THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.33171 OF 2018

O R D E R

The revisionary order dated 28.02.2018 passed by the Joint Collector, Medchal-Malkajgiri District, under Section 9 of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 (*for brevity*, 'the Act of 1971'), is called in question. The petitioners were respondents 1 and 2 in the said revision.

By order dated 20.09.2018 passed in this writ petition, the parties were directed to maintain *status quo* obtaining as on that date as regards entries and possession of the subject matter of the litigation until further orders. I.A.No.1 of 2019 was filed by respondents 3 to 5 in this writ petition, the petitioners in the revision, to vacate the said order.

Heard Sri V.V.Raghavan, learned counsel for the petitioners, learned Assistant Government Pleader for Revenue for the authorities, and Sri B.Vijaysen Reddy, learned counsel for respondents 3 to 5.

As comprehensive arguments were advanced by the learned counsel, the matter is amenable to final disposal at this stage.

The case of the petitioners is to the following effect: Mandala Lakshmaiah was their paternal grandfather and he was assigned Acs.3.32 guntas of land in Sy.No.25/1 of Pet Basheerabad Village, Medchal Taluq (now, Quthbullapur Mandal), Hyderabad District, in the year 1960. Assignment of other extents of land in this survey number was also undertaken at that time in favour of several others. This land was alienable subject to permission being obtained. After the death of Mandala Lakshmaiah, his sons, Yellaiah and Yettaiah, inherited the assigned land of Acs.3.32 guntas in equal shares. Yettaiah sold his half-share in this land to the Administrative Officer, Agro Industrial Co-operative Estate Limited, Balanagar, Hyderabad, along with several others, under registered Sale Deed dated 11.12.1965 bearing Document No.694 of 1965. The total extent of land sold under this document aggregated to Acs.89.15 guntas in Sy.No.25/1 of Pet Basheerabad Village. In turn, the Administrative Officer transferred the land to the Agro Industrial Co-operative Estate Limited under registered Sale Deed dated 01.04.1966 bearing Document No.185 of 1966. Yellaiah died in the year 1975 and the petitioners, being his sons, succeeded to his properties. According to them, in the sale deed executed by Yettaiah along with others on 11.12.1965, the entire extent of Acs.3.23 guntas of assigned land was shown in the total extent of Acs.89.15 guntas and the same was carried forward in the sale deed executed in favour of the Agro Industrial Co-operative Estate Limited. Respondents 3 to 5 purchased a part of the land (Acs.32.07 guntas), including the land sold by Yettaiah, from Agro Industrial Co-operative Estate Limited under registered Sale Deed dated 06.08.1979 bearing Document No.4529 of 1979. Owing to the mistake in the description of the extent owned by Yettaiah, respondents 3 to 5 got their names mutated in the revenue records for the entire assigned land of Acs.3.23 guntas. The petitioners claimed that they were in possession of their extent and having come to know of the mutation carried out in favour of respondents 3 to 5 in the revenue records, they filed an application before the Deputy Collector and Tahsildar, Quthbullapur Mandal, Ranga Reddy District, for correction of entries in respect of their share of Ac.1.32 guntas. However, the Tahsildar passed order dated 31.03.2009 holding that he had no authority or jurisdiction to entertain the application filed by the petitioners under the provisions of the Act of 1971. Aggrieved thereby, the petitioners preferred an appeal under Section 5(5) of the Act of 1971 before the Special Grade Deputy Collector and Revenue Divisional Officer, Malkajgiri, Ranga

Reddy District. By order dated 30.01.2015, the appellate authority set aside the mutation carried out in the revenue records in favour of respondents 3 to 5 and directed restoration of the previous entries in respect of the land claimed by the petitioners. According to the petitioners, the Tahsildar implemented this order and their names were shown in the pahanies of the years 2013-14, 2014-15 and 2015-16. While so, respondents 3 to 5 preferred a revision before the Joint Collector, Medchal-Malkajgiri District, under Section 9 of the Act of 1971 and by order dated 28.02.2018, the revisionary authority set aside the appellate order and directed the petitioners to approach the competent civil Court to establish their title. In this factual scenario, the petitioners asserted that they had title and possession over their extent of Ac.1.32 guntas of land in the sub-divided Sy.Nos.25/1/LA/A, 25/1/LA/AA and 25/1/LA/E of Pet Basheerabad Village and that respondents 3 to 5 had no claim over the said land as it was never sold.

In the counter filed in support of the vacate stay petition, respondents 3 to 5 stated as under: Mandala Laxmaiah was assigned Acs.3.23 guntas of land in Sy.No.25/1 of Pet Basheerabad Village and the same was implemented by the Government in the Jamabandhi of the year 1960. After obtaining necessary permission from the District Collector, Hyderabad, vide proceedings dated 10.12.1965 under Section 58(A) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, the land was sold to the Administrative Officer, Agro Industrial Co-operative Estate Limited, Balanagar, Hyderabad, under registered Sale Deed dated 11.12.1965 bearing Document No.694 of 1965. In turn, the land was then transferred to the Agro Industrial Co-operative Estate Limited under registered Sale Deed dated 01.04.1966 bearing Document No.185 of 1966. One V.V.Ramana filed O.S.No.60 of 1966, which was renumbered as O.S.No.73 of 1972 on the file of the learned Munsif Magistrate, East and North, wherein he claimed that the agricultural land forming part of Sy.Nos.101 and 104 of Kompally Village belonging to Nawab Shamsuddin Dowlah and his heirs, who had entered into an agreement of sale with him, was included in the land claimed by the Agro Industrial Co-operative Estate Limited. Owing to the injunction order passed in this suit, the Agro Industrial Co-operative Estate Limited lost possession over a part of the land and filed O.S.No.19 of 1969 on the file of the learned Chief Judge, City Civil Court, Hyderabad, seeking declaration of its title and for recovery of possession, apart from other reliefs. By common judgment dated 31.12.1973, the trial Court held that the Agro Industrial Co-operative Estate Limited was the lawful owner, having exclusive title over the agricultural land in question, and was entitled to possession. Aggrieved by this common judgment, V.V.Ramana filed C.C.C.A.Nos.43 and 45 of 1974 before the erstwhile High Court of Andhra Pradesh. The said appeals were dismissed by common judgment dated 02.08.1977. The Agro Industrial Co-operative Estate Limited then filed E.P.No.4 of 1978, resulting in it being put in actual possession of the agricultural land totally admeasuring Acs.89.15 guntas in Sy.No.25/1 of Pet Basheerabad Village. Thereafter, by way of registered Sale Deed dated 06.08.1979 bearing Document No.4529 of 1979, the Agro Industrial Co-operative Estate Limited sold an extent of Acs.32.07 guntas in Sy.No.25/1 of Pet Basheerabad Village to respondents 3 to 5 and delivered vacant physical possession. They therefore claimed to be in possession and enjoyment of the land as rightful owners. Referring to the proceedings before the Revenue Divisional Officer, respondents 3 to 5 asserted that he exercised appellate power erroneously despite the long lapse of 30 years since mutation was carried out in their favour in the revenue records. They asserted that the revisionary authority had appreciated the case in the proper perspective and held that the proper remedy would be to approach the competent civil Court. They further pointed out that the first sale was conducted by the assignees as long back as in the year 1965 in relation to an extent of Acs.89.15 guntas, which included the lesser extent of Acs.3.23 guntas assigned to Mandala Laxmaiah and therefore, it was not open to the petitioners to dispute the said sale five decades thereafter. They pointed out that neither the petitioners nor their father, Yettaiah, ever challenged the sale deed of 1965 and never asserted any rights over their alleged half-share of the assigned land. They asserted that the petitioners were indulging in speculative litigation and that they had no semblance of right or interest in the property. They further stated that the petitioners had already approached the learned VI Additional Senior Civil Judge, Medchal, by way of O.S.No.345 of 2018 and basing on the interim order passed in this writ petition, they sought a temporary injunction from the trial Court. They therefore prayed for vacating of the interim order and dismissal of the writ petition.

Perusal of the record on hand reflects that the Deputy Collector and Tahsildar, Quthbullapur Mandal, was approached by the petitioners only in the year 2005. They submitted an application at that time seeking correction of the entries in the revenue records in respect of an extent of Ac.1.32 guntas in Sy.No.25/1 of Pet Basheerabad Village. By order dated 31.03.2009, the Tahsildar noted that as per the revenue records of the year 1954-55, the land admeasuring Acs.195.34 guntas in Sy.No.25/1 and an extent of Acs.39.35 guntas in Sy.No.25/2 was recorded as 'Kancha Sarkari'. B.Mallaiah and 44 others were assigned land to the extent of Acs.160.35 guntas in Sy.No.25/1 of Pet Basheerabad Village @ Acs.3.25 guntas each in the year 1955 by the Tahsildar, Medchal. A supplementary sethwar was issued in the year 1959 and implemented in the revenue records. In 1965, some of the assignees of the land in Sy.No.25/1, *viz.*, B.Mallaiah and 24 others, filed petitions before the Collector, Ranga Reddy District, seeking permission under Section 58(A) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, seeking to sell their assigned land in favour of Agro Industrial Co-operative Estate Limited. Permission was accorded *vide* proceedings dated 10.12.1965 to the 25 assignees to alienate their land admeasuring Acs.89.15 guntas in Sy.No.25/1 of Pet Basheerabad Village in favour of Agro Industrial Co-operative Estate Limited. The assignees thereupon executed registered Sale Deed dated 11.12.1965 bearing Document No.694 of 1965 in favour of the Administrative Officer, Agro Industrial Co-operative Estate Limited, who then transferred the land to Agro Industrial Co-operative Estate Limited under Document No.185 of 1966. Agro Industrial Co-operative Estate Limited, in turn, alienated Acs.32.07 guntas in Sy.No.25/1 to respondents 3 to 5 herein under registered Sale Deed dated 06.08.1979 bearing Document No.4529 of 1979. Mutation was sanctioned by the then Tahsildar and their names were recorded as pattadars. While noting that Yellaiah had not transferred his half-share in the assigned land, the Tahsildar recorded that the petitioners did not furnish a succession certificate showing that they were legal heirs of Yellaiah. He further held that he had no jurisdiction to correct the entries that were made in the year 1984 at this distance of time.

It is against the aforestated order that the petitioners filed an appeal before the Special Grade Deputy Collector and Revenue Divisional Officer, Malkajgiri Division. Be it noted that the scope of this appeal was as to whether the Tahsildar was correct in holding that he had no jurisdiction to undertake correction of the entries in the revenue records due to lapse of time. However, the appellate authority completely lost sight of this aspect, as is clear from the appellate order dated 30.01.2015. It may also be noted that though the Tahsildar rejected the claim of the petitioners on 31.03.2009, they filed an appeal against the said order only in the year 2011 and the said belated appeal was taken on file as Case No.A2/885/2011. By the order dated 30.01.2015, the appellate authority went into the merits of the matter directly without considering as to whether the application filed by the petitioners before the Deputy Collector and Tahsildar, Quthbullapur, was maintainable at all. Holding that Yettaiah had sold his share of the assigned land and that the subsequent transactions made in favour of respondents 3 to 5 under Document No.4929 of 1979 ought not to have been implemented in the revenue records, as the Tahsildar should have verified title over the property and ownership rights before effecting mutation, the appellate authority set aside the order of mutation relating to the subject land and directed the Tahsildar to restore the previous entries in respect of the lands claimed by the petitioners, being their unsold lands.

Aggrieved by the appellate order, respondents 3 to 5 approached the revisionary authority, *viz*., the Joint Collector, Medchal-Malkajgiri District, *vide* Case No.D5/3896/2015. By order dated 28.02.2018, the Joint Collector, allowed the said revision. Therein, he found that the names of respondents 3 to 5, the petitioners in the revision petition, were entered in the revenue records in the year 1984-85. Having adverted to the claim of the petitioners before the Tahsildar, Quthbullapur, and his order dated 31.03.2009 holding to the effect that he had no jurisdiction under the Act of 1971 to rectify the entries dating back to 1984, the revisionary authority opined that the appellate authority's order dated 30.01.2015 did not give any concrete findings under the provisions of the Act of 1971. He also referred to the fact that respondents 3 to 5 herein, the petitioners in the revision, claimed rights under the purchase dating back to the year 1979 whereby mutation was carried out in the year 1984 and observed that the Tahsildar had rightly come to the conclusion that he did not have jurisdiction to correct such entries of the year 1984. He further observed that there were serious disputes of title over which Revenue Courts would have no jurisdiction and concluded that the appellate order was liable to be set aside as it suffered from legal infirmities. The respondents in the revision, the petitioners herein, were advised to seek their remedy before the competent civil Court by instituting a suit.

At this stage, it would be appropriate to take note of the statutory scheme under the Act of 1971. Section 3 deals with preparation and updating of the record of rights in all lands. Section 3(1) provides that as soon as may be after commencement of the Act of 1971, the record of rights in all lands in every village should be prepared and brought up to date from time to time by the recording authority. Section 3(2) provides that when, in respect of any village, the preparation of the record of rights under sub-section (1) is complete, factum of such completion should be notified in the Gazette. Section 3(3) states that any person effected by any entry in such record of rights may, within a period of one year from the date of the notification referred to in Section 3(2), apply for rectification of the entry to such officer as may be prescribed. The said officer may, after such inquiry as may be prescribed, give his decision on such application and direct the rectification of the record of rights in accordance with such decision. It is therefore clear that the power of rectification of entries is limited to a period of one year from the date of notification of the record of rights under Section

3(2) of the Act of 1971. After expiry of this period, the power of rectification vesting in the designated authority ceased to exist.

In the case on hand, it is not in dispute that the names of respondents 3 to 5 were entered into the revenue records as long back as in the year 1984. Therefore, the Tahsildar did not have the power of rectification of such entries in 2005, when the petitioners approached him seeking such relief. The remedy of the petitioners, if they were aggrieved by the entries made in the year 1984-85, was to prefer an appeal under Section 5(5) of the Act of 1971. However, such an appeal also had to be filed within 60 days from the date of communication of the order of the recording authority making an amendment in the record of rights. In any event, the petitioners never chose to take recourse to this appellate remedy against the mutation carried out in 1984-85. On the other hand, they filed an application directly before the Tahsildar concerned seeking rectification. As such power of rectification ceased to exist upon expiry of one year from the date of notification of the record of rights under Section 3(2) of the Act of 1971, the Tahsildar, Quthbullapur, rightly held that he had no jurisdiction to undertake such an exercise.

The appeal filed by the petitioners against the order dated 31.03.2009 of the Tahsildar, Quthbullapur, ought to have been tested on this premise. However, the appellate authority completely lost sight of the scope of the appeal and straightaway set aside the mutation of 1984. The entries made in the year 1984-85 did not even fall for consideration in this appeal as the appellate authority had to address the issue as to whether the Tahsildar was correct in holding that he had no jurisdiction to rectify such entries and if not, identify the provision of law under which he had such power. That aspect of the matter was not even addressed by the appellate authority.

In revision, the Joint Collector, Medchal-Malkajgiri District, rightly held that the appellate authority did not give any concrete findings as to his powers under the Act of 1971 and straightaway treated it as an appeal against the entries made in the year 1984. He rightly held that seriously disputed questions of title could not be adjudicated by the revenue authorities and relegated the respondents in the revision, the petitioners herein, to civil remedies.

Given the aforestated facts, it is clear that the very application filed by the petitioners seeking rectification of the records in the year 2005 was misconceived as such an application was not at all maintainable. The order holding to that effect did not warrant interference in appeal but the appellate authority misguided itself and set aside the entries made in the revenue records dating back to the year 1984, proceeding wholly beyond jurisdiction and the scope of the appeal. The order of the revisionary authority setting at naught such an erroneous appellate order therefore does not warrant interference in this writ petition. As rightly pointed out by the revisionary authority, it is for the petitioners, if they so choose, to approach the competent civil Court for resolution of their alleged claims.

The writ petition is therefore devoid of merit and is accordingly dismissed. Interim order dated 20.09.2018 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

20th MARCH, 2019

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