

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

+ WRIT PETITION No.6567 OF 2008

% Dated 13.02.2024

Mirza Shamsheer Baig, S/o.Late Kareem Baig,
Aged: 60 years, R/o.Narsapur Village and Mandal,
Medak District and another.

...Petitioners

VERSUS

\$ The Joint Collector,
Medak District, Sangareddy and two others

... Respondents

! Counsel for Petitioners : Mr.P.Girish Kumar

^ Counsel for Respondents : GP for Assignment

< GIST:

> HEAD NOTE:

? CITATIONS:

1. 2017 (3) ALD 587 (DB)
2. (2015) 3 SCC 695
3. 2015 (4) ALD 490
4. 2010 (6) ALD 748 (DB)
5. (1998) 9 SCC 183
6. (2003) 7 SCC 667

THE HONOURABLE SRI JUSTICE J.SREENIVAS RAO**WRIT PETITION No.6567 of 2008****ORDER:**

This writ petition is filed seeking the following relief:

“ ... to issue a writ or order more particularly one in the nature of Writ of Mandamus declaring the Order No.F3/1873/01/F3/10/Assign/01, dated 20-02-2008 issued by the 1st respondent as illegal, contrary to law and arbitrary ...”

2. Heard Sri P. Girish Kumar, learned senior counsel, representing Sri M. Venkatram Reddy, learned counsel for the petitioners, and learned Assistant Government Pleader for Assignment (Revenue) appearing on behalf of the respondents.

3. Learned senior counsel submits that the petitioners are landless poor persons and they have made an application for grant of assignment patta. The then Tahasildar after following the due procedure as contemplated under the Assignment Rules (Loani Rules) contained in G.O.Ms.No.1406 dated 26.07.1958 read with G.O.Ms.No.1724 dated 26.03.1959, granted assignment pattas *vide* Proceedings No.H1/2537/70 dated 06.06.1970 to an extent of Ac.5.00 gts., of agricultural dry land, each, covered by Sy.No.153 of Gairam of Avancha Village, Narsapur Mandal, Medak District, and since then they have been in possession and enjoyment of the above said property and their names

were mutated in the revenue records and pattadar passbooks and title deeds were issued. He further submits that the petitioners developed the said land by spending huge amount and labour and dug a bore well and also obtained electricity service connection and doing agriculture and eking out their livelihood. Except the above said land, the petitioners have no other lands.

3.1. While things stood thus, respondent No.1, after lapse of more than 30 years of granting assignment pattas, issued show-cause notice dated 03.03.2001 invoking the provision of Section 166-B of Andhra Pradesh (Telangan) Land Revenue Act, 1317 (for short, 'the Act') directing the petitioners to submit explanation as to why the assignment pattas granted in their favour should not be cancelled, on the alleged ground that at the time of granting of assignment pattas, they are minors and on the other ground, the petitioners' father is an employee working as Attender in Tahasil office, therefore, they are not eligible for grant of assignment pattas. Pursuant to the said show-cause notice, petitioners have submitted detailed explanation on 04.04.2001 denying the allegations made therein, *inter alia* contending that they are majors and living separately and the then Tahasildar Nasapur after following the due procedure as contemplated under law granted assignment pattas and requested respondent No.1 to drop the proceedings.

3.2. He further submits that during the course of enquiry, the petitioners once again submitted reply on 09.05.2003. Respondent No.1 after lapse of more than five years passed the impugned order dated 20.02.2008 cancelling the assignment pattas of the petitioners without considering the explanation as well as reply submitted by the petitioners dated 04.04.2001 and 09.05.2003 respectively, and the same is contrary to law. He further submits that the petitioners have not violated any assignment patta conditions and respondent No.1 solely basing upon the alleged report submitted by respondent No.3 initiated the proceedings, under the Act, after lapse of more than 30 years and the same is not permissible under law. He also contended that respondent No.1 has not furnished the report submitted by respondent No.3 along with show-cause notice. Further, respondent No.3 has not produced any iota of evidence that the petitioners are minors and also there is no prohibition for grant of assignment in favour of minors.

3.3. In support of his contention, he relied upon the following unreported Judgments passed by the High Court of Andhra Pradesh, Hyderabad, as follows:

(i) **Chintapalli Yerradu And Others Vs. The Collector, Nizambad And Another** (W.P.No.592 of 1964 dated 29.11.1967)

(ii) **Som Reddy V. The Joint Collector, Medak And Others**

(W.P.No.716 of 1980 and batch dated 27.01.1986).

4. *Per contra*, learned Assistant Government Pleader submits that the petitioners have obtained assignment pattas on 06.06.1970 and as on that date, they are minors and they are ineligible for grant of assignment pattas under law. Respondent No.3 after due verification of the records rightly submitted a report and respondent No.1 has exercised *suo moto* powers conferred under the Act and issued the show-cause notice and after following the due procedure as contemplated under law, rightly passed the impugned order dated 20.02.2008 cancelling the assignment pattas granted in favour of the petitioners. She contended that the petitioners have not produced any evidence that they are majors at the time of granting assignment pattas and further contended that as per Section 166-B of the Act, respondent No.1 is having jurisdiction to initiate the proceedings while exercising the *suo moto* powers to correct the irregular orders passed by the subordinate officers and there is no time limit fixed under the Act. There is no illegality or irregularity in the impugned order passed by respondent No.1 and the petitioners are not entitled any relief much less the relief sought in the writ petition.

5. From perusal of the record, it reveals that this Court while

admitting the writ petition on 27.03.2008 granted interim order in W.P.M.P.No.8569 of 2008 and the respondents have not filed counter-affidavit.

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, the following points arise for consideration:

1. Whether respondent No.1 is having *suo moto* power to initiate proceedings under section 166-B of the Act and pass the impugned order of cancellation of assignment patta of the petitioners after lapse of more than 30 years ?
2. Whether the petitioners are entitled for the relief sought in the writ petition?

POINT Nos: 1 & 2

7. It is an undisputed facts that the then Tahasildar, Narsapur, granted assignment pattas on 06.06.1970 in favour of the petitioners under the Loani Rules containing in G.O.Ms.No.1406 dated 26.07.1958 read with G.O.Ms.No.1724 dated 26.03.1959 to an extent of Ac.5.00 gts of dry land each, covered by Sy.No.153 of Gairam of Avancha Village, Narsapur Mandal, Medak District, and since then they have been in possession and enjoyment of the said property and their names were mutated in the revenue records and they dug a bore well and obtained electricity service connection and doing agricultural operations by raising

paddy and other crops.

8. Respondent No.1 issued a show-cause notice dated 03.03.2001 basing upon report submitted by respondent No.3, dated 28.11.2001, and directed the petitioners to submit explanation as to why the assignment pattas granted in their favour cannot be cancelled, on the ground that as on the date of grant of assignment pattas, they are minors and their father Kareem Baig is working as Attender in the Tahasil office, as such, they are not come within the purview of landless poor persons. It further appears from the records that pursuant to the above said show-cause notice, the petitioners have submitted explanation dated 04.04.2001 stating that they are majors as on the date of grant of assignment pattas, and it is further stated that petitioner No.1 is 19 years old and petitioner No.2 is 22 years old and also stated that the concerned officials after conducting detailed enquiry and after following the due procedure granted assignment pattas. Thereafter, the petitioners have submitted another reply on 09.05.2003 through their counsel during the course of enquiry before respondent No.1, wherein it is stated that the petitioners have been in possession and enjoyment of the subject property more than 30 years and they invested huge amount and brought the said land into cultivation and they are doing agricultural operations and also dug a bore well and except the said land, there is no

other land to ekout their livelihood and also placed the copy of the order passed by this Court in W.P.Nos.716 of 1980 and batch dated 27.01.1986 and requested respondent No.1 to drop the proceedings.

9. Respondent No.1 passed the impugned order dated 20.02.2008 cancelling the assignment pattas granted in favour of the petitioners simply stating that the petitioners have not produced any evidence that they are majors and financially poor and that the explanation submitted by the petitioners is not convincing.

10. It is very much relevant to place on record that the petitioners have pleaded several grounds in their explanation dated 04.04.2001 to the show-cause notice as well as reply, dated 09.05.2003, during the course of enquiry. Respondent No.1, without considering the same and without giving any reasons, simply stated that the explanation offered by the petitioners is not convincing, passed the cryptic order. Respondent No.1 while exercising the quasi judicial powers under the Act, ought to have give reasons by considering the explanation as well as reply submitted by the petitioners.

11. Similarly, respondent No.3 submitted a report dated 28.11.2001 to respondent No.1 behind the back of the petitioners and basing on the said report, respondent No.1 has initiated the proceedings under the Act

exercising *suo moto* powers after lapse of nearly more than 30 years from the date of granting of assignment pattas.

12. In W.P.No.592 of 1964, dated 29.11.1967 *supra*, the High Court of Andhra Pradesh of Hyderabad, while allowing the writ petition, rejected the contention raised by the respondents therein that lands cannot be assigned to minors, since it cannot be said that they engaged themselves directly in cultivation, one cannot arbitrarily fix any time limit of age when a person can directly engage himself in cultivation. In W.P.No.716 of 1980 and batch dated 27.01.1986 *supra*, the High Court of Andhra Pradesh, Hyderabad, held that *suo moto* power is to be exercised within a reasonable period and further held that the assignment of land in favour of a minor cannot be said to be illegal as the minors are also entitled assignment patta when they are engaged in cultivation. In the case on hand, respondent No.2 cancelled the assignment pattas on the ground that the petitioners are minors and the principle laid down in the above said orders are squarely applicable to present case.

13. It is very much relevant to place on record that In **Lanka Mohan and others vs. State of Telangana and others**¹, the Division Bench of this Court following the judgment of the Hon'ble Apex Court in **Joint Collector, Ranga Reddy District and anr. vs. D.Narsing Rao**

¹ 2017(3)ALD587 (DB)

and others², held that under Section 166-B of A.P (T.A) land Revenue Act, 1317 fasli, merely because of no period of limitation is prescribed for invocation of such power, the authorities are duty bound to invoke such power, within a reasonable period of time and further held that cancellation of assignment patta granted in favour of the assignee after long lapse of time is bad in law.

14. In **Ithagani Lachaiah and others Vs. Joint Collector and Additional District Magistrate, Nalgonda and others**³ this court by following judgments of the Hon'ble Apex Court in **Joint Collector Ranga Reddy district and another (2 supra)** and other judgment of the Hon'ble Apex Court and this court held that;

“26. In **Joint Collector, R.R. District, Hyderabad and another vs. D. Narasing Rao and others**⁴, the Division Bench of this Court held that *Suo motu* exercise of revisional jurisdiction under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli after long lapse of time. The said decision of this Court was affirmed by the Supreme Court in **Jt. Collector, Ranga Reddy Dist. and another etc. v. D. Narsing Rao and others etc.**(supra 1) and the Supreme Court held as under:

“No time limit is prescribed in the above Regulation for the exercise of suo motu power but the question is as to whether the suo motu power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed order reserving 477 acres of land in Survey Nos.36 and 37 of Gopanpally village for house-sites to the Government employees. In other words the Government

² (2015)3 SCC 695

³ 2015 (4) ALD 490

⁴ 2010 (6) ALD 748 (DB)

had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24.9.1991 but no exception was taken to the entries found. Further the respondents herein filed Writ Petition No.21719 of 1997 challenging the Government Order dated 24.9.1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter, the purchasers of land from respondent Nos. 1 and 2 herein filed a civil suit in O.S. No. 12 of 2001 on the file of Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors of certain plots of land in survey No.36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned Notice dated 31.12.2004 the suo motu revision power under Regulation 166-B referred above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.

In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law.”

27. While in **Joint Collector Ranga Reddy district and another** (2 supra) Apex Court Judgment concurring with the view taken by Justice Sri C. Nagappan, Justice T.S. Thakur held that:

*The delayed use of revisional jurisdiction is disapproved because it would lead to perpetual challenges to actions or transactions, causing unnecessary and endless uncertainty in human affairs, contrary to legal principles. Even in the absence of a specified time limit for such powers, the intervening delay may result in the creation of third-party rights that should not be disregarded, especially when there is no reasonable explanation for the delay. The rule of law is expected to align closely with the realities of life. Additionally, **even in cases involving fraudulent orders, the exercise of power must occur within a reasonable period from the discovery of fraud. Merely labeling an act as fraudulent does not extend the time for correction indefinitely, as doing so would amount to a fraud upon the statute granting such revisional power to an authority.***

28. The principle laid down in **Jt. Collector Ranga Reddy Dist's case**. (4Supra) by the Division Bench was followed by another Division Bench in **Joint Collector, Rangareddy District vs. P. Harinath Reddy and others**. One of the issues for consideration was whether order of resumption of assigned land on the ground of violation of Section 3 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, can be passed after long lapse of time. Following the decision of Supreme Court in **Ponnala Narsing Rao vs. Nallolla Pantaiah and others**⁵, Division Bench of this Court held that it is not permissible to exercise power of resumption after long lapse of time. In that case, it was 40 years.

29. In **Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy and others**⁶, the exercise of *suo motu* power under Section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, was in issue. Such power was invoked to cancel validation certificates issued 13 to 15 years after issuance thereof and 10 years after insertion of Section 50-B(4) of the Act. This was held to be bad. In **Ponnala Narsing Rao's** Case, the issue considered by the Supreme Court was with reference to the filing of an application under Section 32 of the Act. It was contended that after unreasonable delay, such an application was filed and the same ought to have been dismissed. Upholding such contentions, the Supreme Court held as under:

“So far as the second contention is concerned, it is true that though no express period of limitation is provided for filing application under Section 32 of the Act, such applications have to be moved within reasonable time. It may be because of such belated applications, the other side may stand adversely affected. It may have changed its position in the meantime. Equities may have arisen in his favour, he may have spent large amounts on land by improving it. But all these questions have to be pleaded and proved. Surprisingly, no such contention was ever canvassed much less tried to be proved on any equitable ground by the petitioner. Therefore, this second contention on the facts of the

⁵ (1998) 9 SCC 183

⁶ (2003) 7 SCC 667

present case cannot be sustained. It has also to be noted that no plea of adverse possession was put forward by the petitioner in support of his case.”

15. In the above said judgments, the Hon'ble Apex Court and this Court specifically held that where there is no time limit is prescribed under the statute, the said powers should be exercised within the reasonable period only.

16. It is already stated that supra that respondent No. 1 had initiated proceedings exercising the powers conferred under Section 166-B of the Act, after lapse of more than 30 years from the date of grant of assignment patta to the petitioners, and passed the impugned order dated 20.02.2008 cancelling the assignment pattas, and the same is contrary to the law.

17. In view of the foregoing reasons, and precedent decisions, the impugned order passed by respondent No.1 dated 20.02.2008 is liable to be set aside, accordingly, set aside. Point Nos.1 and 2 are answered accordingly.

18. In the result, the writ petition is allowed, without costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

J. SREENIVAS RAO, J

Date: 13.02.2024

L.R. copy to be marked – yes

mar/psw