

**(2013) 11 AP CK 0039**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No's. 23254 of 2012 and 19519 of 2010

Sri Vutukuru Subba Rao

APPELLANT

Vs

The State of A.P.

RESPONDENT

**Date of Decision:** Nov. 26, 2013

**Citation:** (2014) 4 ALD 205

**Hon'ble Judges:** C.V. Nagarjuna Reddy, J

**Bench:** Single Bench

**Advocate:** Venkat Raman, for the Appellant; P. Rajasekhar for Respondent Nos. 5 and 6, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

These two writ petitions pertain to the common subject matter and hence, they are heard and disposed of together. W.P. No. 19519 of 2010 is filed feeling aggrieved by order in D. Dis. No. 2444/08 H, dated 16.04.2010, of respondent No. 1. W.P. No. 23254 of 2012 is filed by respondent No. 3 in W.P. No. 19519 of 2010 for a mandamus to declare the action of respondent Nos. 2 to 4 in not mutating his name in the revenue records. The petitioner sought for a further direction to issue pattadar pass book and title deed in his favour with regard to Ac. 0.57 cents of land in Survey No. 971/6 of East Bapatla, Bapatla Mandal, Guntur District (hereinafter referred to as "the subject property").

2. For convenience, the parties are referred to they are arrayed in W.P. No. 19519 of 2010.

3. The brief facts leading to filing of these two writ petitions are as under: The subject property was purchased by the grandfather of the petitioners on 04.01.1958. The petitioners pleaded that after the death of their grandfather, the subject property devolved upon their father and pattadar pass book and title deed were issued to him. That in the year 1992, oral partition took place among the family

members and that the subject property fell to the share of the petitioners. That in the year 1995, pattadar pass books and title deeds were issued to the petitioners under patta Nos. 353 and 354 respectively. That much after the partition, the petitioners' father executed two registered gift deeds, dated 26.12.2001, in favour of his two daughters (sisters of the petitioners). That on 16.07.2005, the two sisters of the petitioners executed two registered sale deeds in favour of respondent No. 3 selling the subject property. It is the further pleaded case of the petitioners that as respondent No. 3 started claiming the subject property under the two registered deeds, they have filed O.S. No. 104 of 2005 in the Court of the learned Senior Civil Judge, Bapatla for declaration of title and permanent injunction or alternatively for partition and separate possession of the property and allotment of 1/3rd share of the property to each of the petitioners and their father.

4. While the said suit is pending, respondent No. 3 has approached respondent No. 1 by way of a representation for issue of pattadar pass book and title deed in respect of the subject property. As no action was taken thereon, he has filed W.P. No. 24152 of 2009 in this Court for a mandamus to declare the inaction of respondent No. 2 in considering his application/representation, dated 25.09.2009, for grant of pattadar pass book and title deed by mutating his name in the revenue records. This Court by order, dated 19.11.2009, without expressing any opinion on the merits of the case, directed respondent No. 2 to consider the representation of respondent No. 3 and pass an appropriate order.

5. After disposal of the writ petition, respondent No. 1 has passed the impugned order, whereunder he has got an enquiry held by respondent No. 2 and rendered a finding that the petitioners have created fake pattadar pass books. While ordering cancellation of the pattadar pass book and title deed, respondent No. 2 has also ordered initiation of criminal proceedings against the persons responsible for creating the fake pass books and tampering the entries in 1B Register. Feeling aggrieved by this order, the petitioners filed W.P. No. 19519 of 2010. As the said order of respondent No. 2 is not implemented, respondent No. 3 filed W.P. No. 23254 of 2012 for its implementation.

6. I have heard Sri P. Rajasekhar, learned counsel for the petitioners, Sri Ch. Venkat Raman, learned counsel for the petitioner in W.P. No. 23254 of 2012 and Mrs. S. Annapurna, learned counsel for respondent No. 3 in W.P. No. 19519 of 2010. Apart from arguing the case on merits, the learned counsel for the petitioners mainly submitted that respondent No. 1 has no jurisdiction whatsoever to entertain the representation of respondent No. 3 and pass the impugned order. I find force in this submission of the learned counsel for the petitioners. The A.P. Rights in Land and Pattadar Passbooks Act, 1971 (for short "the Act") provided for the procedure for mutation of the revenue record and issue of pattadar passbooks and title deeds.

7. In Thripuvaram Krishna Reddy Vs. Joint Collector, Cuddapah (W.P. No. 23254 of 2012), this Court held, at paras 4 and 5, as under:

The learned Counsel for the petitioner contended and in my view rightly, that respondent No. 2/RDO has no jurisdiction to pass order dated 16.3.1999. u/s 5(5) of the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act") respondent No. 2 is empowered to entertain an appeal filed within a period of sixty days from the date of communication of the order passed by respondent No. 3 u/s 5(3) of the Act correcting the entries in the revenue record. In N. Bal Reddy and Others Vs. Revenue Divisional Officer and Others, this Court, however, interpreted Section 5(5) to the effect that an order granting pattadar passbooks and title deeds is also comprehended by the said provision. On such an interpretation, if respondent No. 2 is held to have the jurisdiction to entertain an appeal even against an order issuing pattadar passbooks and title deeds, respondent No. 4 failed to file an appeal against the said order in the form of an appeal and within the period of limitation. In this context, it is necessary to refer to Rule 21 of the Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989, which reads as under:

21. (1) An appeal against every order of the Mandal Revenue Officer either making an amendment in the Record of Rights or refusing to make such amendment shall lie under sub-section (5) of Section 5 of the Act, to the Revenue Divisional Officer/Sub-Collector/Assistant Collector or such authority as may be notified by the Commissioner.

(2) Every appeal referred to in sub-rule (1) shall be in writing and shall set forth concisely the grounds thereof within a period of sixty days from the date of communication of the order and shall be accompanied by a copy of the order appealed against.

(3) Every appeal referred to in sub-rule (2) above, shall bear a Court fee stamp of rupees five only.

Admittedly, neither the so-called petition is in the form of appeal affixed with the required stamp nor was filed in time. No application for condonation of delay was claimed to be filed by respondent No. 4 nor respondent No. 2 passed any order condoning the delay before entertaining and adjudicating the appeal on merits. Respondent No. 2 ought not to have, therefore, entertained the petition of respondent No. 4 and treated it as an appeal. If respondent No. 4 was aggrieved by the issuance of pattadar passbooks and title deeds, he should have filed a statutory appeal u/s 5(5) of the Act, within the time limit, or a civil suit u/s 8(2) of the Act before the competent Civil Court. As he did not take recourse to either of the two remedies, it is beyond the jurisdiction of respondent No. 2 to entertain the petition filed by respondent No. 4, because he has no power akin to the power vested in respondent No. 1 u/s 9 of the Act.

8. From the various provisions of the Act discussed in the above Judgment, it is evident that respondent No. 1 is only an appellate authority. He cannot act either as the Primary Authority or the Revisional Authority. Unless an appeal is brought

before him in the manner as prescribed u/s 5(5) of the Act and Rule 21 of the A.P. Rights in Land and Pattadar Passbooks Act, 1989, respondent No. 1 cannot entertain any dispute. If respondent No. 3 acquired any right, he could have approached respondent No. 2 u/s 4 of the Act. If any such application was made, respondent No. 2 was competent to exercise his jurisdiction u/s 5 of the Act, hold an enquiry under sub-section (3) thereof and pass an order either accepting the application or rejecting the same. If any party is aggrieved by such decision, he can file an appeal u/s 5(5) of the Act. Even if respondent No. 3 has approached respondent No. 1, he ought to have relegated him to respondent No. 2 instead of arrogating to himself jurisdiction of respondent No. 2. On this short ground alone, the order passed by respondent No. 1, which is totally without jurisdiction is liable to be set-aside. The impugned order is accordingly set-aside. Inasmuch as the civil suit, in which respondent No. 3 is also a defendant, is pending, it is appropriate that both parties pursue the said civil suit and approach respondent No. 2 u/s 8(2) of the Act based on the outcome of the suit.

9. Before parting with this case, it is made clear that if the Revenue officials feel that the petitioners have indulged in fabrication/correction of pattadar passbook and title deed, they shall be free to initiate criminal proceedings according to law.

10. In the result, W.P. No. 19519/2010 is allowed and W.P. No. 23254/2012 is dismissed. As a sequel to disposal of the writ petitions, WPMP No. 24742/2010 and 29667/2012 filed in the respective Writ Petitions for interim reliefs are disposed of as infructuous.