THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

APPEAL SUIT No.1034 of 1993

JUDGMENT:

The unsuccessful plaintiffs before the Additional Subordinate Judge Court, Ongole in O.S.No.234 of 1981 preferred this appeal challenging the judgment and decree dated 19.09.1991, whereunder the suit filed by the plaintiffs for the reliefs of declaration of title and for permanent injunction in respect of 'A' and 'B' schedule property and for recovery of possession in respect of 'C' schedule property, which is in the occupation of defendant Nos.34 to 110 was dismissed.

2. For convenience of reference, the ranks given to the parties in O.S.No.234 of 1981 before the Additional Subordinate Judge Court, Ongole will be adopted throughout the judgment.

3. The plaintiffs initially filed the suit against 33 defendants and defendant Nos.34 to 110 were impleaded as per the orders in I.A.No.221 of 1988 and amended appropriately.

4. The waste land belonging to the Government in an extent of Ac.174.86 cents, which is described as 'A', 'B' and 'C' in the schedules annexed to the plaint, situated at Alluru-Kothapatnam village, Ongole Taluq, was offered for sale by the then District Collector, Guntur in the year 1936. As the land was saline and liable for inundation with saline water, no person in the locality came forward to purchase the land in the auction, therefore, the auction was stopped. Later, the first plaintiff, which is a limited company under the name and style of "The Tobacco Company Limited" (for short, 'the company') was floated by several landless poor persons as shareholders and it was represented by its Director Sri Dhara Gopala Sastry. After his death, the company is being represented by the Managing Director, D.Narasimha Murthy, S/o. Dhara Gopala Sastry, as per the bye-laws of the company. The company was floated with the main object of raising Tobacco as the ryots individually could not raise such commercial crop, which involves huge expenditure. Thereupon, the Government assigned the 'A', 'B' and 'C' schedule land to the first plaintiff-company under a temporary assignment vide G.O.No.3960, dated 08.11.1939. Again by issuing G.O.Ms.No.430, dated 17.02.1950, the Government permanently assigned the 'A', 'B' and 'C' schedule property on payment of Rs.20/- per acre by incorporating special conditions which are annexed to the G.O. In terms of G.O.Ms.No.430, dated 17.02.1950, first plaintiff-company paid a sum of Rs.3,550/- to the credit of the Government by Challan dated 26.08.1940 as demanded in the notice dated 10.07.1940 issued by the then Tahsildar, Ongole. Thus, the grant in favour of the first plaintiff-company is for consideration and it is out and out sale for consideration.

5. Later, the first plaintiff spent huge amount on the land to bring the same under cultivation, including raising of land to avoid eroding of land, throughout the rivulet to prevent floods also.

6. While the matter stood thus, some of the villagers trespassed into the land for unlawful gain and thereupon the first plaintiff filed suit O.S.No.15 of 1953 against the trespassers to recover possession on condition and ultimately, the suit was decreed. Since the shareholders of the first defendant are poor cultivators and as they have spent huge amounts for reclaiming the land and for prosecuting the legal proceedings negligible portion of land i.e., an extent of Ac.23.26 cents in 'A' schedule was sold to the plaintiffs 2 to 7. As there was no market to the saline tobacco and as the company was heavily indebted, the first plaintiff has been in possession and enjoyment of 'B' schedule land and leased out the same.

7. The Sub-Collector, Ongole issued notice dated 30.08.1978 complaining breach of conditions of the grant by the first plaintiff, called upon to give an explanation with threat to cancel the grant. In pursuance of the notice, the first plaintiff and one Sirigiri Perayya appeared before the Sub-Collector and requested time. Subsequently, D.Narasimha Murthy represented the first plaintiff and Sirigiri Perayya attended the Sub-Collector's office, but the Sub-Collector was on camp on that day. They were informed

that another intimation will be sent to them. But, a memo Rc.A7/7734/78, dated 11.11.1978 was received on 27.11.1978 from the Tahsildar, Ongole ordering resumption of the plaint schedule land as per B.S.O. 15(12). As per the terms and conditions of the permanent grant, the alienation cannot constitute a ground for resumption when the alienation was effected for justifiable cause. The land cannot be resumed arbitrarily by the executive authority without recourse to Civil Court. As the grant is for consideration, it is an outright sale and thereby the resumption of the land is illegal.

8. Alienation was not incorporated as a ground for resumption in the annexure attached to the grant. Even according to clause - 1 of Annexure-I, assignment is liable to cancellation, if it was found that it was greatly inequitable or obtained by fraud or in excess of the liability of the authority delegated to the assigning officer by B.S.O.No.15 and if there is any irregularity in the procedure. Any of the conditions are not satisfied for resumption of the land. When special conditions are imposed, each condition should contain a clause that Government may resume or re-enter the land if the said condition is infringed. In clause -1 of Annexure -2 of the special conditions, the land should not be alienated by the company and there is no condition for resumption of the land if any of the conditions are infringed.

9. The assignment was made in the year 1939 and the condition of non-alienation was first introduced under clause – 5 of G.O.M.S.No.1142, Revenue, dated 18.06.1954 in the revised assignment policy. These conditions may not be applicable to the assignment made prior to the G.O. under Sections 3 and 4 of Act 9 of 1977 (A.P. Assigned Lands Prohibition of Transfer Act). It is not open to the executive authority to resume the land and on the other hand, it is the duty of the authorities to restore the possession of the land to the first plaintiff. Therefore, the order passed by the Tahsildar resuming the land assigned to the first plaintiff is illegal and the order passed by the Tahsildar, Ongole in Rc.A7/7734/78, dated 11.11.1978, be declared as illegal, pass a decree for the aforesaid reliefs.

10. The second defendant resisted the claim of the plaintiffs by filing a written statement on various grounds while contending that the suit is liable to be dismissed *in limini* as the grant was made in the year 1939, which was confirmed in the year 1950 by incorporating the following conditions:

1. The land assigned should not be alienated by the company.

2. and that the land should revert to the Government if the company fails to function.

11. The company confirmed that the company itself has become defunct, considerable extent was sold and larger extent was leased out on long lease, contrary to the provisions of the assignment or grant. As there was also an apprehension that the remaining extent is likely to be sold, a notice was issued by the authority on 30.08.1978 calling upon the Managing Director Sri D.Markandeya Sastry to show cause as to why the land should not be resumed by the Government for breach of conditions. The notice was received by Dhara Narasimha Murthy and he appeared through his advocate before the Sub-Collector, Ongole and obtained 20 days time for filing his reply, but failed to do so. The Tahsildar basing on material, came to the conclusion that as there is no explanation, passed the order resuming the land dated 11.11.1978. Subsequently, the Revenue Inspector took possession of the land. Thus, the second defendant issued a proclamation dated 20.12.1978 to the effect that the crops in the schedule land will be put to auction on 27.12.1978. While so, the alienee Sirigiri Peraiah and B.MalaKondaiah approached the Sub-Collector, Ongole for grant of stay order. Neither the first plaintiff nor any of them on behalf of the company bothered themselves to take any steps against the order of resumption passed in the matter. As the Government has taken possession of the land and assigned the same to the weaker sections on 22.09.1981 by granting pattas in their favour and put them into possession of the same on 06.10.1981, the suit for permanent injunction is not maintainable under law.

12. The first plaintiff cannot approach the Court without exhausting the statutory remedy under the B.S.O. 15, and on this ground alone, the suit is liable to be dismissed.

13. The suit is bad for non-joinder of the actual assignees, who are in actual possession of the land assigned to them, and furnished list of beneficiaries under the assignment along with the written statement.

14. The Managing Director alone is competent to file the suit and one of the Directors representing the company cannot file a suit and therefore, the suit is not maintainable and is liable to be dismissed on this ground also.

15. The first defendant adopted the written statement filed by the second defendant by filing a memo.

16. The defendants, who are 86 in number, impleaded as per orders in I.A.No.221 of 1988 filed a common written statement contending that each of them was granted 1.5 cents in Survey No.55/3 of Ongole under patta D.K.No.79/F.9, dated 22.09.1987. These defendants took possession of the same, reclaimed the land spending huge amount and cultivated the same since then. The suit is not maintainable as the property was already assigned to the beneficiaries under the assignment.

17. Defendant Nos.87 and 108 filed separate written statements and the same was adopted by defendant Nos.86, 89, 90, 91, 93, 102, 104,105,106, 107 and 109. The specific contention of the above defendants is that they are not aware about the *factum* of assigning the land in the year 1936 to the first plaintiff on payment of consideration. The defendants are landless poor persons and they were granted pattas in their favour in the year 1981, since then, they are in possession and enjoyment of the same. Therefore, the plaintiffs are not entitled to declaration of their title to the property in possession of the defendants and for recovery of the possession. Finally, prayed to dismiss the suit against them.

18. Subsequently, the above defendants remained *ex parte.* Defendant Nos.79 and 103 died and the suit against them was abated. The first plaintiff has given up the claim against defendant Nos.13, 16, 21, 26 and 27.

19. Basing on the above pleadings, the trial Court framed the following issues: (extracted)

1. Whether the plaintiffs are entitled to the reliefs as prayed for?
2. Whether the suit is bad for non-joinder of necessary parties i.e., assignees of the land?
3. Whether the suit is not properly framed as alleged in para No.7 of the written statement?
4. To what relief?

20. On 18.02.1989, after the amendment of the plaint and receiving the written statement from the newly impleaded parties, the trial Court framed the following additional issues:

1. Whether the assignment of ‘C’ schedule by D1 in favour of D.34 to D.110 is valid, and is binding on plaintiffs?
2. Whether granting of D.K.Patta in favour of D.34 to D.110 is valid?
3. Whether the plaintiffs are entitled to recover ‘C’ schedule properties from D.34 to D.110?
4. To what relief?

21. During the course of trial, on behalf of the plaintiffs, D.Narasimha Murthy was examined as PW.1 and marked Exs.A.1 to A.8. On behalf of the defendants, Md. Sareefuddin was examined as DW.1 and marked Exs.B.1 and B.2.

22. Upon hearing argument of learned counsel for both the parties and considering oral and documentary evidence on record, the trial Court dismissed the suit holding that the first plaintiff is not entitled to any of the reliefs claimed in the plaint.

23. Aggrieved by the judgment and decree passed by the Additional Subordinate Judge, Ongole in O.S.No.234 of 1981, the unsuccessful plaintiffs filed the present appeal on various grounds.

24. The main contentions urged before this Court in the grounds of appeal are as follows:

A. The order passed by the Tahsildar, Ongole in Rc.A7/7734/78, dated 11.11.1978 is void, illegal, *ultra vires* and without jurisdiction as the cause shown for proposed resumption in the show-cause notice is different from the cause shown for resumption under the proceedings under challenge. Therefore, the order is liable to be declared as illegal. But, the trial Court did not appreciate the specific contention of the plaintiffs with regard to the variation of violation for the proposed resumption and the reason for resumption.

B. The trial Court also did not decide the validity of pattas granted in favour of defendants 34 to 110 and though they are in possession, the plaintiffs are entitled to recover possession of the property when the resumption proceedings are invalid, but the trial Court on an erroneous appreciation dismissed the suit.

C. The schedule land was waste land initially and it was brought under cultivation by spending huge amount and the condition restraining alienation was not incorporated in G.O.Ms.No.3960, dated 08.11.1939, but the said condition was incorporated in G.O.Ms.No.430, dated 17.02.1950. Therefore, the condition repugnant to the interest created in the property is void, but this fact was not considered by the trial Court and dismissed the suit erroneously.

25. The conclusion arrived by the trial Court that the plaintiffs have no right to question the resumption order representing the shareholders of the company is illegal, since Dhara Narasimha Murthy, Director of the company, was treated as Managing Director by the shareholders, but this was not accepted on erroneous appreciation and committed an error in dismissing the suit and finally prayed to allow the appeal by setting aside the judgment and decree of the trial Court.

26. During the course of argument, Sri C.Raghu, the learned counsel for the plaintiffs, vehemently contended that the cause shown in the show-cause notice for the proposed resumption of the land is not the cause shown in the resumption order under challenge. Therefore, the order of resumption is invalid and on this ground alone the suit is liable to be decreed. It is further contended that the plaintiffs are in possession and enjoyment of 'A' and 'B' schedule property, since the possession was not taken over by the Government in pursuance of resumption order. Therefore, the plaintiffs need not claim relief for recovery of possession under the proviso to Section 34 of the Specific Relief Act (for short, 'the Act'). Hence, the plaintiffs are entitled to claim declaration of title and consequential relief of permanent injunction.

27. Finally, the contention of the defendants that the first plaintiff without approaching the statutory authorities, filed the suit and the same is not maintainable, is without any legal basis and when the parties aggrieved by the order passed by the Tahsildar, they can challenge the same in a Civil Court, since the Civil Court is competent to try any suit of civil nature unless the cognizance of such suit is barred either by express or implied bar. Therefore, the suit is maintainable and finally, requested this Court to reappreciate the entire evidence with reference to the specific contention and prayed to allow the appeal setting aside the judgment and decree of the trial Court and pass a decree declaring that the plaintiffs are absolute owners of 'A' and 'B' schedule property and grant perpetual injunction restraining the defendants and their men from interfering with their enjoyment and possession of the property.

28. Per contra, the learned Government Pleader for Appeals would contend that the resumption is in accordance with law and though there is a minor variation in the show-cause notice and reason assigned in the resumption order, the said order does not make any difference. On the other hand, a remedy under

B.S.O. 15 is available to file an appeal before the authority. But, without filing the appeal under B.S.O., straightaway approached the Civil Court. Therefore, by necessary implication, it is deemed that the jurisdiction of the Civil Court is ousted. Consequently, the suit is not maintainable.

29. It is further contended that the relief of declaration of title is purely discretionary in nature and such relief cannot be granted when the plaintiffs approached the Court with unclean hands and apart from that, when the plaintiffs failed to claim further relief, they are able to claim as on the date of filing the suit in view of the proviso to Section 4 of the Act. On this ground also, the suit is liable to be dismissed and finally, prayed to confirm the judgment and decree passed by the trial court, dismissing this appeal.

30. Considering rival contentions and perusing the judgment and decree under challenge and oral and documentary evidence on record, the points that arise for consideration in this appeal are as follows:

1. ***Whether the resumption order dated 11.11.1978 in Rc.A7/7734/78 is in accordance with law?***
2. ***Whether the civil suit is maintainable against the resumption order passed by the Tahsildar exercising power under B.S.O. 15, A.P.Revenue Board Standing Orders, without exhausting the remedy available under B.S.O. No.15(24)?***
3. ***Whether the plaintiffs were able to seek further relief as on the date of filing the suit and if so, what further relief they are entitled to, if not, whether a suit for declaration of title and permanent injunction restraining the defendants and their men from interfering with possession and enjoyment of plaint 'A' and 'B' schedule property is maintainable?***

POINT No.1:

31. Initially, the suit was filed by the first plaintiff for reliefs of declaration of title and permanent injunction, but later the plaintiffs 2 to 7 were impleaded and the defendants 34 to 110 were impleaded. The total extent of Ac. 174.86 cents was divided into three schedules. 'A' schedule property was sold to the plaintiffs 2 to 7 and 'B' schedule property is in possession of the first plaintiff, whereas 'C' schedule property was assigned to the defendants 34 to 110 by the Government, who are admittedly in possession of the property. Curiously, the plaintiffs claimed relief of declaration of their title to 'C' schedule property and recovery of possession of 'C' schedule property, but the appeal is limited to 'A' and 'B' schedule property as the appeal against defendant Nos.3,10, 14,16,25,29, 30,31,47,48,57,58,67,72,77,94 and 100 was dismissed as L.R. Petition was not filed, and the appeal against defendant Nos.5,7,8,9,13,15,17,18,19,20,21,22,23,24,26,27,32,34,35,36,37,38,40,43,46,49,52,56,59,60,61,62,63,65, 66, 69, 70, 73,76,81,82,

83,84,86,87,88,89,90,91,92,93,95,96,98,99,101,102,103,104,105,
106,107,108 and 109 was dismissed as no notices were served on them. Therefore, the relief of recovery of possession of the 'C' schedule property is not pressed virtually. During argument, the learned counsel for the plaintiffs filed written arguments. In para No.12 of the written arguments, learned counsel for the plaintiffs specifically mentioned as follows:

> "It is submitted that since the notices are not served on the unofficial respondents, the appellants herein do not press for the claim of the Schedule-C property."

Thus, the claim in respect of 'C' schedule property need not be decided, as the plaintiffs have not pressed the appeal in respect of 'C' schedule property. Therefore, it is wholly inappropriate for this Court to decide the claim of the plaintiffs in respect of 'C' schedule property.

32. Undisputedly, 'A', 'B' and 'C' schedule property was initially assigned to Tobacco Company Limited represented by its Managing Director, Dhara Narasimha Murthy under G.O.Ms.No.3960,dated

08.11.1939 and later, permanent grant was made under G.O.Ms.No.430, dated 17.02.1950 on payment of Rs.20/- per acre incorporating certain special conditions including incapacitating the beneficiaries under the grant to alienate the property. Later, the first plaintiff-company reclaimed the property and raised Tobacco. But, due to salinity, there was no demand for tobacco raised in the land and subsequently, the first plaintiff-company became indebted heavily to different creditors and unable to manage the company. Therefore, the first plaintiff leased out the property to Sirigiri Peramma and sold 'A' schedule property to the plaintiffs 2 to 7. In view of lease created in favour of Sirigiri Peramma, the Sub-Collector, Ongole issued a notice dated 30.08.1978, which is marked as Ex.A.3, calling upon the first plaintiff as to why the grant should not be cancelled on the ground that the first plaintiff leased out part of the land to outsiders and it is contrary to the express conditions of the grant thereby, rendering the land liable for resumption. Receipt of Ex.A.3 by the first plaintiff is not in dispute, since there is an admission in the plaint itself that on receipt of Ex.A.3, the first plaintiff and Sirigiri Peramma appeared before the Sub-Collector and sought 20 days time. Therefore, the cause for the proposed resumption is leasing out property to outsiders by the first plaintiff, whereas the Tahsildar passed Ex.A.4 proceedings dated 11.11.1978 on the ground that the 'B' schedule property was leased out to Sirigiri Peraiah admitting that he and another person by name B.Malakondaiah obtained lease of 100 Acres of land from D.Gopala Sastry for a period of 25 years. Besides the said reason, it is also mentioned that one Kalluri Somaiah resident of Ongole is cultivating 20 acres, that harijans of Allur-Kothapatnam village are cultivating 40 acres and that ryots (Yadavas) of Pollur village are cultivating 10 acres of land. It is also revealed that the first plaintiff-company had some liabilities and to meet the liabilities, the land was given to Sirigiri Peraiah and B.Malakondaiah on payment of Rs.22,000/- in the year 1964 and 1967 respectively and that Gopala Sastry also sold Ac.15.00 of land to some others in the year 1974 to discharge the liabilities of the company. Therefore, passed the resumption order resuming Ac.174.86 cents by exercising power under B.S.O. 15(12) of A.P.Revenue Board Standing Orders. Taking advantage of the reason assigned in the notice marked as Ex.A.3 proposing to resume the land and also the reasons assigned in Ex.A.4 proceedings issued by the Tahsildar, Sri C.Raghu, the learned counsel for the plaintiffs, would contend that the lease granted in favour of Peraiah and Malakondaiah is not in violation of terms and conditions of the grant and that apart, the alienation of Ac.12.00 of land to third parties in the year 1974 was not the reason assigned in Ex.A.3 show-cause notice, but strangely a new cause was invented while passing proceedings under Ex.A.4, which is void and liable to be set aside. Undoubtedly, the reason assigned for the proposed resumption under Ex.A.4 was only lease of property to Sirigiri Peraiah and the show-cause notice is silent about alienation of Ac.12.00 of land in the year 1974 for discharge of the liabilities of the first plaintiff. But, suddenly a new cause was invented while passing the order Ex.A.4. If really alienation of Ac.12.00 of land to third parties in the year 1974 is also mentioned as one of the cause for proposed resumption in Ex.A.3, the notice is required to be issued to the purchaser so also inform the cause for proposed resumption to the beneficiaries i.e, the first plaintiff, but without disclosing the said cause in Ex.A.3, passed the impugned order marked as Ex.A.4. Therefore, such an order is against the principles of natural justice, since it was passed without affording any opportunity to explain about the violation of terms and conditions of G.O.Ms.No.430, dated 17.02.1950. Therefore, such order is arbitrary.

33. It is subsequently contended by the learned counsel for the plaintiffs that the special conditions in the grant have come into force by amending B.S.O. in the year 1954. By the date of issuing G.O.Ms.No.430 (dated 17.02.1950), the B.S.O. was not amended incorporating such special conditions creating restraint against alienation by the assignee. No doubt, the condition restraining alienation was not originally in the B.S.O. and it was incorporated subsequently. But, even in the absence of any condition in Revenue Board Standing Orders, the grant was made subject to certain conditions under the

G.O.Ms.No.430, dated 17.02.1950. The first plaintiff having accepted for the conditions annexed to G.O.Ms.No.430, dated 17.02.1950 paid Rs.20/- per acre under challan dated 26.08.1940. Therefore, the first plaintiff is estopped to contend that the condition restraining alienation is void and on that ground the land cannot be resumed.

34. The original cause mentioned in the notice - Ex.A.3 for proposed resumption is only to lease out huge extent of land i.e. 100 acres of land to Sririgiri Peraiah and Malakondaiah for Rs.22,000/-. If 100 acres of land was leased out, as per conditions of original grant of Ac.174.86, it is not an alienation. It is only a transfer of enjoyment of 100 acres of land. Consequently, the resumption order on the ground that the lease is an alienation, is illegal and the same is liable to be set aside.

35. Undoubtedly, there is substantial force in the contention raised by the counsel, but while claiming relief under Section 34 of the Act, the first plaintiff has to approach the Court with clean hands to claim purely equitable and discretionary relief. Here, the original grant was only on temporary basis and later, a permanent grant was made by G.O.Ms.No.430, subject to certain conditions annexed to the said G.O., more particularly a restraint against alienation. But, the first plaintiff admittedly alienated the land by executing registered sale deed in favour of the plaintiffs 2 to 7 and those sale deeds were not marked before the trial Court. However, undisputed fact is that the plaintiffs 2 to 7 have purchased the part of 'B' schedule property in the year 1977 or 1978 at the rate of Rs.1,000/- per acre as admitted by PW.1 in the cross examination dated 01.12.1989. Thus, the first plaintiff violated the conditions of the permanent grant under G.O.Ms.No.430. Subsequently, the first plaintiff also leased out huge extent of land i.e. 100 acres of land to Sririgiri Peraiah and Malakondaiah for Rs.22,000/-. In fact, the grant was only for the benefit of poor ryots, who are shareholders in the Tobacco Company Limited, but in total violation or utter disregard of object of grant, the Managing Director of the first plaintiff alienated part of the property and leased out major part of the schedule property. In such case, the first plaintiff, who approached the Court with unclean hands, is disentitled to claim the equitable or discretionary relief under Section 34 of the Act.

36. When a suit is filed seeking declaration of title, it is for the plaintiff to prove his positive case by adducing cogent and satisfactory evidence and not entitled to take advantage of weakness in the case of the adversary, as held by the Hon'ble Apex Court in **Union of India and another vs. Vasavi Coperative Soceity and others**[1], **Union of India vs. Ibrahim Uddin**[2], and **Mysore State Transport Corporation vs. Mirja Kasim**[3]. But here, the plaintiffs wanted to take advantage of the defect in the proceedings under challenge issued by the Tahsildar without substantiating their positive case.

37. In any view of the matter, it is evident that the first plaintiff-company became defunct as admitted by PW.1 in his evidence in cross examination dated 09.04.1986. According to his evidence, for the last 10 years, the company is not functioning nor doing any business. As per the terms of G.O.Ms.No.430, when a company becomes defunct, the Government is entitled to resume the land. On this ground the grant is liable to be resumed, however, that was not the ground in the show-cause notice.

38. Yet, the learned Government Pleader for Appeals would contend that Dara Narasimha Murty S/o. Dara Gopala Sastry is incompetent to represent the Tobacco Company Limited as per the permanent grant made under G.O.Ms.No.430 to file a suit. The contention of the first plaintiff is that he was recommended as Managing Director of the first plaintiff-company by all the shareholders, though he is a Director, thereby he is competent to file the suit. The said Dara Narasimha Murthy arrayed himself as Director and not as a Managing Director and no resolution was passed by the shareholders designating him as Managing Director or authorizing him to file the suit on behalf of the Tobacco Company Limited. In the absence of any authorization, the said Dara Narasimha Murthy, being one of the Directors of the Tobacco Company Limited, is incompetent to file the suit. In the cross examination dated 01.12.1989,

PW.1 asserted that he himself in the capacity of Chairman of the Board of Directors of the first plaintiff-company sold plaint 'B' schedule property and filed the suit in the capacity as one of the directors. But, he cannot say, unless he was authorized in writing disclosing as to when he was given permission to file the suit under the resolution of the Board of Directors. The strength of the Board of Directors is five in number. The Board of Directors are elected persons from out of the members of the first plaintiff-company. Even according to the admission made by PW.1 in the cross examination referred to above, he was authorized to file a suit by passing a resolution by the Board of Directors, but no such resolution was placed before the trial Court to decide his competency to file the suit. In the absence of any authorization Dara Narasimha Murthy, being one of the directors of the company, is incompetent to file the suit. On this ground alone, the suit is liable to be dismissed as the suit was filed by an incompetent person. Filing of suits by or against the Corporations is governed by Order XXIX Rule 1 of C.P.C. Order XXIX Rule 1 of C.P.C. contemplates that in suits by or against a Corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. Therefore, Order XXIX Rule 1 provides that in a suit by or against a corporation, the secretary or the director or the principal officer of the company is competent to sign and verify the pleadings on behalf of the company. But here, Dhara Narasimha Murthy was not authorized by the directors of the company and consequently, the first plaintiff is incompetent to file the suit. On this sole ground, decree for declaration cannot be granted.

39. Though the trial Court declined to grant the relief of declaration under Section 34 of the Act on different grounds, but for the reasons stated above, I find no ground to grant a declaratory relief in favour of the plaintiffs. Consequently, the finding of the trial Court is hereby confirmed as I find no legal infirmity warranting interference of this Court. Accordingly, the point is answered in favour of the defendants and against the plaintiffs.

POINT No.2:

40. One of the contentions raised in the written statement by the second defendant is that a statutory remedy is available under B.S.O. 15(24). An appeal is maintainable against the resumption order passed under B.S.O. 15(12), but without exhausting the remedy of appeal available under Board Standing Orders, the suit is not maintainable. The learned counsel for the plaintiffs would contend that failure to approach the appellate authority is not a bar when there is no express prohibition, prohibiting the Civil Court to take cognizance of the suit challenging the resumption order passed by the Tahsildar. Section 9 of C.P.C. is the relevant provision which deals with jurisdiction of the Courts. According to it, the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Here, there is neither express nor implied bar prohibiting taking cognizance of the suit against the resumption order. But, in view of providing statutory remedy of appeal, it can be said that there is implied bar from taking cognizance of the suit against the resumption order.

41. No doubt, the Civil Court shall try all suits of civil nature except taking of cognizance of the suits either expressly or impliedly barred. But the judge made law is on different footing. A bare reading of Section 9 of C.P.C., it is clear that the suits of a civil nature can be entertained by a Civil Court excepting suits of which their cognizance is either expressly or impliedly barred. It shall be gathered from the facts and circumstances of each case. A decision of larger Bench consisting of seven judges of Hon'ble Apex Court in **M/s. Kamala Mills Ltd., vs. State of Bombay**[4] laid down certain guidelines as to when the jurisdiction of Civil Court is impliedly barred and held as follows:

"Exclusion of jurisdiction of civil Court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then Court will enquire whether remedies normally available in civil court are prescribed by such statute".

42. In another decision in **M/s. K.S.Venkataraman and Co., (P) Ltd., vs. State of Madras**[5] consisting of five judges, the Hon'ble Apex Court held as follows:

"If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact by necessary implication civil Court's jurisdiction is barred."

In view of the above two decisions, if a special remedy is provided for effectively adjudicating the claim, the civil court has no jurisdiction, but if the Tribunal is incompetent to pass such relief, which a civil court is competent to grant, civil suit is maintainable. In view of the principles laid down in the above decisions, the civil suit is not maintainable since effective remedy is available by way of appeal to set aside the order passed by the Tahsildar under B.S.O. 15.

43. In another judgment in **Dhulabai vs. State of Madhya Pradesh**[6], the Constitution Bench of Supreme Court laid down certain guidelines which are seven in number and they are extracted hereunder to ouster of jurisdiction or to assume jurisdiction to try any civil suit:

> "The Supreme Court has in a recent case after discussing a number of leading cases on this subject, laid down the following principles regarding exclusion of jurisdiction of Civil Courts:
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> (1). Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.
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> 2. Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the civil court.
>
> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all the questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.
>
> 3. Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunal.
>
> 4. When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.
>
> 5. Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.
>
> 6. Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.
>
> 7. An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply."

In view of the principle laid down in the above decision, when a special law creates an effective machinery for deciding the question involved under special enactments, it amounts to ouster of jurisdiction of civil courts. In the instant case, a special remedy by way of appeal under B.S.O. 15(24) is created to decide the legality and validity of the order passed by the Tahsildar, which is effective. The remedy which the plaintiffs sought for before the civil court can be granted by an appellate authority under

B.S.O. 15(24) of A.P. Revenue Board Standing Orders. Therefore, by necessary implication, the jurisdiction of Civil Court is said to be ousted. On this ground alone, in the suit for declaration, the order passed by defendant No.2 in Rc.A7/7734/78, dated 11.11.1978 is not maintainable. Accordingly, the point is held against the plaintiffs and in favour of the defendants.

POINT No.3:

44. One of the contentions raised before this Court by the learned Government Pleader for Appeals is that when plaintiffs file a suit seeking a declaratory relief under Section 34 of the Act, they have to seek all further reliefs which they are entitled to seek at the time of filing the suit, in view of the proviso to Section 34 of the Act. According to the defendants, the property was resumed and in view of the order passed under Ex.A.4, possession was taken over by the Revenue Inspector and later, the standing crop in the land was proposed to be auctioned by open auction vide auction notice dated 20.12.1978, marked as Ex.B.1, and thereafter, major part of 'C' schedule property was assigned to the landless poor persons, who were also granted pattas and they are in actual possession and enjoyment of the property. The possession of the property was taken over under common proceedings under EX.A.4, but part of the property is admittedly in possession of defendants 34 to 110. When the Government assigned the land to the defendants 34 to 110, by necessary implication, it can safely be concluded that the possession of the property was taken after passing resumption order under Ex.A.4. Though the plaintiffs contended that they are in possession and enjoyment of 'A' and 'B' schedule property as on the date of filing of suit, they did not produce any iota of evidence to substantiate such contention. On the other hand, the first plaintiff-company became defunct for the last more than 10 years and is not carrying on any business. In such case, the alleged possession cannot be accepted.

45. According to proviso to Section 34 of the Act, when a suit is filed for declaratory relief, the plaintiff must seek all further reliefs, which he is able to seek, otherwise, declaratory relief cannot be granted. In the instant case, the plaintiffs were dispossessed after passing resumption order under Ex.A.4 and part of the schedule property was assigned to the landless poor persons. Even according to the management of the first plaintiff-company, no piece of evidence is placed on record to prove their contention that they are in actual or constructive possession and enjoyment of the property as on the date of filing the suit. In the absence of evidence that they are in possession and enjoyment of the property, more particularly, in view of the assignment to defendants 34 to 110, the plaintiffs have to seek further relief of recovery of possession, but instead of seeking such further relief of recovery of possession, they sought for perpetual injunction. In such case, the plaintiffs are bound to claim relief of possession from the defendants in an ordinary suit of declaration of title, which they seek to establish. When the plaintiffs failed to seek further relief, then the mere declaration of title depends upon the circumstances of each particular case. The Court will not throw the suit overboard on the ground that it is barred by proviso, unless it is satisfied that the plaintiffs ought to have claimed further relief in regard to the legal character or the right as to any property claimed and the declaration of title or some consequential relief to which they are entitled. As a general rule, when the plaintiffs strongly prove that they are in possession of 'A' and 'B' schedule property, more particularly, when the defendants 1 and 2 claim that the possession of the property was taken over through Revenue Inspector after issuing resumption order under Ex.A.4, it is for the plaintiffs to seek recovery of possession as further relief as required under proviso to Section 34 of the Act, but they did not claim further relief.

46. Learned counsel while contending that the Court can mould the relief by exercising power under Order VII Rule 7 of C.P.C., placed reliance on a judgment of the Hon'ble Apex Court in **Veruareddi**

Ramaraghava Reddy vs. Konduru Seshu Reddy[7], wherein the Hon'ble Apex Court while deciding the similar situation held that a minor relief can be granted to mould the relief by exercising power under Order VII Rule 7 of C.P.C., but the relief of recovery of possession is not minor relief than the declaration. Therefore, the principle laid down in the above judgment has no application to the present facts of the case. In any view of the matter, it is evident that the plaintiffs failed to prove that they are in possession of 'A' and 'B' schedule property as on the date of filing the suit and failed to seek further relief which the plaintiffs are entitled to, as per proviso to Section 34 of the Act. Consequently, the first plaintiff is disentitled to claim relief of declaration in view of the proviso to Section 34 of the Act. Hence, the suit is not maintainable, accordingly the point is held against the plaintiffs and in favour of the defendants.

47. In view of finding on point Nos. 1 to 3, I find no ground warranting interference of this Court in the judgment and decree passed by the trial Court in O.S.No.234 of 1981 and the appeal is devoid of merits and deserves to be dismissed.

48. Accordingly, the Appeal is dismissed confirming the judgment and decree passed in O.S.No.234 of 1981, dated 19.09.1991 on the file of the Subordinate Judge Court, Ongole, but without costs.

49. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 13.08.2015
lvd

[1] AIR 2014 SC 937
[2] 2012 (8) SCC 148
[3] AIR 1977 SC 747
[4] AIR 1965 SC 1942
[5] AIR 1966 SC 1089
[6] AIR 1969 SC 78
[7] AIR 1967 436