THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.18977 of 2019

%03-09-2019

Smt. Nazeema Begum

…. Petitioner

Versus

$1. State of Telangana,
Rep. by its Principal Secretary for Revenue,
Secretariat, Hyderabad and others.

….. Respondents

< GIST:

> HEAD NOTE:

!Counsel for the petitioner : Sri Boggula Raju

^ Counsel for the respondent-1 to 4 : Government Pleader for Revenue

^ Counsel for the respondent-5 to 8 :

? Cases referred

1. 2003 (1) ALD 826 (DB)
2. AIR 1958 SC 86

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.18977 of 2019

ORDER:

This writ petition is filed by the petitioner seeking *Writ of Certiorari* to set aside the order dt.13.08.2019 in Case No.E/976/2018 passed by respondent No.2 – Revenue Divisional Officer and Sub-Divisional Magistrate, Banswada Mandal, Kamareddy District (Appellate Authority) in exercise of the powers conferred under Section 5(5) of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for brevity "the ROR Act"), whereby and whereunder the 2nd respondent – Appellate Authority has allowed the appeal setting aside the mutation order passed by the 3rd respondent – Tahsildar in favour of the petitioner vide Proc.No.ROR/2/2006 in respect of the land to an extent of Acs.2.07 guntas in Sy.No.78/1U, situated at Baswapally Village shivar of Nasrullabad Mandal, Kamareddy District.

The petitioner is absolute owner and possessor of agricultural land to an extent of Acs.2.07 guntas in Sy.No.78/1U, situated at Baswapally Village shivar of Nasrullabad Mandal, Kamareddy District, having obtained the same by way of oral gift executed by her mother and the name of the petitioner has been mutated in the Revenue records and also in Pahani Patrikas from the year 2006-07 to

2017-18 by issuing title deed and Pattadar Pass Book vide proceedings No.ROR/2/2006 issued by respondent No.3 – Tahsildar, Nasrullabad Mandal, Kamareddy District. Questioning the said mutation order, unofficial respondent Nos.5 to 8 herein, who are own brothers of the petitioner, have preferred an appeal under Section 5(5) of the ROR Act before the 2nd respondent – RDO, claiming share in the said land, being the legal heirs of late Afzal Begum, mother of the petitioner, and the said appeal was allowed by respondent No.2 – RDO vide impugned order dt.13.08.2019, thereby setting aside the mutation granted in favour of the petitioner. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner contends that when the Tahsildar concerned stated in his report that the record relating to the mutation granted in favour of the petitioner is not traceable, even without looking into the file relating to the transfer of land in her favour, the conclusion arrived at by the Appellate Authority that the mutation granted in favour of the petitioner was not in accordance with law, is unjustified and contrary to the procedure laid down under the ROR Act.

In support of his contention, learned counsel for the petitioner placed reliance on a judgment rendered by a Division Bench of this Court in M.B. RATNAM v. REVENUE DIVISIONAL OFFICER, R.R. DISTRICT[1], wherein it was held

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[1] 2003 (1) ALD 826 (DB)

that no appeal lies under Section 5(5) as against grant of Certificate under Section 5-A(4) of the ROR Act. The learned counsel, therefore, contends that applying said principle, the mutation granted in favour of the petitioner based on Hiba cannot be interfered with by the Appellate Authority under Section 5(5) of the ROR Act.

On the other hand, the learned Assistant Government Pleader for Revenue would submit that the 2nd respondent - Appellate Authority, having perused the record and considered the submissions of the respective parties, had recorded a finding that there was no material placed before it and the record also does not disclose any material for grant of mutation in favour of the petitioner in exclusion to the other family members. It also held that the procedure for grant of mutation of serving notice in Form No.VIII to all interested persons calling for their objection on the proposed mutation as required under Section 5(3) of the ROR Act r/w. Rule 21 of the Rules made thereunder has not been followed and in those circumstances, the Revenue Divisional Officer had allowed the appeal setting aside the mutation granted in favour of the petitioner and remanded the matter for fresh consideration by the Tahsildar, duly following the procedure prescribed under Section 5(3) of the ROR Act r/w. Rule 21 of the Rules made thereunder and hence the impugned order passed by the Appellate Authority does not call for any interference.

Having considered the submissions made by the learned counsel for the respective parties, it may be noted that the petitioner sought for issue of a Writ of Certiorari. As held by the Apex Court in STATE OF U.P. v. MOHAMMAD NOOH[2], a Writ of Certiorari can be issued in two circumstances, viz. (1) that the Authority passing the order lacks inherent jurisdiction; and (2) that the order is in violation of the principles of natural justice.

In the instant case, it is not the contention of the learned counsel for the petitioner that the Revenue Divisional Officer – Appellate Authority lacks inherent jurisdiction to entertain the appeal. It may be noted that Section 4 of the ROR Act deals with change of mutation based on acquisition of rights, particularly through succession, survivorship, inheritance, partition, Government patta, Decree of a Court or otherwise. It is the case of the petitioner that she acquired rights over the subject land through oral gift executed by her mother.

When an application is made by a person for grant of mutation in his/her favour in respect of certain land, the procedure to be followed by the Mandal Revenue Officer is to make an enquiry in terms of Section 5 of the ROR Act read

[2] AIR 1958 SC 86

with the Rules made thereunder, whether there are any other claimants/legal heirs in respect of the said land before granting mutation to the applicant.

In the instant case, it is the case of unofficial respondent Nos.5 to 8 that mutation was obtained by the petitioner in collusion with the authority in exclusion of their rights and they had no notice about mutation having been granted in favour of the petitioner in respect of the subject land. The 2nd respondent – Appellate Authority, having perused the record, had come to a conclusion that the procedure prescribed under Section 5(3) r/w. Rule 21 of the Rules made thereunder was not followed by the Tahsildar before granting mutation in favour of the petitioner. In those circumstances, the 2nd respondent - Appellate Authority had rightly exercised the jurisdiction conferred on it and remanded the matter to the 3rd respondent - Tahsildar for fresh consideration after giving notice and opportunity to all the parties concerned.

So far as the reliance placed by the learned counsel for petitioner on the judgment rendered by a Division Bench of this Court in M.B. RATNAM's case (supra) is concerned, a perusal of the said judgment, in relation to the consideration of the parties therein, discloses that, *firstly*, that was a case arising under Section 5-A and 5-B of the ROR Act, whereunder an unregistered sale deed came to be regularized in terms of Section 5-A of the ROR Act, based on which the Revenue entries were altered in respect of the subject land therein. Regularisation granted under Section 5-A of the ROR Act was sought to be interfered with in terms of Section 5(5) of the said Act and in those circumstances, the Division Bench held that the regularization granted in terms of 5-A of the ROR Act cannot be annulled under Section 5 of the Act, as there is a separate and independent appeal provided in relation to the matters falling within the para-meters of Section 5 and 5-A of the ROR Act and hence the law laid down in the said judgment rendered by the Division Bench has no application to the facts of the present case. As there is no allegation of violation of the principles of natural justice and further as it is not the case of the petitioner that the Appellate Authority has no jurisdiction to entertain the appeal, this Court does not find any reason to interfere with the impugned order of remand passed by the 2nd respondent – Revenue Divisional Officer. It is also made clear that this Court has not expressed any opinion with respect to the rights of the respective parties or validity or otherwise of oral Hiba granted in favour of the petitioner. Observations made, if any, in this writ petition are only for the purpose of disposal of the present writ petition, particularly considering the scope of Writ of Certiorari.

For the aforesaid reasons, there are no merits in this writ petition warranting interference by this Court with the impugned order dt.13.08.2019 passed by the 2nd respondent – Appellate Authority.

Accordingly, this writ petition is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

JUSTICE CHALLA KODANDA RAM

03.09.2019.
Msr

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