

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA  
PRADESH**

**WEDNESDAY, THE EIGHTEENTH DAY OF MARCH TWO THOUSAND AND  
FIFTEEN**

**Present**

**HON'BLE SRI JUSTICE P.NAVEEN RAO**

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**W.P.No.18632 of 2002**

Between:

Pandula Jayaraju (died per LR),

S/o.Das, Aged 65 years,

R/o. Bhujangaraopet,

Visakhapatnam & another

.. Petitioners

AND

The Joint Collector, Eluru,

West Godavari District & 6 others

.. Respondents

**The Court made the following:**

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Kallem Joji was assigned land to an extent of Ac. 3.88 cents in Survey No.1102/1 of Velagalapalli Village, Hamlet of Pragadavaram of Chintalapudi Mandal. Kallem Joji belonged to Scheduled caste category. On 06.10.1969,

Kallem Joji executed registered Relinquishment Deed in favour of his brother K. Venkateswara Rao relinquishing his joint half share. This relinquishment was after receiving consideration. K. Venkateswara Rao executed registered Lease Deed, dated 12.05.1970, in favour of first petitioner/father of the second petitioner, who since died. The lease was for a period of 90 years commencing from 1972 to 2060. Consequent to grant of lease, possession was vested in the first petitioner. The first petitioner developed the property and brought it for cultivation. While so, in the year 1988, Kallem Joji filed application before the Mandal Revenue Officer, Chintalapudi, West Godavari District (3<sup>rd</sup> respondent) seeking resumption of the subject land in accordance with the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act 9 of 1977'). The 3<sup>rd</sup> respondent passed orders on 25.07.1995 holding that the transfer made in favour of the first petitioner is not permissible under Sections 3(1) and 3(5) of the Act 9 of 1977 and, therefore, ordered to take over the possession of the same from the first petitioner and to deliver the possession to Kallem Joji. Aggrieved thereby, the first petitioner filed appeal before the Revenue Divisional Officer, Eluru, West Godavari District (2<sup>nd</sup> respondent). The said appeal was rejected by order, dated 18.01.1999. Aggrieved thereby, the first petitioner filed revision before the Joint Collector, Eluru, West Godavari District (1<sup>st</sup> respondent). The Joint Collector, by order, dated 04.05.2002, affirmed the decisions of the Mandal Revenue Officer and the Revenue Divisional Officer. Aggrieved by the said decisions, this writ petition is instituted.

2. Heard Sri S. Appadhara Reddy, learned counsel for the petitioners, learned Government Pleader for Revenue for respondents 1 to 3, Sri K.V. Shivaji, learned counsel for respondents 4 to 6 and Sri Naram Nageswara Rao, learned counsel for the 7<sup>th</sup> respondent.

3. Learned counsel for the petitioners contends that the application filed by Kallem Joji ought to have been dismissed on the ground of inordinate delay. The Relinquishment Deed was executed on 06.10.1969 in favour of K. Venkateswara Rao and

K. Venkateswara Rao executed the Lease Deed on 12.02.1970 i.e., after 18 years in favour of the first petitioner. The application for restoration was filed and by the time the Mandal Revenue Officer passed orders, it was more than 25 years. On the ground of inordinate delay alone, the said application ought to have been dismissed. Learned counsel for the petitioners further contends that when the lease was granted in favour of the first petitioner, the land was not cultivable. The first petitioner spent huge money to develop the land and to provide water sources and brought the land to cultivable status and has been cultivating the land by incurring huge expenditure all alone. Learned counsel for the petitioners further submits that there are no *bona fides* on the part of the original assignee. The original assignee is not residing in the same village. He was running a kirana shop in Eluru, as evident from the Relinquishment Deed. For the purpose of running business, he received consideration from his brother and executed the Relinquishment Deed. Thus, there are no *bona fides* in the assignee to file such an application and such application was filed with an oblique motive of harassing and humiliating the first petitioner. The assignee was having full knowledge of the lease granted in favour of the first petitioner. The assignee was not residing in the village and, therefore, he has no *bona fides*.

4. Learned counsel for the petitioners further contended that the first petitioner also belongs to the Scheduled Caste category. He did not have any agricultural land during the time when the lease was taken. Thus, even assuming that the provisions of the Act are attracted when the lease was granted in favour of the petitioner, in view of the provision contained in Section 3(5) of the Act 9 of 1977, the first petitioner being a *bona fide* person and also a landless poor belong to the Scheduled Caste community, is entitled to avail the benefit of provision contained in Section 3(5) of the Act 9 of 1977.

5. The 5<sup>th</sup> respondent denies the averments of the first petitioner. He contends that the first petitioner was a Government employee and by conspiring with the brother, he grabbed the land by way of a lease for the period of 90 years and the first petitioner had no knowledge of grant of such lease. Only when the first

petitioner came to know such lease, the application was filed before the Mandal Revenue Officer, Chintalapudi, West Godavari District (3<sup>rd</sup> respondent) seeking restoration. Learned counsel for the 5<sup>th</sup> respondent, therefore, contends that such a restoration was validly made and there is no error in the orders passed by the authorities. The decisions taken by the Mandal Revenue Officer, as affirmed by the Revenue Divisional Officer and the Joint Collector, are in conformity with the mandate of the Act 9 of 1977. Learned counsel for the 5<sup>th</sup> respondent further contends that the first petitioner never brought the land into cultivation, whereas the brother of the first petitioner alone brought the land into cultivation. Learned counsel for the 5<sup>th</sup> respondent further submits that the first petitioner is not a landless poor person and, therefore, not entitled to avail the benefit of provision contained in Section 3(5) of the Act 9 of 1977.

6. Learned Assistant Government Pleader submits that as the first petitioner was an employee, he does not come under the category of landless poor person to avail the benefit of Section 3(5) of the Act 9 of 1977. Learned Assistant Government Pleader further submits that as no time limit is prescribed in the Act 9 of 1977, the order passed by the competent authority is valid and legal. As and when a complaint is received by him, action was taken and after granting due opportunity, the orders are passed. Having found that the assignment granted in violation of provisions of Section 3 of the Act 9 of 1977, the same is liable to be set aside. Learned Assistant Government Pleader, therefore, submits that there is no error in the order since the legislature was conscious of the fact that such assignments do not come to light immediately and the persons in whose favour assignments are made have no means to agitate the issue, time limit to exercise power is not fixed. Therefore, the order of the Mandal Revenue Officer cannot be declared as illegal on the ground that complaint was not filed within reasonable time, but was filed after lapse of 18 years.

7. Learned counsel for the 7<sup>th</sup> respondent supports the 5<sup>th</sup> respondent. The 7<sup>th</sup> respondent submits that the lease granted by him was erroneous and, therefore, the order passed by the Mandal Revenue Officer is valid and there is

no cause for interference by this Court.

8. As seen from the brief analysis of the facts, the original assignee relinquished his share in favour of his brother. In the said manner, his brother became the assignee to the entire extent of Ac. 3.88 cents. The assignee in turn executed a lease agreement leasing out the entire extent of land in favour of the first petitioner for a period of 90 years. Section 3 of the Act 9 of 1977 prohibits transfer of the land in any manner including grant of lease. The Act 9 of 1977 declares such lease as null and void. Section 4 of the Act 9 of 1977 vests power in the District Collector or any other officer not below the rank of the Mandal Revenue Officer, authorized by the District Collector, to take possession of the assigned land, after evicting the person in possession and restore the assigned land either to the original assignee, if such assignee is eligible for such assignment, or assigned to any other eligible landless poor persons, if it has come to the notice of the competent authority and he is satisfied that provisions of Sub-Section (1) of Section 3 of the Act 9 of 1977 is violated.

9. Reading of Section 4 of the Act 9 of 1977 makes clear that it does not prescribe any particular mode of exercise of power under this Section. Thus, the power can be exercised *suo moto* if it comes to the knowledge of the concerned officer or on an application filed by any person including the original assignee. In the instant case, power under Section 4 of the Act 9 of 1977 was exercised by the Mandal Revenue Officer on an application filed by the original assignee. Provision under Section 4(1) of the Act 9 of 1977 does not prescribe any time limit for exercise of such power.

10. On the above analysis of facts and the provisions of Sections 3 and 4 of the Act 9 of 1977, the point that arises for consideration is whether the application filed by the original assignee on 06.12.1988 is maintainable and the consequential orders passed by the Mandal Revenue Officer on 25.07.1995, as affirmed by the Revenue Divisional Officer and the Joint Collector, are valid in law ?

11. On the scope of the availing of statutory remedies for enforcement of the rights vested in a statute, the principle of law is well settled. The settled principle of law is that such right has to be availed within a reasonable time and if a person does not avail the remedies provided by the statute for enforcement of the rights vested by the statute within reasonable time, the claim cannot be granted. What is reasonable time depends on the facts and circumstances of each case. Following precedents highlight this principle.

12. In ***Joint Collector, R.R. District, Hyderabad and another Vs. D.Narasing Rao and others***, 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. In that case, 50 years held as not valid. In the said provision, no time limit is prescribed to exercise such power.

13. The said decision of this Court was affirmed by the Supreme Court in ***Jt. Collector Ranga Reddy Dist. & Anr. Etc. Vs. D.Narsing Rao & Ors. Etc. Etc.*** The Supreme Court reviewed long line of precedents on the scope of exercise of power though statutory authority is vested with unlimited powers in several enactments after inordinate delay and when such provision has not prescribed time limit to exercise the power, 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 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 166B 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.”

14. While concurring with the view taken by Justice Sri C.Nagappan, Justice T.S. Thakur held as under:

“To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.”

15. The principle laid down in ***Joint Collector Ranga Reddy Dist. (supra)*** by the Division Bench was followed by another Division Bench in ***Joint Collector, Rangareddy District and others 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 AP 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 v. Nallolla Pantaiah and others***, 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.

16. In ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham Vs. K. Suresh Reddy and others***, 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.

17. In ***Ponnala Narsing Rao's Case (Supra)***, 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 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.”

18. In the cases discussed above, the delay in filing an application for *suo moto* exercise of power ranged between five years in one case to 12 to 15 years in another case and delay of 20 years and more in other cases. The Supreme Court held it is unreasonable to exercise power in such cases.

19. In the instant case, on a lease granted to the first petitioner on 12.05.1970, an application for restoration of possession was filed on 16.12.1988 i.e., 18 years later and the person, who filed such application has no *bona fides* in as much as he relinquished his right in favour of his brother much prior to grant of lease for a consideration and the person does not live in the village and is actually carrying on business of operating a kirana shop in Eluru town. It cannot be said that the original assignee was not aware of lease granted by his brother immediately after relinquishment of his rights in the property and cultivating the land by the petitioners after developing the same. Rights have accrued to the petitioners. They have been in possession and enjoyment for such a long time after developing the land. Thus, it is not equitable to through the petitioners out of the subject land at this stage. There was no explanation as to why the individual kept quiet for 18 years knowing fully well the relinquishment and subsequent lease.

20. Having regard to the principle of law enunciated in the precedents referred to above and in the facts of this case, I am of the opinion that such application filed by a person, who had willingly gave the property to his brother, ought not to have been entertained, more particularly, after long lapse of time. Therefore, the orders impugned in the writ petition are liable to be set aside on this ground alone. They are, accordingly, set aside.

21. The Writ Petition is, accordingly, allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

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**P.NAVEEN RAO, J**

Date: 18<sup>th</sup> March, 2015

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**HON'BLE SRI JUSTICE P.NAVEEN RAO**

**W.P.No.18632 of 2002**

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Date: 18<sup>th</sup> March, 2015

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