(2022) 11 TEL CK 0003

In the Telangana High Court

Case No : Writ Petition No. 35540 Of 2021

Vanga Indrasena Reddy APPELLANT

Vs

State Of Telangana RESPONDENT

Date of Decision : 04-11-2022

Acts Referred:

A.P. Rights in Land and Pattadar Pass Books Rules, 1989 — Rule 22(3)
Telangana Rights in Land and Pattadar Pass Books Act, 1971 — Section 5A, 5B
Telangana Rights in Land and Pattadar Pass Books Act, 2020 — Section 16

Citation : (2022) 11 TEL CK 0003

Hon'ble Judges : Mummineni Sudheer Kumar, J

Bench : Single Bench

Advocate : Srinivasa Rao Sirikonda

Final Decision : Allowed

Judgement

1. Heard Mr. S. Srinivasa Rao, learned counsel for the petitioner and Mr. V. Ravi Kiran Rao, learned Senior Counsel appearing on behalf of the fourth respondent and learned Assistant Government Pleader for Revenue for the respondents.

2. This Writ Petition is filed seeking a Writ of Certiorari calling for the records relating to and in connection with order dated 30.07.2021 passed in Case No.F3/ Spl.Tribunal/Siddipet(U)/35/2021 dated 30.07.2021 (Old Case No.D/1699/2018) passed by the second respondent-Special Tribunal confirming the proceedings bearing No.B/9737/2016 issued by the third respondent herein and to quash the same in respect of the land admeasuring Ac.0.32 gts situated at Survey No.286/2 of Ponnala Village, Siddipet (Urban) Mandal, Siddipet District.

3. The impugned order dated 30.07.2021 came to be passed by the second respondent-Special Tribunal on transfer of an appeal filed by the petitioner herein before the appellate authority under Section 5 (B) of the Telangana Rights in Land and Pattadar Pass Books Act, 1971 ("the Act, 1971" for brevity) by virtue of operation of Section 16 of the Telangana Rights in Land and Pattadar Pass Books Act, 2020 ("the Act, 2020" for brevity). Originally, the said appeal was filed by

the petitioner herein having been aggrieved by the 13 'B' Certificate issued in exercise of power under Section 5 (A) of the Act, 1971 by the third respondent in File No.B/9737/2016 in favour of the fourth respondent herein. Through the said proceeding, the third respondent herein regularized the sada sale deed said to have been executed by the petitioner herein in favour of the father of the fourth respondent herein in the year 1981. The petitioner herein, having noticed certain changes in the revenue entries and having come to know about 13 'B' certificate issued in favour of the fourth respondent herein, filed an appeal before the appellate authority under Section 5 (B) of the Act, 1971 mainly on the ground that the petitioner was never put on notice while issuing the proceedings bearing No.B/9737/2016 in favour of the fourth respondent by the third respondent herein. During the pendency of the said appeal, Act, 2020 came into force thereby repealing the Act, 1971 and as noted above, the said appeal came to be transferred to the second respondent-Special Tribunal and the second respondent-Special Tribunal passed the impugned order confirming the order passed by the third respondent and 13 'B' certificate issued in favour of the fourth respondent.

4. It is the contention of learned counsel for the petitioner that he has been in possession and enjoyment of the subject property admeasuring Ac.0.32 gts situated in Survey No.286/2 of Ponnala Village, Siddipet (Urban) Mandal, Siddipet District, for the past 50 years and his name is also continuing as pattadar in respect of the subject land. However, during the year 2018, the name of the fourth respondent came to be entered in the revenue records and having noticed the same, immediately after that, he made enquiries and filed appeal under Section 5 (B) of the Act, 1971, as noted above. It is also contended by the learned counsel for the petitioner that on verification of the record obtained from the office of the third respondent, it is noticed that the claim of the fourth respondent is based upon a sadabainama alleged to have been executed by the petitioner in favour of the father of the fourth respondent on 08.01.1981 and after the demise of the father of the fourth respondent, the fourth respondent herein approached the third respondent seeking regularization of the said sada sale deed dated 08.01.1981 under Section 5 (A) of the Act, 1971 and the same was acceded to by the third respondent without putting the petitioner on notice and without affording any opportunity to the petitioner. It is further contended that in contrast to the claim made by the fourth respondent in the application submitted for regularization of sadabainama by showing the date of purchase as 08.01.1981, the fourth respondent in its counter affidavit filed before this Court mentioned the date of sale as 12.05.1978. Thus, it is contended that the claim of the fourth respondent is totally false and fraudulent.

5. On the other hand, Mr. V. Ravi Kiran Rao, learned Senior Counsel appearing for the fourth respondent, contended that the petitioner herein was the original pattadar in respect of the subject property and it was on 08.04.1973, the petitioner herein executed sadabainama for an extent of Acs.2.22 gts in Survey No.286 in favour of one Payyavula Balaiah. It is also contended that the father of

the fourth respondent purchased an extent of Ac.0.22 gts of land in Survey No.286 from the said Payyavula Balaiah through an unregistered sale deed dated 12.05.1978 and further, the father of the fourth respondent also stated to have purchased another extent of Ac.0.20 gts in Survey No.282/2 from the said Payyavula Balaiah and also claim to have sold certain extent out of the total extent and thereby, retained an extent of Ac.0.32 gts in Survey No.286/2. It is also contended that the name of the father of the fourth respondent is recorded in the revenue records from the year 1978 onwards and after the demise of the father of the fourth respondent; the petitioner herein mischievously got his name entered in the revenue records in the year 2017-18. It is further contended that having noticed the name of the petitioner herein in the revenue records during the years 2017-18, the fourth respondent claims to have approached the revenue authorities and got the entries rectified. It is further contended that 13 'B' certificate is deemed to have been issued by following due process of law and that there is a legal presumption that every order passed by the authorities is deemed to have been passed by following due process of law. Learned Senior Counsel also advanced arguments on various other factual aspects with regard to execution of sadabainama by the said Payyavula Balaiah and also about the alleged attestation of the said sale deed by the petitioner herein etc. However, for the purpose of disposal of this Writ Petition, all such factual averments may not be relevant and hence, the same are not being referred in detail herein in this order.

6. As is evident from the copy of the appeal filed by the petitioner under Section 5 (B) of the Act, 1971, it is seen that the main ground on which the said appeal was filed is, violation of principles of natural justice i.e. the petitioner was not put on notice while issuing the proceedings bearing No.B/9737/2016 dated 02.07.2017 validating the sale in favour of the fourth respondent herein on the ground that the petitioner herein executed a simple sale deed in favour of the father of the fourth respondent. The said appeal filed under Section 5 (B) of the Act, 1971, came to be disposed of by the second respondent-Special Tribunal through the impugned order dated 30.07.2021. The operative portion of the said order reads as under:-

"Here in this case it is observed that, the Tahsildar, Siddipet (Urban) Mandal has issued 13-B Certificate proceedings No.B/9737/2016 dated 02.07.2017 in respect of the lands bearing Sy.No.286/2 to an extent of Ac.0.32 gts situated at Ponnala Village of Siddipet (Urban) Mandal. The respondent herein purchased the land in question from the appellant in the year 1981 and also respondent is in physical possession over the said land. The Tahsildar Siddipet (Urban) Mandal followed due procedure of law while issuing of 13-B Certificate under the provisions of Telangana Rights in Land and Pattadar Pass Book Act, 1971 and Rules, 1989.

This Tribunal is not inclined to interfere with the orders of the Tahsildar Siddipet (Urban) Mandal in file No.B/9737/2016 dated 02.07.2017. The orders of the Tahsildar Siddipet (U) Mandal are upheld and the appeal is dismissed."

From the order passed by the Special Tribunal, as extracted above, it is seen that the Tribunal was of the view that the fourth respondent herein purchased the subject land from the petitioner herein and also recorded a finding that the fourth respondent herein is in physical possession over the subject land and that the third respondent herein followed due process of law while issuing the 13 'B' certificate in favour of the fourth respondent herein. In spite of the specific ground raised by the petitioner herein that he was never put on notice before issuing the proceedings dated 02.07.2017 in favour of the fourth respondent thereby regularizing the alleged simple sale deed, the Tribunal failed to advert to such ground specifically raised by the petitioner herein.

7. On the other hand, the Special Tribunal, without referring to any of the record nor the documents placed before it and without even calling for a report from the third respondent or calling for a record pertaining to the proceedings No.B/9737/2016 dated 02.07.2017, arrived at a conclusion that the third respondent herein followed due procedure of law while issuing the 13 'B' Certificate in favour of the fourth respondent. Absolutely, there is no basis for the second respondent-Special Tribunal to record such a finding without there being any discussion on that aspect. Even in the counter affidavit filed by the fourth respondent, it is not contended that the petitioner herein was put on notice while issuing the proceedings dated 02.07.2017 regularizing the simple sale deed in favour of the fourth respondent.

8. As already noted above, the simple sale deed said to have been executed by the petitioner herein in favour of the father of the fourth respondent is of the year 1978 or 1981 and the same was sought to be regularized after a long lapse of more than thirty years. In terms of Section 5 (A) of the Act, 1971 read with sub-Rule 3 of Rule 22 of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 ("the Rules, 1989" for brevity), it is mandatory that the alienor/transferor shall be issued a notice intimating the date of enquiry. The said Rule 22(3) of the Rules reads as under:-

"On receipt of the application under sub-section (2) of Section 5 -A of the Act, the Mandal Revenue Officer shall issue notice to the alienor or transferor in Form No.XI specifying therein the date on which and the time at which he proposes to enquiry into the application. He shall also cause to issue a notice in Form No.XII to all other persons believed to be interested in the land specifying therein, date, time and place at which he proposes to enquiry into the application. Only unregistered documents shall be considered under Section 5-A of the Act."

Thus, it is obligatory on the part of the third respondent to put the transferor i.e. the petitioner herein on notice before issuing any regularization proceedings in favour of the fourth respondent herein. But in the instant case, the same is alleged to have not been followed, but the Special Tribunal instead of enquiring into the said aspect of the matter either by calling for the record pertaining to proceedings No.B/9737/2016 dated 02.07.2017 or by calling for a report from the third respondent herein erroneously recorded a finding stating that the third respondent herein followed due procedure of law. The said finding recorded by the Special Tribunal is based on no evidence and is only an unsustainable assumption. Hence, the order passed by the Special Tribunal is perverse.

9. In the circumstances, this Court has no hesitation to quash the impugned order dated 30.07.2021 and accordingly, the same is quashed. Consequently, the matter is remanded back to the Special Tribunal to consider the appeal Case No.F3/Spl.Tribunal/Siddipet(U)/35/2021 (Old Case No.D/1699/2018) afresh by putting all the parties on notice and affording them a reasonable opportunity of hearing and then decide the matter afresh and pass appropriate orders thereon in accordance with law within a period of three (3) months from the date of receipt of a copy of this order by duly taking into consideration the observations made in this order.

10. Accordingly, the Writ Petition is allowed to the extent indicated hereinabove.

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

