THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NOs.16531 AND 16548 OF 2018

COMMON ORDER

W.P.No.16531 of 2018 was filed by Mohmmed Abbas assailing the order dated 07.04.2018 of the Revenue Divisional Officer, Jangaon Division, in Case No.I/1755/2017, cancelling the pattadar pass book and title deed issued to him. W.P.No.16548 of 2018 was filed by Mohmmed Sadiq, his brother, assailing the very same order dated 07.04.2018 whereby his pattadar pass book and title deed were also cancelled.

By separate orders dated 02.05.2018 passed in both the writ petitions, interim stay of the impugned order dated 07.04.2018 was granted. Saida Begum, the sister of the petitioners in these two cases, the fourth respondent in each of the writ petitions, filed petitions to vacate the aforestated interim orders dated 02.05.2018.

Comprehensive arguments having been advanced by Sri D.V.Chalapathi Rao, learned counsel for the petitioners in these cases, and Sri Pushadapu Subba Rao, learned counsel appearing for the sister, the fourth respondent in both cases, the matters are amenable to final disposal at this stage.

Pleadings being on the same lines in these writ petitions, it would suffice to refer to the case of Mohmmed Abbas, the petitioner in W.P.No.16531 of 2018, as put forth in his writ affidavit. Therein, he stated that Mahabub Ali, his father, purchased lands in various survey numbers of Quilashapuram Village, Raghunathpally Mandal, Jangaon District. The details of the lands purchased are as follows - Ac.2.14 guntas in Survey No.1429, Ac.2.22 guntas in Survey No.1430, Ac.2.21 guntas in Survey No.1431 and Ac.3.04 guntas in Survey No.1432 of Quilashapuram Village, in all an extent of Ac.10.21 guntas. These lands were stated to have been purchased by Mahabub Ali under unregistered sale deed dated 17.01.1975 (covering an extent of Ac.7.07 guntas) from one Mangu Sudarshan; unregistered sale deed dated 05.06.1975 (covering an extent of Ac.2.09 guntas) from one Mangu Yadaiah and Mangu Srihari; and unregistered sale deed dated 15.09.2008 (covering an extent of Ac.1.05 guntas) in the name of the petitioner's mother, Jamal Bee. According to the petitioner, due to ignorance, neither his father nor Mohmmad Jaffar, his elder brother, took steps to seek regularization and validation of these unregistered documents under Section 5A of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (*for brevity*, 'the Act of 1971'). Further, they did not take steps to secure mutation in the revenue records. While so, Mahabub Ali, the petitioner's father, died in the year 1981 and it is the claim of the petitioner that he and his two brothers partitioned the lands equally amongst themselves in the year 2010. According to him, their individual names were entered in the pahanies in the possession column also. The petitioner stated that he then applied for regularization of the lands that fell to his share, being an extent of Ac.0.34 guntas in Survey No.1429, an extent of Ac.0.33 guntas in Survey No.1430, an extent of Ac.0.33 guntas in Survey No.1431 and an extent of Ac.0.37 guntas in Survey No.1432. He claims to have made an application in Form X of the Rules framed under the Act of 1971 to the Tahsildar, Raghunathpally Mandal, Jangaon District, whereupon regularization was effected and a certificate in Form XIII(B) was issued, regularizing and validating the purchase by his father of the subject lands under unregistered sale deeds and also the share that fell to the lot of the petitioner in the partition effected amongst the three brothers. While things stood thus, Saida Begum, his sister, filed an appeal under Section 5B of the Act of 1971 claiming half-share in the total extent of Ac.10.12 guntas. According to the petitioner, she did not make a mention about the document dated 15.02.1980 allegedly executed by their father in her favour. The said appeal was take on file by the Revenue Divisional Officer, Jangaon Division, as Case No.I/1755/2017. All the three brothers were arrayed as respondents therein. After due contest, the Revenue Divisional Officer allowed the appeal and directed cancellation of the pattadar pass books and title deeds issued to the brothers. The petitioner alleged that the fourth respondent brought into existence the document dated 15.02.1980 after the filing of the appeal but the Revenue Divisional Officer accepted and acted upon the same. The petitioner pointed out that the sister did not choose to take steps to claim her share for the last 37 years and suddenly came out with the so-called document executed in her favour by their father, giving her a half-share in the lands. According to the petitioner, there was no necessity for the Tahsildar to even put the fourth respondent on notice as she could not be treated as a person who was believed to be interested in the lands as she had no semblance of a vested interest in the lands in question. According to the petitioner, the appeal filed by the fourth respondent was not even within time as it was filed beyond the period of prescribed 30 days but despite the same, the Revenue Divisional Officer not only took on file the belated appeal but also allowed the same.

The stand of Mohmmed Sadiq, the petitioner in W.P.No.16548 of 2018, is on the same lines, but his claim was in relation to separate extents of Ac.0.34 guntas in Survey No.1429, Ac.0.33 guntas in Survey No.1430, Ac.0.33 guntas in Survey No.1431 and Ac.0.37 guntas in Survey No.1432.

In her counters filed in support of her vacate stay petitions, the fourth respondent stated that the impugned order dated 07.04.2018 passed by the Revenue Divisional Officer, Jangaon Division, in her appeal bearing Case No.I/1755/2017, demonstrated that the petitioners and she were siblings, being the children of late Mahabub Ali who had purchased lands in Survey Nos.1429, 1430, 1431 and 1432 of Quilashapuram Village from Mangu Sudarshan, Mangu Srihari and Mangu Yadaiah, under unregistered sale deeds dated 17.01.1975 and 05.06.1975. According to her, the said order also records that Lingala Chenna Krishna Reddy was the pattadar of these lands while Manguri Yadaiah, Srihari and Sudarshan were the protected tenants therein. They sold Ac.7.07 guntas through unregistered sale deed dated 17.01.1975 to Dudekula Mahabub Ali, their father, while Jamal Bee, their mother, purchased Ac.1.05 guntas in Survey No.1431 from Karne Ashok, who had purchased the same from Lingala Chenna Krishna Reddy. Therefore, the parents acquired in all Ac.8.12 guntas from the holdings of Lingala Chenna Krishna Reddy, be it through himself or from his protected tenants. However, the Revenue Divisional Officer found that the Tahsildar issued certificates in Form XIII(B) to the brothers in relation to an extent of Ac.10.21 guntas though unregistered sale deeds were available only for Ac.8.12 guntas. The Revenue Divisional Officer further found that the brothers had applied for regularization of the unregistered transactions in relation to individual extents of Ac.3.17½ guntas, Ac.3.17½ guntas and Ac.3.17 guntas respectively, aggregating to Ac.10.12 guntas, but the land purchased under the sale deeds fell short. According to the fourth respondent, her father gave her 50% share, to an extent of Ac.4.23½ guntas, upon payment of Rs.1,835/- and executed a document on 15.02.1980 in her favour. This document was admitted by one of the three brothers, viz., Mohmmed Jaffar. The Revenue Divisional Officer was stated to have found that notice in Form XII was not served upon the fourth respondent even though her objection petitions dated

14.06.2016 and 22.06.2017 were pending before the Tahsildar, Raghunathpally Mandal. Having failed to take action upon her objection petitions, the Tahsildar did not even issue her a notice upon the applications made by her brothers under Section 5A of the Act of 1971. Therefore, her claim in relation to her half-share was never taken into consideration by the Tahsildar. The fourth respondent pointed out that she was not a party to the so-called partition that was effected amongst her brothers and asserted that she was a co-sharer in the subject lands, irrespective of her claim for half-share under the document executed by their father. She reiterated that apart from her rights based on the document executed by her father, she also had an interest as a sharer in the subject lands being the daughter of the title-holder. She therefore asserted that she had a semblance of interest in the said land and the plea of the petitioners to the contrary was denied. As regards the petitioners' claim that her appeal under Section 5B of the Act of 1971 was belated, the fourth respondent stated that she came to know about issuance of certificates in Form XIII(B) only on 05.09.2017 and as no order was ever communicated to her directly by the Tahsildar, Raghunathpally Mandal, the question of limitation commencing from an earlier date did not arise. She further pointed out that the aspect of limitation was never raised before the Revenue Divisional Officer, Jangaon Division. According to her, the eldest brother, Mohmmed Jaffar, was cultivating the lands and handing over her share of the proceeds every year as she was residing at Hyderabad. She therefore justified the appellate order dated 07.04.2018, whereby the Revenue Divisional Officer, Jangaon Division, directed the Tahsildar, Raghunathpally Mandal, to undertake a *denovo* enquiry, duly setting aside the earlier order dated 04.07.2017 passed by him. Lastly, she pointed out that the statutory remedy of revision was available to the petitioners under Section 9 of the Act of 1971 but circumventing the same, they approached this Court by way of these writ petitions.

No reply affidavit was filed by either of her brothers, the petitioners in these two writ petitions.

Perusal of the record in these writ petitions reflects that the Tahsildar, Raghunathpally Mandal, issued certificates in Form XIII(B) on 04.07.2017 in relation to the individual extents claimed by each brother in the four survey numbers, viz., Survey Numbers 1429, 1430, 1431 and 1432, of Quilashapuram Village. On the strength thereof, the Tahsildar then issued pattadar pass books and title deeds to them. This entire action was undertaken by the Tahsildar upon the applications made online by the brothers on 11.08.2016 in Form X under Section 5A. It is also clear from the record that notice in Form XI was issued to each of the brothers and no notice was issued in Form XII to any other person, but the same was merely affixed in the Gram Panchayat notice board. The petitioners themselves filed copies of the representations dated 14.06.2016 and 22.06.2017 submitted by their sister, the fourth respondent. Therein, she categorically asserted rights in the lands in question on the ground that she had paid half the sale consideration and had rights over half-share, being an extent of Ac.4.23½ guntas. They also filed a copy of the document dated 15.02.1980 under which she claimed the half-share, which was allegedly executed by the father on the ground that she had paid half the sale consideration of Rs.1,835/- and therefore, he intended to give her a half-share, coming to Ac.4.23½ guntas. The document also recorded that the remaining half-share should be given to the three sons, who would take their equal shares therein after his death.

The order dated 07.04.2018 passed by the Revenue Divisional Officer (RDO) reflects the following salient points: The RDO found that as per the revenue records, one Lingala Chenna Krishna Reddy was the pattadar of the lands in Survey Nos.1429, 1430, 1431 and 1432 of Quilashapuram Village. Mangu Yadaiah, Srihari and Sudarshan were his protected tenants. They sold an extent of Ac.7.07 guntas under unregistered sale deed dated 17.01.1975 in favour of Dudekula Mahabub Ali, the father of the parties. Their mother, Mohd. Jamal Bee, purchased Ac.1.05 guntas in Survey No.1431 from Karne Ashok who, in turn, purchased it from Lingala Chenna Krishna Reddy. In effect, the couple purchased Ac.8.12 guntas from out of the landholdings of Lingala Chenna Krishna Reddy, be it through him or his protected tenants. The RDO pointed out that the unregistered sale deeds covered only Ac.8.12 guntas but the Tahsildar had undertaken regularization and validation in relation to a larger extent of Ac.10.21 guntas. He further remarked that there was no unregistered document in relation to the shortfall of Ac.2.09 guntas in the concerned file. The RDO then referred to the procedure prescribed in the statute while regularizing unregistered sale deeds and held that the Tahsildar ought to have issued a notice in Form XII to the fourth respondent as her objection petitions dated 14.06.2016 and 22.06.2017 were already pending on his file. The RDO further noted that the claim of the sister under the unregistered deed dated 15.02.1980 with regard to her half-share in the land executed by her father on the strength of her having given half the sale consideration was never enquired into by the Tahsildar while considering the Section 5A applications of the brothers and therefore, the entire proceedings stood vitiated. It is on this ground that the RDO allowed the appeal setting aside the certificates issued in Form XIII(B) to the brothers as well as the consequential entries made in the revenue records. He also directed cancellation of the pattadar pass books and title deeds issued to the brothers on the strength of such regularization. The case was remanded to the Tahsildar, Raghunathpally Mandal, to conduct a *denovo* enquiry, giving due opportunity of hearing to all the parties concerned, by following the due procedure. A time frame of one month was fixed to complete this exercise.

It is no doubt true that in her appeal filed under Section 5B of the Act of 1971, the fourth respondent did not specifically refer to the document dated 15.02.1980 but she categorically asserted that her father had allotted half-share to her and the balance half-share to her brothers. As this is the import of the document dated 15.02.1980, the mere failure to mention the date of the document is not fatal. Further, the counter-affidavits filed by the petitioners before the RDO demonstrated that they never raised any argument with regard to the appeal being time-barred. Having failed to raise this issue before the appellate authority, it is not open to them to raise the issue in these writ petitions, wherein the order of the appellate authority is sought to be challenged. In any event, it is not as if the appellate authority is not clothed with the power of condoning delay and the delay, if any, in this case is not even substantial as the Form XIII(B) certificates challenged in the appeal were dated 04.07.2017 and the appeal was filed in October, 2017.

At this stage, it would be appropriate to take note of the statutory scheme in the Act of 1971 and the Rules framed thereunder.

Section 5A of the Act of 1971 deals with regularization of certain alienations or other transfers of land. It begins with a non-obstante clause and states that notwithstanding anything contained in the Act of 1971, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law, where a person is an occupant by virtue of an alienation or transfer effected otherwise than by way of a registered document, such alienee or transferee may, within such period of time as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid. Section 5A(2) provides that on receipt of such application, the Mandal Revenue Officer shall make such enquiry as may be prescribed and require the alienee or the transferee to deposit an amount equal to the registration fees and the stamp duty that would have been payable had the alienation been effected by a registered document. Section 5A(4) stipulates that upon deposit of the amount specified in sub-section (2), the Mandal Revenue Officer shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of the certificate and such certificate shall, notwithstanding anything in the Registration Act, 1908, be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him. Section 5A(5) provides that the recording authority shall make an entry in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property upon production of the certificate issued under sub-section (4).

Be it noted that sub-section (2) of Section 5A requires the Mandal Revenue Officer to make such enquiry as may be prescribed. The scope of such enquiry is delineated by Rule 22 of the Telangana Rights in Land and Pattadar Pass Books Rules, 1989 (*for brevity*, 'the Rules of 1989'). Sub-rule (3) of this Rule provides that on receipt of the application under Section 5A(2) of the Act of 1971, the Mandal Revenue Officer shall issue a notice to the alienor or transferor in Form XI specifying therein the date on which and the time at which he proposes to hold an enquiry. He shall also issue a notice in Form XII to all other persons believed to be interested in the land specifying therein, the date, time and place at which he proposes to enquire into the application. Sub-rule (4) provides that on the day so appointed or any other day to which the enquiry is adjourned, the Mandal Revenue Officer shall, after hearing the parties and on examining their documents and witnesses, if any, and after taking such further evidence as he may consider necessary to satisfy himself that the alienation is not in contravention of any of the provisions of the Acts referred to in Rule 9(1)(a)(iv), complete the enquiry. Rule 22(5) provides that upon deposit of the amounts through a challan in the treasury, the Mandal Revenue Officer shall issue a certificate in Form XIII(B) as required under Section 5A(4) of the Act of 1971 to the alienee declaring that the alienation is valid from the date of issue of the certificate. Rule 22(6) provides that the recording authority shall make an entry in the Record of Rights in Forms I and I(B) to the effect that the person whose name has been recorded as an occupant is the owner of the property from the date of issue of the said certificate, upon its production. Rule 22(7) provides that thereafter, a title deed and a pass book should be issued to the occupant in the category of owner-pattadar.

This being the statutory scheme, the Mandal Revenue Officer/Tahsildar, Raghunathpally Mandal, was bound to take note of the existence of the fourth respondent, the daughter of the deceased title-holder. Irrespective of whether or not her claim of half-share under the unregistered document dated 15.02.1980 stands, the fact remains that being the daughter of a deceased Muslim, she would automatically have a share in his property. Muslim Personal Law in this regard necessarily had to be kept in mind while dealing with the claims of the legal heirs of late Mahabub Ali over his agricultural property. The representations dated 14.06.2016 and 22.06.2017 made by the fourth respondent, manifesting her existence and voicing her claim in this regard, were already on the file of the Tahsildar, Raghunathpally Mandal. He therefore had no justifiable reason to ignore her and proceed with the enquiry upon the Section 5A applications made by her brothers behind her back. It is an admitted fact that no notice in Form XII was ever issued to her and on the other hand, the said notice was affixed on the notice board of the Gram Panchayat on 11.08.2016, long after receipt of the fourth respondent's representation dated 14.06.2016. Further, even after receipt of her later representation dated 22.06.2017, the Tahsildar did not choose to take note of the same but proceeded to issue certificates in Form XIII(B) on 04.07.2017, without putting her on notice. Even the decision taken by him in that regard was never communicated to her. That being so, this Court finds no grounds whatsoever to interfere with the appellate order dated 07.04.2018 passed by the Revenue Divisional Officer, Jangaon Division, setting aside these proceedings and directing a *denovo* enquiry into the matter.

Sri D.V.Chalapathi Rao, learned counsel, placed reliance on an abundance of case law which, in the opinion of this Court, is of no avail.

In V.KRISHNAIAH V/s. JOINT COLLECTOR[1], a learned Judge of the Andhra Pradesh High Court observed that the scope of enquiry under Section 5A of the Act of 1971 and the relevant Rules is limited and restricted but in the event the plea of limitation is raised, necessary issue has to be framed and a finding thereon has to be recorded. The learned Judge further observed that the attributes of a civil Court do not exist when the revenue authority exercises power in such a situation. This judgment is of no avail to the petitioners as they never raised the

[1] 2007 (3) ALD 391

limitation issue before the appellate authority, thereby requiring a finding to be rendered thereon.

In NADIMINTI VARALAKSHMI V/s. THE STATE OF ANDHRA PRADESH[2], a learned Judge of the Andhra Pradesh High Court observed that when a revenue official came to the conclusion that the disputes raised could not be decided by the revenue functionaries and directed the parties to approach the civil Court, they would be denuded of the jurisdiction to give a further direction as to the Record of Rights. In the case on hand, the direction of the Revenue Divisional Officer, Jangaon Division, to initiate a *denovo* enquiry necessarily required him to set at naught the earlier proceedings so that a clean slate would be available for the parties to demonstrate their rights in relation to the claims made under Section 5A of the Act of 1971. This judgment is therefore of no avail to the petitioners.

In MANSINGH V/s. BOARD OF REVENUE[3], the Rajasthan High Court made certain observations in relation to an enquiry under the Marwar Land Revenue Act, 1949, to the effect that such an enquiry would be of a summary nature. It was further observed that as the matter related to proprietary possession, any party which felt aggrieved by such an order can go to the civil Court to have his title determined. This Court is at a loss to understand as to how this decision furthers the case of the petitioners. Muslim Personal Law clearly provides that the daughter of a deceased Muslim inherits a share in her father's property, though her share would be equal to half the share of a brother. There is therefore no necessity for the fourth respondent to approach the civil Court to establish this point. As regards her other claim for half-share in the entire land

[2] 2014 (1) ALD 677
[3] AIR 1957 RAJ 136

based on the document dated 15.02.1980, it was never considered earlier and it is for the Tahsildar concerned to consider the said claim on its own merits during the *denovo* enquiry.

In P.SAMBASIVA RAO V/s. JOINT COLLECTOR[4], a learned Judge of the Andhra Pradesh High Court was concerned with a similar fact scenario involving an application under Section 5A of the Act of 1971. The learned Judge found that the said application was made by respondents 4 to 8 in that case on the strength of an unregistered document dated 19.09.1993. While so, the petitioner therein claimed rights in relation to the same land on the strength of an agreement of sale. The learned Judge observed that the petitioner did not acquire any perfect title *vis-à-vis* the land and if he got an order of validation under Section 5A of the Act of 1971 or obtained a decree for specific performance of the agreement of sale, he could have asserted his rights *vis-à-vis* the land. The learned Judge further observed that in an appeal or revision arising out of the order passed under Section 5A of the Act of 1971, the scope is limited and the authorities would only have to verify as to whether the prescribed procedure had been followed and whether there existed any legal or factual infirmity in the proceedings. The learned Judge pointed out that it would be impermissible for such authorities to pronounce upon the title of the parties as disputes touching upon title can only be decided by civil Courts. The learned Judge accordingly set aside the observations made in the orders under challenge touching upon the title of the parties and left it open to the petitioner therein to work out his remedies in accordance with law. This judgment also does not help the petitioners as the fourth respondent's claim is not inchoate, as was the case of the

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[4] 2009 (4) ALD 663

petitioner in the aforestated case, inasmuch as her right to succeed under Muslim Personal Law stands protected, in any event.

In YELAGANI PAPAIAH V/s. JOINT COLLECTOR[5], a judgment of the Andhra Pradesh High Court, it was observed that the scope of Section 5A of the Act of 1971 is limited to validation of an alienation made under an unregistered document and in exercise of revisional jurisdiction arising therefrom, it would not be open to the Joint Collector to enlarge the scope of the proceedings and venture to adjudicate disputes with regard to title and cancellation of transactions. This judgment also does not further the case of the petitioner, as the Revenue Divisional Officer, Jangaon Division, did not decide any issues of title and merely directed the Tahsildar, Raghunathpally Mandal, Jangaon District, to undertake a *denovo* enquiry in the light of the procedural fallacy in not putting the fourth respondent on notice, though she eminently deserved to be.

In COMMERCIAL TAX OFFICER, RAJASTHAN V/s. BINANI CEMENTS LIMITED[6], a case relating to sales tax law, the Supreme Court reiterated the settled legal position that if in a statutory rule or notification, there are two expressions used, one in general terms and the other in special words, it has to be understood that the special words were not meant to be included in the general expression. It was further observed that it was well established that when a general law and a special law dealing with some aspect dealt with by the general law are in question, the rule adopted and applied is one of harmonious construction whereby the general law, to the extent dealt with by the special law, is impliedly repealed. This judgment is relied upon by Sri D.V.Chalapathi Rao, learned counsel, in support of his contention that when Section

[5] 2009 (1) ALD 297
[6] (2014) 8 SCC 319

5A(2) of the Act of 1971 merely prescribes a summary enquiry as a condition precedent requiring the alienee under an unregistered document to deposit registration charges and the stamp duty, the requirement of a notice being given to all other persons believed to be interested cannot be imported into the statutory scheme. However, this argument loses sight of the fact that Section 5A(2) specifically requires the Mandal Revenue Officer to make such enquiry as may be prescribed and the prescription of such procedure is under Rule 22 of the Rules of 1989. Therefore, the Mandal Revenue Officer, Raghunathpally Mandal, had to abide by the said procedure. The maxim *generalibus specialia derogant* therefore does not apply to the case on hand.

Sri D.V.Chalapathi Rao, learned counsel would further contend that no value can be attached to the fact that the eldest brother supported the claim of the fourth respondent, inasmuch as their children got married. However, no material has been placed before this Court in support of this statement. Be that as it may.

The writ petitions are therefore devoid of merit. Interim orders dated 02.05.2018 passed in both writ petitions shall stand vacated. The Tahsildar, Raghunathpally Mandal, Jangaon District, is directed to complete the *denovo* enquiry within one month from the date of receipt of a copy of this order, be it from whatever source.

Subject to this direction, the writ petitions are dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR, J

1st APRIL, 2019

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