

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION No.14094 of 2010

ORDER:

The present Writ Petition is filed aggrieved by the action of the Joint Collector-2nd respondent herein in entertaining a revision under Section 9 of The Telangana Rights in Land and Pattadar Passbooks Act, 1971 (for short 'ROR Act'), filed by the 5th respondent herein.

The brief facts of the case are, that originally one Irfan Khan was the owner and possessor of the land bearing Survey No.230 of Yedhira Village, Mahabubnagar Mandal and District, for an extent of Acs.18.23 gts. and in the Khasra Pahani for the year 1954-55, the name of one K.Venkanna was shown as protected tenant in respect of the said land. After the death of the protected tenant K.Venkanna, his wife K.Nagamma, in turn, was declared as legal heir of the protected tenant and after following the due procedure contemplated under Section 38-A of The Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'Tenancy Act'), the then Revenue Divisional Officer has granted Certificate vide order dated 04.05.2002 in File No.K/1556/2001. Thereafter, the District Wakf Committee, Mahaboobnagar, filed an appeal before the Joint Collector, under Section 90 (1) of the Tenancy Act. In the said appeal, the petitioners were arrayed as respondents 11 to 16. Vide order, dated 21.04.2009, the Joint Collector has dismissed the appeal filed by the District Wakf Committee, Mahaboobnagar, and the same became final as no appeal or revision was preferred assailing the orders of the Joint Collector. Thereafter, the property was sold

to the petitioners herein through registered sale deed and their names were also mutated in the revenue records; pattadar passbooks and title deeds were issued to them, after following due procedure. The District Wakf Committee claiming to be the owner of various extents of land in various survey numbers of Yedhira Village and other villages, including the subject land also, filed suit in O.S.No.25 of 1985 before the Senior Civil Judge, Mahaboobnagar, for declaration of title and perpetual injunction, vide judgment and decree, dated 20.07.2006, the Senior Civil Judge, Mahaboobnagar, dismissed the said suit. Thereafter, the District Wakf Committee preferred a First Appeal being A.S.No.686 of 2008 before the High Court and the same is pending adjudication. It is pertinent to note that neither the petitioners herein nor their vendors nor the protected tenant nor the original pattadar Irfan Khan were made parties either to the said suit or the first appeal. The 5th respondent in the meanwhile has filed a Revision before the Joint Collector for cancellation of the entries made in the revenue records and pursuant to the same the Joint Collector has issued the notice impugned in this writ petition.

Heard both sides and perused the record.

Sri A.Giridhar Rao, the learned counsel appearing on behalf of the petitioners, has vehemently argued that entertaining the revision under Section 9 of the ROR Act, at the instance of the 5th respondent, is not only illegal, but the same is arbitrary exercise of power not vested with the said authority and one without jurisdiction. It is contended that when the certificate issued under Section 38-A of the Tenancy Act has become final and the appeal preferred by the 5th respondent has been

dismissed, the question of entertaining any revision under the provisions of the ROR Act does not arise. Further, the suit filed by the 5th respondent for declaration of title and perpetual injunction was dismissed and the First Appeal is pending before this Hon'ble High Court. He further contends that when the 5th respondent is not the owner of the property in dispute, entertaining the revision under Section 9 of the ROR Act does not arise. The issuance of present notice by the Joint Collector, at the instance of the 5th respondent, who do not have any title to the properties as on date, cannot be countenanced and the same is without jurisdiction or any legal basis.

Per contra, the learned Government Pleader for Revenue appearing on behalf of the official respondents, has contended that the writ petition is filed against the issuance of notice only and in the revision filed by the 5th respondent, the petitioners can raise all their objections as to the entertainment of the revision itself, but they cannot prevent the exercise of the power of the revisional authority under the Act by filing the writ petition and the same is liable to be dismissed.

The learned counsel appearing on behalf of the 5th respondent-The District Wakf Officer, Mahaboobnagar, has contended that once the lands are notified as Wakf lands, the jurisdiction of the revisional authority i.e. the Joint Collector to rectify the mistakes committed by the primary authority cannot be found fault and more particularly if the same are made against the provisions of the Wakf Act, they can be rectified at any time either *suo motu* or on the basis of an application filed by a party.

As seen from the record, the undisputed facts are that the petitioners' vendor was issued Certificate under Section 38-A of the Tenancy Act after following due procedure and the 5th respondent has challenged the same by preferring an appeal before the Joint Collector, but the said appeal was dismissed by the Joint Collector vide 21.04.2009. Thereafter, no revision or writ petition was filed by the 5th respondent assailing the orders of the Joint Collector dismissing the appeal. Hence, the Certificate issued under Section 38-A of the Tenancy Act in favour of the vendor of the petitioners has become final. Moreover, the 5th respondent has filed a suit for declaration and injunction before the competent Civil Court vide O.S.No.25 of 1985 and the same was dismissed on 20.07.2006, against which, the 5th respondent preferred a First Appeal being A.S.No.686 of 2008 before this Hon'ble High Court and the same is pending adjudication. Undoubtedly, as on date, the 5th respondent has no title or possession over the property in question and he cannot claim any right or title over the subject property till the First Appeal filed by them is adjudicated by this Court and an order is granted in their favour declaring them to be the owners and possessors of the land in question.

The provisions of the ROR Act are for the purpose of entering the names of the pattadar and possessor in the pahanies and for issuance of the pattadar passbooks and title deeds to the persons who are the actual owners/pattadars or to any persons in possession of the property. Section 9 of the ROR Act reads as under:

“9. Revision :- The Collector may either *suo motu* or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue

Officer or Revenue Divisional Officer under Sections 3, 5, 5A or 5B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to be Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for reconsideration, he may pass orders accordingly:

Provided that no such order adversely affecting any person shall be passed under this Section unless he had an opportunity of making a representation.”

As seen from the above provision, the Collector can call for and examine the record in respect of the orders passed by the Primary authority i.e. Mandal Revenue Officer or the Revenue Divisional Officer to verify as to the correctness/legality/propriety of the entries made in the revenue records or the orders passed under the provisions of the ROR Act. In this particular case, admittedly, the 5th respondent, as on date, is not having any right or title and as such the entertaining of the revision by the Joint Collector at the instance of the 5th respondent cannot be countenanced, more particularly, in view of the fact that the Certificate issued under section 38-A of the Tenancy Act has become final and the suit filed for declaration of title and perpetual injunction by the 5th respondent was dismissed.

It is vehemently contended by the counsel for the respondents that as the First Appeal filed by the 5th respondent herein against the judgment and decree, dated 20.07.2006, rendered in O.S.No.25 of 1985, is pending adjudication before this Court, the revision filed by the 5th respondent is maintainable.

It is well established principle of law that any entries made under the provisions of the ROR Act are only for the purpose of collection of revenue and are fiscal in nature. The entries do not confer/divest a person of their title or right, mere entries in the revenue records will not confer any title to the party and even if the names of any persons are entered in the revenue records, they cannot be made the basis for adjudicating the rights of the parties by a competent civil court. The entries made, if any, in the revenue records at the most can support the party to the extent of establishing the fact that they are in possession of the said property. In the absence of any record to show that the person in whose favour the names are entered has acquired title to the property through any one of the legal modes established by law, mere entries in the revenue records do not confer any title. Admittedly, in this case, the 5th respondent, who lost the suit for title and injunction filed by him, cannot be aggrieved by the entries made in the revenue records based on the Certificate issued under Section 38-A of the Tenancy Act in favour of the vendor of the petitioners and the subsequent sale deeds executed by the vendor of the petitioners in their favour. Unless and until, the rights of the parties herein are adjudicated in the First Appeal filed by the 5th respondent and pending adjudication in this High Court, they cannot claim any right or title to the property in question and as such the Revision under Section 9 of the ROR Act is not only premature, but highly misplaced. Hence, the impugned notice issued by the Joint Collector is liable to be set aside. This Order does not in any manner preclude the respondents to move an appropriate application for correction of entries in case the decision in the First Appeal pending adjudication is in their favour.

In view of the above mentioned facts and circumstances of the case, the Writ Petition is allowed. It is needless to mention that any observations made in this order shall not be construed as making any observations on the merits or demerits of the case and shall not have any bearing on the adjudication of the First Appeal pending before this Court.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

Date : 10-01-2020.
sur

A.ABHISHEK REDDY, J

