have any binding force, meaning thereby he loses jurisdiction on the question of delay, the decision on merits cannot be said to be valid one. Under the circumstances, we affirm the order of the learned trial Judge otherwise. However, we make it clear that in the event the Government wants to approach civil Court to establish the correct title, it is free to do so.

7. In view of our aforesaid observation, we record the findings and observations of the learned trial Judge vis-à-vis the right, title and interest of the respective writ petitioners, will not be a binding factor nor the same will be a supporting plea of res judicata or constructive res judicata. With the aforesaid observation, this appeal is disposed of.”

10. There is a serious dispute with regard to lawful title and possession in respect of the subject property. It is open to the competent civil Court to adjudicate and determine the title and lawful possession in respect of the subject land. Having elaborately discussed the entire material on record, the learned Single Judge by the impugned order dated 21.06.2019 rightly directed to issue e-pass books in favour of the respondents-writ petitioner, within a specified time of four weeks from the date of receipt of a copy of that order. There is no perversity or illegality in the impugned order.

11. Under these circumstances, the issuance of e-pass books in favour of the respondents-writ petitioners would not have any bearing over the pending suit in O.S.No.626 of 2016, on the file of Principal District Judge, Ranga Reddy District. It is further clarified that the issuance of such e-pass books in favour of the respondents-writ petitioners would not amount to conferring or asserting title and lawful possession of the respondents-writ petitioners over the subject

property by the Government. The lawful title and possession are left open to be determined by the civil Court.

12. With the observations as above, the writ appeal is disposed of. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall also stand closed.

RAGHVENDRA SINGH CHAUHAN, HC,J

Dr. SHAMEEM AKTHER, J

Date:19.08.2019

grk

