

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No. 14580 of 2021

Between:

Mohammed Abdul Azeem and another

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 04.07.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.No. 14580 of 2021

% 04.07.2023

Between:

**# Mohammed Abdul Azeem and another
..... Petitioners**

And

**\$ The State of Telangana and others
... Respondents**

< Gist:

> Head Note:

**! Counsel for the Petitioner : Sri Vedula Srinivas
Senior Designate counsel**

^ Counsel for Respondents 1 to 4: G.P. for Revenue

**^ Counsel for respondent No.6 : Sri B.Chandrasen Reddy
Senior Designate counsel**

? Cases Referred:

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No. 14580 of 2021****ORDER:**

Heard the learned senior designate counsel, Sri Vedula Srinivas, appearing on behalf of the petitioners and learned Government Pleader appearing on behalf of the respondents and learned Senior designate Counsel Mr. B.Chandrasen Reddy appearing on behalf of unofficial respondent No.6.

2. The Writ Petition is filed to issue a Writ of Mandamus declaring to issue a Writ of Certiorari or any other appropriate Writ Order or Orders Direction or Directions to quash the order of the Special Tribunal Komaram Bheem Asifabad, District in Case No. D1/15/2021 dated 11.06.2021, and to dismiss the Appeal filed by the 6th respondent in Case No. D1/15/2021, U/s. 55 of Telangana Rights in Land and Pattadar Pass book Act 1971.

3. The case of the Petitioners, in brief, is as follows:

a) Petitioner No. 2 is the absolute owner of the land admeasuring Ac. 28.00 guntas in Sy.No. 138/137/A of Manjampalli Village, Bejjur Mandal, Komaram Bheem Asifabad District, under registered Sale Deed No. 1877 of 2010, dated

05.05.2010, and has been in the possession of the same and also got issued a pattadar passbook in his name under earlier Rules as well as under recent Rules. Petitioner No. 2 is also a beneficiary of Rythu Bandhu from the State Government and had been cultivating cotton.

b) Petitioner No. 1 is the absolute owner of Ac. 10 of land in Sy.No. 138/137/A of Manjampalli Village, Bejju Mandal, Komaram Bheem Asifabad District, under registered Sale Deed No. 395 of 2011, dated 03.02.2011, and has been in possession of the same and also got issued a pattadar passbook in his name under earlier Rules as well as under recent Rules. Petitioner no.1 is also a beneficiary of Rythu Bandhu from the State Government and had been cultivating cotton.

c) Respondent No.6 preferred an appeal against the mutation done by the Tahsildar in favour of the petitioners under ROR Act, 1971 before the Revenue Divisional Officer, Kagaz Nagar.

d) Accordingly, the cases were transferred to Special Tribunals from the RDO office under the new Act of 2020 and

its Rules, and the Special Tribunal without giving notices to either of the parties disposed of the appeal by setting aside the mutation order granted to 1st and 2nd petitioner (2nd and 3rd respondents in the Appeal) and granted a mutation in favor of the 6th respondent in respect to the aforesaid lands of both the petitioners and further in W.P.No. 10452 of 2021, this Hon'ble court directed the Special Tribunal to hear both parties afresh.

e) The Special Tribunal sent notices dated 05.06.2021, fixing the date of hearing as 14.06.2021. The petitioners received the impugned order dated 11.06.2011, in the Tashildar's office, upholding the 6th respondent's mutation. The hearing date given according to the notice is 14.06.2021, but the order was already passed on 11.06.2011.

f) The decree obtained by the 6th respondent in the decree in O.S.No. 15 of 2010 on the file of SCJ, Asifabad, dated 18.09.2010, pertaining to the land of Ac. 38.00 guntas in Sy.No. 138/137/A at Munjampally Village, Bejjur Mandal, Kormaram Bheem Asifabad District, are with specific

boundaries different from the land of the petitioners. Hence, the Writ Petition.

4. The counter affidavit filed by Respondent No. 6, in brief, is as follows:

a) Respondent No. 6 had entered into an Agreement of Sale dated 06.02.2008, to purchase the agricultural land to an extent of Ac. 38.00 guntas @ 17,000/- per acre and paid advance sale consideration of Rs. 1,50,000/- to one Mr. Mohd Nazeemuddin.

b) Thereafter, on request of the land owners, respondent No. 6 paid a further part of the sale consideration of Rs.3,76,000/- under various receipts. When the 6th respondent herein requested the land owner to execute and register the sale deed after receiving the balance sale consideration, 6th respondent came to know that the petitioners alienated the land under the registered sale deed bearing document NO. 1887 of 2010, dated 05.05.2010. The 6th respondent further, filed an O.S.No. 1887 of 2010 before the Senior Civil Judge, Asifabad and got a decree dated

05.05.2010 stating that the registered sale deed of the petitioners executed by Nazeemudddin is not binding.

c) In pursuance to the above decree, E.P.No. 7 of 2016 was filed by the 6th respondent before the High Court and the Hon'ble Court executed a sale deed bearing No. 1287 of 2018 dated 27.04.2018, covered in Sy. No. 138/137/AA, situated Munjampalle Village, Bejjur Mandal, Kumaram Bheem Asifabad District, in favor of the 6th respondent herein.

d) In the meanwhile, the mutation proceedings that took place in favor of the writ petitioners by the Tahsildar when the suit was pending are not valid. This illegal action had been challenged before the Appellate Tribunal i.e. the 4th respondent during which the pendency of which the old Act was repealed and the new Act was enacted and the appeal was allowed by the Special Tribunal on 25.01.2021.

e) Aggrieved by the same, the Petitioners had challenged the same in W.P. No. 10452 of 2021 and it was held vide orders dated 30.04.2021, that this case should be disposed of after giving an opportunity to both the parties vide order dated 30.04.2021.

f) The Special Tribunal allowed the appeal, setting aside the mutation orders passed in favour of the petitioners herein vide its order. Hence the Writ Petition is devoid of merits and liable to be dismissed.

5. PERUSED THE RECORD

a) The order impugned dt. 11.06.2021 passed by the Special Tribunal at Kumuram Bheem (Asifabad) District under the Telangana Rights in Land and Pattedar Passbooks Act, 2020 reads as under :

ORDER:

On perusal of the record available in this file and written submissions by the petitioners and respondents, it is observed that the respondent has approached the Hon'ble Court of Senior Civil Judge at Asifabad, and filed a suit No 13/2010 for breach of contract of selling suit land. The Hon'ble Senior Civil Court at Asifabad has issued decree on 18.09.2013 in favor of respondent and Tahsildar Bejur has submitted proposals to the Revenue Divisional Officer Kagaznagar for cancellation of mutation which was granted in favor of petitioners, reporting the facts in this case The pattadar of said land Sri Mohd Baba Fareeduddin S/o Mohd Nazeemuddin, R/o H.No. 16-01-18/44, Raseland Colony, Saidabad, Near Balaji Sweet House, Hyderabad through his GPA Sri Mohd Nazeemuddin S/o Baba Fareeduddin, R/o Baregoda(V), Bejjur(M) has sold the land to the petitioners, while the case is pending at Hon'ble Court of Senior Civil Judge at Asifabad, even after taking money from the respondent in this case.

It is also noticed that, the Senior Civil Judge at Asifabad has sent the documents through Sri A Laxman Rao, a Court Bailief to the Sub-Registrar Asifabad on 27.04.2018 with a direction to register the subject lands to an extent of 38-00acres in favor of Metpalli Vengal Rao S/o Srinivas Rao and as per the directions issued by the Senior Civil judge, Asifabad the land bearing Sy.No.1138/137/89 extent:38.00 was registered in favor of Metpalli Vengal Rao S/o Srinivas Rao for a consideration of 30,40,000/- towards the final cost of the subject land vide Registered Document No.1287/2018 dated 27.04.2018. As such, the above subject land has to be mutated in favor of the respondent so as to enable the Registered Document No.1287/2018, dt: 27.04.2018.

Therefore, it is concluded that, the mutation proceedings of the Tahsildar Bejjur issued in favour of petitioners are liable to be cancelled in order to implement the Register document No.1287/2018, Dt:27.04.2018 and for sanction of mutation in favour of Metpalli Vengal Rao S/o Srinivas Rao in Sy.No.138/137//, 138/137/ Ext: 10-00A/C& 28-00 A/C respectively situated in Munjampalli Village, Bejjur Mandal of Kumuram Bheem Asifabad District.

Hence, as per powers vested upon the Tribunal under section (16) of The Telangana Rights in Land and Pattadar Pass Books Act, 2020 the petition is dismissed and mutation orders of the Tahsildar Bejjur issued in favour of petitioners are hereby cancelled. The Tahsildar, Bejjur is directed to take necessary action for sanction of mutation in favour of Metpalli Vengal Rao S/o Srinivas Rao in Sy No.138/137/60/2, 138/137/ Ext:10-00A/C& 28-00 A/C respectively situated in Munjampalli Village, Bejjur Mandal of Kururam Bheem Asifabad District under due procedure of Law. Accordingly the Petition is disposed off", The aggrieved party has liberty to approach competent civil court for their further claim.

Pronounced on this the 11th day of June, 2021."

b) The Notice dated 05.06.2021 vide No.D1/15/2021, of the O/o The Special Tribunal reads as under :

"Through the reference 2nd cited, the CCLA Hyderabad has issued public notice in pursuant on the orders of the Hon'ble High Court passed in (PIL)No 20/2021, dated 18.03.2021, a Public Notice stating that any person aggrieved by the Orders as the Special Tribunals on account of being denied an opportunity of hearing may make an appropriate application, for personal hearing before the respective special tribunals on 15.04.2021 & 16.04.2021 A notice was published in conspicuous places in the district and also published in newspapers on 10.04.2021 for wide publicity stating that any person aggrieved by the Orders as the Special Tribunals on account of being denied an opportunity of hearing may make an appropriate application for personal hearing before the respective special tribunals for the cases which are already passed by this Special Tribunal.

Accordingly, through the reference 3 cited, the Respondent/Revision petitioner personally through counsel has filed a petitions at Hon'ble High Court WP No 10452/2021, dt- 30.04.2021 to fix a specific date and time for hearing of the case on land matters on and in survey number 138/137/A and 138/137/A/E an extent 28 00 and 10.00 Acrs/Cents situated at Munjampally village pass such other orders as deemed fit and proper in the facts and circumstances of the case. **Therefore, it is to inform that, in the above subject matter the case is posted for hearing finally on 14.06.2021 at 11.00 AM, before the Special Tribunal, Kumuram Bheem Asifabad.**

Hence, the Petitioner(s) /Respondents/ Revision Petitioner(s)/ Respondent(s) as noted below are hereby directed to appear before the Special Tribunal on the

above date and time with documentary evidences in support of his/her/their claim without fail, Failing which, it will be decided being on of material evidence/records available on record in this case."

c) The order dated 25.01.2021 of the Court of the Special Tribunal, reads as under:

"On perusal of the record available in this file it is observed that the Revenue Divisional Officer has conducted hearings on 21.09.2019, 15.10.2019 & 28.12.2019 and all the related information/documents regarding this case are available in this file to come to a conclusion.

The Tahsildar Bejjur has submitted proposals to the Revenue Divisional Officer Kagaznagar for cancellation of mutation which was granted in favor of Respondents No.2&3, reporting the facts in this case that the appellant has approached the Hon'ble Court of Senior Civil Judge at Asifabad and filed a suit No.15/2010 against the respondents No.1&4 for breach of contract of selling suit land. The Hon'ble Senior Civil Court at Asifabad has issued decree on 18.09.2013 in favor of appellant.

The Tahsildar, Bejjur reported that the Senior Civil Judge at Asifabad has submitted the documents through Sri A Laxman Rao, a Court Bailief to the Sub-Registrar Asifabad on 27.04.2018 with a direction to register the subject lands to an extent of 38-00acres in favor of the appellant and as per the directions issued by the Senior Civil judge, Asifabad the land bearing Sy No.1138/137/es extent: 38.00 was registered in favor of appellant for a consideration of 30,40,000/- towards the final cost of the subject land vide Registered Document No.1287/2018 dated:27.04.2018 As such, the above subject land has to be mutated in favor of the appellant so as to enable the Registered Document No.1287/2018, dt: 27.04.2018.

In view of the above report of Tahsildar Bejjur and orders passed in OS No.15/2010, dated: 18.09.2013, it is observed that the mutation proceedings of the Tahsildar Bejjur issued in favor of respondents No.2&3 are liable to be cancelled in order to implement the Register document No.1287/2018, Dt:27.04.2018 and for sanction of mutation in favor of appellant in Sy No.138/137/a, 138/137/ Ext: 10-00A/C& 28-00 A/C respectively situated in Munjampalli Village, Bejjur Mandal of Kumuram Bheem Asifabad District.

Hence, as per powers vested upon the Tribunal under section (16) of The Telangana Rights in Land and Pattadar Pass Books Act, 2020 the appeal is allowed and mutation orders of the Tahsildar Bejjur issued in favor of respondents No.2&3 are hereby cancelled. The Tahsildar, Bejjur is directed to take necessary action to implement the Register Document No.1287/2018. Dt: 27.04.2018 under due procedure of Law Accordingly the Petition is disposed off"

d) Counter affidavit filed by Respondent No.6, Para 9

reads as under :

"9. It is submitted that the contention of the writ petitioners that the subject land is different from that of the respondent land and have different boundaries altogether is not correct. The land allegedly claimed by the petitioners is the property of the answering respondent and the subject matter of OS No. 15 of 2010 which was decreed in favour of the answering respondent. That the above decree has become final and the writ petitioner are lost their rights and they cannot question before the Special Tribunal orders in view of the finality of the dispute as no appeal has been filed challenging the decree dt. 18.09.2010 by Mohd. Baba Fareeduddeen, Mohd. Nazeemuddeen and Mohd. Yakub Ali. That the petitioner No. 2 is son of Mohd. Nizamuddin who was defendant No. 2 in O.S. No. 15 of 2010 and the 1" petitioner purchased an extent of Ac 10.00 gts under sale deed No. 395 of 2011 dt.

03.02.2011 pending litigation. That instead of approaching the Civil Court, the writ petitioners filed the present writ petition suppressing the material facts by alleging that the subject property is different from the suit property of OS No. 15 of 2010 and to harass the respondent herein and delay the proceedings for mutation of the name of the respondent."

6. DISCUSSION AND CONCLUSION:

a) This court opines that the order impugned passed by the 2nd and 3rd Respondents dt. 11.06.2021 in case No.D1/15/ 2021 needs to be set aside for the simple reason that the order impugned passed by the 2nd and 3rd respondents is dated 11.06.2021 in case No.D1/15/2021 while the hearing of the case was posted to 14.06.2021 as per the notice dated 05.06.2021 vide No. D/15/2021 of the office of the Special Tribunal.

b) A bare perusal of the Notice dt. 05.06.2021 vide No.D1/15/2021 of the Office of the Special Tribunal, Kumuram Bheem (Asifabad) District clearly indicates that the subject case is posted for hearing finally on 14.06.2021 at 11.00 a.m. before the Special Tribunal, Kumuram Bheem (Asifabad) District, but curiously the

order impugned is dated 11.06.2021. The Court opines that the order impugned is not in true compliance of the earlier orders of this Court dated 13.04.2021 in W.P. No. 10452 of 2021 which reads as under :

ORDER:

Heard learned counsel for petitioners, learned Assistant Government Pleader for Revenue and learned counsel appearing for the respondent No.6.

2. This writ petition is filed challenging the decision of the Special Tribunal constituted under Section 16 of the Telangana Rights in Land and Pattadar Passbooks Act, 2020 (Act 9 of 2020) in File No.D/15/2021 dated 25.01.2021 dismissing the appeal filed under the Act 26 of 1971. The primary challenge against the order of the Special Tribunal is that the order is passed without affording opportunity of hearing. This is not disputed by the counsel for respondent No.6. The order of Special Tribunal is not sustainable on this ground alone.

3. With the consent of both Counsel, the Writ Petition is disposed of and the matter is remanded to the Special Tribunal to hear the matter afresh. The Special Tribunal is directed to issue notice in advance, fixing the date of hearing, give opportunity of hearing to both parties, consider their respective submissions uninfluenced by earlier orders and pass reasoned order. The entire exercise shall be completed within a period of six

weeks from the date of receipt of copy of this order. Pending miscellaneous petitions, if any, shall stand closed

c) The specific averments made in Paras 8, 9 and 10 of the affidavit filed by the Petitioner in support of the writ petition had not been denied by the official respondents herein and the same read as under:

8. Thereafter, the Special Tribunal has taken up the case and issued notice to both the parties. The notice dated 05.06.2021 has been issued to the petitioners fixing the date of hearing as 14.06.2021. On that day, the petitioners appeared before the Collector and he has taken the copies of the documents presented by the petitioners in support of their case.

9. To the surprise of the petitioners, they received the impugned order from the office of the Tahsildar whereby the case of the 6th respondent has been upheld and the mutation standing in the name of the petitioners has been cancelled with a direction to the Tahsildar to incorporate the name of the 6th respondent herein in the revenue records.

10. Curiously, the said order is passed by the Special Tribunal on 11.06.2021 itself as could be seen from the 2nd page of the order as well as under the signature of the Addl. Collector though

the 1st page of the order does not contain any date. That means, the hearing dated 14.06.2021 was in the nature of a post mortem while the order has been passed already on 11.06.2021 itself. Such an order is illegal and liable to be set aside straightaway on that ground itself.

d) A bare perusal of the record indicates that the 6th Respondent is having land of 10.00 acres in Sy.No.138/137/A/E and 28 acres in Sy.No.138/137/A, whereas the lands of the Petitioner are in Sy.No.138/137/A alone.

e) It is observed in the order impugned that in order to implement the register document No.1287/ 2018, dt. 27.04.2018, as per the directions issued by the Senior Civil Judge, Asifabad, in suit O.S. No. 15/2010 the land bearing Sy.No.1138/137/A, extent 38.00 was registered in favour of 6th Respondent herein for consideration of Rs.30,40,000/- towards the final cost of the subject land and for sanction of mutation in favour of the 6th Respondent herein in Munjampalli Village, Bejjur Mandal of Kumuram Bheem (Asifabad) District, the mutation proceedings of Tahsildar Bejjur issued in favour of Petitioners had been cancelled, but a

bare perusal of the subject property in O.S.No.15/2010 indicates that the subject land is land admeasuring 38 acres in Sy.No.138/137/A, with boundaries as follows, as per the decree obtained in favor of the 6th respondent.

East : Land of Mujeebur Rehman
West : B.T. Road
North : Land of Hariram Tulsidas
South : Land of T.Banaiah

f) But the boundaries of the lands of the Petitioners as per their sale deeds filed in support of the present Writ Petition and the said details being extracted even at para 3 and 4 of the affidavit by the petitioner in support of the present Writ Petition are entirely different from that of the land of the 6th Respondent. This Court opines that in view of the fact that the application of the 6th Respondent seeking mutation is based on the decree dt. 18.09.2010 passed in O.S.No.15/2010 on the file of Senior Civil Judge, Asifabad pertaining to land of Ac.38.00 gts., in Sy.No.138/137/A at Village Munjampalli, Bejur Mandal, Kumuram Bheem (Asifabad) District with certain specific boundaries and admittedly the lands of the

Petitioners have different boundaries as per their sale deeds, the decree obtained by the 6th Respondent therefore cannot be the basis for implementing mutation against the lands of the Petitioners since the boundaries are entirely different and as borne on record the description of the land in the said decree varies with the description of the land of the Petitioners herein as per Petitioners sale deeds.

7. This Court taking into consideration the specific averments made by the petitioner in paras 8, 9 and 10 of the affidavit filed in support of the present writ petition opines that the order impugned has been pre-determined against the petitioners and is totally biased and in clear violation of principles of natural justice and also Article 14 of the Constitution of India.

8. Taking into consideration the aforesaid facts and circumstances of the case, the order impugned dated 11.06.2021 passed in Case No.D1/15/2021 of the Special Tribunal , Kumram Bheem (Asifabad) District is set aside and the matter is remitted to the Special Tribunal at Kumram Bheem (Asifabad) District in Case

No.D1/15/2021 since the same is passed hastily, mechanically in a routine manner without application of mind, without even taking into consideration the clear details of the subject lands in issue in clear violation of principles of natural justice contrary to the spirit of the orders of this Court dated 13.04.2021 passed in W.P.No.10452 of 2021. The Special Tribunal at Kumram Bheem (Asifabad) District is directed to hear the matter afresh i.e. Case No.D1/15/2021 by issuing notice in advance fixing the date of hearing by giving opportunity of hearing to both parties and consider their respective submissions uninfluenced by the observations of this Court on merits in the present order and earlier orders too within a reasonable period preferably within a period of eight (8) weeks from the date of receipt of the copy of the order.

9. In view of the above observations, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated 04.07.2023

Note: L.R. copy to be marked

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