

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.29164 OF 2019

DATED : 02.01.2020

Between :

Vanamala Jakkaiah S/o.Late Balaiah,
Aged about 88 yrs, Occu : Agriculture,
R/o.Rebenna, District Komarambheem
Asifabad & another

..... Petitioners

And

The State of Telangana,
Rep., by the Principal Secretary,
Revenue Department,
Secretariat Building, Hyderabad & others.

.....Respondents



The Court made the following:

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ORDER :

Heard learned counsel for the petitioners and learned Government Pleader for Revenue for respondents 1 to 3.

2. According to petitioners, Vojjala Papaiah, was the owner of agricultural land to an extent of Ac.4-10 guntas in Sy.No.321, Gangapur Village, Rebenna Mandal, District Komarambheem Asifabad. Petitioners claim that the said land was sold to one Sirra Ebnizer, through registered sale deed, dated 04.11.1967. Petitioners claim that the 1st petitioner purchased the said land from Sirra Ebnizer through unregistered sale deed, dated 31.01.1971, and since the date of purchase, they are in possession and enjoyment of the said land. The first petitioner filed application under Section 5 (A) of the Telangana Rights in Land and Pattadar Pass Books Act (for short 'the Act, 1971') for regularization of an unregistered sale deed for impounding of the said document and after collecting requisite stamp duty, certificate was issued on 27.02.2002.

3. Petitioners also narrate in the affidavit filed in support of the writ petition, the other litigations on the subject matter. That being so, Kotagiri Satyanarayana, Kotagiri Chandra Sekhar, Kotagiri Yamuna and Kotagiri Swathi, filed appeal before the Revenue Divisional Officer (RDO), under Section 5 (B) of the Act, 1971, praying to set aside the order of mutation granted in favour of petitioners and to cancel the pattadar pass books and title deeds issued in their favour. It appears, during pendency of appeal, they have also filed application to implead the legal heirs of Sirra

Ebnizer. In pursuant thereof, notice was issued by the RDO on 11.10.2019, directing the parties to appear on 17.10.2019. This notice is challenged in this writ petition.

4. Learned counsel for the petitioners sought to contend that in the year 2002 itself, the certificate was issued and appeal is preferred after long lapse of time, whereas, Section 5 (B) of the Act, 1971, prescribes only 30 days time to prefer appeal. Therefore, appeal ought not to have been entertained. He further submits that the appellate authority ought not to have entertained the request of appellants to implead the successors of Sirra Ebnizer, who have no say in the matter and all these proceedings are not maintainable. Learned counsel further submits that raising objections on the maintainability of appeal, written arguments were filed, but so far they are not considered.

5. It is not in dispute that the RDO is the appellate authority. Ordinarily, such appeal has to be preferred within the limitation prescribed. Power to condone delay in preferring appeal is vested in the Appellate Authority. From a perusal of the grounds urged in the appeal, it appears that the appellants were contending that they were not aware of the ROR proceedings issued in the year 2015, and as soon as they came to know, the appeal is preferred.

6. It is not in dispute that remedy of appeal is available and the appellate authority is competent to entertain the appeal, subject to limitation and other aspects of issue raised before him. Thus, notice issued to appear before the appellate authority cannot give rise to cause of action to institute the writ petition. Further in what circumstances, the appellate authority allowed impleadment of successors of Sirra Ebnizer is again a matter for contest before

the appellate authority. It is always open to the petitioners to raise objection on arraying of those two persons also, as respondents in the appeal. It is not in dispute that the mutation proceedings were actually granted in the year 2015. The issue of limitation is a question of fact and law and appellate authority is required to consider the aspect of delay having regard to the plea raised by the appellants vis-à-vis the objections of the petitioners and on assessment of facts on record. Similarly, the issue of impleadment of successors of Sirra Ebnizer, also depends on the relevant contentions urged. This Court cannot go into the merits of the contentions urged on these aspects at the stage when notice directing appearance was issued. Therefore, the Court is not inclined to entertain the writ petition.

7. Accordingly, the Writ Petition is dismissed, leaving it open to the petitioners to raise all the objections, as available in law, before the appellate authority. Pending miscellaneous petitions, if any, shall stand closed.

2nd January, 2020
Rds

P.NAVEEN RAO,J