
(2022) 08 TEL CK 0069
In the Telangana High Court
Case No : Writ Petition No. 32785 Of 2022

Vairagade Babu Rao

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Citation : (2022) 08 TEL CK 0069

Hon'ble Judges : Mummineni Sudheer Kumar, J

Bench : Single Bench

Advocate : G.Madhusudhan Reddy, D.Rajasekhar

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioners, Mr. G. Madhusudhan Reddy and learned Assistant Government Pleader for Revenue, Mr. D. Rajasekhar for the respondents.
2. The grievance of the petitioners in this Writ Petition is that in spite of the repeated requests made by the petitioners for conducting of sub-division survey of the land owned by the petitioners to an extent of Ac.1.006 gts each in Survey Nos.199/A/1/1 and 199/A/2/1 situated at Jankapur Village, Asifabad Mandal, Komuram Bheem Asifabad District, the same is not being conducted by the respondents.
3. It is the further case of the petitioners that they have approached this Court earlier on two occasions by filing W.P.No.35092 of 2018 and W.P.No.4167 of 2021 and also submitted repeated applications for conducting sub-division survey of the subject land. However, in terms of the directions issued by this Court in W.P.No.4167 of 2021, finally the fifth respondent issued notice dated 12.03.2020 for conducting survey on 17.03.2021 but the fifth respondent refused to conduct sub-division survey of the land owned by the petitioners and issued a memo dated 17.03.2021 stating as under:-

"As per served Notices I have proceeded to Site on dated:17.03.2021 along with Mandal Surveyor, Asifabad and conducted the demarcation in respect of Sy.No.199 situated at Jankapur Village of Asifabad Mandal by showing the boundaries to applicants, side pattedars and panchas and conducted the panchanama in front of applicants and side pattedars and panchulu. The total extent of land in Sy.No.199 is 10.01 Acres/Guntas the panchas are signed on panchanama but the applicants have refused to sign on the panchanama and claiming to demarcate the extent owned by them only in respect of Sy.No.199 to an extent of 2.01 acres/Guntas. Where as the entire extent of full Sy.No. is 10.01 Acres/Guntas and there is no sub-division in the records/Map.

In view of the claim of petitioner for demarcation of land owned by them separately could not be considered and for consideration of claim they have to apply for sub-division which could be considered subject to actual possession only."

4. Thereafter, the petitioners claim to have submitted another application through challan No.6100953952 dated 29.06.2021 requesting for sub-division survey of the land owned by the petitioners, which is the subject matter of this Writ Petition. But the respondents have not taken any action on the said requisition submitted by the petitioners and hence, the petitioners approached this Court by filing the present Writ Petition.

5. It is further contended by learned counsel for the petitioners that though the respondents are under obligation to conduct sub-division survey of the land owned by the petitioners, the respondents are not taking any steps for conducting of such sub-division survey number and they are only confining the survey in respect of the entire survey number. Thereby, the petitioners are deprived of getting the fixation of boundaries and demarcation of the land owned by the petitioners. Hence, learned counsel for the petitioners prays for passing appropriate orders directing the respondents to conduct sub-division survey. Learned counsel for the petitioners also placed reliance on an order passed by this Court in W.P.No.33290 of 2013 dated 21.11.2013 for conducting sub-division survey.

6. The matter came up for consideration on 22.08.2022 and the learned Assistant Government Pleader informed this Court that the Mandal Surveyor from the office of the fourth respondent has already issued a notice vide reference No.B/387/2021 dated 16.08.2022 proposing to conduct survey of the subject land on 22.08.2022. In view of the same, the matter is directed to be adjourned today i.e. 23.08.2022 and when the matter is taken up today, it is represented by the learned counsel for the petitioners that though notice was issued for conducting survey, the respondents have not conducted survey on the ground that the present Writ Petition is pending before this Court. On the other hand, learned Assistant Government Pleader Mr. D. Rajasekhar placed before this Court the written instructions received from respondent No.4 and relevant portion from the same is extracted hereinunder.

"In this regard it is to submit that on 22.08.2022, the respondent No.4 i.e., the Tahsildar, Asifabad, along with the respondent No.5 i.e., Dy. Inspector of Survey, Asifabad and Mandal Surveyor, Asifabad, have proceeded to the spot along with the petitioners and surrounding pattadars and for the purpose of conduct of sub-division survey, the panchas/mediators have been summoned on the spot. The attendance of the petitioners and surrounding pattadars have been recorded.

During the survey, the petitioners/pattadars of the land bearing Sy.No.199/A/1/1 to an extent of Ac.1.0060 guntas and Sy.No.199/A/1/2 to an extent of Ac.1.0060 guntas have found in the physical possession of land situated on western side of the land in Sy.No.199 of Jankapur village of Asifabad Mandal. But, the petitioners instead of seeking sub-division of such land demanding to conduct the sub-division survey of the land to an extent of Ac.2.00 guntas situated on eastern side on Sy.No.199 of Jankapur village of Asifabad Mandal and also demanded to hand over the physical possession of land which is in physical possession of another pattadar namely Sri Vairagade Rajeshwar, S/o. Shankar, R/o. Dasnapur village of Asifabad, who is the pattadar of land bearing Sy.No.199/A/2/1 to an extent of Ac.0.3750 guntas and Sy.No.199/B to an extent of Acs.4.00 and Sri Vairagade Subhash, S/o. Shankar in Sy.No.199/A/3 to an extent of Acs.2.00. But, the same is not considerable as per Circular No.N1/1408/2007, dated 13.07.2007, issued by the Commissioner of Survey Settlement and Land Records, A.P. Hyderabad, and the revenue authorities have no powers or jurisdiction to hand over the possession as chosen by the petitioner.

In view of the above, it is to submit that the matter has been explained to the writ petitioners that the sub-division survey shall be taken up only subject to the actual possession on ground tallying with the documents and in accordance with the description of property of sale deed. Hence, the claim for sub-division survey of land which is in the physical possession others could not be considered and the petitioner refused to admit the same.

In view of the above, the panchanama has been conducted and the facts have been recorded. The petitioner being in physical possession of land in western side in Sy.No.199 demanding for sub-division survey in eastern side of Sy.No.199 and also demanding for handing over of physical possession of land which is in the physical possession of other pattadars and as per schedule of properties and boundaries stated in the registered sale deed, on eastern side of land falls on the account of other pattadars i.e., Sri Vairagade Rajeshwar, S/o. Shankar & Sri Vairagade Subhash."

7. In the light of the above, it has become necessary for this Court to examine the legal obligation, if any that is cast upon the respondents for conducting the sub-division survey as and when such request is made by the persons concerned.

8. The Commissioner, Survey, Settlements and Land Records, Hyderabad, has issued various circulars from time to time in connection with conducting of survey, demarcations and sub-division of land and survey numbers and also

disposal of F-line petitions submitted by the parties concerned seeking survey and sub-division. The said circulars were issued keeping in view the Board Standing Orders-34A para 20(a) of the Board Standing Orders, which reads as under:-

"Applications from private parties to point out the boundaries of their fields in accordance with the survey records may be received by the Taluk Tahsildar. On receipt of the application with the deposit (prescribed fee), the Tahsildar should forward it to the Surveyor-Firka Deputy Surveyor who should, during his visit to the village, comply with the request. The Surveyor-Firka Deputy Surveyor should after pointing out the required boundary to the ryot, obtain his signature to that effect in the application and should himself (write) thereon that the boundary was pointed out by him in accordance with the measurements noted in the survey records."

Paragraph No.6 (b) of the Rc.No.N2/1741/2010, dated 18.05.2010 Circular reads as under:-

"F-line petitions/demarcation petitions received in respect of portions of survey fields in agricultural lands should be converted by Tahsildars ad applications for subdivision on payment of balance fee payable, if any and subdivision should be done in accordance with BSO 34-A para 13 and in respect of Telangana districts in accordance with CSSLR circular Rc.No.N1/1408/07 dt.13.07.2007."

9. Thereafter, another Circular in Rc.No.N1/4296/2012 dated 22.08.2012 was issued duly issuing further instructions and guidelines for demarcation and survey of the sub-division survey numbers and instruction Nos.1 to 6 of the said Circular read as under:-

"1. Every F-Line Demarcation application must be submitted to the concerned Tahsildar/E-Seva/Mee-Seva.

2. Every F-Line Demarcation application must be registered and such registered applications must be attended in seriatum only and valid reasons for any deviation to the seriatum should be recorded.

3. (a) Every F-Line demarcation application shall be accompanied by a Xerox copy of pattadar passbook or a copy of the latest adangal/pahani.

(b) Demarcation application without such supportive or evidential document may be rejected.

4. If the applicant submits a self sworn affidavit declaring his rights/reputed ownership a possession along with the demarcation petition, the concerned Tahsildar may take an appropriate decision after thorough verification of records either to forward the same to the Surveyor or reject.

5. (a) Mandal Surveyor/Deputy Surveyor shall serve notices to the

(1) Applicant

(2) Adjacent land holders within the survey number and adjoining survey numbers

(3) Village Revenue Officer

(4) If the adjacent land belongs to local body/Government, notices shall be served on the concerned authority

(c) Prior to issue of notices or after issuing the notices, if any written objections of the adjacent land holders are received, demarcation cannot be denied unless it is a legally valid objection and approved by the Tahsildar.

(c) In general, after issuing the notices if any adjacent land holder absent for demarcation, naturally demarcation will be postponed.

In such cases, notices to be issued to all the concerned consequently two times and if any of them is absent for demarcation even after receipt of the notices, a final notice shall be issued intimating them that the demarcation will be done on the date mentioned in the final notice "even in their absence", as due opportunity was given.

6. If the demarcation application is for a part of undivided field such application may be converted into patta sub-division application and necessary statutory procedure to be followed for it by taking application from applicant."

10. From a perusal of the above referred Circulars, it is clear that as and when F-line petitions for demarcation/sub-division are received in respect of portions of survey numbers in agricultural land, they are required to be converted as applications for sub-division by the Tahsildars on payment of balance fee payable, if any and sub-division shall be done in respect of the Telangana Districts in accordance with Circular in Rc.No.N1/1408/07, dated 13.07.2007, issued by the Commissioner of Survey, Settlement and Land Records. At this stage, it would be necessary to make note of some of the instructions issued in the said Circular dated 13.07.2007 which are extracted hereunder:

"5. Thereafter, the Mandal Surveyor will proceed for sub-division and prepare the sub-division record. The sub-division shall be done in accordance with the description of property sale deed in case of sales, partition deed in case of partition, mutual agreement in case of succession etc. However, the sub-division will be done only subject to the actual possession on ground tallying with the documents mentioned above provided that the Transferees name finds place in the Revenue accounts through proper mutation.

6. After preparation of the SDR, the Mandal Surveyor shall submit it to the Tahsildar who will verify whether it confirms to the documents and whether records are signed by all the concerned parties. Thereafter, Tahsildar should send the record to Assistant Director, Survey and Land Records Department with a proposal for sanction of Phodi.

7. Upon receipt of this proposal, the Assistant Director shall scrutinize the

records and take further action for preparation and issue of supplementary sethwar and for incorporation of changes, if any.”

11. The Circular instructions issued by the Commissioner are very clear and absolutely there is no ambiguity and the obligation that is cast upon the respondent-Tahsildar is unequivocal and hence, any action on the part of the respondents to refuse to conduct survey and demarcation or sub-division of the part survey numbers pursuant to the request made by the persons concerned by submitting F-Line petitions is totally impermissible and illegal. It is only to avoid such ambiguous situation, the above referred circulars were issued categorically stating that it is the obligation on the part of the respondent-Tahsildar to take up such applications as and when the applications are received for survey and demarcation of part survey numbers and to complete the survey by duly collecting the required fees.

12. In the light of the clear legal position, as noted above, the action of the respondents herein in not considering the survey and demarcation of the subject land to an extent of Ac.1.006 gts each owned by the petitioners in Survey Nos.199/A/1/1 and 199/A/1/2 situated at Jankapur Village, Asifabad Mandal, Komuram Bheem Asifabad District, is totally unacceptable and such an action cannot be sustained. At the same time, the contention of the learned counsel for the petitioner that no survey was conducted on 22.08.2022 also cannot be accepted. However, this controversy need not be gone into further for disposal of this writ petition.

13. As rightly contended by the learned counsel for the petitioners, this aspect of the matter was in fact considered by the learned Single Judge of this Court in W.P.No.33290 of 2013 and directed for issuance of a comprehensive circular to all the Tahsildars in the State to scrupulously follow the circulars in question and the relevant portion from the said order reads as under:-

“This Court has been receiving Writ Petition of this nature day-in and day-out only due to the failure of the Tahsildars to strictly follow the above-mentioned Circular. Instead of requiring the land owners to obtain the consent of the neighbouring land owners in the same Survey numbers, respondent No.3 had needlessly driven the petitioners to filing this Writ Petition by failing to follow the instructions in the above-mentioned Circular. In order to prevent avoidable litigation, respondent No.1 is directed to issue a comprehensive Circular to all the Tahsildars in the State to scrupulously follow the above-mentioned Circular issued by the Commissioner, Survey, Settlement and Land Records wherever applications for fixing the F-line or demarcating the boundaries of part of the lands without sub-divisions are received.”

14. In the light of the above, this Writ Petition is disposed of with the following directions:-

(i) The respondents 4 and 5 are directed to take up the application submitted by the petitioners for conducting survey of the subject land admeasuring Ac.1.006

gts each in Survey Nos.199/A/1/1 and 199/A/2/1 situated at Jankapur Village, Asifabad Mandal, Komuram Bheem Asifabad District, by taking into consideration the treasury challan No.6100953952 dated 29.06.2021 submitted by the petitioners in continuation of the process for survey already conducted on 22.08.2022 of the subject land;

(ii) In case, if the respondents 4 and 5 are of the view that sub-division of survey numbers is required to be done and any further fees is required to be paid by the petitioners in terms of the circulars referred to above, the same shall be intimated to the petitioners and on receipt of such intimation from the respondents 4 and 5, the petitioners shall pay such fees as may be required by the respondents 4 and 5;

(iii) On such payment of fees by the petitioners, the respondents 4 and 5 shall take further steps for taking up the survey as requested by the petitioners and conclude the same in accordance with law; and

(iv) The entire exercise, as directed above, shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.