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In the Andhra Pradesh High Court

Case No : WA No. 728 of 2002

Sannepalli Nageswar Rao and Another — APPELLANT

Vs

District Collector, Khammam and Others — RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

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

Citation : (2002) 4 ALD 497 : (2002) 4 ALT 465

Hon'ble Judges : Ar. Lakshmanan, C.J;Ghulam Mohammed, J

Bench : Division Bench

Advocate : D.V. Sitharamamurthy, for the Appellant; Government Pleader for Revenue for Respondent Nos. 1 to 3 and K. Vinayakumar, for the Respondent

Judgement

Dr. Ar. Lakshmanan, C.J.—We have heard Sri D.V. Sitarama Murthy for appellant, Sri Kowturu Vinay Kumar for respondent No. 4 and the Government Pleader for Revenue for Respondents 1 to 3.

2. The writ appeal is directed against the order passed by the learned single Judge of this Court dated 21-2-2002 disposing of Writ Petition No.3405 of 2002 filed by the appellants herein and directing the second respondent-Revenue Divisional Officer to complete enquiry and pass appropriate orders within three months from the date of receipt of copy of the said order. Insofar as the contention raised by the appellants/writ petitioners that the second respondent-Revenue Divisional Officer has no right, authority or jurisdiction to conduct any enquiry is concerned, the learned single Judge left open that point to be raised before the same authority, viz., Revenue Divisional Officer.

3. In this case, according to the appellants, they are the pattadars, owners and possessors of Ac.6.21 guntas and Ac. 4.20 guntas out of Survey No.394/AA respectively situated at Gumpena village, Chandrugonda Mandal of Khammam District and their names are recorded as pattadars and possessors of the said land in all the revenue records. According to the appellants, the fourth respondent, B. Appi Reddy, gave a representation to the first respondent-District

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Collector contending that he has got Ac.7.20 guntas of land in said survey number and requested for entering his name alleging that revenue officials tampered the records. The first respondent forwarded the said representation to the second respondent-Revenue Divisional Officer directing him to take it as appeal. The second respondent-Revenue Divisional Officer numbered the said representation as ROR appeal No.A3211/98 u/s 5(5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act"). According to the appellants, the second respondent-Revenue Divisional Officer suo motu passed interim order on 22-8-1998 in violation of principles of natural justice and without authority suspending the patta pass books, title deeds and Form 13 (B) of the appellants in respect of the said land. On 22-10-1998 the second respondent-Revenue Divisional Officer again suo motu passed another interim order, purporting to be relying upon an enjoyment survey report of third respondent-Mandai Revenue Officer, withdrawing earlier order dated 22-8-1998 holding that the fourth respondent appears to be in possession of Ac.5.16 guntas in the said survey number without serving any notice before the said survey, without serving even a copy of said report and in violation of principles of natural justice and without authority. On 30-1-1999, the second respondent again suo motu passed another interim order withdrawing his earlier order dated 29-10-1998 holding that his earlier order dated 22-8-1998 shall continue to be in force till the disposal of ROR appeal. Against the said action of the second respondent in entertaining the representation of fourth respondent as ROR appeal, the appellants herein filed writ petition No.3405 of 2002 on the ground that the same is without jurisdiction. The writ petition was disposed of by the learned single Judge as noticed earlier.

4. Sri D. V. Sitarama Murthy, learned Counsel for the appellants, submitted that taking up the representation of the fourth respondent as ROR appeal u/s 5(5) of the Act and its continuation by the second respondent is an abuse of process of law as the Act does not confer any such authority on the second respondent, viz., Revenue Divisional Officer. It is further submitted by the learned Counsel that the second respondent-Revenue Divisional Officer has got only appellate jurisdiction, that too u/s 5(5) and 5(B) of the Act only, and Rules 21 and 22-A of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (for short "the Rules") prescribe the procedure and the manner in which the appeals under Sections 5(5) and 5(B) of the Act are to be filed. It is further urged that the representation of fourth respondent to the District Collector, which was forwarded to the second respondent, does not fulfil the requirement either Sections 5(5) and 5(B) or the Rules 21 and 22(A) of the Rules and as such the second respondent has no jurisdiction to entertain the same as an appeal under the Act.

5. A counter-affidavit was filed by the third respondent-Mandal Revenue Officer. In paragraph-3 it is stated that the Revenue Divisional Officer, Kothagudem issued notice to the appellants herein on 20-4-2002 to appear before him along with material papers available with them in connection with the correction of entries in column No. 16 of the pahani in Survey No.394/AA of Gumpena village,

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that the appellants herein without approaching the Revenue Divisional Officer straight away filed the writ petition stating that the Revenue Divisional Officer has no authority to entertain the representation of fourth respondent, and that the respondents have acted as per the directions of this Court dated 21-2-2002 in WP No.3405 of 2002 by issuing notices to the appellants to approach the Revenue Divisional Officer along with materials available with them.

6. A counter-affidavit was filed by the fourth respondent stating that the writ petition filed by the appellants is not maintainable since the enquiry is pending before the concerned Revenue Divisional Officer and that the authority has not passed any final order as such and therefore the writ petition is premature. It is further submitted by the fourth respondent that as the revenue records were tampered with partly and in column No. 16 of the pahani some other persons names were entered, the fourth respondent has approached the authorities for correction and appropriate action as those entries will effect his rights and also leads to complication.

7. A reply affidavit was filed by the appellants to the counter-affidavit filed by the fourth respondent denying the allegations contained in the said counter-affidavit.

8. Our attention was drawn to the provisions of the Act, viz., Sections 3, 5(5), 5-B, 6, 6-A and 8 of the Act. We have carefully perused those provisions. Section 3 of the Act provides for the preparation of record of rights in all lands in every village to which the Act is first applied and updating of record of rights in respect of the villages to which the Act has already been applied. Section 5(5) provides for an appeal to the Revenue Divisional Officer against the order of recording authority either in making or refusing to make amendment to record of rights. Section 5-B provides for appeal to the Revenue Divisional Officer against the order passed by the Mandal Revenue Officer under Sub-section (4) of Section 5-A of the Act. Section 6 deals with the presumption of correctness of entries in record of rights. Section 6-A deals with the issuance of pass book to every owner, pattadar, mortgage or tenant of land and recording of entries of alienation in it. Section 8 of the Act provides that no suit shall lie against the Government or any officer of the Government in respect of claim for entry made in any record of rights, but it is open for any person aggrieved to file a suit for declaration of his rights under Chapter VI of Special Relief Act.

9. It is fairly well settled that where a statute prescribes a particular thing to be in a particular manner, it shall be done only in the manner prescribed as held by the Hon''ble Supreme Court in Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., , which was followed in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, . A careful perusal of the provisions of the Act would show that a detailed procedure as to the manner in which the appeals are to be filed, including the period of limitation, is prescribed under the Act, Therefore, as rightly contended by the learned Counsel for the appellants that any appeal filed in violation of the said procedure cannot be entertained. In the instant case, the Revenue Divisional

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Officer has exceeded his jurisdiction and has acted in violation of the provisions of the Act and therefore the appellants/writ petitioners have rightly approached this Court. This apart, the allegations made by the fourth respondent do not constitute a ground for filing an appeal u/s 5(5) of the Act. If the fourth respondent is aggrieved by any entry, the only remedy available is u/s 8(2) of the Act under which he has to seek a declaration of his right under Chapter VI of the Special Relief Act, 1963 in Civil Court and the entry in record of rights shall be amended in accordance with any such declaration. In the instant case, both the parties allege that they are in possession of the respective extents of land in Sy.No.394/AA. The appellants contend that they are in possession of Ac.6.21 guntas and Ac.4.20 guntas out of Survey No.394/ AA respectively situated at Gumpena village, whereas fourth respondent contends that he is in possession of part of extent of land in the said survey number. Under such circumstances, it is left to both parties to approach the Civil Court for redressal of their grievance. But, in the instant case, it is submitted by the learned Counsel for the fourth respondent that there is tampering of records and therefore, in our opinion, the remedy would be to approach the Mandal Revenue Officer for amendment and updating of record of rights. Section 5(5) provides that against every order of recording authority either in making amendment in record of rights or refusing to make such amendment, an appeal shall lie to the Revenue Divisional Officer or such authority as may be prescribed within sixty days from the date of communication of the said order and the decision of the appellate authority thereon shall be subject to provisions of Section 9 be final. Therefore, it is proper for the fourth respondent, who is now complaining that there is tampering of records, to approach the Mandal Revenue Officer u/s 5 of the Act, who shall determine as to whether and if so in what manner the record of rights may be amended in consequence thereof and shall carry out the amendment in the record of rights in accordance with such determination. At the time of hearing, all the parties fairly concede that the Mandal Revenue Officer has the jurisdiction to carry out the amendment as per the provisions of the Act and therefore all of them are ready and willing to submit to the jurisdiction of Mandal Revenue Officer, instead of approaching the Revenue Divisional Officer, who is an appellate authority.

10. In view of the clear position of law, we direct the fourth respondent herein to approach the Mandal Revenue Officer, Chandrugonda for redressal of his grievance since according to him the revenue records were tampered with and in column No. 16 of pahani some other persons'' names were entered. Since the fourth respondent has approached an authority, who has no jurisdiction at this juncture, we hold that the orders passed by the Revenue Divisional Officer and the interim orders passed by him pending disposal of the appeal cannot stand as those orders were passed by him in appeal, which is not maintainable under the provisions of the Act. Apart from that they are violative of principles of natural justice. We, therefore, allow the appeal, set aside the order of the learned single Judge and direct the fourth respondent herein to approach the third respondent-

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Mandal Revenue Officer by immediately filing a fresh and comprehensive application. The Mandal Revenue Officer shall receive the said application and after giving notice to appellants herein, shall dispose of the same in accordance with law after affording opportunity to both parties.

11. The writ appeal is disposed of accordingly. No order as to costs.

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