(2008) 09 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13236 of 2001

Yelagani Papaiah and Another	APPELLANT
Vs	
The Joint Collector and Others	RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 50(4)
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 3, 5, 5A, 5A(1), 5A(2)
Constitution of India, 1950 — Article 226

Citation : (2009) 2 ALT 380

Hon'ble Judges : P.V. Sanjay Kumar, J

Bench : Single Bench

Advocate : E. Madan Mohan Rao, for the Appellant; Govt. Pleader for Revenue for R-1 to R-3 and J. Ashvini Kumar, for R-4 to R-7, for the Respondent

Final Decision : Allowed

Judgement

P.V. Sanjay Kumar, J.—The order of the Joint Collector, Ranga Reddy District, in proceedings No. D5/8031/1993 dated 05.03.2001 passed in exercise of revisional jurisdiction u/s 9 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for brevity, ''the Act''), is under challenge in the present writ petition.

2. The facts of the case, as reflected in the affidavit filed in support of the writ petition, are that one Smt. Shetti Sharanamma was the pattadar of agricultural land admeasuring Ac.8.01 gunta in Najeeb Nagar Village of Moinabad Mandal, Ranga Reddy District. The father of the petitioner No. 1 and respondents 4 to 7, namely late Sri Shankaraiah, is said to have been the Protected Tenant in respect of this land. Owing to the default committed by the pattadar, Smt.Shetti Sharanamma, in payment of arrears, the Tashildar, Chevella, put the land to auction under the Revenue Recovery Act and the petitioner No. 1 participated in the said auction on 26.08.1967 and became the highest bidder. According to him, after he deposited the sale consideration, the then Tahsildar put him in

possession of the property on the date of the auction. He claims to have made an application to the Mandal Revenue Officer, Chevella, Moinabad Mandal, Ranga Reddy District, the third respondent in the writ petition, under the Act and in pursuance thereof, the Mandal Revenue Officer, Chevella, issued a validation certificate dated 14.11.1990 u/s 5-A of the Act, in Form 13(B) proforma with a Form 13(C) proforma appended thereto. It is stated that the respondent No. 5 herein, being aggrieved by the issuance of the said proceedings, filed a Revision Petition before the Joint Collector, Ranga Reddy District, the first respondent in the writ petition. It is further stated that the petitioner No. 1 gifted an extent of Ac.2.00 guntas out of the subject land to his wife, petitioner No. 2 herein and put her in possession. Meanwhile, the proceedings impugned in the writ petition were passed by the Joint Collector, Ranga Reddy District, setting aside the proceedings issued by the Mandal Revenue Officer, Chevella, which led to the filing of the present writ petition.

3. It is the case of the petitioners that they are in possession of the property even as on the date of filing of the writ petition and the findings of the Joint Collector, Ranga Reddy District, are erroneous in law and on fact. The finding that the father of the petitioner No. 1 and respondents 4 to 7 was the actual owner of the property in question and accordingly all his sons, viz., petitioner No. 1 and respondents 4 to 7, would have an equal share therein, is attacked on the ground that the father was not in a position to purchase the land in the auction held in the year 1967. The factum of the father''s name being reflected in the revenue records is sought to be explained by stating that he was a Protected Tenant in respect of the said land and accordingly his name continued to be recorded in the said proceedings notwithstanding the events that transpired thereafter, including the purchase of the land by the petitioner No. 1. Accordingly, the petitioners sought for a writ in the nature of a certiorari calling for the records relating to the proceedings dated 05.03.2001 passed by the Joint Collector, Ranga Reddy District, and to quash the same on the grounds of illegality and arbitrariness.

4. The respondents 4 to 7 filed a counter affidavit stating to the effect that the proceedings under challenge required no interference in this writ petition as there is no error of jurisdiction by the Joint Collector, Ranga Reddy District in passing the said proceedings. They denied the claim of the petitioner No. 1 that he had purchased the lands in the auction and that he alone was in possession of the said lands. It is claimed that their father had participated in the auction and he was the purchaser of the lands in question. It is further stated that their father had purchased the lands in the name of the petitioner No. 1 as he was the eldest son but the purchase was from joint family funds and petitioner No. 1 did not have any independent source of income. It is further stated that petitioner No. 1, taking advantage of this fact, filed a petition under the Act before the Mandal Revenue Officer, Chevella, with the intention of knocking away the entire joint family property depriving them of their rights. They also attacked the alleged gift made by the petitioner No. 1 in favour of his wife, petitioner No. 2, so

far as the extent of Ac.2.00 guntas is concerned. They denied the averment made in the writ affidavit that the petitioners were in exclusive possession of the subject lands. According to them, there is no illegality or error of jurisdiction in the proceedings impugned in the writ petition and accordingly, they sought for dismissal of the writ petition.

5. It is relevant to note that the interim order dated 03.07.2001 granted by this Court, suspending the operation of the proceedings dated 05.03.2001 pending further orders, was modified upon the vacate petition filed by the respondents 4 to 7 and by order dated 10.09.2001, this Court directed that status quo should be maintained with regard to the possession of the subject lands.

6. Heard Sri E. Madan Mohan Rao, learned Counsel appearing for the petitioners, the learned Government Pleader for Revenue appearing for the respondents 1 to 3 and Sri J. Ashvini Kumar, learned Counsel appearing for the respondents 4 to 7.

7. Sri E. Madan Mohan Rao, learned Counsel appearing for the petitioners, submitted that a reading of the proceedings dated 05.03.2001 passed by the Joint Collector, Ranga Reddy District, would demonstrate that the same are unsustainable in law inasmuch as the authority exceeded the jurisdiction vested in him u/s 9 of the Act. He also drew the attention of this Court to the fact that the Joint Collector, Ranga Reddy District, placed reliance upon the reports of the Mandal Revenue Officer dated 27.09.1996 and 21.11.1996 which are said to have been submitted to the Collector and Revenue Divisional Officer, respectively. According to the learned Counsel, the petitioners were not furnished the copies of these reports and the failure in this regard clearly occasions prejudice to them and constitutes a blatant violation of the principles of natural justice. He further stated that the proceedings of the Joint Collector, Ranga Reddy District, have the effect of deciding a title dispute, which is far in excess of the revisional jurisdiction, which he was exercising. Accordingly, he submitted that the said proceedings were unsustainable in law and were liable to be set aside.

8. He placed reliance upon the Judgment of a Division Bench of this Court in Kalari Nagabhushana Rao Vs. The Collector, Panchayat Wing, Guntur and Others, wherein this Court held that the State Government, acting as an appellate authority u/s 50(4) of the A.P. Gram Panchayat Act, 1964, was not competent to call for reports from the subordinate officers in order to sustain the proceedings which were under appeal. The learned Division Bench also held that such action would be violative of the rules of natural justice, thereby vitiating the exercise of the appellate authority.

9. He also relied upon the Judgment of the Supreme Court in Shama Prashant Raje Vs. Ganpatrao and Others, for the proposition that the High Court acting in exercise of its jurisdiction under Article 226 of the Constitution of India, though not sitting in appeal over the findings recorded by the competent Tribunal, would be justified in interfering with such findings if the Court came to the conclusion that the inferior Tribunal had committed manifest error by misconstruing

documents or if it had ignored relevant materials or taken into consideration extraneous materials.

10. On the other hand, Sri J. Ashvini Kumar, learned Counsel appearing for the respondents 4 to 7, contended that the petitioners sought to raise various disputed questions of fact in the present writ petition. In this regard he drew the attention of the Court to the fact that the case of the petitioners as reflected in the writ affidavit, is based upon the alleged purchase of the lands by the petitioner No. 1 in the auction sale said to have been conducted in the year 1967 whereas the proceedings of the Mandal Revenue Officer, Chevella, dated 14.11.1990 reflect that the claim was based upon the sale document dated 25.04.1956. According to him, the failure of the petitioners to mention this sale document in their affidavit, though the same appears to have been the basis for the issuance of the proceedings dated 14.11.1990 by the Mandal Revenue Officer, Chevella, clearly indicates their lack of bona fides and he submits that in the light of these factual inconsistencies, it would not be open to this Court to exercise jurisdiction under Article 226 of the Constitution of India in the present case. He submitted that the proceedings dated 05.03.2001 passed by the Joint Collector, Ranga Reddy District, do not suffer from any error apparent on the face of the record or any error of jurisdiction warranting the interference of this Court by exercising its certiorari jurisdiction.

11. He placed reliance upon the Judgment of the Supreme Court in Surya Dev Rai Vs. Ram Chander Rai and Others, . In paragraph 38 of the said Judgment, the Hon''ble Supreme Court summed up its conclusions with regard to the exercise of certiorari jurisdiction by the High Courts. As per the said Judgment, the writ of certiorari under Article 226 of the Constitution of India is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. The Hon''ble Supreme Court further stated that the High Court in exercise of certiorari jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. The learned Counsel also relied upon the Judgment of this Court in A. Sarojamma Vs. A. Parvath Reddy (died) rep. by his L.Rs., . In the said case, basing upon a partition deed, the party sought validation u/s 5-A of the Act. This Court held that such a document does not effect an alienation or a transfer so as to bring the transaction within the ambit of Section 5-A of the Act. It is the argument of the learned Counsel that the alleged purchase by the petitioner No. 1 in an auction sale stands on the same footing as a partition deed and therefore, dealing with his application u/s 5-A of the Act was inherently erroneous. He would, therefore, submit that the proceedings challenged in the writ petition do not warrant the invocation of the certiorari jurisdiction of this

Court and accordingly prays for dismissal of the writ petition.

12. The learned Government Pleader for Revenue appearing for the respondents 1 to 3 supported the proceedings dated 05.03.2001 passed by the Joint Collector, Ranga Reddy District. He submitted that the said proceedings were issued in pursuance of due and proper exercise of the revisional jurisdiction vested in the authority u/s 9 of the Act and accordingly no cause was made out for interfering with the same.

13. The petitioner filed additional material papers in this writ petition. The proceedings issued by the Mandal Revenue Officer, Chevella, on 14.11.1990 are placed before this Court in these material papers. A reading of the declaration in Form 13(B) proforma issued by the Mandal Revenue Officer, Chevella, would show that the petitioner No. 1 is said to have made an application u/s 5-A of the Act seeking validation of the sale/allotment of the land. The appendix to the said proceedings in Form 13(C) proforma shows that the document relied upon by the petitioner No. 1 is dated 25.04.1956. The Mandal Revenue Officer, Chevella, stated to the effect that upon enquiry he learnt that petitioner No. 1 had purchased the subject lands through the said unregistered document and exercising authority u/s 5-A of the Act, which had been introduced vide A.P. Act 1 of 1989, he collected the requisite payment and validated the alienation in favour of the petitioner No. 1.

14. A reading of the proceedings dated 05.03.2001 passed by the Joint Collector, Ranga Reddy District, complicates the matter, however. These proceedings were passed by the Joint Collector, Ranga Reddy District, in exercise of his revisional jurisdiction u/s 9 of the Act. As per these proceedings, the Joint Collector, Ranga Reddy District, perused the record available with the Mandal Revenue Officer, Chevella, and found that the petitioner No. 1 approached the revenue authorities seeking mutation of his name in the revenue records in the year 1988 stating that Smt. Shetti Sharanamma had executed a sale document in respect of the subject lands on 25.04.1956. However, as Smt. Shetti Sharanamma was found to be in default so far as the payment of arrears to the Government was concerned, the land in Survey Nos. 25 and 41 is said to have been put to auction in the year 1967 and the petitioner No. 1''s father is said to have purchased the lands once again. The Joint Collector, Ranga Reddy District, also stated to the effect that he perused the original sale document dated 25.04.1956 and found that Smt. Shetti Sharanamma has sold the subject lands to the father of the petitioner No. 1 and respondents 4 to 7, which is in variance with what the Mandal Revenue Officer stated in his proceedings dated 14.11.1990. The enquiries said to have been conducted at various stages also do not reflect any cogent and consistent findings. The enquiries referred to by the Joint Collector, Ranga Reddy District, in his proceedings dated 05.03.2001 speak to the effect that the father of the petitioner No. 1 was the owner and possessor of the subject lands whereas the enquiry of the Mandal Revenue Officer, Chevella, as reflected in his proceedings dated 14.11.1990 indicated a different finding altogether.

15. The argument of the learned Counsel for the respondents 4 to 7 that the application ought not to have been treated as one u/s 5-A of the Act as it pertained to an auction transaction may not be correct. It is to be noted that the proceedings of the Joint Collector, Ranga Reddy District, dated 05.03.2001 reflect that the application before the Mandal Revenue Officer, Chevella, was based not only upon the alleged auction purchase by the petitioner No. 1 in the year 1967 but also the sale document dated 25.04.1956. It is to be noted that there is one other inconsistency with regard to the source of the claim. Under the auction sale, the purchase was only with reference to the lands in Survey Nos. 25 and 41 while the sale document dated 25.04.1956 appears to cover the entire extent of Ac.8.01 gunta in Survey Nos. 25, 37, 38 and 41 of Najeeb Nagar Village. This would therefore be a crucial factor in deciding the extent of the purported validation u/s 5-A of the Act. If the claim of the petitioner No. 1 was based on the sale document of 1956, his claim would be over the entire extent whereas if it is based on the alleged auction sale in his favour, it would be limited to the lands in Survey Nos. 25 and 41 of Najeeb Nagar Village.

16. Be that as it may, this Court in exercise of its jurisdiction in a writ petition filed under Article 226 of the Constitution of India seeking a writ of certiorari would not convert itself into a Court of Appeal, as pointed out by the Hon''ble Supreme Court in the decision in Surya Dev Rai''s case (3 supra). The scope of judicial review in such a matter would be limited to the assessment of the exercise of jurisdiction by the Authority/Tribunal. The Judgments in Kalari Nagabhushana Rao''s case, Shama Prashant Raje''s case and A. Sarojamma''s case may not have much bearing on the present case, which essentially turns upon the exercise of jurisdiction by the revisional authority.

17. In the present case, the proceeding dated 14.11.1990 of the primary authority - the Mandal Revenue Officer, Chevella, was passed in exercise of the provisions of Section 5-A of the Act. Section 5-A of the Act reads as follows:

5-A. Regularisation of certain alienations or other transfers of lands: (1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or effected otherwise than by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.

(2) On receipt of such application, the Mandal Revenue Officer shall after making such enquiry as may be prescribed require the alienee or the transferee to deposit in the office of the Mandal Revenue Officer an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the Registering Officer on a reference made to him by the Mandal Revenue Officer on the basis of the value of the property arrived at in such manner as may be prescribed:

Provided that the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under this Sub-section unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

18. Under the said Section, the Mandal Revenue Officer is empowered to validate an alienation or transfer made or effected otherwise than by way of a registered document provided the alienee or transferee is in occupation by virtue of the said alienation or transfer and applies to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid. This is the import of the Sub-section (1) of Section 5-A of the Act. Under Sub-section (2) of Section 5-A of the Act, the Mandal Revenue Officer, after making such enquiry as may be prescribed, shall require the alienee or transferee to deposit the amount equal to the registration fee and stamp duty that would be payable, had the alienation or transfer been effected by way of registered document in accordance with the provisions of the Registration Act, 1908.The other Sub-sections of Section 5-A are not relevant for the purpose of this case.

19. In the present case, the proceedings of the Mandal Revenue Officer dated 14.11.1990 reflect that he undertook an enquiry and thereafter collected the requisite amount due from the petitioner No. 1, as is required u/s 5-A(2) of the Act. Aggrieved by the said proceedings, respondent No. 5 filed a Revision before the Joint Collector, Ranga Reddy District, invoking the provisions of Section 9 of the Act. Section 9 of the Act reads as follows:

9. Revision: The Collector may either suo motu or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue Officer or Revenue Divisional Officer under Sections 3, 5, 5A or 5B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for reconsideration, he may pass orders accordingly:

Provided that no such order adversely affecting any person shall be passed under this Section unless he had an opportunity of making a representation.

20. Under the above Section, the Collector, either suo motu or upon an application, can modify, annul, reverse or remit for re-consideration any order passed by the Recording Authority, Mandal Revenue Officer or Revenue Divisional

Officer, under Sections 3, 5, 5-A or 5-B of the Act. It is in exercise of this revisional jurisdiction that the Joint Collector, Ranga Reddy District, has passed the proceedings dated 05.03.2001, which is under challenge in this writ petition. The narration of the case hereinabove would clearly demonstrate that any number of disputed questions of fact are thrown up and there is no consistency or cogency in the findings arrived at in the so-called enquiries conducted at different stages. According to the Joint Collector, Ranga Reddy District, the original sale document dated 25.04.1956 reflects the name of the father of the petitioner No. 1 and not the name of the petitioner No. 1 as is reflected in the proceedings dated 14.11.1990 of the Mandal Revenue Officer, Chevella. The contention of the petitioner in this case is that the said proceeding is bad in law inasmuch as the Joint Collector relied upon the reports which had been collected behind the back of the petitioners and the denial of an opportunity to them in this regard constitutes violation of the principles of natural justice. It may not be necessary to go into this aspect of the matter in the light of what I have to say hereunder with regard to the scope of exercise of jurisdiction by the revisional authority. The Joint Collector, Ranga Reddy District, having come to the finding, correctly or incorrectly, that the petitioner No. 1 was not entitled to seek validation of the alleged alienation in his favour basing upon the sale document dated 25.04.1956 proceeded to give a finding that all the five sons, viz. the petitioner No. 1 and respondents 4 to 7 herein were entitled to equal shares. He further ordered that the names of all the sons should be entered in the validation certificate in Form 13 issued u/s 5-A of the Act and also in the revenue records. Thereafter, he set aside the alleged gift said to have been made by the petitioner No. 1 in favour of his wife, petitioner No. 2 on the ground that he was not authorized to execute such a gift deed as all his brothers were entitled to an equal share in the subject lands. Having given all these findings, the Joint Collector, Ranga Reddy District, directed the Mandal Revenue Officer, Chevella, to conduct a fresh enquiry after issuing notices to all the five shareholders and dispose of the case basing on their consent.

21. It is relevant to note that the Joint Collector, Ranga Reddy District, was exercising revisional jurisdiction u/s 9 of the Act, with regard to an order passed by the Mandal Revenue Officer, Chevella, u/s 5-A of the Act. The scope of Section 5-A of the Act is limited to the validation of an alienation or transfer made under an unregistered document. In exercise of the revisional jurisdiction, it was not open to the Joint Collector, Ranga Reddy District, to enlarge the scope of the proceedings and venture to adjudicate disputes with regard to title and cancellation of transactions. The Joint Collector, Ranga Reddy District, acted in excess of jurisdiction in giving a finding with regard to the title in respect of the subject lands and in seeking to set aside transactions pertaining to the said lands. The scope of the revision was only with regard to the correctness of the proceedings dated 14.11.1990 of the Mandal Revenue Officer validating the sale document of the year 1956 under which the petitioner No. 1 claimed title over the subject lands to the exclusion of respondents 4 to 7. It was not open to the

Joint Collector, Ranga Reddy District, to adjudicate the disputes amongst the brothers and decide as to the validity of their inter se claims. The Joint Collector, Ranga Reddy District, in the opinion of this Court, assumed the role of a Civil Court in deciding such matters.

22. As pointed out by the Hon''ble Supreme Court in Surya Dev Rai''s case (3 supra), the High Court in exercise of certiorari jurisdiction is entitled to interfere with the findings of the inferior Court or Authority, when it is found that such Court or Authority has acted in exercise of its jurisdiction by overstepping or crossing the limits of jurisdiction. In the present case, it is patent and manifest that the Joint Collector, Ranga Reddy District, acted far in excess of jurisdiction vested in him u/s 9 of the Act while dealing with the proceedings u/s 5-A of the Act. The proceedings dated 05.03.2001 are, therefore, unsustainable and are accordingly set aside. The matter is remitted back to the Joint Collector, Ranga Reddy District, to consider afresh the revision petition filed by respondent 5 herein after giving due notice and opportunity to all the parties concerned. Keeping in mind the fact that the valuable property rights of the parties are in issue and the matter has been pending for a long time, the Joint Collector, Ranga Reddy District, is directed to dispose of the Revision Petition expeditiously.

23. The writ petition is accordingly allowed to the extent indicated above. There shall be no order as to costs.