THE HON'BLE SRI JUSTICE A.V. SESHA SAI

WRIT PETITION No. 25600 of 2005

ORDER:

It is a writ of prohibition, seeking to prohibit the Revenue Divisional Officer, Nuzvid, Krishna district – the 2nd respondent, from proceeding with the hearing of the appeal filed by the 1st respondent-institution and to set aside the order dated 29.10.2005 passed by the 2nd respondent in I.A.No.1 of 2000 in Inam Appeal No.1 of 2000.

2. Heard Sri Sudesh Anand, learned counsel for the petitioners, learned Government Pleader for Revenue and learned Standing Counsel for the 1st respondent-institution; apart from perusing the material available before the Court.

3. Filtering the inapposite and unnecessary details, the pleaded case of the petitioners is as under:

On an application made by one Malyavantam Srinivasa Charyulu, for grant of patta under the provisions of A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short, 'the Inams Act'), in respect of the land admeasuring Ac.13-21 cents in Survey Nos.809, 926 and 927 of Gannavaram village and mandal, Krishna district, the authorities, after holding enquiry under the provisions of the said Inams Act, issued proceedings saying that the said person was entitled for a claim under the Inams Act. Pursuant thereto, the revenue authorities also prepared adangal and also issued pattadar passbook and title deeds under the provisions of the A.P. Rights in Land and Pattadar Passbooks Act, 1971.

Petitioners 1 and 2 are the son and brother's wife of the said Srinivasa Charyulu. Earlier Srinivasa Charyulu and, after his death, the petitioners have been in possession and enjoyment of the subject property for more than 45 years. Previously, in the year 1969, the 1st respondent herein filed O.A.No.141 of 1969 against the 1st petitioner's father under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (Act 18 of 1966) (for short, 'the Endowments Act, 1966'), before the Deputy Commissioner of Endowments, Vijayawada, for production of records and for possession, and the same was dismissed on 16.12.1970. After a lapse of 35 years, the 1st respondent filed Inam Appeal No.1 of 2000 under Section 7(2) of the Inams Act, with an application under Section 5 of the Limitation Act, for condonation of delay in filing appeal before the 2nd respondent. The 2nd respondent, by order dated 29.10.2005, condoned the delay. In the above background, the present writ petition came to be filed, seeking writ of prohibition for restraining the 2nd respondent from adjudicating the Inam Appeal No.1 of 2000, and to set aside the order in I.A.No.1 of 2000.

4. This Court, while issuing Rule Nisi on 02.12.2005, granted interim stay of all further proceedings including hearing of the said appeal. In response to the Rule Nisi, a counter affidavit has been filed, denying the averments made in the writ affidavit and in the direction of justifying the impugned action.

5. Contentions of the learned counsel for the petitioners.

(i) The action of entertaining the appeal by the 2nd respondent after a lapse of 35 years from the date of the order of the Deputy Tahsildar, is untenable and unsustainable; and the vested rights cannot be light-heartedly divested.

(ii) The 1st respondent herein did not assign any valid, cogent and sufficient reasons for condoning abnormal and exorbitant delay in filing the appeal under Section 7 of the Inams Act.

(iii) The Inam Appeal filed against the father of the 1st petitioner, who is no more, is not maintainable.

To bolster his submissions and contentions, the learned counsel placed reliance on the judgments in **DAVAULRI PEDA VENKATESWARLU AND OTHERS v. GOVERNMENT OF A.P. AND OTHERS**[1]**, VEERAPPA v. R.D.O. CHITTOOR & ANR**[2]**,** and **R. BALASUBRAMANYAM REDDY v. DISTRICT COLLECTOR**[3]**.**

6. Contentions of the learned counsel for the respondents:

(i) The impugned action is legal and valid and is in conformity with the object and intention behind the Inams Act.

(ii) The order of the Deputy Commissioner of Endowmennts dated 16.12.1970 is not conclusive and final and no further enquiry was held by the Assistant Commissioner and the Executive Officer, based on further directions, filed appeal before the 2nd respondent.

(iii) The Law of Limitation is not applicable.

7. In the light of the pleadings, submissions and contentions available before this Court, the issues which emerge for consideration are: –

(i) Whether the 2nd respondent is justified in condoning the delay in filing the appeal and proceeding further with the process of adjudicating the Inam Appeal filed by the 1st respondent under the provisions of Section 7(2) of the Inams Act?

(ii) Whether the 2nd respondent has jurisdiction to entertain and adjudicate the said appeal?

8. The material made available before this Court manifestly discloses that the 1st respondent herein filed a petition under Section 93 of the Endowments Act, 1966, vide O.A.No.141 of 1969 against Mr. M. Srinivasa Charyulu, seeking direction to handover the records and to deliver possession of the properties. The Deputy Commissioner of Endowments,

Vijayawada, passed order dated 16.12.1970, saying that the proper remedy to recover the lands is the Civil Court or the Revenue Court, and the lands cannot be recovered under Section 93 of the Endowments Act. In the above order, the Deputy Commissioner of Endowments observed that it is for the Assistant Commissioner to enquire carefully and take appropriate action.

9. Admittedly, after a lapse of nearly three decades, i.e., on 14.06.2000, the 1st respondent filed an appeal under Section 7(2) of the Inams Act against Sri M. Srinivasa Charyulu (deceased father of the 1st petitioner) and petitioner No.2. Along with the said appeal, the 1st respondent filed I.A.No.1 of 2000 under Section 5 of the Limitation Act, seeking condonation of delay in filing appeal, without even indicating the length of delay.

10. The 1st respondent herein, in the affidavit filed in support of the application filed under Section 5 of the Limitation Act, assigned the following reasons at paragraph 3 for not filing appeal within time and the said paragraph reads as follows:

> "*There is no bad intention in not filing the above appeal earlier as I was not told by my predecessor in title and only after perusal of the records I found it. There is neither wilful nor wanton fault on my part in not preferring the appeal in past and the delay is bonafide and is to be condoned as per law.*"

A perusal of the said affidavit evidently shows that except the above, no other reasons were assigned by the 1st respondent herein. Opposing the said application, a counter affidavit was also filed, stating that the supporting affidavit is very vague and does not contain date of grant of patta by the Deputy Tahsildar.

11. It is also stated in the said counter affidavit that the 1st respondent-temple had the knowledge as early as 1970. A reading of the said

counter affidavit clearly shows that the application filed under Section 5 of the Limitation Act was strongly resisted and opposed. The 2nd respondent-Revenue Divisional Officer by relying upon the judgment of this Court in **THE MAHARAJAH ALAK NARAYANA SOCIETY OF ARTS AND SCIENCE, REPRESENTED BY ITS SECRETARY v. SPECIAL DEPUTY TAHSILDAR (INAMS), PARVATHIPURAM, AND OTHERS**[4], allowed the application filed by the 1st respondent.

12. As per the provisions of Section 7(2) of the Inams Act, it is incumbent and obligatory on the part of the person aggrieved to file appeal to the Revenue Court within a period of 60 days from the date of such grant. In **THE MAHARAJAH ALAK NARAYANA SOCIETY** (4 supra), on which the 2nd respondent herein placed reliance to condone the delay, the institution had no notice nor knowledge of the earlier proceedings. But, in the instant case, by any stretch of imagination, it cannot be concluded that the 1st respondent had no knowledge, since the 1st respondent earlier filed O.A.No.141 of 1969 before the Deputy Commissioner of Endowments, Vijayawada, and suffered an order dated 16.12.1970, and no reasons are forthcoming for the absolute silence for more than three decades.

13. Coming to the judgment cited by the learned counsel for the petitioners – in the case of **VEERAPPA** (2 supra), a Division Bench of this Court, by relying upon the earlier judgment reported in **BALASUBRAMANYAM** (3 supra) held as under:

> *"The learned Government Pleader for Revenue, on the other hand, contended that no prejudice would be caused by the order of the learned single Judge inasmuch as the learned single Judge has left open all the issues raised by the parties to be agitated before the Revenue Court and, therefore, it is not a fit case where the Division Bench should interfere with the discretionary order made by the learned single Judge.*
>
> *We would have perhaps fallen in line as suggested by the learned Government Pleader if we did not find the jurisdictional flaw in the impugned order. As already pointed out supra, under*

sub-section (2) of Section 7 of the Act, an appeal could be preferred by an aggrieved party within 60 days from the date of the order. It is not brought to our notice by the learned Government Pleader for Revenue that the Act empowers the Revenue Divisional Officer who constitutes the Revenue Court to entertain an appeal by condoning the delay after expiry of 60 days. The Revenue Divisional Officer is a creature of statute and whatever power he exercises under the statute should be strictly within the parameters of power granted to him. Since the statute does not confer any power on him to condone the delay, the Revenue Divisional Officer condoning delay of 2555 days would not arise. On this aspect, we are in complete agreement with the view taken by the learned Judge in Balasubramanyam Reddy's case (supra). Secondly, it is quite startling to notice that the Revenue Divisional Officer straightaway, without notice to the writ petitioner and completely ignoring natural justice and fair-play in action, exparte condoned the enormous delay of 2555 days. This particular action of the Revenue Divisional Officer speaks volumes, particularly, in the context of Republican Constitution and Rule of Law and after 52 years of Republic coming into existence. It is for the appropriate authority in the Government to view this matter seriously and to see that such a thing does not happen in future at least. In that view of the matter, we are of the considered opinion that the very appeal preferred by the District Collector is not maintainable. Therefore, directing the Revenue Court to dispose of the appeal on merit as directed by the learned single Judge would not arise. No mandamus will go to an authority, statutory or otherwise, to exercise a power which is not granted by the statute and the law. Since the Act does not grant the power to the District Collector to entertain an appeal beyond 60 days of the date of the order, directing him to decide the appeal on merit is not justified. Writ Appeal, is therefore, allowed and the orders of the learned single Judge in W.P.No.11598 of 2001, dated 14-12-2000 and Review WPMP No.5573/2000 dated 26-4-270707177 are set aside. The writ petition is allowed and the impugned order of the first respondent – Revenue Divisional Officer – is quashed with costs quantified at Rs.2,000/- payable within two weeks from today."

14. Learned counsel for the petitioners also relied on a decision reported in **POPAT BAHIRU GOVARDHANE AND OTHERS v. SPECIAL LAND ACQUISITION OFFICER AND ANOTHER**[5], and contended that the provisions of the Limitation Act are not applicable for

quasi-judicial authorities. In **POPAT BAHIRU** (5 supra), the Hon'ble Apex Court referred to earlier judgments reported in **UNION OF INDIA V. MANGATU RAM**[6], and **TOTA RAM v. STATE OF U.P.**[7], held at paragraph 13 as under:

> *"This Court in **UNION OF INDIA V. MANGATU RAM**, and **TOTA RAM v. STATE OF U.P.** dealt with the issue involved herein and held that as the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the 1963 Act would not apply and, therefore, the application under Section 28-A of the Act, has to be filed within the period of limitation as prescribed under Section 28-A of the Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award."*

15. The learned Government Pleader and the learned Standing Counsel for the respondent-institution, while referring to the provisions of Section 143 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short, 'Endowments Act, 1987') contends that there is no limitation for the 1st respondent to file appeal before the 2nd respondent.

16. In view of the contention of the learned counsel, it may be appropriate and necessary to refer to Section 143 of the Endowments Act, 1987 which reads as under:

> "*143. **Property of Charitable or religious institution or endowment not to vest under the law of limitation after commencement of this Act:-** Nothing in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th September, 1951, in the Andhra Area of the State and the 26th January, 1967 in the remaining area of the State"*

17. A plain reading of Section 143 of the Endowments Act, 1987 makes it abundantly clear that the said provision of law deals with a claim of vesting of the Endowments property in the individual and the effect of law of limitation, but not with the present contingency filing of an appeal under the provisions of the Inams Act. This provision imposes a prohibition on individuals to claim ownership in the Endowments property on the ground of expiry of period of limitation, i.e., plea of adverse possession is not available in respect of Endowment properties. In the considered opinion of this Court, the scope, ambit and parameters of the applicability of the said provision are different and cannot be extended to the contingencies of the present nature.

18. Having filed an application in 1969 before the Deputy Commissioner of Endowments, Vijayawada, and having suffered an order in 1970, and having failed to explain the delay of approximately three decades in filing appeal against the order of grant of patta, and having failed to explain the reasons for such exorbitant delay of three decades, in the delay condonation application filed under Section 5 of the Limitation Act, it is not open to the respondents to advance such contention for the first time before this Court.

19. Learned counsel for the 1st respondent places reliance on the judgments of the Apex Court reported in **MAHANTH MOTILAL GOSWAMI v. STATE OF BIHAR AND OTHERS**[8] and **BHARTIYA SEVA SAMAJ TRUST TR. PRES. & ANR v. YOGESHBHAI AMBALAL PATEL & ANR**[9], and contends that quashing of one illegal order by the Court should not result in revival of another illegal order.

20. In the facts and circumstances of the case, and in view of the reasons set out supra, the principles laid down in **MAHANTH MOTILAL** (8 supra) and **BHARTIYA SEVA SAMAJ** (9 supra) would not render any assistance to the case of 1st respondent herein.

21. In view of the above narration, this Court has neither any hesitation nor any traces of doubt to hold that the order impugned in the present writ petition is neither sustainable nor tenable in the eye of law.

22. For the aforesaid reasons, the writ petition is allowed, setting aside the order dated 29.10.2005 passed by the Revenue Divisional Officer, Nuzvid, Krishna district, in I.A.No.1 of 2000 in Inam Appeal No.1 of 2000, and consequently it is declared that the 2nd respondent herein cannot proceed further with the adjudication of the Inam Appeal No.1 of 2000.

No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE A.V. SESHA SAI

31st December, 2014

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[1] 2002 Suppl. (1) ALD 785

[2] 2002 (3) L.S. 47 (D.B.)

[3] 1990 (1) An. WR 95

[4] W.P.No. 4188 of 1974 dated 28.12.1976

[5] (2013) 10 Supreme Court Cases 765

[6] (1997) 6 SCC 59

[7] (1997) 6 SCC 280

[8] AIR 1993 PATNA 171

[9] CIVIL APPEAL No. 6463 of 2012 dated 14.09.2012