

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.11625 OF 2009

% Dated 16.02.2024

Sannepalli Nageswer Rao S/o.Satyanarayana,
Aged: 57 years, Occ: Agriculture,
R/o.Gumpena (V), Chandrugonda Mandal,
Khammam District and another

...Petitioners

VERSUS

\$ The State of A.P., rep. by Prl. Secretary,
Revenue Department, Secretariat,
Hyderabad and three others

... Respondents

! Counsel for Petitioners : Mr.Hari Sreedhar

^ Counsel for Respondents :

< GIST:

> HEAD NOTE:

? CITATIONS:

1. AIR 1964 SC 358
2. 2010 (1) ALD SC 1
3. 2014 (1) ALD 406

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**WRIT PETITION No.11625 of 2009****ORDER:**

This writ petition is filed seeking the following relief:

“ ... to issue such appropriate writ, order or direction to the respondents more so particularly one in the nature of Mandamus declaring the order of the second respondent in Rc.No.E3/1135/2009 dated 27.05.2009 and the proceeding of the 3rd respondent in Rc.No.B/849/98 dated 27.05.2009 and the consequential entries in Pahani for the year 2008-09 made in favour of the 4th respondent in the occupation column in respect of the land admeasuring Ac.6.39 gts. out of Sy.No.394/AA of Gumpena Revenue Village, Chandrugonda Mandal, Khammam District as arbitrary, illegal and without jurisdiction and in violation of principles of natural justice and consequently set aside the same ...”

2. Brief facts of the case:

2.1. The claim of the petitioners is that petitioner No.1 is the pattadar and possessor of the agricultural land to an extent of Ac.6.21 gts., and petitioner No.2, who is none other than the son of petitioner No.1, is the pattadar and possessor of agricultural land to an extent of Ac.4.20 gts. in Sy.No.394/AA, apart from other lands , situated at Gumpena Village of Chandrugonda Mandal, Khammam District. Petitioner No.1 purchased the said lands under registered sale deeds in the year 1962 and 1967 respectively from its owners and the same were validated by respondent No.3 under Section 5-A of the A.P. Rights in Lands and Pattadar Pass Books Act, 1971 (for short, ‘the

Act) and mutated their names in the revenue records as pattadars and possessors.

2.2. Respondent No.4 submitted a representation alleging that he got land to an extent of Ac.7.20 gts. in Sy.No.394/AA of Gumpena Village and that some of the revenue officials tampered the 16th column of the pahanies and entered some other persons names as an occupant. Basing on the said representation, respondent No.2 directed the Revenue Divisional Officer, Kothagudem, (RDO) to take up the said representation as ROR Appeal and enquire. The RDO initiated the proceedings exercising the powers conferred under Section 5(5) of the Act, suspending the pattadar pass books and title deeds issued in favour of the petitioners dated 22.08.1998. Thereafter, RDO passed another order dated 29.10.1998 basing on the alleged enjoyment survey report of respondent No.3 by withdrawing the earlier order dated 22.08.1998. Thereafter, RDO once again passed another order dated 30.01.1999 withdrawing the earlier order dated 29.10.1998 and restored the order dated 22.08.1998 without issuing any notice to the petitioners.

2.3. Questioning the above said three orders passed by the RDO, petitioners have filed W.P.No.3405 of 2002 and the same was disposed of on 21.02.2002 directing the RDO to conduct enquiry and

pass appropriate orders in accordance with law within a period of three months. Aggrieved by the same, the petitioners filed W.A.No.728 of 2002 and the same was allowed on 17.06.2002 holding that the RDO had exceeded the jurisdiction and acted contrary to the provisions of ROR Act and directed respondent No.4 herein to approach respondent No.3 immediately by filing a fresh and comprehensive application and respondent No.3 shall receive the said application and after giving notice to the petitioners, shall dispose of the same, in accordance with law, after affording opportunity to both parties. In spite of the same, respondent No.4 had not approached respondent No.3 and not filed application, as directed by this Court in the above said writ appeal.

2.4. However, respondent No.3 himself had issued notice to both the parties to appear and make their claim and adduce evidence. Accordingly, both the parties appeared and produced documents and respondent No.3 finally passed an order dated 12.07.2003 directing respondent No.4 to file a suit for declaration of his rights under Chapter VI of the Specific Relief Act in civil Court having jurisdiction and the above said order has become final.

2.5. When respondent No.4 and others are trying to interfere with the possession, the petitioners filed suit in O.S.No.750 of 2007 on the

file of the Principal Junior Civil Judge at Kothagudem, for seeking perpetual injunction and the said Court has granted *ad interim* injunction against respondent No.4 and another till 30.11.2007 and the said order was made absolute on 12.06.2008. On 27.09.2013, the said suit was returned for presentation before Agency Court, in view of the principle laid down by the Hon'ble Supreme Court in Nagarjuna Grameena Bank case reported in 2013 (11) SCC 362, stating that the civil Court established under TS Civil Courts Act, 1971 cannot exercise jurisdiction over Agency Areas and the provisions of Civil Court Act are not brought into force in Agency Areas.

2.6. While things stood thus, once again respondent No.4 approached respondent No.2 and gave a representation on 19.05.2009 stating that though he is in actual possession and enjoyment of the land to an extent of Ac.7.20 gts. in Sy.No.394/AA, his name has not been recorded in the revenue records i.e., Pahani. Basing on the said representation, respondent No.2, without issuing notice to the petitioners, whose names were recorded as pattadaras and possessors and to whom pattadar pass books and title deeds were issued, requested the Assistant Director, Survey and Land Records, Khammam, to conduct survey and to identify the survey number under the possession of respondent No.4 and to suggest the

course of action to get his name recorded in the revenue records. Thereafter, respondent No.2 passed impugned order dated 27.05.2009 basing on the alleged survey report of the Assistant Director, Survey and Land Records, Khammam, directing respondent No.3 to record the name of respondent No.4 to an extent of Ac.6.39 gts. in Sy.No.394/AA and on the very same day, respondent No.3 implemented the above said order incorporating the name of respondent No.4 and submitted compliance report. Questioning the above said proceedings issued by respondent No.2 dated 27.05.2009 and the consequential proceedings issued by respondent No.3 dated 27.05.2009 as well as consequential entries in pahani for the year 2008-09 made in favour of respondent No.4, the petitioners filed the present writ petition.

3. Heard Sri Hari Sreedhar, learned counsel for the petitioners, and Sri R.R.Kalyan, learned counsel appearing on behalf of respondent No.4 as well as learned Assistant Government Pleader for Revenue appearing on behalf of respondent Nos.1 to 3.

4. Learned counsel for the petitioners vehemently contended that basing upon the application submitted by respondent No.4 dated 19.05.2009, respondent No.2, without giving notice and opportunity to the petitioners, straight away passed the impugned order dated

27.05.2009 solely basing upon the alleged report submitted by the Assistant Director, Survey and Land Records, Khammam, dated 21.05.2009, and directed respondent No.3 to incorporate the name of respondent No.4 in the revenue records. Respondent No.3 also without issuing any notice on the very same day implemented the orders passed by respondent No.2. Hence, the order passed by respondent No.2 and the consequential order passed by respondent No.3 are clear violation of principles of natural justice and contrary to law.

4.1. He further contended that respondent No.4 has not filed revision, as required under the provisions of Section 9 of the ROR Act and Rules 23 of the Andhra Pradesh Rights in Land and Pattadar Pass Book Rules, 1989 (for short, 'the Rules). As per sub-rule 1 Rule 23 of the Rules, every revision shall be in writing and set forth concisely the grounds thereof and shall be accompanied by a copy of the order or proceedings against which revision is sought. Whereas, respondent No.4 without filing revision as required under Rule 23 (1) of the Rules, simply submitted application before respondent No.2 and the same was treated as a revision and passed the impugned order on 27.05.2009, which is contrary to Section 9 as well as Rule 23 of the Rules.

4.2. He also contended that earlier proceedings issued by the then RDO, Kothagudem, was set aside by the Division Bench of this Court in W.A.No.728 of 2002 dated 17.06.2002 and further directed respondent No.4 to approach respondent No.3 and file comprehensive application. However, respondent No.4 has not filed any such application, on the other hand, respondent No.3 himself had issued a notice to the petitioners as well as respondent No.4 and after considering the explanation submitted by both the parties, respondent No.3 passed order dated 12.07.2003 directing respondent No.4 to approach the competent Ckivil Court invoking the provisions of Chapter-VI of the Specific Relief Act and the said order has become final. Respondent No.4 without approaching the competent civil Court filed representation before respondent No.2 dated 19.05.2009 and the said representation was treated as revision and passed the impugned order dated 27.05.2009 and the same is contrary to the orders passed in W.A.No.728 of 2022 dated 17.06.2002.

4.3. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in **State of Uttar Pradesh v. Singhara Singh and others**¹.

5. *Per contra*, learned counsel for respondent No.4 contended that

¹ AIR 1964 SC 358

respondent No.4 had submitted an application dated 19.05.2009 to respondent No.2 specifically stating that his name has not been recorded in the revenue records i.e., in the pahani for the year 2008-09, though he is in actual possession of the land to an extent of Ac.7.20 gts. in Sy.No.394/AA situated at Gumpena Village and requested him to take necessary action. Pursuant to the said application, respondent No.2 directed the Assistant Director, Survey and Land Records, Khammam, to conduct survey and submit a report. Accordingly, he conducted survey after issuing notice to both parties. In the said survey, the petitioners have submitted objections and also stated that they have not having any objection for conducting survey of the subject land. After conducting survey, he submitted a report dated 21.05.2009. After due verification of the records, respondent No.2 passed the impugned order dated 27.05.2009 and the petitioners are estopped to contend that respondent No.2 has passed the impugned order behind their back.

5.1. He further contended that as per Section 9 of the ROR Act, respondent No.2 is having jurisdiction to entertain revision petition either *suo moto* or basing on the application. Admittedly, respondent No.2 has initiated the proceedings basing upon the application submitted by respondent No.4 and rightly passed the impugned order

and respondent No.3 rightly implemented the orders passed by respondent No.2 and there is no illegality or irregularity in the said orders and the petitioners are not entitled any relief much less the relief sought in the writ petition.

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, the following points arise for consideration:

- (i) Whether the impugned order passed by respondent No.2 dated 27.05.2009 treating the application of respondent No.4 dated 19.05.2009 as a revision under Section 9 of the ROR Act is permissible under law?
- (ii) Whether the petitioners are entitled the relief as sought in the writ petition?

POINT NOS.(i) and (ii):

7. Admittedly, the petitioners are claiming rights over the property to an extent of Ac.11.01 gts. including the property claimed by respondent No.4 to an extent of Ac.7.20 gts., in Sy.No.394/AA basin upon the unregistered sale deeds of 1962 and 1967 and the same were validated as per the provisions of Section 5-A of the Act and pattadar pass books and title deeds were issued in the year 1994. The records disclose that in earlier round of litigation, respondent No.4 filed application before the Revenue Divisional Officer,

Kothagudam, for suspension/cancellation of pattadar pass books and title deeds issued in favour of the petitioners to an extent of Ac.7.20 gts., in Sy.No.394/AA. Basing on the said application, the RDO has exercised the powers conferred under Section 5(5) of the Act and had passed order dated 22.08.1998 suspended the pattadar pass books issued in favour of the petitioners. Thereafter, the RDO once again passed order dated 29.10.1998 modifying the earlier order dated 22.08.1998. Subsequently, once again RDO had passed another order dated 30.01.1999 withdrawing the earlier order dated 29.10.1998, confirming the order dated 22.08.1998.

8. Questioning the above said three (3) orders, the petitioners have filed W.P.No.3405 of 2002 and the same was disposed of at the stage of admission directing the petitioner to approach the RDO and raise all the grounds on the ground that RDO only temporarily suspended the pattadar pass book and title deed of the petitioners, by its order dated 21.02.2002. Aggrieved by the same, the petitioners filed W.A.No.728 of 2002 and the same was allowed and set aside the orders of learned Single Judge dated 21.02.2002 as well as the orders of RDO holding that the RDO has exceeded his jurisdiction and passed the order exercising the powers conferred under Section 5(5) of the Act and further directed respondent No.4 to submit

comprehensive application before respondent No.3 and on such application, respondent No.3 is directed to dispose of the same, in accordance with law, after giving opportunity to both parties, by its order dated 17.06.2002 and the said order has become final.

9. It further reveals from the records that pursuant to the said order, respondent No.4 has not submitted any application before respondent No.3, on the other hand, respondent No.3 issued a notice and directed the parties to submit their objections, after considering the objections of both the parties, respondent No.3 had passed order vide proceedings Rc.No.B/849/1998, dated 12.07.2003, directing respondent No.4 to approach the competent Civil Court under Chapter-VI of the Specific Relief Act for seeking declaration of the rights in respect of the subject property. Respondent No.4 has not questioned the above said order nor approached the competent Civil Court and the same has become final.

10. It further reveals from the record that respondent No.4 approached respondent No.2 and submitted an application, dated 19.05.2009, requesting to rectify the revenue records i.e., Pahani, on the ground that though he is in actual possession of land to an extent of Ac.7.20 gts., some other persons names were entered in the revenue records. Basing on the said application, respondent No.2

issued directions to the Assistant Director, Survey and Land Records, Khammam, to conduct survey and submit report. Pursuant to the same, the Assistant Director, Survey and Land Records, Khammam, submitted a report on 21.05.2009. Pursuant to the said report, respondent No.2 without giving notice and opportunity to the petitioners and without furnishing copy of the report, passed the impugned order directing respondent No.3 to include the name of respondent No.4 in the revenue records to an extent of Ac.6.39 gts. in Sy.No.394/AA situated at Gumpena Village and the said order of respondent No.2 was implemented by respondent No.3 on the very same day i.e., on 27.05.2009 and submitted the compliance report to respondent No.2. It is very much relevant to place on record that neither respondent No.2 or respondent No.3 has issued notice before passing the impugned orders dated 27.05.2009 and the same is clear violation of the principles of natural justice and contrary to law as well as contrary to the orders passed in W.A.No.728 of 2022 dated 17.06.2002.

11. It is also relevant to place on record that in **Allwyn Housing Colony Welfare Association v. Government of Andhra Pradesh and others**², the Hon'ble Apex Court held that no order adverse to a party

² 2010 (1) ALD SC 1

should be passed without hearing them.

12. It is also relevant to extract the provision of Section 9 of the Act and Rule 23 (1) of the Rules, which reads as follows:

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 the 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.

R.23(1): Every revision shall be in writing and set forth concisely the grounds thereof and shall be accompanied by a copy of the order or proceeding against which revision is sought. The revision petition shall bear a Court-fee stamp of rupees five only.

13. In the case on hand, the petitioner has not questioned order passed by respondent No.3 and not filed statutory revision under Section 9 of the Act, as per the provision of Rule 23(1) of the Rules, on

the other hand, he simply filed an application dated 19.05.2009 before respondent No.2 and the same was treated as revision under Section 9 of the Act and passed the impugned order and the same is contrary to the provisions of Section 9 of the Act as well as Rules.

14. In **Singhara Singh** (*supra*), the Hon'ble Apex Court held at *para* 8 that if a statute has conferred a power to do an act in particular method and procedure that power has to be exercised in accordance with the statute only, it accessorially prohibits doing of the act in any other manner than prescribed, which reads as follows:

“The rule adopted in Taylor v. Taylor([1875] 1 Ch.D.426, 431) is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on magistrates the power to record

statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him.”

15. It is very much relevant to place on record that in **J. Krishnamachari v. State Government of Andhra Pradesh and others**³, this Court while considering the various judgments specifically held that Revenue Divisional Officer has no power to treat the application as appeal under Section 5(5) of the Act and pass order and further held that respondent No.2 therein has committed a serious procedural illegality and jurisdictional error in treating the report of respondent No.3 as appeal.

16. It is already observed '*supra*' that in the case on hand, respondent No.2 treated the application submitted by respondent No.4 as Revision under Section 9 of the Act and passed the impugned order dated 27.05.2009 and the same is contrary to the provisions of the Act and Rules and also Law.

17. For the foregoing reasons, the impugned order passed by respondent No.2, *vide* Rc.No.E3/1135/2009, dated 27.05.2009 and consequential proceedings issued by respondent No.3 *vide* Rc.No.B/849/98, dated 27.05.2009, are liable to be set aside and

³ 2014 (1) ALD 406,

accordingly set aside. Point Nos.(i) and (ii) are answered, accordingly.

18. In the result, the writ petition is allowed without costs. However, it is left open to respondent No.4 to take appropriate steps to ascertain his claim over the subject property by approaching a competent Civil Court, if so he is aggrieved.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

J. SREENIVAS RAO, J

Date:16.02.2024

L.R. Copy to be marked - Yes.

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