(2017) 01 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23574 of 2014

M/s. Janapriya Engineers Syndicate Pvt. Limited — APPELLANT

Vs

The State of Telangana — RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 158(1), Section 159(2), Section 166-B
Constitution of India, 1950 — Article 226

Citation : (2017) 2 ALT 587 : (2017) 2 AndhLD 754 : (2017) 1 HLT 578

Hon'ble Judges : Sri A. Rajasheker Reddy, J.

Bench : Single Bench

Advocate : Sri D. Prakash Reddy, learned Senior Counsel for Sri Harender Pershad, Advocate, for the Petitioner; Government Pleader for Revenue, for the Respondents

Final Decision : Dismissed

Judgement

Sri A. Rajasheker Reddy, J.—This writ petition is filed seeking writ of certiorari calling for the records pertaining to proceedings No.P3/456/2013, dated 29.05.2014 on the file of the 3rd respondent and quash the same as illegal, arbitrary and contrary to A.P (T.A) Land Revenue Act, 1317 Fasli (for short ''the Act'') and consequently to dismiss the appeal No.P3/456/2013.

2. Case of the petitioner is that it is the absolute owner and possessor of the land to an extent of Acs.51.15 gts in Sy.No.44(part) of Maktha Mahaboobpet, Serilingampally Mandal, R.R. District (hereinafter will be referred to as ''subject land'') having purchased the same through registered sale deeds in the year 2002 and ever since the date of purchase, the petitioner is in possession and enjoyment of the said land. The Joint Collector (J), Ranga Reddy District-4th respondent issued a show-cause notice to the petitioner and some others in respect of the land in Sy.Nos.5,6,9,19,29,39, 41, 44, 52, 61, 77, 98, 119 and 121 in an extent of Acs.309.36 gts, situated at Maqtha Mahabubpet Village,

Serilingampally Mandal, R.R. District calling upon them to show-cause as to why the supplementary sethwar issued in file No.B1/171/68 (G1/177/68), dated 07.06.1969 should not be cancelled by exercising his revisional powers under Section 166- B of the Act. After filing explanations to the above show-cause notice, the petitioner and others were issued another show-cause notice in respect of the land in above said survey numbers as to why wrong entries made in revenue records in respect of the land in above survey numbers should not be cancelled. Aggrieved by the show-cause notice No.E1/7306/99, dated Nil.11.1999, some of the persons filed W.P.Nos.4849/2000 and batch, which were disposed of by this Court directing the Joint Collector-4th respondent to conclude the proceedings initiated vide show-cause notice within a period of 6 months from the date of receipt of a copy of the judgment and also observed that it is for the petitioners to file their explanations or additional explanations within 30 days from the date of orders. Subsequently, petitioner and others filed explanations and after considering the same, the Joint Collector-4th respondent, after conducting an enquiry, passed order in proceedings No.E1/7306/1999 dated 07.11.2006. The operative portion of the said order reads as follows :

"In the instant case the entries in Faisal Patti of 1968-69 are purportedly made on the basis of a non-existent supplementary sethwar. As such these entries are vitiated by fraud and are a nullity. The entries in Faisal patti which are made on the basis of a non-est supplementary sethwar have to be corrected and removed. The entries made in revenue records pursuant to the entries made in Faisal Patti also need to be corrected.

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As the lands in question are Govt. lands, the M.R.O, Serilingampally Mandal is directed to take necessary action to correct the Revenue Records by deleting the names of private persons from the pahanies in pattedar column and depict the lands in question as Government lands. The M.R.O, Serilingampally (M) is also directed to take necessary steps to safeguard the said lands and take necessary steps for removal of encroachments, if any, on the said lands."

Aggrieved by the order of the 4th respondent-Joint Collector dated 07.11.2006, batch of appeals were filed under Section 158 of the Act before the 3rd respondent and the appeal filed by the petitioner herein is numbered as P5/1374/2006. The 3rd respondent passed an order dated 30.05.2007 remanding the matter back to the 4th respondent to conduct a detailed enquiry and pass appropriate orders. In pursuant to the same, the 4th respondent passed orders on 19.01.2013 in E1/7306/1999 holding that the power under Section 166-B of the Act cannot be invoked for cancellation of supplementary sethwar issued in the year 1969 and cancel the entries made in the revenue records and the 4th respondent also directed the 6th respondent to examine the records in respect of the subject lands and if any fabricated material is produced relating to fraud for issuance of supplementary sethwar, for obtaining correction of revenue records, to file comprehensive civil suit for declaration of title and for necessary recovery of possession in favour of the Government. Subsequently, the 6th respondent filed appeal under Section 158 (1) of the Act and same is numbered as No.P3/456/2013 and the 3rd respondent passed interim order granting stay on the proceedings of the 4th respondent dated 19.01.2013. Though the petitioner raised preliminary objections regarding maintainability of the appeal filed by the 6th respondent by placing reliance under Sections 158(4) and 159(2) of the Act, the 3rd respondent passed orders dated 29.05.2014 by overruling the objections raised by the petitioner stating that the appeal is maintainable under Section 158(1) of the Act. Aggrieved by the same, present writ petition is filed.

3. Counter affidavit is filed by the 6th respondent on behalf of the respondents 1 and 5 denying the averments in the affidavit filed in support of the writ petition stating that appeal filed by 6th respondent is maintainable. It is stated that though the matter was remanded at the first instance by the appellate authority-3rd respondent on 30.05.2007 for conducting fresh enquiry, the 4th respondent has not followed directions of the appellate authority-3rd respondent in remand order dated 30.05.2007. It is stated that the writ petition is premature and sought for dismissal of the writ petition.

4. Heard Sri D. Prakash Reddy, learned Senior Counsel appearing for the petitioners and learned Assistant Government Pleader for Revenue.

5. Sri D. Prakash Reddy, learned Senior Counsel submits that the 4th respondent refused to exercise the jurisdiction under Section 166-B of the Act, which amounts to rejection of the proceedings initiated under Section 166-B of the Act. He submits that by virtue of Section 158(4) of the Act, no appeal lies since the Joint Collector has not passed any orders reversing or varying the entries in revenue records. He submits that against an order of rejection, no appeal lies as the same is barred under Section 159(2) of the Act. He would further contend that even on merits, supplementary sethwar issued in the year 1969 cannot be cancelled after long lapse of time and 4th respondent rightly dropped the proceedings.

6. On the other hand, learned Assistant Government Pleader for Revenue submits that against any order passed by the Revenue Officer, appeal lies to the immediate Superior officer under Section 158(1) of the Act. He submits that the petitioner has also availed the remedy when the Joint Collector passed orders dated 07.11.2006 before the 3rd respondent and the 3rd respondent allowed the same by order dated 30.05.2007, as such, the appeal filed by the 6th respondent is maintainable. He submits that since the impugned order is passed by the 4th respondent, the 3rd respondent, being the superior officer, can entertain the appeal, as such, the appeal is maintainable. He submits that by playing fraud entries in revenue records are made and fraud vitiates all subsequent acts. He submits that the 4th respondent has not followed the directions in the remand

order passed by the 3rd respondent on 30.05.2007. He also submits that there is no rejection order passed by the 4th respondent and the 4th respondent has only directed the 6th respondent to conduct enquiry and institute a civil suit, as such, the provisions of Sections 158 (4) and 159(2) of the Act have no application.

7. In order to appreciate the contentions of both parties, it is relevant to extract Section 159(2) of the Act.

159. Non-appealable orders: The following orders shall be non appealable :-

"(1)????..

(2) order rejecting an application for revision or review."

In the instant case, 4th respondent refused to exercise powers of revision under Section 166-B of the Act, as such, it amounts to clear refusal to entertain the suo motu revision as 4th respondent only directed the 6th respondent to file civil suit, after conducting an enquiry, though the word ''rejected'' is not used by 4th respondent.

In view of same, the bar contained in Section 159(2) of the Act applies and appeal does not lie against order dated 19.01.2013.

"158. Appeal from order of Revenue officer: (1) Except as otherwise provided in this Act for any other law for the time being in force, an appeal shall lie against any decision or order passed by a Revenue Officer under this Act or any other law for the time being in force, to his immediate superior officer whether such decision or order may have been passed in this exercise of original jurisdiction or on appeal.

2??.

3??.

158 (4) : Subject to the provisions of [the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 F.], (Regulation LX of 1358 F.) if any decision or order is varied or reversed on revision or review in accordance with the provisions hereinafter land down, an appeal shall lie from the order passed on such revision or review as if such order were an original order or decision.]"

A reading of Sub-Section (1) of Section 158 goes to show that appeal lies against any decision or order passed by a Revenue Officer under this Act or any other law for the time being in force, to his immediate superior officer. However, the aforesaid provision cannot be read in isolation and same has to be read in consonance with Sub-Section (4) of Section 158 of the Act.

In this case, no doubt, the petitioner invoked the jurisdiction of the 3rd respondent in the first instance under Section 158(1) of the Act against the order dated 07.11.2006 passed by the Joint Collector, wherein the Joint Collector reversed entries in revenue records by exercising the power under Section 166-B of the Act, as such, appeal was heard and remanded the matter. Section 158(4) of the Act provides an appeal in case of any order or decision is varied or reversed on revision or review in the revenue records. But after remand order is passed by the 3rd respondent on 30.05.2007, the 4th respondent refused to alter the revenue records, as such, it does not amount to any variation or reversal of entries in revenue records. On reading of Section 158(1) & (4) of the Act, I am of the view that appeal does not lie against the proceedings dated 19.01.2013 refusing to reverse the entries in revenue records.

In view of the above legal position, I am of the view that the 3rd respondent was not correct in overruling the objection raised by the petitioner by placing reliance on Sections 158(1) of the Act alone, as such, impugned proceedings No.P3/456/2013, dated 29.05.2014 overruling objection of petitioner regarding maintainability of appeal, is liable to be set aside and accordingly same is set aside and appeal filed by 6th respondent is dismissed.

Accordingly, this Writ Petition allowed. However, this will not preclude the authorities from taking action as per the orders passed by the Joint Collector on 19.01.2013.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand dismissed.

