

(2013) 09 AP CK 0037

Andhra Pradesh High Court

Case No: Writ Petition No's. 16891 and 24863 of 2013

J. Krishnamachari

APPELLANT

Vs

The State Government of Andhra
Pradesh and Others
 M.

Kanthamma, Gundluri

Yasodamma and Sharapu

RESPONDENT

Rajamma Vs The Government of
Andhra Pradesh and J.

Krishnamachary

Date of Decision: Sept. 6, 2013

Citation: (2014) 1 ALD 406

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

Bench: Single Bench

Advocate: V.R. Reddy Kovvuri in W.P. No. 16891 of 2013 and Smt. Umadevi Manchala in W.P. No. 24863 of 2013, for the Appellant; G. Rama Gopal for Smt. M. Muma Devi Respondent Nos. 4 to 6 in W.P. No. 16891 of 2013 and GP for Revenue for Respondent Nos. 1 to 3, for the Respondent

Judgement

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C.V. Nagarjuna Reddy, J.

These two writ petitions arise out of common order in D.Dis.H/701/2011, dated 13.05.2013, of the Revenue Divisional Officer, YSR Kadapa District. For convenience, the parties are referred to as they are arrayed in W.P. No. 16891 of 2013.

2. The petitioner and respondent Nos. 4 to 6 are siblings. It is the case of the petitioner that his mother, by name, Salemma, has purchased Acs. 4.85 cents of land in Survey No. 1008 of Chemalacheruvu Palli Village, Galiveedu Mandal, YSR Kadapa District (for short "the subject land") under two registered sale deeds, dated 13.03.1965 and 16.11.1970, from Shaik Masthan Sab and Tirumala Konda Venkatappa respectively. That the petitioner's mother executed a Will on 11.05.1971

in his favour and died in the year 1972. That thereafter the name of the petitioner was mutated by respondent Nos. 2 and 3 in the revenue records and pattadar pass books and title deeds were issued in favour of the petitioner in the year 1990.

3. S. Venugopala Chari, the husband of respondent No. 6, approached the District Collector under the Right to Information Act, 2005 (for short "the RTI Act") for supply of information relating to the pattadar pass books pertaining to the subject land. The said application was referred by the District Collector to respondent No. 3 u/s 6(3) of the RTI Act. Respondent No. 3 has in turn submitted his report, dated 09.06.2011, to respondent No. 2. The said report was evidently treated as appeal by respondent No. 2 and after issuing notices to the petitioner as well as respondent Nos. 4 to 6, respondent No. 2 has passed the impugned order.

4. It is the case of respondent Nos. 4 to 6 that their father has executed a registered gift deed, dated 12.09.1988, jointly in their favour in respect of the subject land and that on coming to know that the pattadar pass books and title deeds were issued in favour of the petitioner, they have approached the District Collector under the RTI Act and that consequently, the said petition was treated as an appeal by respondent No. 2. It is thus the plea of respondent Nos. 4 to 6 that on the strength of the registered gift deed, they have succeeded to the property and the petitioner has no title over the same.

5. I have carefully perused the order of respondent No. 2.

6. In his order, respondent No. 2 instead of dealing with the respective claims of the parties pursued a totally different approach by dwelling into the issue as to whether the subject land was a Government land or a private patta land. Respondent No. 2 has solely relied upon the report submitted by respondent No. 3, wherein he has stated that the RSR of the village contains "dots" under the relevant column and therefore the land is a Government land. In that view of the matter, respondent No. 2 has directed respondent No. 3 to cancel the pattadar pass books and title deeds informing both the parties that further action will be initiated by the revenue authorities subject to the outcome of the issue pending before this Court pertaining to the effect of "dots" in RSR. As both the parties felt aggrieved by this order, they have filed these writ petitions.

7. Sri V.R. Reddy Kovvuri, learned counsel for the petitioner, submitted that respondent No. 2 has exercised jurisdiction which is not vested in him, as he is not empowered to treat the report of the Tahsildar submitted to him on the application filed by the husband of respondent No. 6 under the RTI Act as an appeal and examine the title over the subject land. He further submitted that respondent No. 2 has committed a patent illegality in setting aside the pattadar pass books and title deeds issued in favour of the petitioner on a completely erroneous assumption that the land is a Government land based on RSR "dots".

8. Sri G. Rama Gopal, learned counsel, representing Smt. G. Uma Devi, learned for respondent Nos. 4 to 6, while endorsing the submission of Sri V.R. Reddy Kovvuri, learned counsel for the petitioner, to the extent of respondent No. 2 holding that the land is a Government land, however, submitted that the case may be remanded to respondent No. 2 for consideration of the respective claims of the parties by treating the subject land as private land.

9. The learned Assistant Government Pleader for Revenue (AA) appearing for respondent Nos. 1 to 3 sought to support the impugned order passed by respondent No. 2.

10. From the respective pleadings of the parties, two points arise for consideration, namely, (1) whether respondent No. 2 was correct in law in treating the report submitted by respondent No. 3 as an appeal? and (2) whether the order of respondent No. 2 declaring the subject land as belonging to the Government is sustainable in law?

Re point No. 1:

11. The A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short "the Act") envisaged maintenance of record of rights and provided for remedies to the aggrieved parties. If any person has a claim with respect to any land relating to the entries in the record of rights, he is entitled to approach the recording authority u/s 4 of the Act. On being satisfied that such claim falls within the said provision, the recording authority has to take appropriate decision by following the procedure prescribed u/s 5(3) of the Act. Section 5(5) of the Act envisages an appeal to the Revenue Divisional Officer against every order of the recording authority either making an amendment in the record of rights or refusing to make such amendment. The party aggrieved by an order passed u/s 5(5) of the Act is entitled to file a revision petition before the Collector u/s 9 of the Act. u/s 6-A of the Act, every owner, pattadar, mortgagee or tenant of any land is entitled to apply for issuance of pattadar pass books and title deeds.

12. Even though Section 5(5) of the Act in terms does not comprehend the act of issuance of pattadar pass books and title deeds within its ambit, this Court in [N. Bal Reddy and Others Vs. Revenue Divisional Officer and Others](#), has held that issue of pattadar pass books and titled deeds is also amenable to the remedy of appeal u/s 5(5) of the Act. Under the said provision, an aggrieved party has to file an appeal within 60 days from the date of communication of the said order.

13. Rule 21 of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (for short "the Rules") envisages procedure for filing an appeal. Sub-rule (2) thereof prescribed that every appeal shall be in writing and shall set forth the grounds thereof and that such appeal shall be filed within 60 days of communication of the order. Under sub-rule (3), every appeal shall bear a Court fee stamp of Rs. 5/-.

14. In [Sri Thripuravaram Krishna Reddy Vs. The Joint Collector and Others](#), I had an occasion to deal with the question whether the Revenue Divisional Officers can exercise their appellate jurisdiction at any point of time without regard to the limitation. While answering the said question in the negative, I have held:

The learned Counsel for the petitioner contended and in my view rightly, that respondent No. 2 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.

15. In the light of the ratio laid down in the above-mentioned judgment, this Court finds that respondent No. 2 has committed a serious procedural illegality and jurisdictional error in treating the report of respondent No. 3 as an appeal. It is not the case of respondent Nos. 4 to 6 that they have approached respondent No. 2 by filing an appeal in the form of memorandum of grounds by affixing the Court fee. Indeed, they have not at all approached respondent No. 2. As noted supra, the husband of respondent No. 6 has approached the District Collector under the RTI Act and the said petition was forwarded by the District Collector to respondent No. 3 who has submitted a report to respondent No. 2, upon which the latter has exercised his appellate jurisdiction u/s 5(5) of the Act. This procedure is wholly unheard of. Respondent No. 2 ought not to have clutched at the appellate jurisdiction when no appeal was filed against grant of pattadar pass books and title deeds in favour of the petitioner. Therefore, point No. 1 is accordingly answered.

Re point No. 2:

16. In the impugned order, respondent No. 2 has dealt with the issue as to whether the property belongs to the Government or not. While the very entertainment of the appeal itself was unwarranted, respondent No. 2 has strayed into an issue which has not arisen in the appeal. The parties to the purported appeal proceeded on the premise that the subject land is a private land. It is the case of neither of the parties that the subject land is a Government land. Therefore, even assuming that respondent No. 2 was convinced that the subject land is a Government land, he cannot cancel the pattadar pass books and title deeds already issued to the petitioner in the purported appeal of respondent Nos. 4 to 6 on that ground. He appears to be oblivious of the fact that he was exercising this function as a statutory authority under the provisions of the Act and in the absence of any provision clothing him with the power to make a declaration that the subject land is a Government land, his finding in this regard is wholly without jurisdiction and unwarranted.

17. Furthermore, respondent No. 2 has made a vague reference to some case stated to be pending before this Court on the issue as to whether the RSR "dots" can be taken as conclusive proof of the land belonging to the Government. He has not given specific reference to any case of this Court to term the said aspect as sub judice. In a catena of judgments, this Court has held that the "dots" in RSR cannot be relied upon as a conclusive proof of the land belonging to the Government (See [Shaik Ali and Others Vs. District Collector, Chittoor and Others](#), [P. Suresh and Another Vs. A.P. State and Others](#), and [Madiga Papanna Jammanna Vs. State of Andhra Pradesh and Others](#)). Thus, the law standing as on today is to the effect that by mere existence of "dots" in RSR, the land cannot be held to be a Government land.

18. In the instant case, the property was purchased by the late mother of the petitioner under two registered sale deeds executed as far back as 1965 and 1970. If the subject land belongs to the Government, there was no reason for the revenue department for not taking action to prevent registration of sale deeds or at least to claim the property by initiating appropriate proceedings. At this length of time, respondent No. 2 cannot unilaterally declare based on the "dots" in RSR that the subject land is a Government land. The whole approach of respondent No. 2 borders on perversity and irrationality. Point No. 2 is accordingly answered.

19. For the above-mentioned reasons, the order of respondent No. 2 cannot be sustained and the same is accordingly set aside.

20. With respect to the submission of Sri G. Rama Gopal, learned counsel for respondent Nos. 4 to 6, that the matter may be referred to respondent No. 2 for consideration afresh, I am afraid, I cannot accept this submission. As discussed under point No. 1, respondent Nos. 4 to 6 have failed to file an appeal in accordance with Section 5(5) of the Act. Hence, the question of remanding the matter to respondent No. 2 does not arise. At any rate, the parties have been claiming title based on a gift deed and a Will. Therefore, such a complex issue touching upon succession and title dispute is not expected to be adjudicated by the revenue functionaries. It is only the civil Court in a properly instituted suit which can adjudicate the dispute between the parties based on the oral and documentary evidence. Therefore, the appropriate course for respondent Nos. 4 to 6 is to file a civil suit before a competent Court of civil jurisdiction and approach respondent No. 3 u/s 8(2) of the Act for correction of the entries in the record of rights in the event they succeed in the suit.

21. On the strength of the aforementioned reasons, both the writ petitions are allowed to the extent of setting aside the order of respondent No. 2. Liberty is given to respondent Nos. 4 to 6 to file a civil suit as indicated hereinbefore. As a sequel to disposal of the writ petitions, the pending interlocutory applications shall stand disposed of as infructuous.