

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.11661 of 2012

Sri Chandra Mohan S/o Late Sri.Ram
Prathap, Aged about 34 years,
Occ:Business, R/o H.No.4-7-1,
Kasabgally and Vinayaknagar and
other.

....Petitioner

VERSUS

The Revenue Divisional Officer,
Nizamabad District and four others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 13.02.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

J. SREENIVAS RAO, J

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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... Respondents

! Counsel for Petitioners : Sri D.Madhava Rao, Adv

^ Counsel for Respondent Nos.1 to 3 : G.P for Revenue,
Sri Ghanshyamdas
Mandhani,
Sri V. Rohith.

< GIST:

> HEAD NOTE:

? CITATIONS:

1. AIR 2008 AP 15
2. 2002 4 ALD 497 (DB)
3. 2009 1 ALD 248
4. 2014 2 ALD 246
5. 1976 3 SCC 215
6. 2014 1 ALD 406

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.11661 of 2012****ORDER:**

This writ petition is filed seeking following relief:

“...to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent No.2 in considering the appeal as illegal, arbitrary and against the principles of natural justice and consequently set aside the order dated 17.03.2012 passed by the respondent No.2 in case No.D2/104/2011..”

2. Brief facts of the case:

2.1 The claim of the petitioners is that the petitioners along with others inherited agricultural lands in Survey Nos.2852 and 2854 situated at Nizamabad to an extent of Acs.2.1 guntas and Acs.1.11 guntas respectively to the total extent of Acs.3.12 guntas. The said lands were owned and possessed by Sri Katike Mohinuddin, S/o Laxmanji as per the revenue records and Khasra Pahani for 1954-55. Katike Mohinuddin died in the year 1962 leaving behind his two sons namely Miryalkar Bada Sab @ Bajrang and Miryalkar Ramji and both expired in the years 1974 and 1986 respectively leaving behind their children and grandchildren. The original owner and

pattadar had four brothers namely Miryalkar Khaloji, Miryalkar Gangoji, Miryalkar Laxmanji and Miryalkar Kishanji all sons of Laxmanji.

2.2 It is further submitted that the above said land is recorded in revenue records in the name of Katike Mohinuddin as owner and pattadar, however in the year 2004, the said land got mutated in favour of Miryalkar Kishanji S/o Laxmanji, who is one of the brothers of Katike Mohinuddin. The application of mutation under ROR was filed and the same was effected and pattadar pass books and title deeds were issued to Miryalkar Kishanji without issuing any notice to the petitioners who are the legal heirs and without conducting any enquiry.

2.3 The petitioners immediately after knowing that mutation was sanctioned in the year 2004 in favour of Miryalkar Kishanji, approached respondent No.1 and submitted application on 19.12.2009 requesting to conduct enquiry about mutation of Acs.3.28 guntas in the name of unofficial respondents and take appropriate steps for deletion of the revenue entries and also for cancellation of the pattadar pass books and title deeds and take

appropriate action with regard to mutation of the unofficial respondents' names in the revenue records in respect of Acs.3.12 guntas in Survey No.2852 and 2854 and cancel the title deeds and pattadar pass books issued in favour of the unofficial respondents. Basing on the said representation, respondent No.1 directed respondent No.3 to conduct enquiry and submit report. Pursuant to the same, respondent No.3 after conducting enquiry submitted detailed enquiry report *vide* Proc.No.A5/72816/2009 dated 29.12.2009 for cancelling the revenue mutation in favour of the unofficial respondents. Taking into consideration of the above said report, respondent No.1 after issuing notice to the petitioners as well as respondent Nos.4 and 5 and after conducting detailed enquiry and after hearing both the parties passed order on 21.12.2010 *vide* Case No.A3/269/2010 by setting aside the mutation proceedings issued by respondent No.3 *vide* No.ROR/NZB-III/24/2004 dated 18.12.2004 and remitted the matter to respondent No.3 to pass appropriate orders, after giving notice and opportunity to both the parties.

2.4. Aggrieved by the said order, unofficial respondent No.5 filed revision petition before respondent No.2 and the revisional authority without verifying the records allowed the revision on 17.03.2012 *vide* Case No.D2/104/2011 and passed cryptic order without giving any reasons and aggrieved by the above said order, the petitioners filed this present writ petition.

3. Heard Sri D.Raghavendra Rao, learned counsel representing Sri D.Madhava Rao, learned counsel for the petitioners and learned Assistant Government Pleader for Revenue for respondent Nos.1 to 3, Sri Ghanshyamdas Mandhani, learned counsel, representing Sri Bankatlal Mandhani, appearing for respondent No.4 and Sri V.Ravi Kiran Rao, learned Senior Counsel representing Sri V.Rohith, learned counsel for respondent No.5.

4. Learned counsel for the petitioner vehemently contended that respondent No.3 without issuing any notice and without conducting any enquiry mutated the names of the unofficial respondents in the revenue records and issued proceedings dated 18.12.2004 in respect of subject property and the same is clear violation

of the provisions of Section 3 of A.P. Rights in land and Pattadar Pass Books Act, 1971 and also Rules made there under('for brevity' Act). As soon as the petitioners came to know about the illegal entries made in the revenue records, they have approached respondent No.1 and submitted representation on 19.12.2009 requesting to conduct enquiry and take appropriate steps. Pursuant to the same, respondent No.1 directed respondent No.3 to conduct enquiry and submit report. Respondent No.3 after conducting detailed enquiry submitted report on 29.12.2009. Thereafter, respondent No.1 initiated the proceedings, exercising the powers conferred under section 5(5) of Act, after giving opportunity to both the parties, conducting enquiry and after due verification and considering the documentary evidence on record, passed order by setting aside the mutation proceedings issued by respondent No.3 dated 18.12.2004 and remitted the matter to respondent No.3 to pass appropriate orders, after giving opportunity to both the parties. In the said order, respondent No.1 specifically held that Mandal Revenue Officer, Nizamabad issued mutation proceedings dated 18.12.2004, without following mandatory procedure

prescribed under the provisions of the Act, 1971 and Rules made thereunder.

4.1 Aggrieved by the said order, respondent No.4 filed revision petition before respondent No.2 and the revisional authority without considering the contentions raised by the petitioners herein and also without verifying records allowed the revision petition and passed the cryptic order without giving any reasons and the same is not permitted under law.

4.2. Learned counsel further contended that the unofficial respondents are disputing the title over the property. Neither the revenue authorities nor this Court is having jurisdiction to decide the title over the property under ROR proceedings. He also contended that the only grievance of the petitioners in this writ petition as well as before the respondent authorities is that the then Mandal Revenue Officer without following the due procedure as contemplated under the provisions of the Act and Rules made thereunder issued mutation proceedings dated 18.12.2024.

4.3. In support of his contention he relied upon the Judgment in ***Chinnam Pandurangam Vs. The Mandal Revenue Officer, Serilingampally Mandal and Ors***¹.

5. *Per contra* Sri V.Ravi Kiran Rao, learned Senior Counsel vehemently contended that petitioners are not having any right, interest and title over the subject property. He further contended that in respect of very same property and other property, respondent Nos.5 filed a suit O.S.No.52 of 2002 on the file of VIII Additional District Judge, Nizamabad, against his father and others seeking partition of the Suit Schedule property. In the said suit, petitioner No.2 himself was examined as PW-3 and in his deposition, he specifically stated that a partition had taken place between respondent No.5 and his father and his brothers and in the said partition, property to an extent of Acs.6.00 situated at Arsapally, Nizamabad, was allotted to the share of respondent No.5. The said document was also placed before respondent No.1. In spite of the same, respondent No.1 without giving any reasons, simply set aside the mutation proceedings issued by respondent No.3, dated 18.12.2004.

5.1. He further contended that petitioners have not filed statutory appeal as required under Section 5(5) of the Act and they have simply submitted a representation dated 19.12.2009 before respondent No.1 and he is not having any authority or jurisdiction to treat the said application as appeal under Section 5(5) of the Act. He also contended that as per the provisions of the Section 5(5) of the Act, aggrieved party has to file appeal within a period of 60 days from the date of receipt of a copy of the order under prescribed procedure as mentioned in Rule 21 of the Rules. In spite of the same, respondent No.1 treated the application submitted by the petitioners dated 19.12.2009 as appeal and passed order dated 21.12.2010 and same is excess of jurisdiction.

5.2. In support of his contention he relied upon the following judgments:

1. Sannepalli Nageswar Rao and another Vs. District Collector, Khammam and others²,

2. Thripuravaram Krishna Reddy v. Joint Collector³,

¹ AIR 2008 AP 15

3. Peddi Sailaja and another Vs. State and others⁴

6. Sri Ghanshyam Das Mandhani, learned counsel appearing for respondent No.4 also submits that petitioner No.2 himself was examined as PW3 in O.S.No.52 of 2002 and he specifically deposed that a partition has taken place between respondent No.5 and his father and his brothers and in the said partition, property to an extent of Acs.6.00 was allotted to the share of respondent No.5 and the same is binding upon him. He further contended that subsequent to passing of the order by respondent No.1 dated 21.12.2010 petitioner sold away the subject land to an extent of Acs.2.17 guntas, through registered sale deed *vide* document No.412 of 2011, dated 10.01.2011, to one Shaik Zameel and the said Shaik Zameel filed O.S.No.27 of 2011 on the file of Senior Civil Judge, Nizamabad and the same was dismissed after full fledged trial. He further submits that the petitioner No.2 did not enter into witness box in the said suit. Aggrieved by the said judgment and decree, Zameel filed appeal and the same is pending. He also contended that respondent

² 2002 4 ALD 497 (DB)

³ 2009 (1) ALD 248

⁴ 2014 (2) ALD 246

No.2 after considering the contentions of both the parties and after verification of entire records, rightly passed the impugned order and there is no illegality or irregularity in the said order and the petitioner is not entitled any relief much less the relief sought in this writ petition.

6.1. In support of his contention he relied upon the judgment of ***Prakash Chand Sharma and others Vs. Narendra Nath Sharma***⁵.

7. Learned Assistant Government Pleader submits that respondent No.2 rightly passed the impugned order exercising the powers conferred under Section 9 of the Act.

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

- i. Whether the order dated 21.12.2010, passed by respondent No.1(Revenue Divisional Officer) is within the purview of Section 5(5) of the Act and Rule 21 of the Rules and whether he is having authority or jurisdiction to treat the application filed by the petitioner No.1 as appeal under RoR Act?

⁵ 1976 3 SCC 215

ii. Whether the impugned order dated 17.03.2010 passed by respondent No.2 is in accordance with law?

iii. Whether the petitioners are entitled for the relief sought in the writ petition? If so what relief?

Point Nos: i to iii

8.1. As per the records, it reveals that the petitioners are claiming the rights over the subject property through Katike Mohinuddin, whereas the unofficial respondents are claiming rights over the property through Kishanji. During the lifetime of Kishanji, Mandal Revenue Officer Nizamabad issued mutation proceedings *vide* dated 18.12.2004 and also issued pattadar pass books and title deeds in his favour, after his death, respondent Nos.4 and 5 who are sons of Kishanji succeeded the said property. The grievance of the petitioners is that the then Mandal Revenue Officer, Nizamabad without following mandatory procedure prescribed under the Act and Rules mutated the name of Kishanji in the revenue records and issued mutation proceedings dated 18.12.2004. Admittedly, the petitioners have not questioned the above said proceedings before any Court of law nor filed appeal before

respondent No.1 as per the Section 5(5) of the Act and Rule 21 of the Rules and the same has become final.

8.2. It further reveals from the records that petitioner No.1 had submitted representation on 19.12.2009 before respondent No.1 to conduct enquiry and cancel the pattadar pass books and title deeds issued in the name of Kishanji in respect of land to an extent of Acs.3.28 guntas in Survey No.2852 and 2854. Basing on the said representation, respondent No.1 directed respondent No.3 to submit the report. Accordingly, he submitted report on 29.12.2009. Pursuant to the said report, respondent No.1 passed the impugned order on 21.12.2010, exercising the powers conferred under Section 5(5) of the Act, setting aside the mutation proceedings issued by the then Tahsildar, dated 18.12.2004 and remitted the matter for fresh consideration to respondent No.3. It is very much relevant to place on record that petitioners have not filed statutory appeal questioning the proceedings dated 18.12.2004 issued by respondent No.3 as per the procedure prescribed under Section 5(5) of the Act and Rule 21 of the Rules and respondent No.1 is not having authority or jurisdiction to treat the application dated

19.12.2009 filed by the petitioner No.1 as an appeal under Section 5(5) of the Act and Rule 21 of the Rules.

9. The judgment relied upon by the learned counsel for the petitioners in **Chinnam Pandurangam supra** is not applicable to the facts and circumstances of the case on the sole ground that the petitioner.No.1 filed application before respondent No.1 to conduct enquiry and for cancellation of the pattadar pass books issued in respect of subject property and also issue title deeds in their favour. The said application was treated as an appeal under section 5(5) of the Act and respondent No.1 passed the impugned order dated 21.12.2010.

10. The judgment relied upon by the learned counsel for respondent No.4 in **Prakash Chand Sharma and others supra** wherein it is stated that admission made by the parties under the provisions of Section 17 and 124 of Indian Evidence Act, 1872 is binding. This Court is not deciding the title over the property between the petitioners and unofficial respondents and scope of writ petition is very limited to decide whether the impugned order passed by respondent no.2 exercising powers under section 9 of

the Act is accordance with law or not, while exercising the powers conferred under Article 226 of Constitution of India.

11. In **Sannepalli Nageswar Rao and another Vs. District Collector, Khammam and others**, this Court held that:

9. It is fairly well settled that where a statute prescribes a particular thing to be in a particular manner, it shall be done only in the manner prescribed as held by the Hon'ble Supreme Court in Asst. Collector, CE v. N.T. Co., of India Limited, (1972) 2 SCC 560 : AIR 1972 SC 2563, which was followed in CIT v. Anjum M.H. Ghaswala, (2002) 1 SCC 633. A careful perusal of the provisions of the Act would show that a detailed procedure as to the manner in which the appeals are to be filed, including the period of limitation, is prescribed under the Act. Therefore, as rightly contended by the learned Counsel for the appellants that any appeal filed in violation of the said procedure cannot be entertained. In the instant case, the Revenue Divisional Officer has exceeded his jurisdiction and has acted in violation of the provisions of the Act and therefore the appellants/writ petitioners have rightly approached this Court. This apart, the allegations made by the fourth respondent do not constitute a ground for filing an appeal under Section 5(5) of the Act. If the fourth respondent is aggrieved by any entry, the only remedy available is under Section 8(2) of the Act under which he has to seek a declaration of his right under Chapter VI of the Special Relief Act, 1963 in Civil Court and the entry in record of rights shall be amended in accordance with any such declaration. In the instant case, both the parties allege that they are in possession of the respective extents of land in

Sy. No. 394/AA. The appellants contend that they are in possession of Ac. 6.21 guntas and Ac. 4.20 guntas out of Survey No. 394/AA respectively situated at Gumpena village, whereas fourth respondent contends that he is in possession of part of extent of land in the said survey number. Under such circumstances, it is left to both parties to approach the Civil Court for redressal of their grievance. But, in the instant case, it is submitted by the learned Counsel for the fourth respondent that there is tampering of records and therefore, in our opinion, the remedy would be to approach the Mandal Revenue Officer for amendment and updating of record of rights. Section 5(5) provides that against every order of recording authority either in making amendment in record of rights or refusing to make such amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed within sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall be subject to provisions of Section 9 be final. Therefore, it is proper for the fourth respondent, who is now complaining that there is tampering of records, to approach the Mandal Revenue Officer under Section 5 of the Act, who shall determine as to whether and if so in what manner the record of rights may be amended in consequence thereof and shall carry out the amendment in the record of rights in accordance with such determination. At the time of hearing, all the parties fairly concede that the Mandal Revenue Officer has the jurisdiction to carry out the amendment as per the provisions of the Act and therefore all of them are ready and willing to submit to the jurisdiction of Mandal Revenue Officer, instead of approaching the Revenue Divisional Officer, who is an appellate authority.

12. In ***Thripuravaram Krishna Reddy v. Joint Collector***, this Court held that:

4. The learned Counsel for the petitioner contended and in my view rightly, that

respondent No. 2 has no jurisdiction to pass order dated 16.3.1999. Under Section 5(5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act"), respondent No. 2 is empowered to entertain an appeal filed within a period of sixty days from the date of communication of the order passed by respondent No. 3 under Section 5(3) of the Act correcting the entries in the revenue record. In N. Bal Reddy v. Revenue Divisional Officer, Hyderabad, 2004 (2) ALD 419, this Court, however, interpreted Section 5(5) to the effect that an order granting pattadar passbooks and title deeds is also comprehended by the said provision. On such an interpretation, if respondent No. 2 is held to have the jurisdiction to entertain an appeal even against an order issuing pattadar passbooks and title deeds, respondent No. 4 failed to file an appeal against the said order in the form of an appeal and within the period of limitation. In this context, it is necessary to refer to Rule 21 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989, which reads as under:

"21. (1) An appeal against every order of the Mandal Revenue Officer either making an amendment in the Record of Rights or refusing to make such amendment shall lie under sub-section (5) of Section 5 of the Act, to the Revenue Divisional Officer/Sub-Collector/Assistant Collector or such authority as may be notified by the Commissioner.

(2) Every appeal referred to in sub-rule (1) shall be in writing and shall set forth concisely the grounds thereof within a period of sixty days from the date of communication of the order and shall be accompanied by a copy of the order appealed against.

(3) Every appeal referred to in sub-rule (2) above, shall bear a Court fee stamp of rupees five only."

This extract is taken from Thripuravaram Krishna Reddy v. Joint Collector, 2008 SCC OnLine AP 533 : (2009) 1 ALD 248 at page 250

5. Admittedly, neither the so-called petition is in the form of appeal affixed with the required stamp nor was filed in time. No application for condonation of delay was claimed to be filed by respondent No. 4 nor respondent No. 2 passed any order condoning the delay before entertaining and adjudicating the appeal on merits. Respondent No. 2 ought not to have, therefore, entertained the petition of respondent No. 4 and treated it as an appeal. If respondent No. 4 was aggrieved by the issuance of pattadar passbooks and title deeds, he should have filed a statutory appeal under Section 5(5) of the Act, within the time limit, or a civil suit under Section 8(2) of the Act before the competent Civil Court. As he did not take recourse to either of the two remedies, it is beyond the jurisdiction of respondent No. 2 to entertain the petition filed by respondent No. 4, because he has no power akin to the power vested in respondent No. 1 under Section 9 of the Act.

13. In ***Peddi Sailaja and another Vs. State and others*** this Court held that:

Under Section 5(5) of the Act, against every order of the recording authority either making an amendment or refusing to make such amendment, an appeal shall lie to the Revenue Divisional Officer or any other prescribed authority within a period of sixty days from the date of communication of the said order. The order passed in such appeal is final subject to the order that may be passed under Section 9 of the Act by the Collector exercising the revisional power. Rule 21 of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (for short 'the Rules') also made a similar provision as Section 5(5) of the Act. Under sub-rule (2) thereof, the manner in which an appeal has to be filed is envisaged

besides prescribing sixty days as limitation for filing such appeal. Under sub-rule (3) thereof, the appellant shall pay the Court fee stamp of Rs. 5/-. From the above-noted provisions, it is evident that respondent No. 3 is constituted as an appellate authority, who is conferred with the power of entertaining the appeals filed by the aggrieved parties by following the procedure prescribed under Rule 21 of the Rules. From the order passed by respondent No. 3, it is clear that respondent No. 5 has not filed any appeal. Instead of filing such an appeal, respondent No. 5 has approached respondent No. 4 who in turn submitted a report which was taken as ROR appeal by respondent No. 3. This procedure in my opinion is patently contrary to the procedure prescribed under the Act and the Rules.

14. In the above judgments, this Court specifically held that Revenue Divisional Officer is not having power to treat the application filed by the party as an appeal under Section 5(5) of the Act in the absence of the filing of appeal as required under Rule 21 of the Rules.

15. It is also very much relevant to place on record that in ***J.Krishnamachari Vs. State Government of Andhra Pradesh***⁶ this Court while considering the various judgments specifically held that Revenue Divisional Officer has no power to treat the application as appeal and pass order and further held that respondent No.2 therein has

⁶ 2014 1 ALD 406

committed a serious procedural illegality and jurisdictional error in treating the report of respondent No.3 as appeal.

16. It is also relevant to place on record that Division bench of this Court in ***Ratnamma vs. RDO, Dharmavaram, Ananthapur District & Others***⁷ held that once pattadar pass books and title deeds were issued under section 6-A of the Act, Revenue Divisional Officer is not having power/authority to entertain appeal under Section 5(5) of the Act and the parties has to approach Common law remedy.

17. It is already stated “supra” that in the case on hand, petitioner No.1 submitted application dated 19.12.2009 for conducting enquiry and for cancellation of pattadar pass books and title deeds issued in respect of subject property in favour of unofficial respondents and to issue title deed in his favour. Respondent No.1 entertained and adjudicated the said application as appeal and passed the impugned order dated 21.12.2010 exercising the powers under Section 5(5) of the Act. Hence the order dated

⁷ 2015 6 ALD 609

21.12.2010, passed by the respondent No.1 is contrary to the law and respondent No.2 has rightly passed the impugned order dated 17.03.2012 and set aside the order passed by respondent No.1.

18. Viewed from any angle, there is no illegality, irregularity or error in the impugned order passed by respondent No.2 dated 17.03.2012, to invoke jurisdiction of this Court under Article 226 of Constitution of India, and there are no merits in the writ petition and the same is liable to be dismissed.

19. In the result, the writ petition is dismissed without costs. Point Nos.(i) to (iii) are answered accordingly. However, it is left open to the petitioners to take appropriate steps to ascertain their claim over the subject property by approaching a competent Civil Court, if so they are aggrieved.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

JUSTICE J. SREENIVAS RAO

13th February, 2024

Note:L.R.Copy to be marked: 'Yes'

PSW