(2013) 10 AP CK 0074

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19415 of 2013

Smt. Peddi Sailaja and Peddi Madavi APPELLANT

Vs

The State and Others RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 2 ALD 246 : (2014) 3 ALT 181 : (2014) ALT(Rev) 250

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Vijaya Kiran, for the Appellant; K. Sesharajyam, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a mandamus to set aside proceedings in Rc. No. 2026/11-D4, dated 15.01.2013, of respondent No. 2, whereby he has confirmed the order, dated 31.03.2010, of respondent No. 3. In the manner in which this Court is proposing to dispose of the writ petition, it is not necessary to record the facts in detail. It will suffice to note that in the family partition, Ac.0.88 cents of land fell to the share of the husband of petitioner No. 1. According to the petitioners, the husband of petitioner No. 1, by name, Venkateswar Rao, was holding pattadar pass books and title deeds. The said Venkateswar Rao died in the year 2002. On the petitioners'' approaching respondent No. 4, he has issued pattadar pass books and title deeds in favour of petitioner No. 1. Years later, respondent No. 5 approached respondent No. 4 by claiming that the property belongs to him and that therefore issuance of pattadar pass books and title deeds to petitioner No. 1 was illegal.

2. Respondent No. 4 has submitted a report on 22.01.2010 to respondent No. 3, who thereupon has initiated suo motu proceedings by treating the said report as an appeal. After giving notice to both the parties, respondent No. 3 allowed the purported appeal and set aside the pattadar pass books and title deeds issued to petitioner No. 1 and further directed to issue pattadar pass books and title deeds

in favour of respondent No. 5. The said order was confirmed in the revision petition filed by the petitioners before respondent No. 2 u/s 9 of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short ''the Act''). These two orders have been questioned in this writ petition.

3. Besides making his submissions on merits, the learned counsel for the petitioners mainly emphasised on the procedural illegality committed by respondent No. 3 in treating the report of respondent No. 4 as an appeal and setting aside the pattadar pass books and title deeds issued to petitioner No. 1.

4. u/s 5(5) of the Act, against every order of the recording authority either making an amendment or refusing to make such amendment, an appeal shall lie to the Revenue Divisional Officer or any other prescribed authority within a period of sixty days from the date of communication of the said order. The order passed in such appeal is final subject to the order that may be passed u/s 9 of the Act by the Collector exercising the revisional power.

5. Rule 21 of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (for short ''the Rules'') also made a similar provision as Section 5(5) of the Act. Under sub-rule (2) thereof, the manner in which an appeal has to be filed is envisaged besides prescribing sixty days as limitation for filing such appeal. Under sub-rule (3) thereof, the appellant shall pay the Court fee stamp of Rs. 5/-.

6. From the above-noted provisions, it is evident that respondent No. 3 is constituted as an appellate authority, who is conferred with the power of entertaining the appeals filed by the aggrieved parties by following the procedure prescribed under Rule 21 of the Rules. From the order passed by respondent No. 3, it is clear that respondent No. 5 has not filed any appeal. Instead of filing such an appeal respondent No. 5 has approached respondent No. 4 who in turn submitted a report which was taken as ROR appeal by respondent No. 3. This procedure in my opinion is patently contrary to the procedure prescribed under the Act and the Rules.

7. Smt. K. Sesharajyam, learned counsel for respondent No. 5, has relied upon Rule 13(2) of the Rules which reads as under:

13. (1) xxx

(2) The Mandal Revenue Officer, the Revenue Divisional Officer, and the Deputy Collector (Record of Rights) the District Revenue Officer, the Collector of the District, and any officer designated by the Collector for this purpose in exercise of their general powers of supervision, shall be competent, suo motu, to test and revise the entries in the confirmed Record of Rights provided that no revision shall be made without giving any person whose name is entered in the Record of Rights, as having any interest in the land in respect of the entry relating to which the alteration is proposed an opportunity of making a representation in that behalf. Before making any revision an Officer shall obtain the approval of his immediate superior officer, if the entry, in the Record of Rights was made or

confirmed by an officer of the same rank.

8. No doubt, the above re-produced Rule confers suo motu power on all the functionaries under the Act upto the level of the Collector to suo motu revise the entries in the record of rights. In my opinion, this Rule runs contrary to Sections 5(5) and 9 of the Act and also Rule 21 of the Rules. u/s 9 of the Act, only the Collector is conferred with the power of revision to be exercised either suo motu or on an application. If the legislature intended that even the authorities lower in rank to the Collector, such as, Mandal Revenue Officer and Revenue Divisional Officer, also need to be conferred with such power, Section 9 of the Act would not have conferred such power only on the Collector. If the power of revision is conceded to the Revenue Divisional Officer, it will come in conflict with Section 5(5) of the Act, which conferred appellate power on him. It cannot be imagined that the same authority will be conferred with both the appellate and revisional powers to be exercised in respect of the same proceedings.

9. In the light of the above discussion, this Court is of the opinion that since Rule 13(2) of the Rules comes into conflict with the above-mentioned statutory provisions, the same cannot be construed as conferring suo motu appellate or revisional powers on the Revenue Divisional Officers. The substantive source of power is conferred on the Revenue Divisional Officers u/s 5(5) of the Act only. Therefore, in negation of such power, the Revenue Divisional Officers cannot act by taking shelter under Rule 13(2) of the Rules. At any rate, respondent No. 3 has not relied upon this Rule to justify his order.

10. In Sri Thripuravaram Krishna Reddy Vs. The Joint Collector and Others, this Court held that the appellate authority u/s 5(5) of the Act cannot entertain his appellate powers unless an appeal within the period of limitation and following the procedure prescribed by Rule 21 of the Rules is filed.

11. The learned counsel for respondent No. 5 has further submitted that the petitioners failed to raise objections on the exercise of suo motu appellate power by respondent No. 3 either before him or before respondent No. 2.

12. In my opinion, the jurisdiction of respondent No. 3 to pass the order does not depend upon the raising or not raising of objection by a party. An issue which pertains to the very jurisdiction of an authority can be raised at any stage. There can be no question of a party acquiescing in raising such objection because by the conduct of the parties, an authority cannot exercise jurisdiction which does not vest in it or contrary to the prescribed procedure.

13. For the above-mentioned reasons, the order of respondent No. 3 confirmed in revision by respondent No. 2 cannot be sustained. Both these orders are accordingly set aside. This order however cannot be construed as this Court expressing any opinion on the merits of the case. If respondent No. 5 feels aggrieved by issuance of pattadar pass books and title deeds to petitioner No. 1, he is entitled to avail appropriate remedy in accordance with the procedure prescribed under the Act and the Rules made thereunder.

14. The writ petition is accordingly allowed. As a sequel to disposal of the writ petition, W.P.M.P. No. 23752 of 2013 shall stand disposed of as infructuous.