(2006) 12 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16335 of 2006

Thota Narasinga Rao APPELLANT

Vs

The State of A.P. and Others RESPONDENT

Date of Decision : 04-12-2006

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 2(10), 2(9), 3, 3(1), 4
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 13, 13(2), 6, 9, 9(1)

Citation : (2007) 1 ALD 500

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : S. Chakrapani, for the Appellant; Government Pleader for Revenue Respondent Nos. 1 to 3 and Vedula Venkata Ramana and Vedula Srinivas, for the Respondent

Judgement

V.V.S. Rao, J.—The petitioner claims to be the owner of land admeasuring Acs.5.10 in survey Nos. 45/2 and 45/3 situated at Nerellavalasa village of Bheemunipatnam Mandal of Visakhapatnam District (subject land, for brevity). He is statedly continuously in possession for over fifty years. In 1995, the third respondent issued Pattadar Pass Book and Title Deed (PPB/TD), vide proceedings, dated 01.05.1995. He states that in July, 2006, he came to know that the PPB/TD issued in 1995 was ordered to be cancelled. On further enquiry, it was revealed to him that third respondent, by letter, dated 18.02.2006, submitted a report and recommended to the second respondent to cancel PPB/TD. As a sequence thereto, the second respondent entertained suo motu appeal purportedly under Sub-section (5) of A.P.Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity) and passed orders vide proceedings No. Ac.6/926/2006/C, dated 20.04.2006, cancelling PPB/TD issued to the petitioner in respect of the subject land. Aggrieved by this, the present writ petition is filed. It is the main contention of the petitioner that the second respondent lacks suo motu power of appeal against the proceedings of the Mandal Revenue Officer (MRO) in issuing PPB/TD. The second respondent has filed a counter affidavit. The contents thereof are as follows. As per Settlement Fair Adangal, the subject land in survey Nos. 45/2 (Acs.4.48) and 45/3 (Acs.0.62) is held in the name of one Thota Satyanarayana. As per 1-B Register (ROR Register) PPB was issued to the petitioner whereas the pattadar, Thota Satyanarayana, has got three brothers and one son. The fourth respondent submitted an application for cancellation of PPB. The third respondent enquired into the same and found that Thota Satyanarayana, Gurunadha Rao and Lakshminarayana executed unregistered settlement deed in favour of petitioner on 15.05.1950. The MRO entertained a doubt about genuineness of the settlement/gift deed in favour of the petitioner when the survey and settlement operations were taken up in 1956. On enquiry, third respondent came to know that grandfather of the third respondent never executed the settlement deed in favour of the petitioner. The third respondent submitted a report opining that the petitioner obtained PPB on the basis of false and concocted settlement deed and recommended for cancellation. The same was entertained as appeal u/s 5(5) of the Act and notices were sent to the petitioner and third respondent. The notice was not served on the petitioner, and therefore, the same was served by substituted service but he did not attend the enquiry. Therefore, the impugned order is passed based on the record after considering the representation of the fourth respondent. The matter was decided on merits. The petitioner filed a reply affidavit denying the allegations made in the counter affidavit of the second respondent. It is however, not necessary to refer to the same in detail.

2. Initially, the matter came up for preliminary hearing on 07.08.2006. As the learned Assistant Government Pleader for Revenue (General) wanted to get instructions, time was granted and the impugned order was suspended.

3. The fourth respondent filed W.V.M.P. No. 2032 of 2006 along with counter affidavit through his GPA, G.S.Srinivasa Raju. It is the case of the fourth respondent that the land originally belonged to grandfather of fourth respondent, namely, late Thota Satyanarayana and the writ petitioner is one of his three brothers. The fourth respondent is grand nephew of the petitioner. The father of fourth respondent was only son of Thota Satyanarayana, he is alone entitled to succeed to the property. When the petitioner obtained PPB/TD,

during the Spandana programme the fourth respondent submitted a representation to third respondent for cancellation of the same. Revenue Divisional Officer (RDO) has such power under Rule 13 of the A.P.Rights in Land and Pattadar Pass Books Rules, 1989 (the Rules, for brevity). An enquiry was conducted on 25.03.2006, 01.04.2006, 10.04.2006 and 1.04.2006 but the petitioner avoided receipt of notices. The second respondent having noticed that the petitioner claimed under fraudulent unregistered settlement deed allegedly executed by late Satyanarayana and his two brothers, passed orders on 20.04.2006 cancelling PPB/TD issued to the petitioner. The fourth respondent also contends that the same is valid and the second respondent has such power under Rule 13 of the Rules.

4. In the additional counter affidavit filed on 15.11.2006, the fourth respondent refers to the registered agreement of sale-cum-General Power of Attorney, dated 16.10.2006, executed by him in favour of Gadiraju Satya Srinivasa Raju and K.V.Suryanarayana Raju and also the subsequent registered sale deed executed by both of them in favour of Kakarlapudi Srikanth on 17.10.2006. Further, a reference is also made to the suit being O.S. No. 207 of 2006 on the file of the Court of the Principal District Judge, Visakhapatnam, for declaration of title and permanent injunction, filed by Kakarlapudi Srikanth. The plaintiff in the said suit also filed I.A. No. 1583 of 2006 for ad interim injunction. Based on this subsequent event, the fourth respondent contends that when the suit for declaration of title is pending, any order passed by the authorities under the Act have to await the result of the title suit to avoid conflict of orders.

5. The learned senior counsel for the petitioner refers to various provisions of the Act and the Rules and submits that the impugned order is without jurisdiction. According to the learned Counsel, Sub-section (5) of Section 5 of the Act does not confer any suo motu powers on the RDO to take an appeal against PPB/TD issued to the petitioner. Secondly, he would submit that as the impugned order is passed behind the back of the petitioner, and without proper notice and without proper opportunity to the petitioner, the same is unsustainable. He also points out that the petitioner was given PPB on 01.05.1995, whereas the purchaser from fourth respondent filed a suit only in July, 2006 for declaration of title and therefore, the same has no bearing and at best it can be treated as a suit referable to Section 8(2) of the Act.

6. Learned Assistant Government Pleader for Revenue (General-A) and learned Counsel for the fourth respondent opposed the writ petition. They would urge that though Sub-section (5) of Section 5 of the Act does not specifically confer any authority to suo motu entertain an appeal, it is still competent for the RDO to pass the impugned order under Rule 13(2) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989. They would rely on the well settled administrative law principle that mere reference or mention of wrong provision itself does not vitiate the order, if the decision maker has such power under the Statute.

7. A perusal of Section 2(10), 3, 4 and 5 of the Act would show that either at the stage of preparing record of rights u/s 3(1) of the Act or at the stage of altering record of rights as contemplated u/s 4 read with Sections 5(1)(2) and (3) of the Act, it is the MRO who has to conduct enquiry as contemplated under the Act and the Rules. When a person is aggrieved by any order of the recording authority either making an amendment in the record of rights or refusing to make such amendment, an appeal shall lie to the RDO. Sub-section (6) of Section 5 of the Act further clarifies that the MRO shall have the power to correct clerical errors if any in the pattadar pass book. The order passed by the RDO u/s 5(5) of the Act

is explicitly made subject to the provisions of Section 9 of the Act, which confers the revisional powers on the Collector (which means Collector of a District and includes the Joint Collector). As between Sub-section (5) of Section 5 and Section 9 of the Act, there is a difference. u/s 9 of the Act, the Joint Collector can take up suo motu revision in relation to the record of rights or order, any recording authority/appellate authority to satisfy himself as to regularity, correctness, legality or propriety. This ''suo motu'' power is conspicuously absent in Sub-section (5) of Section 5 of the Act. Reading Section 5(5) and Section 9, and Sub-section (6) of Section 5 of the Act together, it becomes clear that when once the PPB/TD is issued to the person claiming to be the owner of the agricultural land, the same can be cancelled by an appellate authority on an appeal being presented to him or by revisional authority either suo motu or on an application. The RDO has no such power though Section 5(6) of the Act confers power to the limited extent on the MRO to correct clerical errors in the pass books.

8. Therefore, there cannot be any manner of doubt that suo motu exercise of powers by the RDO would be ex facie illegal. Whether Rule 13(2) of the Rules can save the situation? In the counter affidavit filed by second respondent, it is admitted that the report sent by the MRO on the representation submitted by the fourth respondent was treated as an appeal u/s 5(5) of the Act. Without anything else, it must be held that the exercise was ex facie illegal. Rule 13(2) of the Rules also does not confer any power to cancel PPB/TD. In exercise of their general powers of supervision, MRO, RDO, Deputy Collector, DRO and the Collector of the District are conferred the power ''to test and revise the entries in the confirmed record of rights''. The term ''record of rights'' is defined u/s 2(9) as to mean ''records prepared and maintained under the provisions or for the purpose of the Act'', whereas ''title deed and pass book'' means, the title deeds and pass books issued u/s 6-A of the Act. As the "title deed and pass book" do not find a mention in Rule 13(2) of the Rules, it is not possible to accept the submission that the RDO can suo motu cancel the PPB/TD.

9. The suit filed in July, 2006, by subsequent purchaser for declaration of title is of no effect on the pattadar pass books issued by the MRO in favour of petitioner. Rule 9 of the Rules mandates that after conducting enquiry, under Rule 6 of the Rules, the recording authority shall pass orders in respect of all cases requiring change of registry necessitated by the death of registered holder, all cases requiring change due to transfer by registered documents and all cases requiring splitting up joint pattas. Rule 9(1)(iv) of the Rules, however, prohibits recording authority from passing any order for change of registry or splitting up joint pattas if there is any contravention of the provisions of ceiling laws or laws in force in scheduled areas. The nature of enquiry to be conducted is contained in Rule 9(1)(c)(ii) of the Rules. The same reads as under.

9(1)(c)(ii) - In respect of cases falling under Rule 9(1)(a)(i), the Mandal Revenue Officer shall hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder, according to the principles of the Law of Succession which govern the case and give notice to all persons known or believed to be interested to the effect that the registry will be made in the name of the person found to be entitled, Unless a declaration is filed, within three months from the date of the notice, by any person objecting to the registry, stating that he has instituted a suit in a Civil Court to establish his superior title and an authenticated copy of the plaint in the suit is produced. If no declaration is filed, the registry should be made as stated in the notice, at the expiration of three months. If a declaration is filed, the result of the suit should be awaited before taking further action.

10. If at the time of holding summary enquiry in respect of cases falling u/s 9(1)(c)(ii) of the Rules (cases requiring change necessitated by death of register holder, succession by heirship if succession is not disputed), the MRO shall effect necessary changes in the record of rights. However, if a declaration is filed within three months from the date of notice of enquiry objecting to change of record of rights that a suit for declaration of title is pending, the recording authority has to await the decision/result of the suit. In this case, when statedly MRO conducted enquiry on the application submitted and issued pattadar pass books in 1995, there was no such suit pending either by the fourth respondent or his father, and therefore, Rule 9(1)(c)(ii) of the Rules has no application.

11. In the result, for the above reasons, the writ petition is disposed of and the impugned order is set aside giving liberty to fourth respondent to prefer revision before the Joint Collector, if so advised. There shall be no order as to costs.

