

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.20930 of 2016

% Dated 22.01.2024

A Srinivas, S/o. Kumara Swamy,
Hindu, Aged about 34 years, Occ:Business,
R/o.House No.3-139/1, Huzurabad, Karimangar District,
and another

....Petitioners

VERSUS

\$ The State of Telangana
Rep by its Principal Secretary,
Revenue Department, Secretariat Buildings,
Hyderabad and 6 others.

... Respondents

! Counsel for Petitioners : Sri K.G.Krishna Murthy,

^ Counsel for Respondent

Nos.1 to 4 : Assistant Government
Pleader for Revenue

^ Counsel for Respondent No.5 : Sri V.Ravi Kiran Rao.

< GIST:

> HEAD NOTE:

? CITATIONS:

1. AIR 1963 SC 786
2. (2015) 8 SCC 519
- 3.2023 (4) ALT450 (TS)
4. W.P.No.44461 of 2016 dated 08.09.2023

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.20930 of 2016****ORDER:**

This writ petition is filed seeking the following relief:

“...to issue a Writ, order or direction, more particularly a Writ of Certiorari, calling for all the connected records including the impugned Proceedings of the 2nd respondent passed in R.P.No.D1/4371/2014, dated 20.12.2015 as illegal, improper, unjust, arbitrary and contrary to law and violative of principles of natural justice and quash the same and pass such order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.”

The Brief facts of the case are as follows:

2.1 Petitioners submits that they have purchased the land to an extent of Acs.1-27 guntas in Sy.No.712/A of Molangur Village, Shankarapatnam Mandal, Karimnagar District, through registered sale deed dated 29.07.2013, (herein after called as “subject property”) from Korem Mukunda Reddy by paying valid sale consideration. Originally, the said land belongs to Korem Papaiah, who is none other than the father of the petitioners' vendor. Subsequently, the Petitioners submitted application before respondent No.4 for mutation of their names in the revenue records. At that stage, respondent No.4 informed them that respondent No.5 filed appeal before respondent No.2, questioning

the order passed by respondent No.3 and the same has been allowed by an order dated 25.07.2014, and in view of the same, he is unable to mutate their names in the revenue records.

2.2. They further stated that respondent No.6 is also claiming rights over the subject property alleging that she purchased from Korem Papaiah through simple sale deed dated 10.05.1966 and she made an application before revenue authorities for seeking regularization of the said sale deed invoking the provisions of Section 5-A of A.P.Rights in Land and Pattadar Pass Books Act,1971 (hereinafter called "the Act" for brevity). When the said proceeding are pending, respondent No.5 had also raised claim in respect of very same subject property alleging that he had purchased from Korem Papaiah in the year 1970 and he got pattadar Pass Book and Title Deed, though Korem Papaiah, died in the year 1968.

2.3 Petitioners further stated that when the proceedings are pending before Revenue authorities, respondent No.6 filed O.S.No.176 of 2005 on the file of Junior Civil Judge, Huzurabad, Karimnagar District, against respondent No.5 & others for seeking Perpetual Injunction and the said suit was dismissed for default

on 07.08.2012. In the said suit, the petitioners' vendor is not a party, and as such the same is not binding on their vendor.

2.4. They further stated that questioning the issuance of pattadar passbook and title deed in favour of respondent No.5, respondent No.6 filed Appeal No.D/1171/2008 before respondent No.3 under Section 5(5) of the Act, and the same was allowed and cancelled the pattadar passbook issued in favour of respondent No.5, also cancelled the proceedings issued under Sec.13-B and 13-C of the Act, in favour of respondent No.6, on the ground that she has not produced the original record and further directed the respondent No.4 to record the name of original pattadar namely Korem Papapiah in patta column and his legal heirs while sanctioning virasath by its order dated 02.02.2013. Accordingly, respondent No.4 issued notice directing respondent Nos.5 and 6 to deposit the original pattadar passbook and title deeds within one (01) week before the concerned Village Revenue Officer. Pursuant to the same, respondent No.4 issued proceedings dated 06.07.2013, mutating the property in favour of Korem Mukunda Reddy, s/o. Korem Papaiah, and pattadar passbook and title deed were issued in his favour. Thereafter petitioners have purchased

the subject property from him through registered sale deed.

2.5 Petitioners further stated that questioning the above said order dated 02.02.2013, respondent Nos.5 and 7 have filed Revision Petition No.D1/4941/2013 before respondent No.2 and the same was allowed on 25.07.2014 and restored the pass book and title deeds issued in favour of respondent No.5. Questioning the said order petitioners have filed W.P.No.26860 of 2014 and this Court while admitting the writ petition granted interim suspension on 06.11.2014. Aggrieved by the same, respondent No.5 filed W.A.No.1489 of 2014 and the same was disposed of on 09.12.2014 and set aside the order passed by the learned Single Judge as well as order dated 25.07.2014 passed by the respondent No.2, and remitted the matter back to the respondent No.2 for fresh disposal. Petitioners further stated that the above said revision petition was posted for hearing before respondent No.2 on 20.03.2015, on the said date the Advocates abstained from Court works for separate High Court for the State of Telangana. Therefore, the petitioner's counsel could not appear and argued the matter and the petitioners have requested the respondent No.2 to give one adjournment for submission of their

arguments. In spite of the same, respondent No.2, without giving opportunity to them passed the impugned order allowing the revision petition, and the same is violative of the principles of natural justice.

3. Respondent No.5 filed counter affidavit denying the allegations made by the petitioners interalia contending that, respondent No.5 had purchased the subject property through sada sale deed in the year 1970, from original owner, namely, Korem Papaiah and the same was validated/regularized by the then Mandal Revenue Officer, Shankarapatnam Mandal, by duly following the procedure as contemplated under the Act, and Rules made there under, and also issued 13-B proceedings. Accordingly his name was mutated in the revenue records and pattadar passbooks and title deeds were issued and the above said regularization proceedings were become final. He further stated that respondent No.6 filed appeal before respondent No.3 after lapse of long period even without filing any application for seeking condonation of delay. That respondent No.3 without following the mandatory procedure prescribed under the provisions of the Act, allowed the appeal on 02.02.2013 and cancelled the pattadar

passbook & title deed issued in favour of respondent No.5.

3.1. Aggrieved by the above said order, respondent No.5 filed revision petition before respondent No.2 and the same was allowed on 25.07.2014. Questioning the same, petitioners filed W.P.No.26860 of 2014 and this Court granted *exparte* interim order on 06.11.2014. Aggrieved by the same, respondent No.5, filed Writ Appeal No.1489 of 2014 and Division Bench of this Court disposed of the said Writ Appeal on 09.12.2014 and setaside the order passed by the Learned Single Judge as well as order of the respondent No.2, and directed the respondent No.2 to pass orders afresh after giving opportunity to the parties. Pursuant to the above said order, respondent No.2 after considering the contentions of the respective parties and also after due verification of the records passed the impugned order on 28.12.2015, by giving cogent reasons.

3.2. Respondent No.5 further stated that, the petitioners have appeared before respondent No.2 on 20-03-2015 and after hearing the matter respondent No.2 reserved for orders and thereafter passed the impugned order on 20.12.2015. He also stated that petitioners have not taken any steps to file any application for

seeking reopen the matter before respondent No.2 or approached this Court, and without availing the said remedies which are available under law, they have filed the present writ petition with bald allegations, and they are not entitled for any relief much less the relief sought in the writ petition.

4. Heard Sri K.G.Krishna Murthy, learned Senior Counsel representing Sri K.Ram Mohan Mahadeva, learned counsel for the petitioners, learned Assistant Government Pleader for Revenue appearing on behalf of respondent Nos.1 to 4 and Sri V.Ravi Kiran Rao, learned Senior Counsel, representing Sri G.Madhusudhan Reddy, learned counsel for respondent No.5. In spite of service of notice, respondent Nos.6 and 7 have not chosen to enter their appearance.

5. Learned Senior Counsel for the petitioners contended that on 20-03-2015, petitioners have appeared before respondent No.2 and requested to grant an adjournment on the ground that their counsel is not attending the court due to abstaining Court works by the Advocates for separate High Court for the State of Telangana, but respondent No.2 without giving reasonable opportunity to the petitioners passed the impugned order and the

same is in clear violation of the principles of natural justice.

5.1 He further contended that, respondent No.2 is not having authority or jurisdiction to decide the title over the subject property, especially respondent No.5 is claiming the rights, basing upon the sada sale deed which is said to have been executed by the late Korem Papaiah in the year 1970, though as on the date of execution of the alleged sada sale deed Korem Papaiah was no more and he died in the year 1968 and the document relied upon by the respondent No.5 is not genuine. In such circumstances, respondent No.2 ought to have directed the respondent No.5 to approach the competent Civil Court.

5.2 He also contended that respondent No.5 did not produce sada sale deed either before the respondent No.2 & 3, or before this court to prove his source of title. He further contended that the then MRO, Shankarapatnam Mandal, without following the due procedure as contemplated under the Act, issued 13-B proceedings in favour of respondent No.5 and without considering the said facts, respondent No.2 passed the impugned order and the same is contrary to law.

5.3. In support of his contentions, he relied upon the judgment of

the Hon'ble Apex Court in

1. *Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar*¹,

2. *DharampalSatyapal Ltd. Vs. Deputy Commissioner of Central Excise and Ors*²,

3. *GundalapurapuEswarammaV.The state of Telangana and others*.³

4. *Unreported judgment in W.P.No.44461 of 2016 dated 08.09.2023.*

6. Per contra, Sri V.Ravi Kiran Rao, learned Senior Counsel contended that aggrieved by the order passed by respondent No.4 dated 02.02.2013, respondent No.5 filed revision petition before respondent No.2 vide Rc.No.D1/941/2013, wherein, the said authority had granted interim stay, when the said order is in force, the petitioners have purchased the property from Korem Mukunda Reddy, on 29.07.2013 and the same is not permissible under law. Especially, Korem Mukunda Reddy is not having any

¹AIR 1963 SC 786

²(2015) 8 SCC 519

³ 2023 (4) ALT450 (TS)

right to alienate the subject property and the petitioners are also not entitled to claim any rights basing on the said alleged sale deed dated 29.07.2013. Respondent No.6 filed suit vide O.S.No.176 of 2005 on the file of Junior Civil Judge, Huzurabad, Karimnagar District, for perpetual injunction against respondent No.5 and the same was dismissed for default, and the same has become final. Respondent No.6 as well as petitioners and Korem Mukunda Reddy have colluded each other and obtained the above said alleged registered sale deed, and the said document clearly shows, that respondent No.6 also put her thumb impression as one of the witnesses.

6.1 He further vehemently contended that the appeal filed by respondent No.6 before respondent No.3 under Section 5(5) of the Act, is time barred and as such the same is not maintainable under law. He further contended that sada sale deed executed by Korem Papaiah during his life time in favour of respondent No.5 was regularized by the respondent No.4 after following due procedure as contemplated under the provisions of the Act as well as Rules made thereunder and the same has become final and binding upon all the parties and his name was mutated in the

revenue records and pattadar pass book and title deeds were issued and he is in possession of the subject property since 1970. He further contended that respondent No.2 after considering the contentions of both the parties and after due verification of the records, passed the impugned order dated 20.12.2015, by giving cogent reasons, and there is no illegality, irregularity or any error in the said order, therefore, the petitioners are not entitled to any relief in the writ petition and the same is liable to be dismissed.

7. Learned Assistant Government Pleader submits that respondent No.2 passed the impugned order after due verification of the records and by giving reasons, and the same is in accordance with law.

8. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that, petitioners are claiming the rights over the subject property, basing upon the registered sale deed dated 29.07.2013 executed by late Korem Mukunda Reddy. As on the date of the execution of the said document, respondent No.5 had filed Revision Petition No.D1/941/2013 before respondent No.2 against the order passed by respondent No.3 dated 02.02.2013 in

D1/1171/2008 and wherein, respondent No.2 has granted interim stay on 25.07.2013 and the said revision petition is pending.

9. The main grievance of the petitioners is that respondent No.2, without giving reasonable opportunity to them passed the impugned order dated 20.12.2015, though the petitioners have appeared on 20.03.2015 and requested him to grant one adjournment on the ground that their counsel could not appeared before him on the ground of abstaining Court works by the Advocates for separate High Court for the State of Telangana, and in spite of the same, respondent No.2 reserved the matter for orders and passed the impugned order.

10. In ***UditNarain Singh Malpaharia's*** (*supra*) relying upon the judgment in ***King Vs London Country Council*** [(1931) 2 KB 215, 243] stated as follows:

“Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority — a writ of certiorari may issue”. It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to

represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesis it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it.

In ***DharampalSatyapal Ltd*** (*supra 2*), in **Gundlapuram Eswarmma** case (Supra 3) and In **WP.No.44461/2016** unreported judgment (Supra 4), the Hon'ble Apex Court as well as this court relying upon the Judgment in ***Udit Narain Singh Malpaharia's*** (*supra 1*) specifically held that no adverse order should be passed against a party without hearing them.

11. It is very much relevant to place on record that the quasi judicial authorities are not having any powers to reopen, recall or review their own orders. The records clearly disclose that the petitioners have not prosecuted the case before respondent No.2 diligently and they very much aware that their case was reserved for orders on 20.03.2015, and they have not taken any steps and they waited till the order dated 20.12.2015 was passed by the

respondent No.2 and filed the present writ petition. Learned Senior Counsel for the respondent No.5, had rightly contended that from the date of reserved for order 20.03.2015 and till date of passing of the order dt: 20.12.2015, the petitioners have not taken any steps which are available under law.

12. It is undisputed fact, that the counsel appearing on behalf of the petitioners herein have not attended and submitted the arguments before the respondent No.2 on 20-03-2015. It is settled principles of law that due to the mistake on the part of the counsel, the parties should not be suffered. Therefore, this Court is of the consider view that to render substantial justice to the parties and to give one opportunity to the petitioners for submitting their arguments, without going into other grounds, the matter is required for reconsideration by the respondent No.2. However, it is already stated supra that the petitioners have not prosecuted the matter before respondent No.2, in diligent manner and hence, they are liable to pay costs for causing inconvenience to the respondent No.2-Tribunal as well as to the respondent No.5.

13. In **Ashok Kumar v. New India Assurance Co Ltd**⁴, the

⁴ 2023 INSC 65

Hon'ble Apex Court held that a litigant should not suffer due to counsel's fault.

14. It is also relevant to place on record that during the pendency of this writ petition, the State of Telangana, while repealing the Telangana Rights in Land and Pattadar Pass Books Act, 1971, legislated new enactment, namely, the Telangana Rights in Land and Pattadar Pass Books Act, 2020 (Act No. 9 of 2020) and the same came into force on 29.10.2020. By virtue of repealing the Act, 1971 respondent No.2 herein is not having jurisdiction to adjudicate the revision petition filed U/Sec.9 of ROR (old)Act. However, as per the provisions of the new enactment Act 9/2020, and Special Tribunal Rules issued under G.O.Ms.No.4 Revenue (Assignment-I) Dept., dt 12-01-2021, Special Tribunals were constituted for every District for adjudication of pending cases, and the said Special Tribunal shall consist of the District Collector and the Additional Collector (Revenue). Hence the Revision Petition No.D1/4371/2014, has to be adjudicated by the Special Tribunal, Karimnagar.

15. In view of the foregoing reasons, the impugned order dated

20.12.2015 passed by respondent No.2 is set aside, and the matter is remitted back to the Special Tribunal, Karimnagar, subject to payment of costs of Rs.15,000/-(Rupees fifteen thousand only), to the respondent No.5, within a period of four (04) weeks from today, and the Special Tribunal is directed to pass appropriate orders, in accordance with law, in the Revision Petition No.D1/4371/2014, after giving opportunity to the petitioners and unofficial respondents, within a period of two (02) months from the date of receipt of a copy of this order, and till such time, the parties are directed to maintain *status quo* as on today in respect of possession of the subject property.

16. With the above directions, the Writ Petition is disposed of, accordingly.

Pending miscellaneous applications, if any, shall stand closed.

J.SREENIVAS RAO,J

Dated.22.01.2024

Note 1: The Registry is directed to communicate this order to the District Collector, Karimnagar District.

Note 2. L.R.Copy to be marked
b/o.
Smk