

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28046 OF 2019

Date: 18.12.2019

Between:

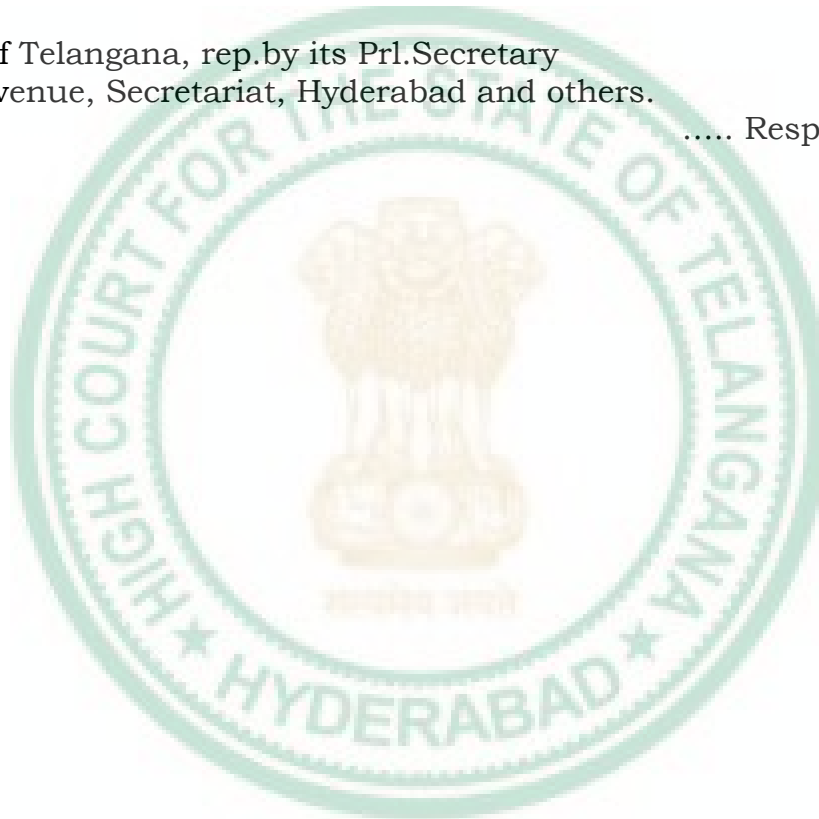
Malgawar Anil, s/o. Ershetty, Aged 45 years,
Occu:Private Employee,r/o.Doulthapur village,
Bichkunda mandal, Kama Reddy District,
Telangana State.

.... Petitioner

and

State of Telangana, rep.by its Prl.Secretary
For Revenue, Secretariat, Hyderabad and others.

..... Respondents



This Court made the following:

HONOURABLE SRI JUJUSTICE P.NAVEEN RAO

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ORDER:

Petitioner is aggrieved by the order of the Revisional Authority dated 29.10.2019, upholding the decision of Appellate Authority date 29.06.2015 setting aside the entries made in the revenue records and remitting the matter to the Tahsildar to conduct *de novo* enquiry. According to petitioner, land to an extent of Acs.10.27 guntas in Sy.Nos.191, 192, 193, 194, 198/AA and 189/AA of Doultapur village of Bichukunda Mandal, Kamareddy district, was the joint family property and after the demise of his father, he succeeded to the property. He applied for mutation of his name in the revenue records and accordingly, the Tahsildar, by following due process, mutated the name of petitioner in the revenue records vide his proceedings dated 23.04.1997. Thereafter, pattadar passbooks and title deeds were issued and his name was reflected in the pahani all along. After long lapse of time, 5th respondent filed appeal before the Revenue Divisional Officer. The Revenue Divisional Officer considered the appeal and set aside the proceedings without looking into the record and ought not to have remanded the matter to the Tahsildar. Aggrieved by the decision of Tahsildar, when revision was filed, the revisional authority erroneously upheld the decision of the Revenue Divisional Officer without looking into the records that Tahsildar is not competent to partition of the joint family property. If a person is aggrieved by the rival claims to the joint family property, he ought to have been availed civil law remedy.

2. It is not in dispute that subject property is joint family property. Father of the petitioner late Ershetty survived by petitioner, his mother and his brother. In the year 1997, the brother of the petitioner was minor and mother being widow, without informing the mother and the younger brother straightaway his name was got mutated in the revenue records. Apparently, no procedure was followed before entering the name of petitioner as sole successor to the subject property nor there was any family settlement where under the entire property is vested in the petitioner. This was noticed by the Revenue Divisional Officer and matter was remitted to the Tahsildar for *de novo* enquiry. In the representation filed by the petitioner, petitioner has fairly stated that even before the Revenue Divisional Officer, petitioner came forward to partition the above subject land and plots (paragraph 5 of the revision petition). Further grounds urged in paragraphs 7, 8 and 9 of the revision petition would show that petitioner was more concerned by the communication of Tahsildar in not conducting enquiry on remand and protracting the matter and directing restoration of the name of his father in the revenue records without continuing the name of petitioner. It is thus apparent that petitioner was not urging about the delay in filing appeal nor was denying the claim of mother and the brother of the petitioner for partition of the property, but was more concerned in delay in conducting *de novo* enquiry by the Tahsildar.

3. Having regard to the fact that subject property is the joint family property, and that there was no partition settlement affected among the family members, the question of mutating the name of petitioner as successor to the entire extent of land is not valid.

Further, when mutation exercise was undertaken, the brother of the petitioner was minor and, therefore, it cannot be said that he consented for mutation and kept quiet. I see no error in the decision of the Revenue Divisional Officer, confirmed by the Joint Collector, warranting interference by this Court within the parameters of judicial review. The orders of two authorities cannot be said as patently illegal or in excess of jurisdiction in order to invalidate the said decisions in exercise of power of judicial review under Article 226 of the Constitution of India.

4. Having regard to the fact that matter is pending for a long time, the Tahsildar is directed to complete the exercise and determine the claim for mutation within a period of six weeks from the date of receipt of this order after affording due opportunity to both parties, as per the orders of the Revenue Divisional Officer, confirmed by the Joint Collector. Learned counsel for petitioner submits that petitioner has been in possession and his possession shall not be disturbed. Possession is a matter which requires verification and without that exercise, Court cannot express any opinion. If petitioner is in possession and when counsel fairly submits that protection was granted by the appellate and revisional authorities, there is no cause for apprehension for the petitioner at this stage on that aspect. If there is any rival claim of possession, it is for him to work out his remedies.

5. Writ Petition is accordingly disposed of. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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