

(2021) 07 TEL CK 0003
In the Telangana High Court
Case No : Writ Petition No. 14509 Of 2021

R. Ram Reddy

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 01-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Telangana Rights in Land and Pattadar Pass Books Act, 2020 — Section 5, 6(1), 9, 10

Telangana Rights in Land and Pattadar Passbooks Act, 1971 — Section 8, 8(1), 8(2)

Citation : (2021) 07 TEL CK 0003

Hon'ble Judges : P.Naveen Rao, J

Bench : Single Bench

Advocate : P.Bhanu Prakash

Final Decision : Allowed

Judgement

1. This writ petition is filed seeking the following relief :

â??to issue writ, order or direction especially one in the nature of Writ of Mandamus declaring the action of the respondent No.3 in not

recording/entering the name of the petitioner on online dharani and not issuing E-patta pass book (PPB)/Title deed (TD) under Section 5, 6 (1) and 10

of Telangana Rights in Land and Pattadar Pass Books Act, 2020 in respect of agricultural land Adm.Ac.3-39 gts in Sy.No.24, Ac.1.33 gts in

Sy.No.25, Ac.1.08 gts in Sy.No.26, Ac.3.00 gts in Sy.No.47 and Ac.4.03 gts in Sy.No.331/1, total admeasuring Ac.14.03 gts., situated at Inole Village,

Achampet Mandal, Nagarkurnool District as illegal, arbitrary, unjust and against the principles of natural justice and further declare the action of the

3rd respondent in issuing the endorsement vide No.A/1346/2019 dt.16.07.2020 by rejecting/denying the application of the petitioner is also illegal,

arbitrary, without jurisdiction and against the principles of natural justice and consequently set aside the endorsement No.A/1346/2019 dt.16.07.2020 of the 3rd respondent and pass such other order or ordersâ?|â??

2. According to petitioner, he is the owner of land to an extent of Ac.14.03 guntas spread over several survey numbers in 24, 25, 26, 47 and 331/1 of

Inole Village, Achampet Mandal, Nagarkurnool District, having inherited the same by way of partition deed dated 12.05.1975 and registered Will deed

document No.8 of 1985. Petitioner name was mutated in the revenue records. He was issued pattadar passbook and title deed with Patta No.479.

Though petitioner inherited larger extents of land, as of now, he is in possession of Ac.14.03 guntas of land only. Petitioner applied for issuance of e-

pattadar passbook by his representation dated 29.05.2020. In response to the said representation, the Tahsildar issued endorsement dated 16.07.2020

informing the petitioner that in view of pendency of O.S.No.159 of 2007 in the Court of Additional Senior Civil Judge (FTC) at Mahabubnagar, the

property is included in Part-B revenue records and his request cannot be accepted till disposal of the said suit.

3. Aggrieved by the rejection of request by the Tahsildar, petitioner submitted representation to the District Collector, Nagarkurnool-2nd respondent on

10.02.2021 requesting to issue e-pattadar passbook and alleging inaction, this writ petition is filed.

4. According to learned counsel, O.S.No.159 of 2007 was disposed of on 12.06.2017. He submits that O.S.No.22 of 2017 is filed in the Court of IX

Additional District Judge at Wanaparthy praying to grant partition of the suit schedule lands and allotment of Ac.50.30 guntas of land to the plaintiffs

therein. Petitioner herein is the 1st defendant in the said suit and the same is pending consideration and no injunction order is operating in the said suit.

5. Learned counsel for the petitioner contends that mere pendency of the suit is not a bar to consider the application submitted by the petitioner to

grant e-pattadar passbook, more so, when the name of petitioner stands in the revenue records as an independent pattadar since 1975 that the

Tahsildar could not have rejected the request for grant of e-pattadar passbook by referring to suit which was already disposed of.

6. According to learned counsel, as held by the Division Bench of this Court in Erukala Uma Vs Government of Andhra Pradesh & Others

2014(2)ALD 228, mere pendency of suit is not a ground to refuse to grant e-pattadar passbook.

7. The issue for consideration is whether mere pendency of a suit in civil Court or a case in this Court is sufficient to deny request to issue mutation

and/or pattadar passbook under the Telangana Rights in Land and Pattadar Passbooks Act, 2020 (Act 9 of 2020) ?

8. Section 8 of the Telangana Rights in Land and Pattadar Passbooks Act, 1971 (Act 26 of 1971) imposed bar on suits. According to Sub-Section (2),

if a person is aggrieved as to any right of which he is in possession by an entry made in any record of rights he may institute a suit against any person

denying or interested to deny his title to such right for declaration of his right under Chapter-VI of the Specific Relief Act, 1963.

8. Bar of suits. - (1) No suit shall lie against the Government or any officer of Government in respect of a claim to have an entry made or in relation

to an entry made in any record of rights or to have any such entry omitted or amended.

(2) If any person is aggrieved as to any right of which he is in possession by an entry made in any record of rights he may institute a suit against any

person denying or interested to deny his title to such right for declaration of his right under Chapter-VI of the Specific Relief Act, 1963 (Central Act

47 of 1963) and the entry in the record of rights shall be amended in accordance with any such declaration.

9. A bare reading of the provision makes it clear that an aggrieved person who seeks enforcement of his right under Chapter VI of the Specific Relief

Act, can avail civil law remedy and if he obtains declaration from the civil Court, the revenue records are required to be amended in compliance of

such declaration.

10. There was debate on scope of application of Section 8 of the Act 26 of 1971. It was contended that in view of the provision in Section 8,

whenever a suit is pending on any issue concerning agriculture land, the request for mutation is not maintainable and the revenue authorities should not

undertake any exercise till a decision is made by the civil Court.

11. In Erukala Uma's case, on considering the earlier decision of this Court, the Division Bench of this Court held as under :

13. We are of the opinion that the Act provides a complete mechanism in

respect of making entries in the revenue records. The Act contains a prescribed procedure and lays down the powers of the authorities in relation to passing orders and making entries. The provision envisages that whenever an application is filed before the authorities intimating them about the acquisition of rights and seeking amendment of the entries, the authorities have to put all such persons to notice, whose names are entered in the record of rights, who are interested and who are going to be affected by the amendment. When a person receives a show cause notice from the authorities, it is incumbent upon him, to appear before the authorities and by way of a reply, submit before the authorities all relevant facts including pendency of civil suit, if any. But he cannot straightaway approach this Court under Article 226 of the Constitution of India and seek a writ of Mandamus. In such cases, this Court should refrain from exercising the extraordinary jurisdiction under Article 226 of the Constitution of India.

14. Hence, we deem it appropriate to clarify the judgment of the learned single Judge of this Court in V.Goutham Rao's case, to the extent that, when a show cause notice is issued by a competent authority, just because a civil suit is pending, ipso facto, it will not entitle a party to approach the High Court under Article 226 of the Constitution in view of the law laid down in V.Gowtham Rao's case, but the party has to approach the authority by way of a reply and should bring all the relevant facts to the notice of the authority otherwise, the purpose of the Act itself would be frustrated, which is enacted for effective implementation of entries in Record of Rights.

12. In supercession of the Act 26 of 1971, Act 9 of 2020 is promulgated. The Act 9 of 2020 has dispensed with various provisions then existing and simplified the system of mutation in the revenue records and issuance of pattadar passbook.

13. Section 9 of the Act 9 of 2020 deals with bar on suits. According to this Section, no suit shall lie against the Government or any officer of the Government who made an entry in respect of any land or amended or omitted from the record of rights. This clause is something similar to Section 8

(1) of the Act 26 of 1971 and the provision similar to Sub-Section 2 of Section 8 of the Act 26 of 1971 is not incorporated in the Act 9 of 2020. In

other words, after promulgation of Act 9 of 2020, no restriction is imposed on consideration of applications under the Act 9 of 2020, merely because a suit is pending on any issue touching upon the agriculture land.

Section 9 : No suit shall lie against the Government or any officer of the Government who have made an entry, in respect of any land, made in or amended or omitted from the Record of Rights.

14. However, it is apt to note word of caution that whenever an injunction order is passed by the civil Court or interlocutory order by this Court

imposing any restraint on parties to the litigation and/or on the revenue authorities, that shall be binding on the authorities while considering any

application filed under the Act 9 of 2020 affecting the property in issue. But for this contingency, as things stand now, there is no restraint on

processing the applications for mutation or issuance of pattadar pass book, merely because a suit is pending before civil Court or a case pending

before this Court concerning the property in issue.

15. Coming back to the facts of this case, the Tahsildar's endorsement refusing to issue pattadar passbook is on the ground that in O.S.No.159 of

2007, an injunction order was granted by the Court of I-Additional Senior Civil Judge (Fast Track Court) at Mahabubnagar. Therefore, he cannot issue

pattadar passbook. No exception can be taken to the said decision, if an injunction order was operating. But as can be seen from the material on

record, the said suit was dismissed for non-prosecution on 12.06.2017 and no injunction was operating.

16. Thus, there was no application of mind by the Tahsildar. Ordinarily, it is a clear case to remand. However, according to learned Assistant

Government Pleader mere pendency of a suit or a writ petition is sufficient to deny the claims.

17. In view of the liberty granted by the Court of I-Additional Senior Civil Judge (Fast Track Court) at Mahabubnagar, though a new suit is instituted,

it appears, sofar no injunction is granted by the civil Court. Thus, as of now, there is no injunction order operating, concerning the subject land.

18. Having regard to Section 9 of Act 9 of 2020 and the law laid down by the Division Bench of this Court in Erukala Uma, I see no merit in the

submission of learned Assistant Government Pleader. Further, the said suit relied by the Tahsildar was already disposed of by the time the

endorsement was issued to the petitioner by the Tahsildar, impugned herein. Thus, the said endorsement is erroneous and is liable to be set aside.

19. However, matter does not rest here. Having regard to the subsequent developments, the Tahsildar cannot deal with the issue at this stage. In

supercession of the Act 26 of 1971, the Act 9 of 2020 was promulgated. The Act 9 of 2020 simplified procedure of mutation into three categories. It

has laid down detailed procedure to issue pattadar passbook. However, Act 9 of 2020 has not envisaged power in the Tahsildar to deal with pending

application made when Act 26 of 1971 was in force. In order to redress any grievance on land matters, including similar to grievance of petitioner the

Chief Commissioner of Land Administration issued Instructions in Circular No.1 of 2021 dt.15.01.2021 authorising the District Collector to look into

the grievances and to resolve them wherever possible.

20. In view of the same, the District Collector is directed to consider the representation dated 10.02.2021 of the petitioner acknowledged on

11.02.2021 duly taking note of the principle laid down by the Division Bench of this Court in Erukala Uma. While considering the representation of the

petitioner, he shall ascertain that there is no subsisting injunction order granted by the Civil Court affecting the lands in issue and the name of petitioner

continues to reflect in the revenue records. If the District Collector agrees to the request of petitioner he shall take steps to issue e-pattadar passbook.

However, issuing pattadar passbook to petitioner does not enure to the petitioner any advantage and defeat the claim of plaintiffs in O.S.No.22 of 2017

pending in the Court of IX Additional District Judge at Wanaparthy and it shall abide the ultimate result of pending suit. The entire exercise shall be

completed by the District Collector within ten (10) weeks from the date of receipt of copy of this order.

21. Writ Petition is accordingly, allowed. Pending miscellaneous petitions, if any, shall stand closed.