**THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION NO.27278 OF 2019**

**Date: 10.12.2019**

Between:

Mandadi Kondaiah S/o.Malakondaiah,
Aged 72 yrs, Occu : Agriculture,
R/o.H.No.10-1-46, Ramnagar,
Backside of TV Tower, Karimnagar City.

.....Petitioner

And

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

.....Respondents



The Court made the following:

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**ORDER:**

Heard learned counsel for the petitioner, learned Government Pleader for respondents 1 to 4 and Sri P.Giri Krishna learned counsel appearing for 5th respondent.

2. Petitioner is challenging the order dated 19.10.2019 of the Joint Collector setting aside the order of Revenue Divisional Officer (RDO) and affirming the decision of Tahsildar.

3. According to learned counsel for the petitioner, petitioner purchased land to an extent of Ac.1-35 guntas in Sy.No.1321/AA, Ac.5-17 guntas in Sy.No.1324 and Ac.0-32 guntas in Sy.No.1345, put together Ac.8-04 guntas of Garrepalli Village of Sultanabad Mandal, Peddapalli District, by way of an unregistered sale deed dated 16.11.1985. He was granted possession and he was undertaking manufacturing of bricks in the said land.

4. In the year 1996, petitioner applied for validation of unregistered sale deed. On 25.10.2000 the Tahsildar validated the unregistered sale deed and issued Form XIII (B) Certificate (Ex.P.4). Accordingly, his name was mutated in the revenue records and was issued pattadar pass books and title deeds. While so, the 5th respondent filed Appeal in September, 2014, challenging the validation of sale deed and issuance of Form XIII (B) Certificate. On 15.04.2015 the RDO dismissed the appeal. Aggrieved thereby, Revision is filed before the Joint Collector. The Joint Collector, vide orders dated 19.10.2019 allowed the revision. Questioning the same, this writ petition is filed.

5. According to learned counsel for petitioner, based on unregistered sale deed and by relying on provision in Section 5-B of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act, 1971'), petitioner applied for validating the sada sale deed and upon following the due procedure prescribed, orders are passed validating the sada sale deed. According to learned counsel, notices were taken out to the known address of the 5th respondent in the village and as there was no one present in the address given in village, and therefore, notice was displayed in the Gram Panchayat office and there after final orders are passed. He would further submit that there is no illegality committed by the Tahsildar and by following the due procedure only Tahsildar has validated the unregistered sale deed. That after long lapse of time, 5th respondent could not have filed appeal merely claiming that she is not residing in the village and residing at Hyderabad and that cannot be a ground for the Joint Collector to reverse the decision taken by the competent authority made in valid exercise of power in the year 2000. He points out that the Joint Collector made certain observations on merits of the matter, which would deprive the petitioner to agitate his rights and even otherwise, Joint Collector could not have made such observations and at the most Joint Collector could have remanded the matter to the Tahsildar.

6. Learned counsel for 5th respondent Sri P.Giri Krishna submits that apparently no notice was served on 5th respondent and behind her back, based on fictitious documents, her property was sought to be knocked away and as soon as she got the information, she immediately filed appeal and thereon revision. In

the facts of this case, it cannot be said that there was delay in prosecuting the grievance. As valuable right in the property was sought to be knocked away, the mandatory procedure has to be followed and unless and until due opportunity is afforded to the owner of the property, the ownership rights cannot be affected, even if a valid claim is set up before the Tahsildar.

7. It is not disputed that the notice was not served on 5th respondent before Tahsildar passed orders in favour of petitioner validating the unregistered sale deed. Ordinarily, deed of conveyance where value of the transaction is more than Rs.100/-, has to be compulsorily registered to have its legal validity and to enforce the same. Having regard to the fact that several sale transactions have taken place by way of unregistered sale deeds and on receipt of full sale consideration possession was also vested in the purchaser, Government formulated scheme to regularize such unregistered sale deeds and in terms of the policy, Section 5-A was incorporated into the Act, 1971. Initially, such facility was made available in the year 2008 but later it was reintroduced and was open till 31.12.2017.

8. Ordinarily, whenever a deed of conveyance is presented before the Registering Authority, both parties should be present, their signatures should be authenticated and entire transaction should be witnessed and parties have to sign in the presence of Registering Authority, and only then the document can be treated as validly executed, subject to compliance of requirements. Section 5-A of the Act, 1971 only carves out an exception to mandate of Section 17 of the Indian Registration Act by giving an opportunity to validate the unregistered sale deeds subject to

payment of stamp duty in due recognition of sale that took place long ago and possession conferred on the purchaser. It being an exception carved out, it has to be viewed strictly and in a narrow compass. Thus, when unregistered sale transaction is sought to be validated, the person who is likely to be affected must be put on notice and opportunity has to be given. Merely because person is not living in village is not a ground to hold that notice need not be served on the person and validation can be made holding that the notice displayed at Gram Panchayat office is sufficient. It is the duty and responsibility of simple sale deed holder to secure the presence of land owner/ vendor to participate in the proceedings for validating the unregistered sale deed.

9. Therefore, prima facie, exercise undertaken by the Tahsildar, as upheld by the Revenue Divisional Officer is not valid in law and it was rightly set aside by the Joint Collector.

10. However, as seen from the order of the Joint Collector, he has also gone into various other aspects and recorded findings thereon, which may be offending the petitioner and such findings could not have been recorded by the Joint Collector. At this stage, learned counsel for 5th respondent fairly submits that matter can be remanded to the Tahsildar for consideration of the issue afresh. Learned counsel for 5th respondent also states that 5th respondent is residing in the address mentioned in the cause title of this writ petition and notices, if any can be sent to the said address.

11. Having regard to the above submissions, the proceedings of the Tahsildar dated 25.10.2000, as upheld by the Revenue Divisional Officer dated 15.04.2015 and the order of the Joint Collector dated 19.10.2019 are set aside and matter is remitted to

the Tahsildar. The Tahsildar shall consider the application for validation of the unregistered sale deed by affording due opportunity to the petitioner and 5th respondent and complete the exercise within a period of six weeks from the date of receipt of copy of this order. The observations and findings recorded by the Joint Collector on other issues are nullified and notwithstanding said observations and findings, it is open to the petitioner to work out remedies as available under law.

12. Accordingly, the Writ Petition is allowed. Pending miscellaneous petitions, if any, shall stand closed.

**P.NAVEEN RAO, J**

10th December, 2019
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