THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.18573 OF 2020

Date:29.06.2021

Between:

P. B. Sudarshan Rao, S/o. Late Balaiah,
Aged about 57 years, Occ: Employee,
R/o.Kowkoor Village, Alwal Mandal,
Medchal – Malkajgiri District .. Petitioner

And

The State of Telangana, rep., by its
Principal Secretary, Revenue Department,
Secretariat, Hyderabad and others .. Respondents

The Court made the following:

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ORDER:

Prayer sought in the writ petition reads as under:

> "… to issue a Writ of Certiorari or any other appropriate Writ or Writs, Order or Orders calling for the entire records pertaining to Orders Dated 03.09.2020 in case No.A2/1203/2019 passed by the Respondent No.3 and consequently set aside the Orders Dated 03.09.2020 in case No.A2/1203/2019 passed by the Respondent No.3 which is consequent to the Orders Dated 20.09.2019 in Proceeding Nos.B/1046/2019 passed by the Respondent No.4 and pass such other and further order or orders as are deemed fit and proper in the circumstances of the case and in the interest of justice."

2. Heard Sri Vedula Srinivas, learned senior counsel representing Sri G. Rajeshwar Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Revenue for respondents 1 to 4 and Sri Deepak Bhattacharya, learned senior counsel representing Sri S. Lakshmikanth, learned counsel for respondent No.5.

3. By the orders of the Revenue Divisional Officer dated 03.09.2020, impugned herein, the Revenue Divisional Officer sets aside the orders of the Tahsildar issues on 19.11.1997 granting assignment patta to Balaiah and also issuing pattadar passbook.

4. Dwelling into the facts of the case gives an interesting reading on how the litigation can be orchestrated. While the revenue records reflect the name of Balaiah, respondent No.5 makes an innocuous application on 10.07.2019 in physical form requesting the Tahsildar to grant pattadar passbook on land to an

extent of Acs.25.05 guntas in Survey Nos.173 and 174 of Kowkoor Village, Malkajgiri Mandal. This innocuous request resulted in lengthy order by the Tahsildar on 20.09.2019 dwelling into the manner in which patta was granted to Balaiah. Though the Tahsildar ultimately rejected the request of Sri P. Prathap, but observes that patta was erroneously granted and again holds that since such mutation exercise was undertaken by the Tahsildar, he has no power to review. This observation of the Tahsildar provoked respondent No.5 to prefer appeal under Section 5 (5) of the Telangana Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'the Act, 1997'). It is apt to note that this appeal was against the decision of the Tahsildar, dated 20.09.2019. The Revenue Divisional Officer entertained the appeal and passed the order, impugned in the writ petition.

5. By this order, the Revenue Divisional Officer held as under:

> "… On verification of the orders of the Tahsildar, Alwal, in file Nos.B/1046/2019, dated 20.06.2019, the Tahsildar, Alwal Mandal, has observed that late P. Balaiah, S/o. Mankaiah has filed claim petition in Form No.10, in respect of land in Survey No.173 (Ac.0-22½ gts.), Sy.No.174 (Ac.0-03 gts.) situated at Kowkoor Village, Alawal Mandal, Medchal – Malkajgiri District, basing on the sale agreement dated 22.02.1984 and issued Notice in Form-11 U/s. 22 (3) of ROR Act vide Reference No.ROR/3225/89 dated 06.02.1989, calling for claims and objections if any. That the legal heirs of late P. Muttaiah, in their joint statement on 25.02.1992, have stated that they have not sold the said land in favour of P. Balaiah. That the unregistered sale deed executed (written) on stamp papers were different and not reliable. That for regularization, stamp duty/registration fee to be collected and to pass orders required U/s.5(A) (4) of ROR Act, but no orders were passed. The objection petitioner

> has not filed any amendment orders issued by the competent authority. But, the name of P. Balaiah, S/o. Mankaiah was recorded in the Pahanies for the years from 1992-93 to 1996-97. Accordingly, vide proceedings No.B/1046/2019 dated 20.09.2019, the Tahsildar, Alwal Mandal, held that the name of P. Balaiah and P.B. Sudarshan Rao were already appearing in the pahanies, that the Tahsildar is not competent for issue of pattadar passbooks afresh in the name of the applicant P. Muthaiah and rejected their application to file an appeal before the competent authority.
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> It is observed that the name of P. Balaiah was entered in the pahanies from the years 1992 unauthorizedly without any valid orders of the competent authority, in respect of Ac.0-22.05 gts., in Sy.No.173 and Ac.0-03 gts., in Sy.No.174 situated at Kowkoor village, Alawal Mandal, and basing on the unauthorized entries, succession has also been sanctioned in favour of Sri P.B. Sudarshan Rao, S/o. Balaiah, the said entries and the succession orders No.ROR/Kowkur village/8/1996 dated 19.11.1997 and the E. Pattadar passbooks were issued vide Khatha No.48 of Kowkoor Village are hereby set aside and the matter is remanded back to the Tahsildar, Alwal Mandal for fresh enquiry and conducting hearing duly issuing notices to both the parties providing fair opportunity to both the parties and to pass appropriate reasoned orders"

6. As noted above, initial request of respondent No.5 was to issue a pattadar passbook which was rejected by the Tahsildar. In the appeal, against the decision, the appellate authority goes deep into the issue as to how the name of Balaiah was mutated in the revenue records, holds that it was illegally mutated and sets aside the mutation granted to Balaiah on 19.11.1997 and cancels the pattadar passbook issued in favour of his son P.B. Sudershan Rao.

7. Against the decision of the Tahsildar, remedy of appeal was provided in Section 5 (5) of the Act, 1971. Such appeal has to be preferred within 60 days. It is appropriate to note that the proceeding of the Tahsildar dated 19.11.1997 granting assignment to Balaiah was not challenged in the form of appeal or revision leave alone delay in preferring the appeal. The above order of the Revenue Divisional Officer is in the appeal preferred against the order of the Tahsildar dated 20.09.2019. Therefore, the appellate authority could not have looked into the validity of the order of 1997 and set aside the order. It is without jurisdiction and competency of the Revenue Divisional Officer. Since 1997 order of the Tahsildar was not under challenge in the said appeal and he is not competent to entertain the appeal preferred after 60 days from the date of decision of the original authority, the order is wholly unsustainable and the same is accordingly set aside. However, it is open to the parties to work out their remedies as available in law on the *inter se* dispute.

8. The writ petition is accordingly allowed. Miscellaneous petitions, if any, pending, stand closed.

P.NAVEEN RAO, J

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