(2023) 01 TEL CK 0014

In the Telangana High Court

Case No : Writ Petition Nos. 26474, 44387 Of 2022

Tadaboina Narasimha APPELLANT

Vs

State Of Telangana And 4 Others RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Telangana Survey and Boundaries Act, 1923 — Section 9, 10
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 9
Telangana Rights in Land and Pattadar Pass Books Act, 2020 — Section 7, 9, 16

Citation : (2023) 01 TEL CK 0014

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : M Laxman Rao

Final Decision : Allowed/Dismissed

Judgement

1. Lis involved in these writ petitions is one and the same, therefore, the same heard together and decided by way of this common order

2. W.P.No.26474 of 2022 is filed to declare the action of 4th respondent in issuing pattadar passbook and title deed bearing No.T30110061196, Khata No.60348 in respect of Ac.4.30 guntas situated in Sy.No.427/A5, Narayanapur Village and Mandal, Yadadri Bhuvanagiri District (for short, 'subject property') in favour of 5th respondent contrary to the orders of the Special Tribunal Dated 28.01.2021 in File No.F2/2057/2021 and Special Tribunal Revision Case File No.F2/8436/2014 dated 26.06.2021, as illegal.

3. W.P.No.44387 of 2022 is filed to call for the record pertaining to impugned Memo vide Lr.No.B/840/2022, dated 26.11.2022 issued by 1st respondent and quash the same as violative of Sections 9 and 10 of Telangana Survey and Boundaries Act, 1923 as there is no embargo on survey in W.P.No.26474 of 2022 and consequently direct 1st respondent to survey and demarcate the subject land.

4. Heard Sri M.Laxman Rao, learned counsel for the petitioner in W.P.No.26474 and 5th respondent in W.P.No.44387, Smt. NVR Rajyalakshmi, learned counsel for petitioner in W.P.No.44387 of 2022 and 5th respondent in W.P.No.26474 of 2022 and learned Govt.Pleader for Revenue for official respondents in both the writ petitions. Perused the record. (For sake of convenience, Tadiboina Narasimha is hereinafter referred as Petitioner and Tadiboina Krishna Murthy is referred as 5th respondent as referred in W.P.No.26474 of 2022).

5. The petitioner in W.P.No.26474 of 2022 i.e. Tadaboina Narasimha, is claiming that he has purchased the subject property from late Tadaboina Galaiah, father of 5th respondent Tadaboina Krishnamurthy long back and his name was also mutated in the revenue records. Pattadar passbooks and title deeds were also issued in his favour. Name of Tadaboina Jaganandham was deleted from the records instead of name of Tadaboina Galaiah. It is only a clerical error. He is in possession of the aforesaid property. Therefore, he has filed an application with 4th respondent seeking correction of entries in revenue records. But 4th respondent directed the petitioner to file appeal before 3rd respondent. Therefore, the petitioner had filed an appeal before 3rd respondent. 3rd respondent, who in turn, sought report from 4th respondent on conducting enquiry. Accordingly, 4th respondent had conducted enquiry drawn panchanama in respect of subject land and submitted his report vide proceedings No.3/8006/2008, dated 30.06.2012 stating that the petitioner herein is in possession of the subject property. It is also further stated that the said Tadaboina Galaiah died prior to 2005. After his death, his son i.e. 5th respondent appeared before 3rd respondent and filed counter stating that his father never sold the subject property in favour of the petitioner. His name was mutated in the revenue records as pattadar in respect of the subject property.

6. On consideration of the entire facts and material available on record, 3rd respondent vide order dated 26.07.2014 allowed the said appeal setting aside recording of name of Tadaboina Galaiah as pattadar of the subject property and directed 4th respondent to record the name of the petitioner herein as pattadar.

7. Feeling aggrieved by the said order dated 26.07.2014, 5th respondent had filed a Revision under Section 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 before the Joint Collector and the same was transferred to Special Tribunal after promulgation of the Telangana Rights in Land and Pattadar Pass Books Act, 2020 (for short, 'the Act'), in terms of Section 16 of the Act. Vide order dated 28.01.2021, Special Tribunal dismissed the said Revision filed by 5th respondent. Review filed by 5th respondent was dismissed vide order dated 26.06.2021.

8. It is relevant to note that 5th respondent did not challenge the aforesaid order dated 28.01.2021 and review order dated 26.06.2021 of Special Tribunal, Yadadri-Bhuvanagiri District. The said proceedings attained finality. Even then, 4th respondent had issued pattadar passbooks in favour of 5th respondent in respect of the subject land. Questioning the same, the petitioner herein had filed

the present writ petition.

9. 5th respondent had filed a suit vide O.S.No.265 of 2012 against the petitioner and two others for declaration of title and for perpetual injunction and the same was decreed on 03.07.2019. Feeling aggrieved by the said Judgment and Decree, the petitioner herein had filed an appeal vide A.S.No.79 of 2019 and it is pending on the file of the Additional District Judge, Yadadri-Bhuvanagiri District. He has also filed an interlocutory application to suspend the aforesaid Judgment and Decree in O.S.No.265 of 2012 dated 30.07.2019 and the said Interlocutory Application is pending for consideration. During pendency of the aforesaid appeal and aforesaid Interlocutory Application, 5th respondent had filed F-line application with 4th respondent/Tahsildar with a request to conduct survey and demarcate the aforesaid land by fixing boundaries. Vide impugned memo Lr.No.B/840/2022 dated 26.11.2022, 4th respondent rejected the same on the following grounds:-

1. The petitioner raised objection in conducting survey.

2. Writ petition vide W.P.No.26474 of 2022 is pending.

3. There are disputes between the petitioner and 5th respondent with regard to the aforesaid land.

On the aforesaid grounds, 4th respondent informed 5th respondent that conducting of survey is not possible. Challenging the said memo, 5th respondent had filed the present writ petition vide W.P.No.44387 of 2022.

10. The above stated facts would reveal that according to the petitioner, he has purchased the subject property from the father of 5th respondent i.e. Tadaboina Galaiah. Mutation was effected in his favour and pattadar passbooks and title deeds were also issued. But instead of deleting the name of Tadaboina Galaiah, revenue officials have deleted the name of Tadaboina Jagannadham i.e. father of the petitioner herein. Therefore, he has approached 4th respondent for correction of wrong entries. On the advise of 4th respondent, the petitioner has filed appeal before 3rd respondent and the same was allowed vide order dated 26.07.2014. In the said order, 3rd respondent gave a categorical finding that the name of the petitioner is required to be recorded as pattadar in respect of the subject land as held by Tadaboina Galaiah, but it is recorded against the holding of Tadiboina Jagannadham. Thus the then Village Revenue Officer error and the same is continued.

11. Subsequently, 5th respondent got mutation of the same taking advantage of the continuance of his father’s name in revenue records. Since his father is ceased to be a pattadar of the subject land by virtue of amendment, mutation of the same in favour of 5th respondent is not valid. The 3rd respondent further referred the report submitted by 4th respondent in Lr.No.B/8006/2008, dated 30.06.2012 that the petitioner had purchased the subject land from the father of 5th respondent and he is in physical possession of the same. With the said

findings, he has allowed the aforesaid appeal filed by the petitioner, setting aside the entries in revenue records in respect of the subject land of Tadaboina Galaiah. He has directed 4th respondent to record the name of the petitioner as pattadar in respect of the aforesaid land.

12. It is trite to note that 3rd respondent had also considered validity of the amendment. The said order was confirmed by the Special Tribunal vide order dated 28.01.2021 in a revision filed by 5th respondent under Section 9 of the Act. 5th respondent had filed a review before the Special Tribunal and the same was also dismissed on 26.06.2021. 5th respondent did not challenge either the aforesaid order dated 28.01.2021 or the order dated 26.06.2021 of the Special Tribunal. Therefore, the aforesaid orders attained finality. While the aforesaid orders are in subsistence, 4th respondent cannot issue passbooks in favour of 5th respondent.

13. It is also relevant to note that 5th respondent had filed the aforesaid suit vide O.S.No.265 of 2012 against the petitioner and two others seeking declaration of title and perpetual injunction over the subject property. The said suit was decreed on 03.07.2019 by learned Junior Civil Judge, Nalgonda. Feeling aggrieved by the said order, the petitioner herein had preferred an appeal vide A.S.No.79 of 2019 and he has also filed Interlocutory Application seeking suspension of the aforesaid Judgment and Decree. The aforesaid Interlocutory Application and Appeal are pending before the Additional District Judge Yadadri-Bhuvanagiri.

14. It is trite to note that while the proceedings in the aforesaid appeal are pending, 5th respondent obtained pattadar passbooks in his favour on 29.12.2021. He has submitted F-line application with 4th respondent with a request to conduct survey and demarcate the aforesaid land by fixing the boundaries. The same was rejected by 3rd respondent vide memo dated 26.11.2022.

15. As discussed supra, 4th respondent himself in his report dated 30.06.2012 specifically stated that the petitioner being the purchaser of the subject property from the father of 5th respondent is in physical possession and enjoyment of the same. He has issued pattadar passbooks and title deeds in favour of the petitioner. During the pendency of the appeal, he cannot issue pattadar passbooks in favour of 5th respondent in respect of the very same property without issuance of notice, without affording an opportunity to the petitioner and without following the procedure laid down under the Act.

16. As per Section 7 of the Act, 5th respondent is entitled to seek mutation of his name basing on the Decree in O.S.No.265 of 2012.

There is no dispute that there is decree in his favour in O.S.No.265 of 2012 dated 03.07.2019 and at the same time, it is also relevant to note that 5th respondent had filed an appeal vide A.S.No.79 of 2019 against the said Judgment and Decree and also an Interlocutory Application seeking suspension of the said Judgment and Decree in O.S.No.265 of 2012. The said proceedings are continuation of the proceedings. According to learned counsel for the petitioner, there is no officer in appellate Court and due to COVID-19 he could not pursue the aforesaid Interlocutory Application. However, there is no dispute that the aforesaid Interlocutory Application is filed by the petitioner to suspend the aforesaid Judgment and Decree in O.S.No.265 of 2012 is pending. Thus, the action of 4th respondent in issuing pattadar passbooks in favour of 5th respondent dated 29.12.2021 in respect of subject property is in violation of principles of natural justice and also in violation of the procedure laid down under the Act. Therefore, the said proceedings are set aside.

17. In view of the findings given by this Court in W.P.No.26474 of 2022, there is no error in the Memo dated 26.11.2022 issued by 4th respondent refusing to conduct survey in view of the dispute between the petitioner and 5th respondent.

18. In view of the above discussion, i) W.P.No.26474 of 2022 is allowed. The Pattadar passbook and title deed bearing No.T30110061196, Khata No.60348 in respect of subject land issued in favour of 5th respondent are contrary to the orders of the Special Tribunal Dated 28.01.2021 in File No.F2/2057/2021 and Special Tribunal Revision Case File No.F2/8436/2014 dated 26.06.2021 and the same are declared as illegal and the same are accordingly set aside.

ii. W.P.No.44387 of 2022 is dismissed. However, liberty is granted to 5th respondent/Tadaboina Krishnamurthy to approach 2nd respondent with a request to issue pattadar passbooks in his favour after disposal of the aforesaid appeal vide A.S.No.79 of 2019 filed by the petitioner/Tadaboina Narasimha.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

