

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

+ W.A.No.512 of 2012

% Date: 15-02-2023

Between:

**# D.Narsimha Rao, S/o. Balkishan Rao,
Occ: Govt. Service, r/o Nagerkurnool Mandal
Mahaboobnagar District**

... Appellant

v.

**\$ Joint Collector, Mahabubnagar District,
Mahabubnagar and others**

... Respondents

! Counsel for the Appellant : Mr. A.Narasimha Rao

^ Counsel for the respondents : Mr. T.Srikanth Reddy, GP for Revenue

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? CASES REFERRED:

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.A.No.512 of 2012

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. A.Narasimha Rao, learned counsel for the appellant; and Mr. T.Srikanth Reddy, learned Government Pleader for Revenue representing the respondents.

2. This intra-court appeal is directed against the judgment and order dated 14.11.2011 passed by the learned Single Judge disposing of W.P.No.19254 of 2002 filed by the appellant as the writ petitioner.

3. Appellant had filed the related writ petition assailing the legality and validity of the order dated 17.07.1999 passed by respondent No.1 *i.e.*, Joint Collector, Mahabubnagar.

4. The dispute pertains to Ac.0.11 guntas of land situated in Survey No.333 of Nagerkurnool in Mahabubnagar District (briefly 'the subject land' hereinafter).

5. One D.Srinivas Rao was the inamdar of the subject land; through him, appellant had acquired title and possession of the subject land by way of succession. In this connection, Revenue Divisional Officer, Nagerkurnool (respondent No.2) had by way of proceedings dated 20.01.1978 granted Occupancy Right Certificate (ORC) in favour of the appellant as per Section 4 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (briefly 'Abolition of Inams Act' hereinafter) read with Rule 6(3) of the Andhra Pradesh (Telangana Area) Abolition of Inams Rules, 1975 (briefly 'Abolition of Inams Rules' hereinafter).

6. After nineteen years of grant of ORC, Mandal Revenue Officer of Nagerkurnool *i.e.*, respondent No.3 preferred appeal before the Joint Collector (respondent No.1) under Section 24(1) of the Abolition of Inams Act against the order dated 20.01.1978. By the impugned order dated 17.07.1999, Joint Collector condoned the delay in filing the appeal and thereafter set aside the order of the Revenue Divisional Officer

dated 20.01.1978 in respect of the subject land holding the same to be not an inam land. This order came to be challenged by the appellant before the learned Single Judge in W.P.No.19254 of 2002.

7. Learned Single Judge by the order dated 14.11.2011 set aside the order dated 17.07.1999 as well as the ORC dated 20.01.1978 and remanded the matter back to the Joint Collector for a fresh decision in accordance with law and till such time to maintain *status quo*. Aggrieved by the aforesaid order of the learned Single Judge dated 14.11.2011 passed in W.P.No.19254 of 2002, petitioner has filed the present appeal.

8. We may mention that respondents have not assailed certain findings recorded by the learned Single Judge by way of writ appeal.

9. Learned counsel for the appellant has drawn the attention of the Court to various contours of the order passed by the learned Single Judge and submits that there was no justification

for condoning the delay of nineteen years by the learned Single Judge by first construing the delay to be of four years and then holding that the said delay could not be held to have been caused due to deliberate inaction. Learned Single Judge had recorded as a finding of fact that the subject land is an inam land and that one Srinivasa Rao Deshpande, the great grandfather of the appellant was the inamdar. Learned Single Judge also held that there was no material before the Joint Collector to have set aside the ORC. Having held so, learned Single Judge herself proceeded to set aside the ORC.

9.1. Learned counsel for the appellant has also referred to the ORC at page 26 of the paper book which contains two plots of land; one in survey No.369; the other in Survey No.333, which is the subject land. In so far the other portion of the land in Survey No.369 is concerned, the ORC granted in favour of the successors of the inamdar has been affirmed by this Court *vide* the judgment and order dated 09.11.2005 passed in W.A.No.321 of 2001 and batch. Special Leave Petition filed against the

aforesaid decision of this Court was dismissed by the Supreme Court. He therefore, submits that order of the learned Single Judge, which is wholly unsustainable in law as well as on facts, is liable to be set aside.

10. On the other hand, Mr. T.Srikanth Reddy, learned Government Pleader for Revenue submits that there are number of government buildings on the subject land including munsif court building; therefore, no ORC could have been granted to the appellant in respect of the subject land. He submits that learned Single Judge has only passed an order of remand to the Joint Collector; therefore, instead of pursuing the appeal, appellant should be relegated to the forum of the Joint Collector.

11. Submissions made by learned counsel for the parties have received the due consideration of the Court.

12. There is no dispute to the fact that appellant was granted ORC by the Revenue Divisional Officer, Nagerkurnool

on 20.01.1978; appeal came to be filed in the year 1997 *i.e.*, 19 years thereafter. Section 24 of the Abolition of Inams Act deals with appeals from orders under Section 10 to prescribed authority. As per Section 10, Collector is required to examine the nature and history of all lands in respect of which an inamdar *etc.*, claims to be registered as an occupant under Sections 4, 5, 6, 7 & 8 as the case may be and thereafter decide in whose favour and in respect of which inam lands, the claims should be allowed *etc.* As per sub-section (1) of Section 24, any person aggrieved by a decision of the Collector under Section 10 of the Abolition of Inams Act may within thirty days from the date of the decision or such further time as may be allowed, file appeal provided sufficient cause is shown.

13. From a perusal of the order dated 17.07.1999 passed by the Joint Collector, it is evident that he had exercised power under Section 24(1) of the Abolition of Inams Act. Before we deal with the reasons given by the Joint Collector in condoning the delay of nineteen years, we may mention that the appeal

before the Joint Collector under Section 24 of the Abolition of Inams Act was filed by the Mandal Revenue Officer, Nagerkurnool. Mandal Revenue Officer is an officer junior in hierarchy to the Revenue Divisional Officer. As a matter of fact, Revenue Divisional Officer had exercised powers under Section 10 of the Abolition of Inams Act on behalf of the Collector. Now, the question is whether a subordinate officer can challenge the order of a superior officer in appeal before an authority, which is still subordinate to the authority on whose behalf the power was exercised by the Revenue Divisional Officer? Related to the above, the further question would be whether the Mandal Revenue Officer can be construed to be 'any person' within the meaning of sub-section (1) of Section 24 and whether he was competent/authorized to file such an appeal or he had filed such an appeal on his own.

14. However, examination of the above question(s) may not be necessary in view of the discussions hereinbelow.

15. Adverting to the ORC dated 20.01.1978 issued by the Revenue Divisional Officer, Nagerkurnool, we find that a copy of the same was marked to the Tahsildar, Nagerkurnool nomenclature of which authority was subsequently changed to Mandal Revenue Officer. Therefore, the Mandal Revenue Officer could not have taken the plea that he was unaware of the ORC for nineteen long years. Joint Collector adopted a strange reasoning by observing that when the State is in appeal, considerable delay in filing appeal is a common feature. Therefore, the delay should be condoned and accordingly delay was condoned. First and foremost, a Mandal Revenue Officer cannot be said to be the State. He cannot file and maintain an appeal as a State. Secondly, the State cannot file an appeal before a Joint Collector.

16. Learned Single Judge however held that respondents could come to know about the ORC only in the year 1993 when the appellant got the entries made in the revenue record. On that basis, learned Single Judge held that there was a delay of about

four years in preferring the appeal. Learned Single Judge further held that the said delay of four years could not be said to be on account of deliberate inaction on the part of the respondents and therefore, Joint Collector had not committed any error in condoning the delay.

17. We are afraid we cannot subscribe to the line of reasoning adopted by the learned Single Judge. The Mandal Revenue Officer, who had filed the appeal, is the custodian of the revenue records. For him to say that he had no knowledge about any entries made in the revenue records maintained by him cannot be accepted at all. As already noted, a copy of the ORC was furnished to the Mandal Revenue Officer (then known as Tahsildar). There was no justifiable reason at all and no sufficient cause for the Mandal Revenue Officer to file the appeal under Section 24 of the Abolition of Inams Act, nineteen years after issuance of ORC even assuming that he could have filed the appeal.

18. On merit, learned Single Judge held as follows:

In the present case, even according to the respondents the land in question is an inam land. It is also not in dispute that one Srinivasa Rao Deshpande was the inamdar. The petitioner claims that the said inamdar is his paternal great grandfather and that he acquired title and possession by way of succession. Though the fact that the land is situated in the midst of village has not been disputed by the petitioner, it is his case that the pahani patrikas right from the year 1973 contained the name of the inamdar. Thus according to the petitioner there is no substance in the contention that it is the Government land and that the 1st respondent failed to properly appreciate the material produced by the petitioner.

On a perusal of the copies of the pahani patrikas placed before this Court, it appears to me that the observation of the 1st respondent that there is no material to establish the possession of the petitioner is without any basis. Therefore, the 1st respondent ought not have set aside the ORC, but it would have been appropriate to direct the 2nd respondent to hold a *de novo* enquiry and pass appropriate orders with regard to the petitioner's claim for ORC.

19. Thus, learned Single Judge held that it is undisputed that the subject land is an inam land and that Srinivasa Rao Deshpande was the inamdar. Appellant claims to be the great grandson of the inamdar. Learned Single Judge agreed with the contention of the appellant and observed that it was not justified on the part of the Joint Collector to say that there were no materials to establish possession of the appellant and that such a conclusion was without any basis. Therefore, Joint Collector ought not to have set aside the ORC. If this is the finding of the learned Single Judge, we fail to understand as to how learned Single Judge herself could have set aside the ORC dated 20.01.1978.

20. That being the position, we have no hesitation in taking the view that learned Single Judge was not at all justified in setting aside the ORC dated 20.01.1978 and calling upon the Joint Collector to decide the matter afresh. The matter having attained finality way back on 20.01.1978, cannot be permitted to

be reopened after such a long lapse of time to unsettle settled matters.

21. Consequently, judgment and order dated 14.11.2011 passed by the learned Single Judge in W.P.No.19254 of 2002 cannot be sustained and the same is accordingly set aside.

22. Writ Appeal is accordingly allowed. No costs.

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

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 15.02.2023
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