

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.10592 OF 2019

% Dated 16.04.2024

Bairy Samba Siva Reddy S/o.Malla Reddy,
Aged: 66 years, Occupation: Retired Employee,
R/o.H.No.1-7-623, Subedari, Hanamkonda,
Warangal and two others

....Petitioners

VERSUS

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

... Respondents

! Counsel for Petitioners : Mr.S.Lakshmikanth

^ Counsel for Respondents : GP for Revenue &
Mr.Pramod Maligi

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (2007) 6 ALD 348
2. 2015 (4) ALD 248
3. 2023 (6) ALT 622
4. 2015 (6) ALD 609

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO

WRIT PETITION No.10592 of 2019

ORDER:

This writ petition is filed for the following relief:

“...to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the high handed action of Respondent No.4 and 5 in issuing pattadar passbook No.T21050110358 and Khata No.853 and changing the entries in 1-B Manual in respect of land admeasuring Ac.1.07 guntas in Survey No.44 and Ac.0.13 guntas in Survey No.46 situated at Mucherla village, Hasanparthy Mandal, Warangal Urban District in favour of Respondent No.6 as illegal, arbitrary, and contrary to the provisions of ROR Act and Rules, violative of principles of natural justice, violative of Article 14, 300-A of Constitution of India and consequently direct the Respondent No.4 to cancel the pattadar passbook by deleting the name of Respondent No.6 in 1-B Manual and in Pattedar passbook in respect of the land admeasuring Ac.1.07 guntas in Survey No.44 and Ac.0.13 guntas in Survey No.46 situated at Mancherla village, Hasanparthy Mandal, Warangal Urban District by setting aside the impugned memo dated 17.05.2019 issued by Respondent No.4 in the interest of justice...”

2. Heard Sri S.Lakshmikanth, learned counsel for the petitioners, and Sri A.Mahith Reddy, learned counsel, representing Sri Pramod Maligi, learned counsel for respondent No.6, and learned Assistant Government Pleader for Revenue appearing on behalf of the official respondents.

3. Learned counsel for the petitioners submits that mother of petitioner No.1, namely, Bairy Kanakamma, was the owner and possessor of agricultural land in Survey No.44 to an extent of Ac.1.17 guntas and in Survey No.46 to an extent of Ac.1.23 guntas, total

extent of Ac.3.00 guntas, situated at Mucherla Village of Hasanparthy Mandal, Warangal Urban District, which was retained by herself after allotment of certain lands in different survey numbers in favour of her four sons, namely, B.Veera Reddy (respondent No.6 herein), B.Samasiva Reddy (petitioner No.1 herein), late B.Raji Reddy and late B.Satyanarayana Reddy and pursuant to the said allotment, they are enjoying their respective shares and their names were mutated in the revenue records in the year 2003 and they obtained pattadar pass books and title deeds.

3.1. He further submits that Government had acquired the land to an extent of Ac.0.10 guntas in Sy.No.44 and Ac.1.10 guntas in Survey No.46, out of an extent of Ac.3.00 guntas, belonging to Bairy Kanakamma in the year 2007 for laying Devadula Pipeline and accordingly, Government paid compensation to her and she is in possession of remaining extent of land to an extent of Ac.1.07 guntas in Survey No.44 and Ac.0.13 guntas in Survey Nos.46, total extent of Ac.1.20 guntas, and she died on 16.04.2015. After her death, when respondent No.6 is trying to mutate his name in the revenue records in respect of the above said land, petitioner No.1 made a representation, dated 12.01.2017, before respondent No.4 requesting him not to entertain any application from respondent No.6 as the above said land is a joint property. Thereafter, petitioner No.1 submitted another representation dated 29.05.2017 requesting

respondent No.4 not to change the existing name of his mother Bairy Kanakamma in the revenue records and basing on the said representation, Village Revenue Officer submitted a report, dated 14.06.2017, to respondent No.4 stating that petitioner No.1 and other family members are claiming rights over the property of late Bairy Kanakamma on the ground that said property is a joint property.

3.2. He further submits that in spite of the same, respondent No.6 got mutated his name in the revenue records with respect to the subject property and obtained pattadar pass book and title deed from the office of respondent No.4. After came to know about the same, petitioner No.1 immediately approached respondent No.4 and submitted a representation dated 03.05.2019 requesting him to cancel the revenue entries and also pattadar pass book and title deed issued in favour of respondent No.6, wherein it is stated that respondent No.4 office, without issuing any notice to petitioner No.1 and other successors of late Bairy Kanakamma, mutated the subject property in the name of respondent No.6.

3.3. He further contended that respondent No.4, without properly considering the application submitted by petitioner No.1, erroneously passed the impugned order *vide* Memo Rc.No.B/627/2010 dated 17.05.2019 stating that during lifetime of Bairy Kanakamma, a partition was took place between her family members and the name of respondent No.6 was recorded in pattadar pass Book No.WGL2002,

41534, Khatha No.853, in respect of subject property and new pattadar pass book was issued under Land Record Updation Programme (LRUP) in favour of respondent No.6 and further observed that for cancellation of the above said pattadar pass book, petitioner No.1 has to file appeal before Revenue Divisional Officer, Warangal (Urban).

3.4. He vehemently contended that respondent No.4, without issuing any notice to petitioner No.1 and other family members, who are successors of late Bairy Kanakamma, issued 1-B Proceedings under Rule 9 of A.P. Rights in Land and Pattadar Pass Book Act, 1989 and also issued Pattadar Pass Book in favour of respondent No.6 and the same is contrary to the provisions of Section 5, 5-A of Andhra Pradesh (Telangana) Rights in Land and Pattadar Pass Book Act, 1989 (hereinafter called brevity 'ROR Act') and also contrary to the Rules 5, 6, 9(1)(a), 9(1)(c)(ii) of A.P. (Telangana) Rights in Land and Pattadar Pass Book Rules, 1989, (hereinafter called brevity, 'the Rules'). He further contended that name of Bairy Kanakamma was continued in the pahanies till 2017 and inclusion of subject land in pattadar pass book is not genuine one and the same is created one. He also contended that respondent No.4, without conducting any enquiry and without verifying the records, rejected the application of petitioner No.1 and passed impugned order and the same is contrary to law.

3.5. In support of his contention, he relied upon the Full Bench judgment of erstwhile High Court of Andhra Pradesh at Hyderabad in **Chinnam Pandurangam v. Mandal Revenue Officer, Srilingampally Mandal and others**¹.

4. *Per contra*, learned counsel appearing on behalf of respondent No.6 submits that the petitioners themselves have admitted that during lifetime of Bairy Kanakamma, joint family properties were partitioned in the year 2003 and by virtue of the said partition, Bairy Kanakamma retained agricultural land to an extent of Ac.0.10 guntas in Survey No.44 and Ac.1.10 guntas in Survey No.46, total extent of Ac.1.20 guntas only, and the said land was acquired by the Government during her lifetime and she received the compensation and the remaining extent of land i.e., Ac.1.07 guntas in Survey No.44 and Ac.0.13 guntas in Survey No.46 was allotted in favour of respondent No.6. He further contended that respondent No.6 denied the allegation made by the petitioners that Bairy Kanakamma retained land to an extent of Ac.3.00 guntas in Survey Nos.44 and 46.

4.1. He further submits that respondent No.6 obtained pattadar pass book in respect of land to an extent of Ac.1.20 guntas in Sy.Nos.44 and 46 along with other lands in the year 2003 itself, *vide* Patta Pass book No.41535 (Khata No.854). After death of Bairy Kanakamma, respondent No.6 made a request before respondent No.4 for correction

¹ (2007) 6 ALD 348

of pahani basing upon the pattadar pass book which was issued in the year 2003 and issue new pass book. Respondent No.4 rightly issued 1-B certificate and also issued new pattadar pass book in favour of respondent No.6. He further contended that respondent No.6 is in possession of the subject land since 2003 and he dug a bore well and also obtained electricity service connection and doing cultivation.

4.2. He further contended that petitioners are not entitled to claim any rights over the subject property basing upon the alleged report of Village Revenue Officer, dated 14.06.2017, and the same is not genuine one as respondent No.4 office themselves had issued proceedings *vide* Rc.No.B/953/2019 dated 31.07.2019 pursuant to the application dated 10.06.2019 submitted by petitioner No.1 under Right to Information Act stating that “the report of Village Revenue Officer, Mucherla, is not available in his office”.

4.3. He further contended that the petitioners are claiming that subject property is joint property and without impleading the other coparceners i.e., daughters of late Bairy Kanakamma, filed the present writ petition, especially after lapse of long period of time questioning the issuance of pattadar pass book in favour of respondent No.6 and the same is not maintainable under law. He further contended that petitioners have to approach the competent Civil Court to establish their claim and they are not entitled any relief much less the relief sought in the writ petition.

4.4. In support of his contention, he relied upon the judgment of this Court in **Shesheela and Ors. V. A.Gopal Reddy and Ors.**²

5. Learned Assistant Government Pleader submits that respondent No.4 while rejecting the claim of petitioner No.1 directed him to approach the Revenue Divisional Officer by way of appeal for cancellation of pattadar pass book. Petitioners without approaching the appellate authority filed the present writ petition and the same is not maintainable under law.

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, it reveals that petitioners and respondent No.6 are successors of late Bairy Kanakamma W/o.late Malla Reddy, and it further reveals that during her lifetime, joint properties were allotted between her and her sons, namely, B.Veera Reddy, B.Samasiva Reddy, late B.Raji Reddy and late B.Satyanarayana Reddy, in the year 2003. According to the petitioners, Bairy Kanakamma retained the land to an extent of Ac.3.00 guntas in Survey Nos.44 and 46, whereas according to respondent No.6, Bairy Kanakamma was retained land to an extent of Ac.1.20 guntas in Survey Nos.44 and 46, (i.e., Ac.0.10 guntas in Survey No.44 and Ac.1.10 guntas in Survey No.46). It is an undisputed fact that Government had acquired the land to an extent of Ac.0.10 guntas in Survey No.44 and Ac.1.10 guntas in Survey

² 2015 (4) ALD 248

No.46, total extent of Ac.1.20 guntas, for laying Devadula Pipeline and paid compensation to Bairy Kanakamma in the year 2007 and she died on 16.04.2015.

7. The specific claim of respondent No.6 is that the land to an extent Ac.1.17 guntas in Survey No.44 and Ac.0.13 guntas in Survey No.46 was allotted to his share in partition along with other properties and he obtained pattadar pass book in the year 2003 itself *vide* Pattadar Pass Book No.41531, Khatha No.853. Whereas, the petitioners are claiming that the name of Bairy Kanakamma was continued in the revenue records till 2017 and the entries made in the pattadar pass book in respect of subject property in the name of respondent No.6 is not genuine one and after death of Bairy Kanakamma, petitioners are eligible and entitled equal share in the subject property as the said property is a joint property.

8. It is very much relevant to mention here that both the parties have raised several disputed questions of facts (i) whether the subject property belongs to Bairy Kanakamma and after her death the petitioners are entitled share on par with respondent No.6; (ii) whether the subject property along with other properties were allotted to respondent No.6 in partition in the year 2003; (iii) whether respondent No.6 is in possession of the subject property since 2003 and the entries made in the pass book No.41535 (Khata No.854) in favour of respondent No.6 is genuine or not and other contentions raised by the

respective parties are also disputed questions of facts and the same have to be adjudicated by the competent Civil Court.

9. In **Chinnam Pandurangam** (1supra), this Court held that while carrying out amendment in records of rights, requirement of issuance of notice to all persons interested is required under the ROR Act. The said judgment relied by the counsel for petitioners is not applicable to the facts and circumstances of the case, on the ground that petitioners are claiming the subject property allotted to Bairy Kanakamma and after her death, they entitled equal share on par with respondent No.6. However, respondent No.6 had obtained pattadar pass book in respect of subject land and got entries in revenue records behind their back. On the other hand, respondent No.6 contended that in family partition in the year 2003 the subject property was allotted along with other properties towards his share and he is in possession of the same since then and he obtained pattadar pass book in 2003 basing upon old pass book he obtained new pass book. The above said aspects are purely disputed questions of facts and the same have to be adjudicated by the competent Civil Court.

10. In **Susheela and Ors.** (2 *Supra*), this Court held that the petitioners therein have not exhausted the right of appeal within the statutory limitation period prescribed and after 12 years of delay, they cannot take advantage of provision contained in Section 9 of the Act of 1971 to file a revision directly, though the said Act does not prescribe

time limit for preferring a revision, such revision has to be filed within the reasonable time and in such circumstances, courts may not grant equitable relief if the delay is deemed unreasonable, particularly when the matter at hand is of substantial importance, such as determining the status of property rights. The said principle is also not applicable to the facts and circumstances of the case on the ground that the main issue involved in the case on hand is whether subject property belonging to respondent No.6 or Bairy Kanakamma and by virtue of the death of Bairy Kanakamma, whether the petitioners are entitled share in the said property. These are disputed questions of facts and the same cannot be adjudicated in the writ petition.

11. It is very much relevant to place on record that in **K. Jaipal Reddy Vs. Joint Collector, Ranga Reddy District**³, the Division Bench of this Court by considering the judgments of the Hon'ble Apex Court as well as this Court specifically held that revenue authorities have no power or jurisdiction to decide the complicated questions of title and possession.

12. It is also relevant to place on record that in **Ratnamma v. RDO, Dharmavaram, Ananthapur District and others**⁴, the Division Bench of erstwhile High Court of Andhra Pradesh, Hyderabad, held that once pattadar pass books and title deeds were issued under

³ 2023 (6) ALT 622

⁴ 2015 (6) ALD 609

Section 6-A of the Act, Revenue Divisional Officer is not having power/authority to entertain the appeal under Section 5(5) of the Act and the parties have to approach Common law remedy.

13. In the case on hand, petitioners sought relief for cancellation of pattadar pass book and delete the name of respondent No.6 in 1-B Manual in respect of subject property and the same is not permissible under law. Similarly, the observation made by respondent No.4 in the impugned order dated 17.05.2019 directing petitioner No.1 to approach the Revenue Divisional Officer, Warangal (Urban) and file appeal for cancellation of pattadar pass book, is also not tenable under law, in view of the principle laid down by the Hon'ble Division Bench in **Rathnamma case** as stated (3 supra).

14. It is already stated *supra* that the revenue authorities while exercising the powers conferred under the provisions of ROR Act or this Court in a writ petition cannot be adjudicated the complicated disputed questions of facts with respect to title and possession over the properties and the parties have to approach the competent Civil Court.

15. Viewed from any angle, this Court do not find any merit in the writ petition and the same is liable to be dismissed.

16. Accordingly, the writ petition is dismissed. 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. No costs.

Miscellaneous petitions, if any pending, shall stand closed.

J.SREENIVAS RAO, J

Date: 16.04.2024

L.R. Copy to be marked – Yes.

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