
(2002) 12 AP CK 0055
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16922 of 2002

V. Goutham Rao

APPELLANT

Vs

Revenue Divisional Officer and Another

RESPONDENT

Date of Decision : 31-12-2002

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 8(1), 8(2)

Citation : (2003) 1 ALD 681 : (2003) 1 ALT 615 : (2003) 1 APLJ 301

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : A. Sudershan Reddy, for the Appellant; Government Pleader for Respondent No. 1 and O. Manohar Reddy, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—The petitioner herein claiming to be the absolute owner and possessor of the land bearing Survey No. 1253 to an extent of Ac.0-09 guntas situated at Metpally, Karimnagar District files this writ petition seeking a writ of mandamus declaring the action of the respondent No. 1 in initiating proceedings by issuance of notice in File No. B/1720/2001 dated 28-12-2001 as illegal and to set aside the same.

2. The petitioner submits that the said property was purchased by his mother viz., Smt. B.Satyamma on 17-8-1957 under a simple sale deed from its original owner and since then she has been in possession and enjoyment. However, she died on 4-2-1998 and thereafter the petitioner continues to remain in possession and enjoyment. In the year 1995 itself, the respondents have issued the pattadar pass book in favour of the mother after holding a regular enquiry and later on, a sale certificate was issued on 24-3-1995. However, since the respondent No. 2 has encroached to an extent of 90 square yards into the said land, the petitioner had filed a suit in O.S.No.12 of 2001 on the file of Junior Civil Judge, Metpally for declaration of title, recovery of possession and also for mandatory injunction for removing the structures raised by the respondent No. 2 on the said land

encroached by him. The case of the petitioner is that it is only after filing, of the said suit, the respondent No. 2 has approached the authorities and the impugned proceedings have been initiated whereby the petitioner is asked to appear in the enquiry in pursuance of the notice.

3. The farther case of the petitioner is that the respondent No. 1, who issued the said notice, has absolutely no jurisdiction nor there is any warrant for initiating the , proceedings as such. Accordingly, the very entertainment of application by the respondent No. 1 at ..the instance of the respondent No. 2 is illegal and liable to be set aside. Hence the writ petition.

4. In the counter-affidavit filed by the respondent No. 1, it is stated that the respondent No. 2 had in fact initially sent an application on 27-8-2001 to the Chief Minister, Government of Andhra Pradesh, Hyderabad seeking cancellation of the R.O.R patta proceedings issued in favour of the petitioner's mother and also to cancel the succession granted in favour of the petitioner. The same was numbered as 026553 dated 31-9-2001 in the Chief Minister's Office and accordingly the District Collector had issued proceedings dated 5-10-2001 asking the respondent No. 1 to conduct enquiry in the matter and take necessary action. Therefore, it is only in pursuance of the said instructions, the impugned notice dated 28-12-2001 was issued by the respondent No. 1 fixing the date, time and place of enquiry. The allegation that the respondent No. 1 had no jurisdiction was denied. It was also pointed out that on 5-9-2001 an affidavit has been filed by the second respondent herein before the respondent No. 1 seeking cancellation of the ROR patta issued in favour of the petitioner's mother and thus the enquiry is on. Subsequently, the petitioner had filed a detailed counter-affidavit on 6-9-2001 contesting the claim of the respondent No. 2. However, instead of appearing before the respondent No. 1, the petitioner had approached this Court.

5. In the counter-affidavit filed by the respondent No. 2, it is stated that the proceedings before the respondent No. 1 are in the nature of an appeal u/s 5-B of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act") as against the orders passed by the Mandal Revenue Officer u/s 4 or Section 5 of the said Act and, therefore, the respondent No. 1 has ample powers and jurisdiction to entertain and dispose of the same. The claim of the petitioner and his mother was denied and further it was stated that having regard to the fact that the land being a non-agricultural land, the question of issuance of any pattadar pass book under the provisions of the aforesaid Act is totally illegal. The allegation as to encroachment is also denied. However, it is admitted that the petitioner has filed a suit in O.S.No.12 of 2001 on the file of the Junior Civil Judge, Metpally and the same is pending. It was admitted that it is only after he came to know about the title deed issued by the Mandal Revenue Officer to the petitioner, he approached the respondent No. 1 for cancellation of the said patta. The petitioner instead of appearing before the said authority and contesting the claim, has approached this Court and therefore, the very writ

petition is not maintainable especially against the show cause notice. It was further averred in the counter-affidavit that the respondent No. 2 is claiming title to the property by means of a registered sale deed and the said question of title is the subject matter of suit in O.S.No.12 of 2001 filed by the petitioner himself. The petitioner can as well raise all these objections including as to the jurisdiction before the appellate authority and cannot invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

6. Sri A. Sudershan Reddy, the learned Counsel appearing on behalf of the petitioner, submits that the very entertainment of the application as processed by the respondent No. 1 at the instance of the respondent No 2 is wholly misconceived and not maintainable more so when it is stated in the counter-affidavit filed by the respondent No. 1 that it is only in pursuance of representation filed by the second respondent before the Chief Minister, the Collector in turn has directed the respondent No. 1 to conduct an enquiry. Therefore, there being no regular proceedings either by way of appeal or revision as contemplated under the provisions of the Act, the entire proceedings are totally vitiated. In support of his plea, he sought to place reliance on a decision of a Division Bench of this Court in Sannepalli Nageswar Rao and Another Vs. District Collector, Khammam and Others, .

7. The learned Government Pleader appearing on behalf of the respondent No. 1 submits that the writ petition being only against a show cause notice, it is always open for the petitioner to raise all questions before the respondent No. 1 and therefore, the writ petition is premature and not maintainable.

8. Sri O.Manohar Reddy, learned Counsel appearing for the respondent No. 2, submits that the proceedings as initiated by the respondent No. 1 are in the nature of a regular appeal as provided under the Act and the notice is only in pursuance thereof and thus the question of lack of jurisdiction does not arise.

9. Having considered the submissions made on either side and also on a perusal of the record, it is evident that in pursuance of a simple sale deed dated 17-8-1957 as claimed by the petitioner in favour of the mother, a validation certificate was issued by the Mandal Revenue Officer on 24-3-1995 under the provisions of the Act. Subsequently, she died on 4-2-1998 and thereafter, the petitioner continued to remain in possession and enjoyment. At this stage, apparently, the respondent No. 2 approached the Chief Minister by filing a representation j, which has ultimately given rise to the issuance of the impugned notice dated 28-12-2001 asking the petitioner to appear in the said proceedings. There is no dispute of the fact that a regular comprehensive suit in O.S. No. 12 of 2001 seeking declaration of title, recovery of possession and also for the relief of mandatory injunction was filed by the petitioner and the same is pending between the parties. Even according to the respondent No. 2, having come to know about the said validation certificate, he resorted to approach the authorities and ultimately the respondent No. 1, whereupon the impugned proceedings have been initiated.

10. In Sannepalli Nageswar Rao's case (supra), this Court while considering the provisions of Section 5(5) of the Act and on the facts of that case, held that the fourth respondent therein had approached an authority who has no jurisdiction wherein certain orders were passed which were held to be not maintainable under the provisions of the Act, apart from being violative of the principles of natural justice. Necessarily, it follows that where a special statute prescribes regular remedies before the hierarchy of authorities, a person aggrieved has to take recourse only to such forum and method and manner in which it is prescribed under the said law.

11. In this case, the respondent No. 2 has directly approached the Chief Minister, whereupon the Collector issued instructions on 5-10-2001 and ultimately the respondent No. 1 issued the impugned notice dated 28-12-2001. Admittedly all these proceedings at the instance of the respondent No. 2 are only subsequent to the filing of the civil suit by the petitioner. In regard to the nature of the entries made under the Act, it is now well established that all such entries shall be presumed to be true until the contrary is proved or until they are otherwise amended in accordance with the provisions of the Act. It is also well settled that such entries in the record of rights would not create any rights where none existed nor divest the rights where they existed. Therefore, it follows that mere entries in the record of rights would not confer any title but they only show prima facie evidence.

12. Under Sub-section (1) of Section 8 of the Act, there is a bar against filing of any suit against the Government or any Officer of the Government in respect of a claim to have an entry made or in relation to any entry made in any record of rights or to have any such entry omitted or amended. However, under Sub-section (2) thereof, it specifically contemplates that any person aggrieved as to any rights of which he is in possession by any entry in the record of rights, 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. Further it also states that the entry in the record of rights shall be amended in accordance with any such declaration. Therefore, ultimately it is the finding of the Civil Court which governs the field and which has to be given effect to by the authorities and make entries accordingly. It is not too late in the day to take judicial notice of proceedings being initiated under the provisions of the Act where either a civil proceedings is already pending or where a serious dispute of title is involved. Having regard to the fact that the authorities constituted under the aforesaid statute would not venture to go into such serious questions nor can decide thereupon, yet the parties are taking recourse to such proceedings. Ultimately after exhausting the remedies under the Act, the parties are approaching the Civil Court whereby there is any amount of duplication in the entire process apart from the time consumed thereunder. In the circumstances, wherever there is a serious dispute of title or claims of any rival title, it would not only be proper for the authorities to refrain from proceeding with the enquiries as such under the provisions of the Act but also pragmatic for the parties to

approach the Civil Court for establishing their right, title and interest of whatsoever nature. Though the proceedings now are at the threshold i.e., at the stage of issuance of a show cause notice, but one cannot lose sight of the fact that ultimately the authorities would have to fall back on the finding of the Civil Court. In view of the same, the entire exercise by the authorities under the Act would be a mere farce and nugatory.

13. Accordingly, the writ petition is allowed and the impugned notice is set aside. It shall be open for both sides to establish their right, title and interest in the civil suit pending between the parties and further it is also needless to observe that the Civil Court would enquire into the same and come to its own conclusion bereft of any entries as such made under the provisions of the Act. No costs.