

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION No.7946 of 2023

Between:-

D.L.N.Chowdary

.... Petitioner

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue Department,
Velagapudi, Amaravathi,
Guntur District & Others.

..... Respondents

Counsel for the petitioner : Mr.D.Krishna Murthy

Counsel for the respondents : G.P. for Revenue

ORDER:

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Revenue. With their consent, the Writ Petition is disposed of at the stage of admission.

2. Rejection of the application made by the petitioner seeking mutation of his name in the revenue records by the 4th respondent/Tahsildar *vide* Endorsement dated 16.02.2023 is the subject matter under challenge.

3. Learned counsel for the petitioner submits that the petitioner purchased an extent of Ac.0.20 ½ cents out of Ac.0.41 cents in Survey No.430/2A2 of Pudipatla Village, Tirupati Mandal from its rightful owner one Smt.Yerraguravagari Sambhavi through Registered Sale Deed

bearing document No.4341/2022 dated 23.11.2022 and since then he is in possession and enjoyment of the same. He submits that the petitioner's vendor inherited the said property from her predecessors in title, who purchased the land under Registered Sale Deed bearing No.1658/1941 dated 22.09.1941. He submits that the name of the petitioner's vendor Smt.Sambhavi was mutated in the revenue records in respect of the subject matter land and in view of acquisition of title, the petitioner made an application dated 09.01.2023 to the 4th respondent seeking to mutate the subject matter land in the revenue records and to issue pattadar pass book and title deed for the same. He submits that to the petitioner's utter surprise, an Endorsement was uploaded in the website on 16.02.2023, wherein no reasons were mentioned for such rejection. Under the said circumstances, the learned counsel submits that the petitioner approached the 4th respondent to furnish a reasoned order, upon which the impugned Endorsement dated 16.02.2023 was furnished to the petitioner, wherein it was mentioned that the petitioner's application was rejected as the land was already mutated in the name of another person.

4. The learned counsel for the petitioner submits that the impugned Endorsement rejecting the petitioner's application was issued without application of mind. He submits that the earlier mutation referred to by the 4th respondent was done in the name of petitioner's vendor i.e., Smt.

Yerraguravagari Sambhavi, who sold the land to the petitioner *vide* Registered Sale Deed bearing Document No.4341/2022 dated 23.11.2022. He submits that as the mutation in respect of the subject land was in the name of the petitioner's vendor only, but not others and since the subject matter land was sold to the petitioner under a Registered Sale Deed, the petitioner is entitled for mutation of land in his name. He further submits that the impugned Endorsement suffers from not only non-application of mind, but also procedural irregularities as the rejection Endorsement was issued without following due procedure contemplated under Section 5 of the A.P.Rights in Land and Pattadar Pass Books Act, 1971(for short 'the Act'). He submits that had a notice been issued and an opportunity was afforded to the petitioner, the relevant aspects would have been brought to the notice of 4th respondent. In any event, the learned counsel submits that the impugned Endorsement is not sustainable and the same is liable to be set aside.

5. Learned Assistant Government Pleader for Revenue, on the other hand, with reference to the instructions dated 29.03.2023 received from the 4th respondent, advanced arguments and tried to impress upon this Court that the 4th respondent has rejected the application of the petitioner as he has not submitted any documentary evidence with regard to the rights of the petitioner's vendor in respect of the subject

matter property. Be that as it may. He submits that against the impugned Endorsement, the petitioner has a remedy of appeal and instead of availing the same, the present Writ Petition is filed and the same is not maintainable. Making the said submissions, the learned Assistant Government Pleader seeks to dismiss the Writ Petition.

6. Considered the submissions made and perused the material on record. At the outset, it may be appropriate to state that the contentions raised by the learned counsel for the petitioner merits appreciation in the light of the settled legal position that before rejecting the application for mutation, the applicant should be afforded an opportunity to make a representation(See: Chinnam Panduranga Rao v. M.R.O., reported in 2007 (6) ALT 134).

7. However, in the present case, the 4th respondent issued the endorsement on 16.02.2023 i.e., after Act was amended and some of the sections were substituted, more particularly, Section 5 of the Act dealing with Amendment(and updating of record of rights). By virtue of A.P.Rights in Land and Pattadar Pass Books Act(Amendment) Act, 2022(Act 15 of 2022) published in the Andhra Pradesh Gazette dated 18.10.2022, the power or authority of the Tahsildhar with regard to amendment and updating of revenue records, pursuant to an application for mutation is limited to the extent as laid down therein. For better

understanding, it would be appropriate to extract the amended section for ready reference:

“[5.Amendment and updating of Record of Right:- (1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, otherwise than by a registered document, the Tahsildar shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence thereof and shall carryout the amendment in the record of rights in accordance with such determination.

(2) In the event of the Tahsildar determining that the amendment in consequence of the acquisition of right referred to in sub-section (1) above, is liable to be refused, then the Tahsildar shall transmit all the documents to the Revenue Divisional Officer with the recommendations.

(2a) The Revenue Divisional Officer, on receipt of such recommendations, shall pass an order as under, after affording an opportunity of hearing to the interested persons,

- (i) Confirming the recommendations of the Tahsildar.
- (ii) Disagreeing with the recommendations of the Tahsildar.
- (iii) On the receipt of communication of disagreement under 5(2a)(ii), the Tahsildar shall carry out the amendment of R.O.R, as provided for under Section 5(1).

Provided that the procedure for initiation and conclusion of action by the Tahsildar and Revenue Divisional Officer shall be such as may be prescribed under the Rules.

(3) In case of acquisition of right under Section 4(1) by a registered document in accordance with the provisions under the Registration Act, 1908, the R.O.R shall stand amended to reflect the said transaction.

(4) Any person aggrieved by any order passed under sub-sections (1), 2(a) and the amendment of R.O.R under sub-section (3), above may prefer an appeal before the District Revenue Officer within a period of

thirty(30) days from the date of receipt of such order or amendment of R.O.R. the Appellate Authority shall dispose the appeal preferably not later than 6 months from the date of filing of such appeal.

(5) In all cases of amendment of Record of Rights in resurveyed villages, unless the acquisition of right is for the entire extent of the land parcel, it shall be mandatory to carry out sub division of the Land parcel in the manner prescribed.

(6) The District Collector, *suo motu* or otherwise, shall be competent to initiate proceedings under criminal law in case any application for amendment of R.O.R under this Act is made fraudulently, or on the basis of multiple registrations by the same executant of the same land parcel.]

8. Though the section was amended, it appears that the Rules were not correspondingly amended. Be that as it may. From a reading of Section 5(2) as amended by Act 15 of 2022, it is crystal clear that in the event of the Tahsildar taking a view that the amendment in consequence of acquisition of right is liable to be refused, he shall transmit all the documents to the concerned Revenue Divisional Officer with the recommendations and thereafter in terms of Section 5 (2a), the Revenue Divisional Officer shall pass an order, after affording an opportunity of hearing to the interested persons.

9. In the present case, such a procedure in terms of Section 5 of the Amended Act has not been followed and therefore, the impugned Endorsement, dated 16.02.2023 is not sustainable. Hence, the same is set aside.

10. The Writ Petition is accordingly allowed with a direction to the 4th respondent to reconsider the matter, by reviving the mutation application of the petitioner and take further action in the matter in the light of the above mentioned provisions of Law, as expeditiously as possible, at any rate, within a period of four (4) weeks from the date of receipt of a copy of the order. There shall be no order as to costs.

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

NINALA JAYASURYA, J

Date: 03.07.2023
BLV

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

W.P.No.7946 of 2023

Date: 03.07.2023

BLV