(2001) 09 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1284 of 2001

Dist. Collector and Others — APPELLANT

Vs

Harikishan Agarwal and Others — RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books (Amendment) Act, 1989 — Section 4
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5, 5A, 6, 6(1), 6A(5)
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 9, 9(1)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 4(1), 8(1), 8(3)

Citation : (2001) 6 ALT 397

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : G.P. for Revenue, for the Appellant; J. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The question, which arises for consideration, in this writ appeal is as to whether a Pattedar Passbook and Record of Rights Passbook can be issued during the pendency of a proceeding under the Urban Land (Ceiling and Regulation) Act, 1976 (for short "1976 Act").

FACTS:

2. The facts of the matter, in brief, are that the respondent No. 1 herein had purchased Ac. 7-00 and Ac. 11-00 of lands in Survey Nos. 54 and 56 respectively situated at Hafizpet village from respondents 5 to 7 and one Veeraiah under two registered sale deeds dated 6-4-1966 and 22-5-1967. Respondent No. 7 filed a suit in O.S.No. 579 of 1989 in the Court of I Additional Subordinate Judge, Rangareddy for partition and injunction. Respondent No. 1 herein impleaded himself as defendant No. 5 in the said suit and the said suit was dismissed. Thereafter, respondent No. 1 filed a suit in O.S.No. 1 of 1990 in the Court of

District Munsif, West and South, Rangareddy for injunction against respondents 5 to 7 and the said suit was decreed on 8-12-1997. A pattedar pass book was issued to respondent No. 1 to the effect that the aforementioned lands were purchased by him and his name was recorded in the pahanies for the year 1989-90 pursuant to the mutation proceedings issued in 1982.

3. Respondent No. 1 filed an application with respondent No. 4 u/s 4 of the Andhra Pradesh Record of Rights in Lands and Pattedar Passbooks (Amendment) Act, 1989. After enquiry an order on the said application was passed on 30-4-1992 by respondent No. 4. An appeal preferred thereagainst was dismissed by respondent No. 3 by an Order dated 8-9-1993. Against the said order, a revision was filed before the second respondent in the year 1996, which was also dismissed by an order dated 18-10-1997. On coming to know of issuance of Pattedar passbooks during the pendency of injunction suit before the Civil Court, respondent No. 1 filed the writ petition praying for the following relief:

"......to pass appropriate writ, order or direction particularly writ of mandamus declaring action of the respondent 4 in issuing pattedar pass books and ROR pass books in favour of respondents 5 to 7 bearing Nos. Z 183839 (patta No. 8), Z 183840 (patta No. 11), Z 183834 (patta No. 4), Z 235154 (ROR passbok-pattaNo. 11) and Z 235153 (ROR pass book-patta No. 8) as without jurisdiction, contrary to law, illegal and cancel the same and consequently direct the respondents 1 to 4 herein to issue pattadar pass books and ROR pass books in favour of the petitioner in respect of land admeasuring 7 Acres in Sy.No. 54 (New Sy.No. 54/2) and 11 Acres in Sy.No. 56 (New Sy.No. 56/1) situated at Hafeezpet village, Serilingampally Mandal, Ranga Reddy District, by implementing orders bearing No. C/47/90, dt. 30-4-1992 passed by the respondent No. 4 herein, confirmed in appeal No. C/4700/92, dt. 8-9-1993 passed by respondent No. 3 herein."

4. The learned Single Judge allowed the writ petition as prayed for questioning the same the present appeal has been filed.

SUBMISSIONS:

5. Learned Government Pleader for Revenue appearing on behalf of the appellants would submit that having regard to the different provisions contained in the Andhra Pradesh Record of Rights and Pattedar Passbooks Act, 1971 (for short "1971 Act") and Rule 9 of the Andhra Pradesh Record of Rights in Lands and Pattedar Passbooks Rules, 1989 (for short "1989 Rules"), no such direction could have been issued.

6. Mr. J. Prabhakar, the learned Counsel appearing on behalf of the respondent No. 1 writ petitioner, on the other hand, contends that it is not a case where there is a change in the registry, but in this case the writ petitioner-respondent No. 1 had only asked for implementation of the order passed by the authorities themselves. It was submitted that the appellants themselves inserted the names of some persons in the record of rights without giving respondent an opportunity

of hearing and in that view of the matter the learned Single Judge was right in issuing the aforementioned directions.

FINDINGS:

7. It is not in dispute that on a declaration made by the writ petitioner a proceeding under the 1976 Act had been initiated. 56845.93 square metres of vacant land was found to be in excess. The respondent No. 1 writ petitioner preferred an appeal wherein inter alia it was contended that some lands do not fall within the purview of the definition of ''vacant land'' as they are agriculture in nature. The appellate authority by an order dated 29-6-2001 had allowed the said appeal and remitted the matter back to the competent authority under the 1976 Act.

8. The record of rights, as is well known, does not create any title. In the State of Andhra Pradesh not only a person''s name is entered in the record of rights maintained by the revenue authorities, but also a pattedar passbook is issued, which is considered to be a title deed.

9. A presumption of correctness as to entries in passbooks arises in terms of subsection (5) of Section 6-A of the 1971 Act. In the event such passbooks are issued, the lands in question would be treated to be agricultural lands and would fall beyond the purview of the 1976 Act.

10. A reading of Section 5, 5-A, 6 and 7 would show that the recording authority (Mandal Revenue Officer) is required to make entries or changes in record of rights after following the procedure laid down in Section 5 and Rules. However, in certain circumstances the Mandal Revenue Officer is precluded to make entries or amend record of rights. This is provided for in Rule 9. Rule 9 (1) (a) (iv) of 1989 Rules provides that no order shall be passed for the change of registry or splitting joint pattas, unless the recording authority is satisfied that it is not in contravention of any of the provisions of the 1976 Act.

11. The purport and object of the 1971 Act and the 1989 Rules is that no action should be taken which should be violative of the provisions of any other law for the time being in force. Whether the petitioner holds excess vacant land in terms of 1976 Act is pending lis before an appropriate authority. All questions raised therein by the petitioner will have to be determined in the said proceeding itself.

12. The revenue authorities could not have taken any decision in this regard either by inserting the names of some other persons in the record of rights, as has been contended by the writ petitioner, but the same does not mean that only because his name finds place in the record of rights, he would be automatically entitled to grant of pattedar passbook. There is nothing to show that before the authorities concerned, it had been disclosed that in terms of Section 4 (1) (b) of the 1976 Act, it had been determined that the writ petitioner holds an excess land of 54865.93 square metres and upon remand of the matter by the appellate authority, the matter is pending consideration. Before the appellate authority

documents were produced to show that Survey Nos. 54 and 56 of Hafeezpet and Survey No. 284/6 of Gudimalkapur villages were included in the Income Tax returns as filed by the writ petitioner herein as "HUF". As regards the land in Survey Nos. 54 and 56, it was noticed:

"(ii) The admitted facts are that S.Nos. 54 and 56 of Hafeezpet are situated in peripheral area for which there was no Master plan on the date of the commencement of the Act, i.e., 17-2-76. They are covered by extended Master Plan w.e.f. 29-9-80 in which S.No. 54 is earmarked for residential and S.No. 56 is earmarked for agricultural purpose as per the S.O''s provisional orders u/s 8(1) and 8 (3) dated 12-6-90. The S.O. treated the land in 56 also as vacant land for the reason its not being used for agriculture as earmarked for that purpose in the extended Master Plan and proceeded to determine vacant land held on the appointed day i.e., 28-1-76. Determination of excess land on the appointed day with reference to the land use as specified in the Master Plan which came into effect much later i.e., on 29-9-80 is obviously not correct. He should have determined excess or otherwise as on 29-9-80 i.e., the date on which the lands are covered by Master Plan which would be the date of commencement of the Act in relation to these lands as per explanation (ii) u/s 6 (1) of the Act."

13. The writ petitioner evidently intends to use the passbook, which may be handed over to him in the aforementioned proceedings. The order of the Mandal Revenue Officer dated 30-4-1992, whereupon strong reliance has been placed by the learned Counsel for the writ petitioner and which has been upheld in the appeal by the Revenue Divisional Officer, Chevella in his order dated 8-9-1993, if directed to be implemented at this stage by issuing a writ or order in the nature of Mandamus, the same would give rise to another illegality. In a situation of this nature, we are of the opinion that the impugned direction could not have been issued. We are, therefore, of the opinion that a decision of the Division Bench of this Court in Pydi Hariya and another Vs. Revenue Divisional Officer, Kandukuru Division, Prakasam Dist. and others, . shall apply in the instant case.

14. The decision in State of A.P. and Others Vs. K. Ashok Rao and Others, cannot be, in our opinion pressed into service at this stage. The questions raised herein, as noticed hereinbefore, being essential questions of fact, whether the principle of estoppel would apply or not would depend on the findings of the competent authority thereon.

15. However, in our opinion, the interest of justice would be subserved if an observation is made to the effect that the authorities under the 1976 Act may dispose of the proceeding at an early date and preferably within a period of four weeks from the date of communication of this order. In the event the said proceeding comes to an end and is determined in favour of the writ petitioner-respondent No. 1; the appellants must issue the pattedar passbook in his favour without any further delay.

16. This writ appeal is allowed to the aforementioned extent. No order as to

costs.

