

HON'BLE THE CHIEF JUSTICE
SRI THOTTA THIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

W.P.Nos.40775 & 41358 OF 2017
&
W.A.Nos.1055 & 1041 OF 2018

COMMON JUDGMENT: (*Per the Hon'ble Sri Justice S.V.Bhatt*)

Heard Mr.O.Manoher Reddy and Mr.K.V.Simhadri for writ petitioner, Mr.Vedula Srinivas for 5th respondent and the learned Government Pleader (Revenue) for respondent Nos.1 to 4 in W.P.No.40755 of 2017.

The parties are referred as arrayed in W.P.No.40755 of 2017.

Kesani Yedukondalu filed W.P.No.40775 of 2017 for Certiorari to call for the records relating to order dated 03.10.2017 in R.P.No.5 of 2015 in proceeding Rc.No.3592/2015/D2 of the Joint Collector, Visakapatnam District/respondent No.2 and quash the same as illegal, contrary to law and vitiated by material irregularities.

Jampani Krishna Babu and another filed W.P.No.41358 of 2017 challenging the order dated 03.10.2017 in R.P.No.5 of 2015 in proceeding Rc.No.3592/2015/D2 of the Joint Collector, Visakapatnam.

The subject matter of these two writ petitions relates to an extent of Acs.6-00 in Sy.No.99/2 of Kapuluppada Village, Bheemunipatnam Mandal. The issue arises under the A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short 'the Act').

This Court, after hearing the learned counsel for all the parties in W.A.Nos.1041 and 1055 of 2018, on 10.09.2018, passed the following order:

“We have heard the learned counsel for the appellant in these two writ appeals, which are against interlocutory orders passed during the course of two writ petitions which were considered by the learned single Judge in a consolidated manner. We have also heard the learned counsel for unofficial respondents in these writ appeals who represent the writ petitioners. We have also heard the learned Government Pleader for Revenue.

In the fitness of things, having noticed that the fundamental disputes are essentially in the domain of private disputes between the unofficial respondents to these writ appeals, the learned counsel on all sides have acceded to our suggestion that the writ petitions be withdrawn and heard along with these writ appeals since no useful purpose would be served by merely hearing the writ appeals against the interlocutory order. It is also agreed that the parties would make submissions based on the pleadings already placed on record. The Government is not required to now place on record any pleadings. However, it will make available the entire official records in connection with the case.

Post on 17.09.2018”.

The counsel have consented to disposing of the writ petitions.

The learned Government Pleader has produced the record in file No.3592/2015/D2 and also the Settlement Land Register pertaining to Sy.Nos.99, 99/1 and 99/2; Classification Register pertaining to Sy.Nos.99, 99/1 and 99/2; 10(1) Adangal Register pertaining to Sy.No.99/2; 1-B Register maintained under the Act for Khatha Nos. 1478, 1479 and 1480 and also copy of order of this Court in W.P.No.24912 of 2010. The learned Government Pleader through our order dated 10.09.2018 was relieved from filing counter affidavit in the writ petitions, however, basing on instructions the Government Pleader has received, a few submissions are made on behalf of respondents 1 to 4/Government in the writ petitions.

We would refer to these submissions at appropriate stage of our order.

Dr.Rednam Ahi Krishna filed revision under Section 9 of the Act aggrieved by the order in Rc.No.747/2010/C dated 13.04.2011 passed by Tahsildar, Bheemunipatnam under Section 5(1) (B) of the Act, whereunder pattadar passbook/title deed was granted in favour of the writ petitioner. The case of Dr.Rednam Ahi Krishna is that the subject matter of writ petition was part of Acs. 24-30 Cts. covered by old Sy.No.280 and Patta No.331. The said extent of land originally was owned and held by one Dendukuri Seetha Rama Raju s/o Rama Raju. The 5th respondent claims right, title and possession to the subject matter through Court auction sale in favour of 5th respondent's mother, and that possession of old Sy.No.280 was delivered to her by the Court Amin on 26.10.1965 in EA.No.791 of 1965. The 5th respondent after the demise of purchaser, being the successor and legal representative of late Rednam Chandramathi, claims right and interest in the subject matter.

The writ petitioners in W.P.No.41358 of 2017 allege that one Danthuluri Seetharama Raju was the registered holder of subject matter of writ petition. The writ petitioners claim right, title and possession to the subject matter of writ petition through registered sale deeds executed in favour of writ petitioners by the daughters of Danthuluri Seetharama Raju.

The writ petitioner in W.P.No.40775 of 2017 and two others filed W.P.No.24912 of 2010 complaining inaction by the revenue officials in recognizing the transfer made by the

legal representatives of Danthuluri Seetharama Raju and issuing pattadar passbook/title deed in their favour. On 05.10.2010, W.P.No.24912 of 2010 was disposed of and in implementation of the instant order, the Tahsildar Bheemunipatnam issued proceedings Rc.No.747/2010/C dated 13.04.2011 by entering the names of writ petitioners in 1-B register and also issued pattadaar book/title deed. As already noted, the proceeding dated 13.04.2011 was challenged in R.P.No.5 of 2015 by respondent No.5 before the Joint Collector/respondent No.2. The Joint Collector, Visakhapatnam through order dated 03.10.2017 in R.P.No.5 of 2015 held as follows:

“I have examined the issue. It is true that in the year 2010, the respondents have purchased the land in Sy.No.99/2 of Kapuluppada Village through registered sale deeds from the family member of Danthuluri Seetharamaraju. In the 1st instance, when the petitioners applied for grant of pattadar pass books, the then Tahsildar, Bheemunipatnam vide his orders dated 13.04.2011 has rejected the claims duly observing various issues. But the same Tahsildar has issued pass book to the respondents, wherein he has mentioned that he has issued pattadar pass books as per the orders of Hon’ble High Court in a contempt case. Whatever the issue, as per the rules in force, before making an entry in record of rights, all the interested and affected persons should be informed by way of serving notice. In the present case, the revision petitioner is in possession and enjoyment of the land, but he was not served with any notice. Hence, the pass books issued in favour of the respondents need to be cancelled.

Conclusion:

- i. On perusal of the record and material concerned it is found that as per the SLR the land measuring Ac.6.00 Cts covered by Sy.No.99/2 of Kapuluppada village of Bheemunipatnam Mandal stood classified as ‘Zeroyithi land’ and registered in the name of Dendukuri Seetharamaraju as pattadar. As per the VANO.10(1) of Kpauluppada Village,

under Patta No.106, the name of the pattadar was recorded as Dendukuri Seetharamaraju but it was rounded off with pencil and mentioned as "Dantuluri Seetharamaraju". Thus there is a discrepancy regarding pattadar name and the petitioner has filed a complaint before the Commissioner of Police, Visakhapatnam alleging that pattadar name is tampered and the matter is under investigation.

- ii. The revision petitioner's mother has purchased the land measuring Ac.24.30 Cts covered by old Sy.No.280/2 A4 and 280/A/96 of the lands belonging to Sri Dendukuri Seetha Ramaraju in the Court auction held in the year 1964. The land covered by Sy.No.99/1 and 2 has been in possession and enjoyment of revision petitioner. But the new Sy.No.99/2 is correlating to old Sy.No.280/A.A4 and A.A6.
- iii. There is a civil suit filed before the IV Additional District Court, Visakhapatnam on the same subject matter of the land by the respondents and the same is pending for disposal. As stated supra, the title is under dispute and this Court has no jurisdiction to decide the title.
- iv. For the facts and circumstances of the case, I am of the conclusion that, the matter has to be decided by the Hon'ble Civil Courts. Hence, both the parties are directed to approach the competent civil court to get title over the land. The pattadar pass books issued in favour of the respondents for the land in Sy.No.99/2 of Kapuluppada Village of Bheemunipatnam Mandal are hereby cancelled. Until final title is confirmed, the said land would be recorded in dispute register to avoid further transactions".

Hence, the writ petitions.

The petitioners assail the order dated 03.10.2017 on several legal and factual grounds. This Court, having regard to the nature of disposal given to these writ petitions and to protect all the contentions available to all the parties, including the Government, does not refer to these contentions, much less record findings on the respective claims of the parties.

The learned Government Pleader on instructions and also after perusing the record contends that the order of Joint Collector dated 03.10.2017 though has relegated the parties to the Civil

Court, the Joint Collector ought to have taken note of the ratio laid down in the decision reported in KURUVA HANUMANTHAMMA v. PRINCIPAL SECRETARY, REVENUE DEPARTMENT, HYDERABAD, AND ANOTHER¹ and delved deep into the matter and decided the revision. She further contends that the revisional authority ought to have examined the propriety, legality, correctness, etc., of the rival claimants and also ought to have examined the basic issue of carving out of some extent from Sy.No.99/1 and changing the classification from Banjar to assessed waste. According to her, a close scrutiny of sub-division of Sy.No.99/1 into Sy.No.99/2 is required by the Joint Collector viz., whether the sub-division is authorised and if so whether is based on the orders passed by the competent authorities etc. In other words, when the private parties are claiming exclusive right, title and possession to the subject matter, she introduces third angle to the case by contending that there is also Government interest involved in this property and if ultimately it transpires that the subject matter is Government land and continues to be Government land, the issue of pattadar passbook in favour of either of the parties does not arise. She further contends that the fraud played in the matter can be appreciated by taking note of the prayer in W.P.No.24912 of 2010, for Sy.No.99/2 is not the survey number for which pattadar passbook/title deed was requested, Tahsildar issued pattadar passbook Sy.No.99/2 to report compliance in a contempt case filed against disobedience of the order in W.P.No.24912 of 2010. She fairly states that though these submissions are made before this Court, the Government is not

¹ 2018(1) ALD 290

inviting a finding on these aspects of the matter, however, these submissions are made for the limited purpose of convincing this Court that the matter requires re-examination by the Joint Collector within the scope of 9 of the Act. In KURUVA HANUMANTHAMMA's case, one of us (SVBJ) considered the scope and jurisdiction of revisional authority under Section 9 of the Act. The counsel appearing for the parties agree that the ratio laid down in KURUVA HANUMANTHAMMA case has conferred wide jurisdiction on the revisional authority in deciding the disputes that have arisen under the orders passed under Sections 4 and 5 of the Act and before relegating parties to the remedy of Civil Court.

By keeping in view the ratio laid down in KURUVA HANUMANTHAMMA case, we are of the view that the claims of writ petitioner on the one hand and the 5th respondent on the other run on parallel lines, and correlation of old survey number or paimash number with the subject matter, identification of the subject matter on ground etc., certainly arise for consideration in deciding the revision under Section 9 of the Act. The learned counsel appearing for both the writ petitioner and also the 5th respondent have not vehemently pressed for consideration of their respective contentions, for this Court cannot and ought not to examine these contentions on title, identity, etc., which may ultimately arise for consideration after remand to the Joint Collector in the matter. After perusing the record produced by the Government and also the contentions now raised, we are of the view that the orders impugned in the writ petitions can be set aside

and matter remitted to the Joint Collector/respondent No.2 for fresh disposal in accordance with law and particularly after undertaking field inspection of the subject matter of the writ petitions, if necessary to identify the property with reference to the village map.

The order dated 03.10.2017 in R.P.No.5 of 2015 in proceeding R.C.No.3592/2015/D2 of the Joint Collector is set aside. The matter is remitted to the Joint Collector for disposal as indicated above within a period of four weeks from the date of receipt of a copy of this order. Any party to these proceedings but is not impleaded as one of the parties, such party is given liberty to file application for impleadment and the application will be allowed and the newly added party is also heard in accordance with law in R.P.No.5 of 2015.

The writ petitions are, accordingly, ordered. In view of the orders passed in writ petitions, the writ appeals which are directed against the interlocutory order in W.P.No.41358 of 2017 and W.P.No.40755 of 2017 are dismissed as no further order is necessary.

As a sequel thereto, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

28th September, 2018

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