

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.6700 of 2017

% Dated 22.01.2024

Smt Korem Lakshmi, W/o.late Mukanda Reddy,
Aged about 75 years, R/o.Kothagattu Village,
Sankarampatnam Mandal, Karimnagar District
and 2 others

....Petitioners

VERSUS

\$ The State of Telangana,
Rep. by its Principal Secretary, Revenue Department,
Secretariat Buildings Hyderabad and 5 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. MANU/AP/0028/2003=2003(1) ALD 826=2003(1) ALT 688
2. 2011 (1)SCC 484

THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.6700 of 2017****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 Memo No.D1/4798/2016 dated 17.12.2016 as illegal, improper, unjust, arbitrary, contrary to law violative of principles of natural justice and without jurisdiction 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 under,

2. Petitioner No.1 had submitted online application on 25.05.2016, through Meeseva, to Respondent No.4, for issuance of death certificate of late Korem Papaiah who is none other than her father-in-law and the said application was forwarded to the respondent No.3 through letter dated 3-6-2016, recommending for issuance of death certificate and basing upon the said report respondent No.3 issued Memo No.E/7226/2016 dated 13.06.2016 stating that, the fact of death of late Korem Papaiah was confirmed as in the year 1968, but the exact date of death could not be ascertained. Therefore, request for issuance of death certificate was rejected.

3. Aggrieved by the same, respondent No.5 filed application on 05.11.2016 before respondent No.2 and requested him to conduct enquiry and take necessary action. After due verification of the records respondent No.2 passed the impugned order dated 17-12-2016 vide Memo No.D1/4798/2016 cancelling the memo dated 13.06.2016 issued by the respondent No.3. Questioning the same petitioners have filed the present 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 for 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 No.6 has not chosen to enter appearance.

5. Learned Senior Counsel for the petitioners vehemently contended that respondent No.2 is not having any authority or jurisdiction to entertain the application dated 05.11.2016 filed by the respondent No.5 and treating the same as appeal/revision invoking the provisions of Section 158 of A.P (Telangana Area) Land Revenue Act,1317 Fasli (for short "the Act 1317 Fasli"),

especially when the respondent No.3 passed order/memo dated 13.06.2016 under the Provisions of Registration of Births and Deaths Act, 1969 (for short 'the Act'), and the provisions of "the Act 1317 Fasli" is not applicable. Hence, the impugned order dated 17.12.2016 passed by the respondent No.2 is without jurisdiction and the same is liable to be set aside.

5.1 He further contended that respondent No.5 has not filed appeal as prescribed under law and he only submitted application and as such the same cannot be treated as an appeal. He also contended that respondent No.3 without issuing any notice and opportunity to the petitioner No.1, who is a effected party, passed the impugned order and the same is in violation of the principles of natural justice.

5.2 In support of his contentions, he relied upon the Division Bench judgment of Andhra Pradesh High Court at Hyderabad in

M.B.Ratnam and Ors. Vs.Revenue Divisional Officer and Ors.¹

6. Per contra, learned Senior Counsel appearing on behalf of respondent No.5, vehemently contended that petitioner No.1

¹ MANU/AP/0028/2003=2003(1) ALD 826=2003(1) ALT 688

submitted application dt: 25.05.2016 to the respondent No.3, for issuance of death certificate of late Korem Papaiah, more than 48 years after his death, without explaining any reasons for the said delay and not produced any iota of evidence that Korem Papaiah died on particular date. He further contended that petitioner No.1, with a malafide intention filed application before respondent No.3, to defeat the rights over property of the respondent No.5 to an extent of Acs.1-27 guntas in Sy.No.712/A, situated Molangur Village, Shankarapatnam Mandal, Karimnagar District, though he had purchased the same from Korem Papaiah in the year 1970 through sada sale deed by paying valuable sale consideration and the same was regularized/validated by the then MRO, Shakarapatnam, and issued 13-B Proceedings and his name was mutated in the revenue records, pattadar pass book and title deed were also issued.

6.1 He further contended that respondent No.4 submitted a report basing upon the fabricated documents i.e. death ceremony cards produced by the petitioner No.1, wherein in one of the card it was mentioned that late Korem Papaiah died on 18.11.1968 and in another document it was mentioned that as he died on

28.11.1968. Basing upon the alleged report respondent No.3 without conducting any independent enquiry and in the absence of evidence, issued Memo dated 13.06.2016, holding fact that the death of late Korem Papiah was confirmed as in the year 1968, but the exact date of death could not be confirmed and the same is contrary to the law.

6.2 He further contended that respondent No.3 without issuing any notice and opportunity to the respondent No.5 who is really effected party passed order on 13.06.2016 and the same is clear violation of principles of natural justice.

6.3 He further contented that respondent No.2 has rightly exercised the powers conferred under the provisions of Act 1317 Fasli, and passed the impugned order dated 17.12.2016, and there is no illegality and irregularity in the said order to invoke the jurisdiction of this court under Article 226 of Constitution of India.

7. Learned Assistant Government Pleader submits that when the irregular order passed by respondent No.3 was brought to the notice of was respondent No.2, he being a superior officer, rightly passed the impugned order 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, the following points arise for consideration.

(i) Whether respondent No.2 is having jurisdiction to entertain the application of respondent No.5 and pass the impugned order dated 17.12.2016, exercising the powers conferred under the provisions of Section 158 of A.P (Telangana Area) Land Revenue Act, 1317 Fasli ?

(ii) Whether the petitioners are entitled for any relief in the writ petition?

(iii) What relief?

Point No.1 to 3

9. As per the pleadings and documents filed in support of the writ petition it reveals that, petitioner No.1 had submitted application on 25.05.2016 through Meeseva for issuance of death certificate of late Korem Papaiah and respondent No.4 forwarded the said application to respondent No.3 and submitted proposals for issuance of death certificate vide report dated 03.06.2016. Basing upon the said report, respondent No.3 passed order vide Memo.No.E/7226/2016 dated 13.06.2016, rejecting the

application for issuance of death certificate. However, by relying upon the report of respondent No.4, he stated that the fact of the death of late Korem Papaiah was confirmed as in the year 1968, but the exact date of death could not be confirmed. It is very much relevant to extract the said order which reads as follows:

“It is to inform you that, through reference 1st cited, you have filed an application in Meeseva through vide application No. LRBD021600687518 regarding the issue of Late Registration of Death Certificate of Sri Late Korem Papaiah S/o Machaiah.

Through reference the 2nd cited, the Tahsildar, Shanakarapatnam has forwarded and recommended the proposals of Smt. Korem Laxmi, W/o.Late Mukunda Reddy for issue of Late Registration of Death Certificate.

On Verification of the proposals submitted by the Tahsildar, Shankarapatnam it is noticed that, the applicant's father-in-law was expired (48) years long back and mentioned the date of death as 28.11.1968, and applied as per Late Registration of Birth & Death Act, 1969.

In this regard, as per the report submitted by Tahsildar,Shankarapatnam, vide Reference 2nd cited, the fact of the death of Sri Late KoremPapaiah was confirmed as in the year 1968, but the exact date of death could not be confirmed. The request for issue of death certificate is rejected.”

10. It further appears from the record that aggrieved by the order dated 13.06.2016 to the extent of confirming the year of death of

Late Korem Papiyah as in the year 1968, respondent No.5 approached respondent No.2 and filed application dt: 05.11.2016 and the said authority while exercising the powers conferred under the Provisions of Act 1317 Fasli, and after due verification of the records passed the impugned order dated 17.12.2016, cancelling the Memo/order passed by respondent No.3 dated 13.06.2016.

11. It is very much relevant to place on record that respondent No.3 has not passed the above said order dated 13.06.2016 under the Provisions of the Act 1317 Fasli. Respondent No.2 is having authority and jurisdiction to entertain the appeal invoking the provisions of Sec.158 of the Act, if any decision or order is passed by a Revenue Officer under the Act 1317 Fasli. Hence respondent No.2 treating the application dated 05.11.2016 filed by respondent No.5 as an appeal and passing order invoking the provisions of Sec. 158 of the Act 1317 Fasli, is not permissible under law.

12. In **M.B.Ratnam and Ors**(*supra*) the Hon'ble Division Bench of this court specifically stated that A.P.Rights in Land and Pattadar Pass Books Act, 1971 (ROR Act) being a special law in relation to record of rights shall prevail over the provisions of the Act 1317 Fasli and the remedies provided under the ROR Act alone

would be available to the aggrieved individual. It is relevant to extract Paragraph No.66, which reads as follows:

“66. We have no doubt whatsoever in our mind to hold that the A.P. (T.A.) Land Revenue Act, 1317 Fasli is a general law which deals mainly with land revenue and allied matters whereas the R.O.R. Act not only being a subsequent Act but also being a special law in relation to record of rights shall prevail over the provisions of the A.P. (T.A.) Land Revenue Act, 1317 Fasli. In our considered opinion, the remedy provided under Section 158 of the Land Revenue Act, 1317 Fasli is not available to challenge any order passed by the Mandal Revenue Officer under the provisions of the R.O.R. Act. The remedies provided under the R.O.R. Act alone would be available to the aggrieved individual. The contention urged by the learned Counsel for respondents is accordingly rejected. Thus, the appeals preferred by the respondents herein before the first respondent cannot be treated as appeals filed under Section 158 of the Land Revenue Act, 1317 Fasli.

13. Similarly, respondent No.3, rejected the claim of the petitioner No.1 for issuance of death certificate on the ground of non-availability of exact date of death of late Korem Papaiah, solely basing upon the report of respondent No.4 dated 03.06.2016 and confirmed the year of death of late Korem Papaiah as 1968. Learned counsel for respondent No.5, had rightly pointed out that the documents relied upon by the petitioner No.1 itself shows that in one document it was mentioned that late Korem Papaiah died

on 18.11.1968 and in another document it was mentioned that as he died on 28.11.1968.

14. It also reveals that, respondent No.3 without following mandatory procedure as prescribed under law, and without giving any notice to the effected parties, especially respondent No.5, who is claiming the rights over the subject property, basing upon the sadha sale deed executed by the late Korem Papaiah in the year 1970, passed the order dated 13.06.2016. By virtue of finding given by respondent No.3 in the above said order, that the death of late Korem Papaiah was confirmed as in the year 1968, the rights of respondent No.5 were going to be effected. Hence the order passed by the respondent No.3 is clear violation of principles of natural justice. If this Court allows the writ petition it amounts to upholding the irregular order passed by respondent No.3.

15. It is very much relevant to place on record that in **M. Sudakar vs. V. Manoharan and Others**², the Hon'ble Apex Court held that the power to mold relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice, it can mold the relief depending upon the

² 2011 (1)SCC 484

facts and circumstances of the case. In the facts of a given case, a Writ Petitioner may not be entitled to the specific relief claimed by him, but this itself will not preclude the Writ Court from granting such other relief to which he is otherwise entitled. Hence, although there may be no specific prayer, the Court thinks that, to meet the requirements and to do complete justice in the matter, the relief can be molded by the Court.

16. In view of the foregoing reasons, this Court while exercising the powers conferred under the Article 226 of the Constitution of India, to render substantial justice to the parties, is of the consider view that, the impugned order passed by respondent No.2 dated 17.12.2016 as well as order passed by respondent No.3 in memo dated 13.06.2016, are liable to be setaside. Accordingly set aside.

17. Respondent No.3 is directed to consider the application submitted by the petitioner dated 25.05.2016 and pass appropriate orders, in accordance with law, after issuing notice and opportunity to the petitioners, respondent No.5 and other effected parties if any, including personal hearing, within a period of two (02) months from the date of receipt of a copy of this order. It is needless to observe that both the parties are entitled to raise

all the grounds as are available under law. Point Nos.i to iii are answered accordingly.

18. Accordingly, the Writ Petition is disposed of. No costs.

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

J.SREENIVAS RAO,J

Dated 22.01.2024

Note:L.R.Copy to be marked.

b/o.

Smk