

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.31336 OF 2017

Liyaqatullah Khan,
S/o Late Inayathullah Khan
Aged 59 years Occ: Agriculture
R/o H.No.5-120, Kankurthi Village
Mahaboobnagar

....Petitioner

VERSUS

1) State of Telangana
Through its Secretary for Revenue
Department, Secretariate Hyderabad.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 29.02.2024

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

+ WRIT PETITION No.31336 OF 2017

% Dated 29.02.2023

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... Respondents

! Counsel for Petitioner : C.Ramachandra Raju

^ Counsel for Respondent Nos.1 to 3 : G.P for Revenue,
Sri Mirza Nisar
Ahmed Baig

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2005 (6) ALT 560
2. 2009 (9) SCC 489
3. 2011(4) ALD 14

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.31336 of 2017****ORDER:**

This writ petition is filed for seeking following relief:

“...to issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus declaring the order in Case No.C/2943/2015, dated 11.08.2017, passed by respondent No.4 at the behest of respondent No.3 pursuant to his letter No.A/2943/2017, dt.03.08.2017 as to mutation of name of the respondent No.5 as pattedar and possessor in land of the respondent in Survey No.407, extent Acs.4.24 guntas, situated at Village Kankurti, Revenue Mandal Damargidda, District Mahabubnagar, illegal, arbitrary, unconstitutional and violative of the principles natural justice and the same be set aside in the interest of justice and further orders in the circumstances of the case may be passed ...”

2. Heard Sri C.Ramachandra Raju, learned counsel for the petitioner and learned Assistant Government Pleader for Revenue appearing on behalf of respondent No.1 to 4 and Sri Mirza Nisar Ahmed Baig for respondent No.5.

3. Learned counsel for the petitioner submits that the petitioner is the owner and possessor of the land to an extent of Acs.4.24 guntas in Survey No.407 situated at Kankurti Village, Damargidda Mandal, Mahboobnagar District and his name was mutated in the Revenue Records and pattadar pass books and title deeds were

issued in his favour. He further submit that originally Marepaly Hanmappa was protected tenant and his legal heirs surrendered protected tenancy rights and delivered possession of the subject property to the petitioner on 28.07.1995. Questioning the revenue entries made in favour of the petitioner, respondent No.5, who is non-other than his elder brother, filed ROR Appeal vide case No.A/490/2006, before respondent No.3.

3.1. He further submits that respondent No.5 also filed a suit O.S.No.41 of 2006 on the file of Junior Civil Judge, Kodangal, seeking to declare him as absolute owner of the subject land and recovery of possession and also recording his name as pattadar in ROR records by deleting the name of the petitioner herein. The said suit was decreed in part by its judgment and decree dated 14.07.2017, to the extent of declaration and recovery of possession, in so far as the other relief is concerned, the suit was dismissed. Aggrieved by the same, petitioner filed appeal A.S.No.7 of 2017 on the file of Senior Civil Judge, Narayanpet, along with the said appeal he filed application, I.A.No.237 of 2017 to grant stay of execution of the decree dated 14.07.2017 passed by the Trial Court

and the said application was dismissed by its order dated 30.08.2017. Questioning the same, petitioner filed C.R.P.No.4462 of 2017 and this Court initially granted stay on 01.09.2017 till 15.09.2017 and thereafter the same was allowed by its order dated 09.11.2017. Subsequently, lower appellate Court allowed the appeal A.S.No.7 of 2017 by its judgment and Decree dated 15.07.2021. Aggrieved by the same, respondent No.5 filed Second Appeal No.7 of 2022 before this Court wherein this Court was pleased to order Notice Before Admission and both the parties are directed to maintain *Status-Quo*.

3.2. While things stood thus, respondent No.3 issued directions to respondent No.4 through letter dated 03.08.2017 to implement judgment and decree passed by the Junior Civil Judge, Kodangal in O.S.No.41 of 2006, dated 14.07.2017 to carryout the corrections in revenue records. Basing on the said instructions, respondent No.4 issued the impugned proceedings No.C/2943/2015, dated 11.08.2017 for mutation of name of respondent No.5 in the revenue records in respect of subject property in place of the petitioner, even without issuing any notice and opportunity to the petitioner.

3.3. Learned counsel for the petitioner vehemently contended that respondent No.3 is not having any authority or jurisdiction to issue any direction for implementation of the judgment and decree passed by Junior Civil Judge, dated 14.07.2017, even without issuing any notice and opportunity to the petitioner, the said judgment and decree of the trial Court was set aside by the lower Appellate Court in A.S.No.7 of 2017. Aggrieved by the same, respondent No.5 filed S.A.No.7 of 2022 and the same is pending before this Court.

3.4. He further contended that the Junior Civil Judge's Court, Kodangal, rejected the claim made by the respondent No.5 for recording his name in ROR records by deleting the name of the petitioner and further the trial Court while decreeing the said suit has granted sixty(60) days time for handing over the vacant possession of the suit schedule property in favour of respondent No.5, failing which the respondent No.5 can execute the same through process law and even before expiry of the above said period, respondent No.3 issued the directions dated 03.08.2017, to respondent No.4 for carrying out the corrections in revenue records and respondent No.4

without issuing any notice to the petitioners passed impugned proceedings dated 11.08.2017. The impugned order passed by respondent No.4 is gross violation of principles of natural justice, contrary to the provisions of Andhra Pradesh Rights In Land And Pattadar Pass Books Act, 1971(Act, for brevity) and rules made thereunder.

4. *Per contra*, learned counsel appearing on behalf of respondent No.5 contended that the petitioner is not having any right, interest and title over the subject property. Respondent No.5 had purchased the subject property through registered sale deed No.1884 of 1982 dated 06.12.1982 from his father. Respondent No.4 has rightly issued the impugned proceedings dated 11.08.2017, implementing the judgment and decree passed by Competent Civil Court in O.S.No.41 of 2006, dated 14.07.2017. He further submits that as on the date of issuing of impugned proceedings, the judgment and decree passed by trial Court was not stayed by the Appellate Court. On the other hand, the stay application I.A.No.237 of 2017 filed by the petitioner in A.S.No.7 of 2017 was dismissed. Aggrieved by the same, petitioner filed C.R.P.No.4462 of 2017 and the same was allowed on

09.11.2017 and subsequently, Appellate Court allowed the appeal A.S.No.7 of 2017 dated 15.07.2021. Aggrieved by the same, respondent No.5 filed S.A.No.7 of 2022 and the same is pending and in the said appeal *Status Quo* order was granted.

4.1. He further contended that the petitioner without availing the remedy of appeal or revision as available under Section 5(5) of the Act or under Section 9 of ROR Act, straight away approached this Court and filed the present writ petition and the same is not maintainable under law and liable to be dismissed.

4.2. In support of his contention he relied upon the judgment of this Court in ***Entala Bhupal and another Vs. District Revenue Officer, Warangal and others***¹.

5. Having considered the rival submissions made by respective parties and after perusal of the material available on record, it reveals that the petitioner and respondent No.5 are own brothers and both of them are claiming the rights over the subject property. It is an admitted fact that respondent No.5 filed comprehensive

¹ 2005 (6) ALT 560

suit O.S.No.41 of 2006 on the file of Junior Civil Judge, Kodangal, seeking declaration declaring him as absolute owner of the scheduled property and recovery of possession from the petitioner and also for deletion of name of the petitioner and inclusion of his name in the Revenue Records and the same was decreed in part in respect of declaration and recovery of possession and dismissed the rest of the claim to the extent of recording his name as pattadar in the ROR Records and deleting the name of the petitioner by its judgment and decree dated 14.07.2017.

6. That the trial Court while passing the decree in O.S.No.41 of 2006 has granted 60 days time to the petitioner for handing over the vacant possession of the suit schedule property to respondent No.5, failing which the respondent No.5 is entitled to execute the said decree through process of law. Even before expiry of the said period of time, respondent No.5 had approached respondent No.3 for seeking implementation of the above said decree and judgment dated 14.07.2017 and for incorporation of his name in Revenue records. Basing on the said application, respondent No.3 without passing any

order in pending Appeal No.A/490/2006 and without issuing any notice to the petitioner issued directions to respondent No.4 to carry out the corrections in the revenue records pursuant to the judgment and decree in respect of subject property. In pursuance of the same, respondent No.4 issued the impugned proceedings dated 11.08.2017, even without issuing notice and opportunity to the petitioner.

7. As per the provisions of sub Section 3 of Section 5 of the Act and A.P(T.S.) Rights in land and Pattadar Pass Book Rules 1989, respondent No.4 ought to have issued notices to the petitioner before passing the impugned order dated 11.08.2017. Admittedly, as on the date of passing of the above said impugned order, name of the petitioner is continuing in the revenue records in respect of subject property. Respondent No.4 without giving any notice and opportunity to the petitioner passed the impugned order behind his back solely basing on the directions of respondent No.3 and the same is gross violation of the principles of natural justice and contrary to the provisions of ROR Act and Rules made thereunder.

8. It is relevant to place on record that in ***Allwyn Housing Colony Welfare Association vs. Government of Andhra Pradesh and others***², the Hon'ble Apex Court specifically held that no order adverse to a party should be passed without hearing him. Hence, the impugned order dated 11.08.2017, passed by the respondent No.4 is contrary to law.

9. The judgment relied upon by the learned counsel for the respondent No.5 in ***Entala Bhupal and another supra*** this Court held that the revisional authority is not having power to set aside that order in revision in respect of the entries made in favour of the party therein on the ground that the primary authority after due enquiry and after following the procedure as per the provisions of RoR Act and Rules made thereunder passed order. Hence, the aggrieved party has to approach the Competent Civil Court to establish his right under Section 8(2) of the Act. The above said judgment is not applicable to the facts and circumstances of the case on the ground that respondent No.4 passed the impugned order dated 11.08.2017 without giving notice and opportunity to the petitioner and

² 2009 (9) SCC 489

without following the mandatory procedure prescribed under the provisions of the Act as well as the Rules.

10. In so far as the other ground raised by the learned counsel for respondent No.5 that the petitioner without availing the remedy of appeal before concerned authority under Section 5(5) of the Act filed this writ petition is also no tenable on the ground that the respondent No.4 passed the impugned order basing upon the directions issued by respondent No.3 who is appellate authority and question of filing appeal before the same authority does not arise. Similarly, filing of revision under Section 9 of the Act is also does not arise on the ground that respondent No.4 passed the impugned order dated 11.08.2017 without giving any notice and opportunity to the petitioner and it amounts to gross violation of principles of natural justice.

11. It is also relevant to place on record that in **S. Panduranga Reddy v. Government of Andhra Pradesh and others**³, this Court while following the Judgments of the Hon'ble Apex Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai**

³ 2011 (4) ALD 14

and Others⁴ and **Harbanslal Sahnia Vs. Indian Oil Coporation Limited and others⁵** held that alternative remedy is not an absolute bar to maintainability of the writ petitions, when action complained of is in violation of fundamental rights, principles of natural justice or without jurisdiction.

12. In view of the foregoing reasons, impugned order passed by respondent No.4, dated 11.08.2017 is liable to be set aside. Accordingly set aside.

13. It is needless to observe that any revenue entries are made in the subject property the same is subject to outcome of the result of Second Appeal No.7 of 2022 pending before this Court and the parties are entitled to work out their remedies as per the provision of Section 7 of the Telangana Rights in land and Pattadar Pass Books Act, 2020.

14. With the above directions, the writ petition is disposed of accordingly. No costs.

⁴ (1998) 8 SCC 1

⁵ (2003) 2 SCC 107

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

JUSTICE J. SREENIVAS RAO

29th February, 2024

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

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