(2015) 04 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3541 of 2015

K.A. Swamy — APPELLANT

Vs

State of Andhra Pradesh and Others — RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 4, 5(3), 9

Citation : (2015) 4 ALT 60

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Challa Kodanda Ram, J.

1. Petitioner challenges the order dated 27.12.2014 passed by the respondent No. 2-Joint Collector, Vizianagaram District, in exercise of the power under Section 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (in short "the Act"). The facts in brief are that petitioner is the landlord owning vast extents of land in Bogapuram village, Bogapuram Mandal and he has also declared under land ceiling proceedings. Petitioner is aggrieved with the proceedings of the Mandal Revenue Officer mutating name of Respondent No. 5 in the year 2004 and issuance of pattadar passbook in his favour on 23.07.2004 and also the subsequent amendments carried out in favour of respondent Nos. 6 to 8 based on the sales made by the respondent No. 5 in favour of respondent Nos. 6 to 8. The dispute relates to the land in Sy. Nos. 384, 385, 386/1, 386/2 and 387 of Bogapuram village. Petitioner approached the Revenue Divisional Officer, Vizianagaram, by way of an appeal on 29.05.2012, contending that the petitioner never executed any valid documents in favour of the respondent No. 5 with respect to the land in the above survey numbers, therefore, the issuance of pattadar passbooks and title deeds in favour of respondent No. 5 and others, is totally arbitrary and illegal and the same is malafide. The Revenue Divisional Officer after elaborately discussing the material placed before him and

particularly considering the original record of the Mandal Revenue Officer in granting mutation and effecting the changes in the revenue records vide orders dated 27.02.2004 and considering the rival contentions directed the parties to approach the competent civil court and get the issues decided. Thereafter, petitioner approached the Joint Collector by filing revision under Section 9 of the Act, who also in turn confirmed the order of the Revenue Divisional Officer, the present writ petition is filed questioning the order of the Joint Collector dated 27.12.2014 raising the following grounds:

(a) Section 4 of the Act has provided for updating of revenue records. Any person acquiring right in the land by purchase, conveyance, Will etc., can approach for updating of revenue records. Such a claim should be notified to the person whose name is already recorded as owner and possessor of the subject land. It has been held by a Full Bench of this Court that Section 5(3) of the Act is mandatory and any change in the revenue entries without notice to the person whose name has already been recorded, is invalid and illegal. Without any notice to the petitioner, the 4th respondent has changed the entries in the revenue records and the same has necessitated filing of appeal before the 3rd respondent. The appellate authority, without examining the contentions and the basic facts of the case, has erroneously relegated the petitioner to civil court. The revisional authority i.e., the 2nd respondent has committed the same error of law by not exercising jurisdiction. The authorities under the Act should examine about the basis of a claim for updating of revenue records. Since there cannot be conveyance by oral act, there is no title over the land in so far as the 5th respondent is concerned and consequently, there cannot be a conveyance in favour of respondents 6 to 8. Therefore, they cannot be issued Pattadar Pass Books and Title Deeds. As the 2nd and 3rd respondents have failed to exercise their jurisdiction, the order under challenge is liable to be set aside.

(b) In a mutation enquiry, the recording authority should verify about the flow of time. Admittedly, there is no sale transaction between the petitioner and the 5th respondent. Hence, the 5th respondent could not have sold the subject land to respondents 6 to 8.

(c) Approaching civil court for declaration of title is called for only when there is a dispute of time. Admittedly, the petitioner is the owner and he did not sell any land to the 5th respondent. Hence, the 5th respondent could not have sold any lands to respondents 6 to 8 and consequently respondents 6 to 8 are not entitled to grant of mutation or issuance of pattadar passbooks and title deeds. As the authorities below have failed to exercise their jurisdiction and as there is no triable issue between the parties, the petitioner is constrained to file the present writ petition to invalidate the appellate and revisional orders passed by the respondents 2 and 3.

2. Initially the matter came up for admission on 24.02.2015 and notice before admission was ordered. Counters were filed on behalf of the respondent Nos. 6 to 8. No appearance on behalf of the respondent No. 5.

3. The facts are not in dispute. It is the specific case of the petitioner that there is no transfer of property in favour of the respondent No. 5 by the petitioner by executing any valid document and as such the respondent No. 5 could not have acquired any right and as such he could not have conveyed any valid title in favour of the respondent Nos. 6 to 8. In that view of the matter, mutating the names of the respondent No. 5 and others, is unauthorised and illegal.

4. The learned counsel appearing for the respondent Nos. 6 to 8 submit that the petitioner had executed an unregistered sale deed in favour of the respondent No. 5 on 06.04.1984 and thereafter he gave a statement before the Mandal Revenue Officer on 29.06.2004 admitting the execution of the said document and transferring the property in favour of the respondent No. 5. It is also further contended that it was accepted before the Mandal Revenue Officer that the petitioner has no objection for recognising the respondent No. 5 as true owner of the property and for effecting the necessary changes in the revenue records and for issuance of pattadar passbook and title deeds in favour of the respondent No. 5. Respondent No. 5 in turn had sold the property in different extents to respondent Nos. 6 to 8 by executing registered sale deeds on 13.12.2013. Thereafter, the respondent Nos. 6 to 8 were issued pattadar passbooks and title deeds. It is also submitted that the appeal filed by the petitioner against the proceedings dated 23.07.2004 passed by the Mandal Revenue Officer, by way of an application on 29.05.2012 was hopelessly barred by time and the Revenue Divisional Officer ought not to have entertained the same and ought to have rejected the claim at the very inception. Further, it is submitted on behalf of the respondent No. 6 that the suit bearing O.S. No. 373 of 2010 seeking injunction against the respondent No. 5 and two others came to be decreed on 29.07.2013. Further, it is submitted by the learned counsel for the respondent No. 8 that on 20.12.2013, respondent No. 8''s name was mutated in the revenue records and pattadar passbooks were also issued in her favour. In the light of the above factual situation, it is submitted by the learned counsel appearing on behalf of the respondent Nos. 6 to 8 that there is no infirmity in disposing the application of the petitioner and in fact it is the specific contention of the respondents counsel that even making observation that the matter is required to be settled by the civil court at this point of time is itself unwarranted.

5. In the light of the above factual situation and considering the fact that the rights of the parties are involved in the present case and the scope of enquiry under the ROR Act by the authorities is limited, and especially the title aspects could not have been decided by the authorities under the Act, I do not find any infirmity in the order dated 27.12.2014 confirming the order dated 29.04.2014 of the Revenue Divisional Officer, who had merely observed the parties to workout their remedies in the Civil Court. It is also brought to the notice of the Court that as a matter of fact petitioner has filed O.S. No. 104 of 2015 on the file of Senior Civil Judge Court, Vizianagaram, seeking permanent injunction and other reliefs. In the above factual background, I do not find any merits in the writ petition.

6. Accordingly, the Writ Petition is dismissed. The observations made, if any, in dismissing the Writ Petition shall not be construed as expressing the opinion with respect to the rights of the parties in any manner and shall not prejudice either of the parties in the civil court, which are pending or which may be instituted. There shall be no order as to costs. Interim order granted on 24.02.2015 shall stand dissolved. Miscellaneous petitions pending, if any, shall also stand dismissed.