(2005) 09 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23160 of 2004

Entala Bhupal and Another — APPELLANT

Vs

District Revenue Officer and Others — RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 158, 166B, 58
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5B, 8(2), 9
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 3, 9
Constitution of India, 1950 — Article 226

Citation : (2005) 6 ALT 560

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : P. Pankaj Reddy, for the Appellant; G.P. for Respondent Nos. 1 and 2 and A. Prabhakar Rao, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—The petitioners invoked extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India and accordingly prayed for issuance of order, direction or writ of mandamus declaring the proceedings of District Revenue Officer, Warangal, Warangal District, 1st respondent issued in Rc.No. E3/ H5/180/2001, dated 3-9-2002 as illegal, arbitrary, without jurisdiction and contrary to the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971.

2. The impugned order passed by the 1st respondent, District Revenue Officer, Warangal, Warangal District is challenged on various grounds. Before I consider the question as to the validity of the impugned order, it may be relevant to notice a few facts leading to filing of this writ petition.

3. The petitioners are joint owners and possessors of land bearing Survey No. 1061 admeasuring Ac.1-37 gts. situated at Himmathnagar Village, Zaffergadh

Mandal of Warangal District. The petitioners claim that they purchased the land from the legal heirs of one Bommera Narsaiah in 1994. The names of the petitioners after their purchase and their vendors names earlier (there) to are recorded as pattadars and possessors in all revenue records, ever since 1978. Pannala Shyam Sunder Reddy-3rd respondent submitted an application before the District Revenue Officer, Warangal, 1st respondent claiming that the lands were purchased by his father from pattadar Bommera Narsaiah in 1951. Therefore, he sought deletions of petitioners'' names from the Occupancy Column of the pahanies and inclusion of his name for the years 1994-95, 1997-98 and 1998-99. The writ petitioners claimed that their names are recorded under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 and thus the 1st respondent has no jurisdiction u/s 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli to pass orders in respect of correction of entries in the Revenue records. According to the petitioners, if the proceedings passed by the 1st respondent are allowed to stand, it would result in far reaching consequences adversely affecting their existing right and interest in respect of land. Thus, the petitioners filed this writ petition with the prayer stated supra.

4. The 3rd respondent filed counter affidavit and it is in brief as follows:

The petitioners are never in possession of the land to an extent of Ac. 1-37 guntas in Survey No. 1061 situated at Himmathnagar village, Zafferghad Mandal, Warangal District. He filed an application before the 1st respondent for correction of entries wrongly recorded in the pahanies. The 1st respondent has called for a report from the Mandal Revenue Officer 2nd respondent and found that the entries made in favour of the petitioners in respect of Survey No. 1061 are irregular and accordingly, ordered for deletion of the names of the petitioners in the revenue record for the years 1994-95, 1997-98, 1998-99. Since, the order passed by the 1st respondent was after due enquiry and based on the report of the Mandal Revenue Officer, the same is not to be required to be interfered in the writ petition. Petitioners filed the writ petition after more than two years questioning the impugned order dated 3-9-2002 and therefore, the writ petition is liable to be dismissed on the ground of laches. He filed a suit O.S.No. 1684 of 2004 on the file of the II Additional Junior Civil Judge''s Court, Warangal against the petitioners for the relief of permanent injunction restraining the petitioners from interfering with his possession and enjoyment over the land in dispute. He also filed I.A.No. 2794 of 2004 seeking temporary injunction. The trial Court granted interim injunction in his favour and the same is subsisting. The petitioners instead of contesting the suit filed this writ petition. The petitioners can establish the fact of their being in possession of the land in the trial Court.

5. Heard learned Counsel for the petitioners and learned Government Pleader for Revenue appearing for Respondent Nos. 1 and 2 and learned Counsel appearing for the 3rd respondent.

6. The learned Counsel appearing for the petitioners submits that the petition

filed by 3rd respondent before the District Revenue Officer, Warangal, Warangal District-1st respondent invoking the revisional powers for rectification of the entries in the Occupancy column of the pahanies for the years 1994-95, 1997-98 and 1998-99 is not maintainable, since the pattadar passbooks have already been issued in favour of the petitioners in respect of the land under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971. He further submits that the Revenue Authority after due enquiry under the provisions of A.P. Rights in land and Pattadar Pass Books Rules, 1989 prepared record of rights in Form No. 1 as required under Rules 3 and 9 of A.P. Rights in Land and Pattadar Pass Books Rules, 1989 and any person aggrieved by the entries made in Records of Rights has to workout remedy provided under the A.P. Rights in land and Pattadar Pass Books Act and Rules framed there under and therefore, the application filed by the 3rd respondent before the 1st respondent seeking review u/s 166-B (T.A.) Land Revenue Act, 1317 Fasli is not maintainable. In support of his submissions, reliance has been placed on a Division Bench decision of our High Court in M.B. Ratnam and Others Vs. Revenue Divisional Officer and Others, wherein it has been held that A.P. (T.A.) Land Revenue Act, 1317 Fasli is a general law which deals mainly with land revenue and allied maters 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, the remedy provided u/s 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 Division Bench observed in paras 66 and 67 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 u/s 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 he firs respondent cannot be treated as appeals filed u/s 58 of the Land Revenue Act, 1317 Fasli.

67. We may also notice that an appeal u/s 158 of A.P. (T.A.) Land Revenue Act 1317 Fasli, has to be preferred within a period of sixty days. In the instant case; the respondents have chosen to prefer appeals after a period of 10 years. The appeals could not have been entertained even if the said appeals preferred by them are treated as appeals u/s 158 of the Land Revenue Act, 1317 Fasli".

7. The learned Counsel appearing for the 3rd respondent submits that the 1st

respondent ordered correction of the entries in the possessory column in respect of the land relating to Fasli, 1994-95 to 1997-98 after due enquiry and taking into account the report submitted by the Mandal Revenue Officer and thus, the order impugned in the writ petition is legal and proper and the same is not required to be disturbed. He further submits that since the suit filed by the 3rd respondent is pending for adjudication and the writ petitioners can agitate their rights in the suit. In support of his submissions, reliance has been placed on the decision of our High Court in V. Goutham Rao Vs. Revenue Divisional Officer and Another, , where in it has been held that wherever there is a serious dispute of title or claims of any rival title, it would not only be proper for the authorities to refrain from proceeding with the enquiries as such under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 but also pragmatic for the parties to approach the Civil Court for establishing their right, title an interest of whatsoever nature. The contention of the learned Counsel appears to be sound at the first blush. But, on close scrutiny, the same is liable to be dismissed, since the suit filed by the 3rd respondent is for mere injunction and not for declaration of title or correction of entries in the revenue records.

8. The issue that calls for adjudication in the writ petition is whether the 1 st respondent in the circumstances of the case is justified in passing the impugned order by invoking revisional powers u/s 166-B of the A.P. (T.A.) Land Revenue Act, 1317 Fasli.

9. For better understanding I may refer Section 166-B of the A.P.(T.A.) Land Revenue Act, 1317 Fasli and it is thus:

"(1) Subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 F. the Government or any Revenue Officer not lower in rank to a Collector the Settlement Commissioner of land Records may call for the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may make suitable order in that behalf.

Provided that no order or decision affecting the rights of the ryot shall be modified or annulled unless the concerned parties are summoned and heard.

"(2) Every Revenue Officer lower in rank to a Collector or Settlement Commissioner may call for the records of a case or proceedings for a subordinate department and satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and if in his opinion, any order or decision or, proceedings should be modified or annulled, he shall put up the file of the case with his opinion to the Collector, or Settlement Commissioner as the case maybe. Thereupon the Collector or Settlement Commissioner may pass suitable order under the provisions of Sub-section (1)".

"(3) The original order or decision or an authentic copy of the original order or decision sought to be revised shall be filed along with every application for revision".

10. The 3rd respondent filed an application before the 2nd respondent Mandal Revenue Officer for correction of entries in the pahanies in respect of possessory column relating to Survey No. 1061, situated at Himmathnagar village, Zafferghad Mandal, Warangal District for the years 1994-95, 1997-98 and 1998-99. The Revenue Divisional Officer took up the petition as a revision as provided u/s 166-B of A.P. (T.A.) Land Revenue Act, 1317 Fasli and called for report from the Mandal Revenue Officer. The 3rd respondent contended before the Revenue Divisional Officer that his grand father purchased the land from pattadar in Survey No. 1061 situated at Himmathnagar village to an extent of Ac.1-37 gts. In 1951.

11. A fact is required to be noted at this juncture that recording authority made certain entries in the revenue records after due enquiry as contemplated under A.P. Rights in Land and Pattadar Pass Books Act, 1971 as well as A.P. Rights in Land and Pattadar Pass Books Rules, 1989. Under Rule 3 of Pattadar Pass Books Rules, 1989 the record of rights shall be prepared and maintained in Form-1 for every separate revenue village. An order came to be passed on 3-8-2005 by this Court directing the Revenue Authorities to place on record Form No. 1. In pursuance of the direction, the Government Pleader for Revenue placed on record Form No. 1 Register relating to Himmathnagar H/O Zafferghad Mandal, Warangal District on 21-9-2005. The entries noted in Form No. 1 of the register in respect of Survey No. 1061 reads as follows:-

12. As per the entries in Form No. 1 register in respect of Survey No. 1061 the following names recorded as pattadars:

1. Bommera Sivalingam

2. Bommera Som Reddy

3. Bommera Raji Reddy

So also in the enjoyers column, the names mentioned are:

1. Bommera Sivalingam

2. Bommera Som. Reddy

3. Sommera Raji Reddy.

13. Extent of their enjoyment has been stated as Ac.0-26 guntas, Ac.0-26 gts. And 0-25 guntas respectively. Pahanies in respect of Survey No. 1061 relating to years 1995-96, 1996-97 and 1997-98 are also placed on record. The original entries in the Pahanies do not speak of the possession of the 3rd respondent in respect of the land. When the entries in Record of Rights have been updated under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971, any person aggrieved by the entries has to work out his remedies as provided under the Act i.e. by way of appeal u/s 5-B or revision as provided u/s 9. There is also remedy to the aggrieved persons with regard to any entries made in the revenue records by way of filing suit as provided u/s 8 (2) of the A.P. Rights in

Land and Pattadar Pass Book Act, 1971. The 3rd respondent instead of working out remedies provided under the Act has chosen to file an application before the 1st respondent seeking review by invoking the provisions of A.P. (T.A.) Land Revenue Act, 1317 Fasli. Such course is not permissible in the circumstances of the case.

14. Therefore, the order impugned in the writ petition cannot be sustained and the same is hereby set aside.

15. Accordingly, the writ petition is allowed. No order as to costs.

