HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.3240 of 2005

Date: 01.05.2015

Between:

V.Krishna Murthy s/o.Ramachandraiah (died),

per L.R. Sri K.V.Narsimhan s/o.late V.Krishna Murthy,

Aged about 66 years, r/o.No.75, 5th Cross, Ashok

Avenue, Periyar Nagar, Chennai, rep.by his

G.P.A.Holder A.V.Narasimha Sastry, s/o.A.Krishna

Shastrulu, r/o.House No.98, Kesavayanguta, Tirupati,

Chittoor District.

.. Petitioner

AND1

Revenue Divisional Officer, Tirupati, Chittoor

District and others.

.. Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.3240 of 2005

ORDER:

Petitioner claims that he along with V.Srinivasaiah, V.Parthasaradhy and D.Rama

Raju are the permanent tenants under the Inamdars to an extent of Ac.17.82 gts., of land situated in Sy.Nos.254/2, 254/3, 254/4, 254/5, 255/1 and 256/1, known as Tuntapallanattu lands in Vellerugunta Patteda, Patha Agraharam of Tiruchanur Village, Tirupati Rural Mandal, Chittoor District. Insofar as this writ petition is concerned, petitioner is confining his claim to Ac.3.98 cents in Sy.No.254/2 of the said village. In accordance with the provisions contained in Madras Estates (Reduction of Land) Act, 1947, Tiruchanur village was notified as an Estate. Aggrieved by the said notification, one of the inamdars instituted O.S.No.4 of 1955 in the Sub-Court, Chittoor praying to grant declaration that Tiruchanur village is an Inam Estate and, therefore, the provisions of Act, 1947 would not apply. The suit was decreed in favour of the plaintiff. The appeal filed against the judgement and decree in the suit by way of A.S.No.52 of 1957 was dismissed by this Court. Giving effect to the said judgment, declaration was issued by the State Government in the year 1963 declaring Tiruchanur village as an Inam village. Thus, Tiruchanur village is governed by the provisions of A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short, 'Act, 1956').

2. It is the further case of petitioner that the Inams Deputy Tahsildar, Chittoor, conducted enquiry under Section 3 of the Act and declared that the lands in Tiruchanur village are inam lands in an inam village. An enquiry under Section 7 was also taken up and pattas were granted to the tenants of original inamdars by orders dated 06.12.1980. Petitioner was granted joint patta. The orders of the Inams Deputy Tahsildar were notified in District Gazette dated 03.09.1984. Challenging the said orders, the District Collector filed appeal on 04.08.2004. The Revenue Divisional Officer by condoning the delay of 20 years, entertained appeal and granted stay of the Gazette publication. Aggrieved thereby, this writ petition is instituted.

3. Heard Sri. P.S.Rajasekhar counsel for the petitioner and the learned Government Pleader for respondents.

4. Learned counsel for the petitioner contended that in accordance with the provision contained in Section 7(2) of the Act, 1956 an aggrieved person can avail the remedy

of appeal to the Revenue Court i.e., Revenue Divisional Officer, within a period of 60 days from the date of such grant. In the instant case, the appeal was preferred after more than 20 years. The Act does not vest power in the appellate authority to condone the delay and therefore condoning the delay beyond period of 60 days and entertaining the appeal is *ex facie* illegal, amounts to error of jurisdiction and competence.

5. He further contended that even assuming that the Revenue Divisional Officer has power to condone the delay; no such power can be exercised without there being an application filed to condone delay. Even if the Revenue Divisional Officer has power to condone the delay, no order of condoning delay can be passed *ex parte,* without giving opportunity of hearing to the affected parties. Therefore, on this ground also the order under challenge is liable to be set aside.

6. Learned counsel further contended that no reasons are assigned to condone the delay in filing the appeal by the District Collector. There is no discussion on power to condone delay. Revenue Divisional Officer refers to a decision of this Court to pass an interim order, whereas the said decision is against the State. This shows total non-application of mind and on that ground also the proceedings are vitiated.

7. He further contended that the respondents cannot plead ignorance of the orders passed by the Inams Deputy Tahsildar. The same village, classification of lands and the same gazette was subject of several rounds of litigation. Learned counsel further contended that no specific plea is taken in the grounds of appeal on crucial issues, whereas in the counter affidavit filed in this writ petition for the first time a new plea is raised. The contents in the counter affidavit would disclose that there was non-application of mind on the part of the authority in instituting the appeal in the year 2004. The Inams Deputy Tahsildar recorded finding that land in issue is not attracting the provisions of Section 2A of the Act, 1956 and that it has been in cultivation by the farmers for a long time. The Tahsildar, Chandragiri has not availed opportunity provided by Inams Deputy Tahsildar.

8. There was non-application of mind on the part of the Revenue Divisional Officer in relying on decision of this court in R.Balasubramanyam Reddy’s case, which is

against the respondents.

9. Learned Government Pleader contended that though Section 7(2) prescribes time limit of 60 days for filing an appeal, it does not prohibit the appellate authority from condoning the delay if there is sufficient cause in not filing appeal within the time. He further contended that since the Act is silent, in accordance with the provision contained in Section 29(2) of the Limitation Act, Limitation Act would apply and the appellate authority is competent to condone the delay when sufficient cause is shown. In pursuant to the directions issued by this Court in W.P.No.11457 of 1999, when old records were verified, it was noticed that the subject land is classified as 'Vellerukunta Kotha Cheruvu Poramboke' and, therefore, is governed by the provisions contained in Section 2A of the Act and no patta can be granted. Therefore, granting of patta was *ex facie* illegal and thus no rights occurred to the petitioner.

10. Learned Government Pleader further contended that the Inams Deputy Tahsildar did not follow the procedure prescribed in Section 3A of the Act. No notice was issued to the Government; no opportunity was given; and no communication of passing of orders. Thus, there was total violation of mandate of Section 3. Learned Government Pleader pointed out that under Section 3(4), right to prefer appeal is available to an aggrieved person within 60 days from the date of communication of the orders. As there was no communication of the order passed, from the date of knowledge limitation period should be computed. They have come to know such orders only in the year 2004 on verification of the records and immediate steps were taken. On verification of records, it was also noticed that fraud was played; that no such patta was granted; and that the lands are covered by the provisions of Section 2A of the Act, immediately appeal was preferred. He, therefore, contended that there was no lapse on the part of the respondents in preferring the appeal.

11. He further contended that land in issue is governed by the provisions contained in Section 2A of the Act and Section 2A imposes clear embargo on the grant of pattas. Section 2A though introduced by way of amendment in the year 1976, it is applicable retrospectively and, therefore, by the time patta was granted the provision was in force. Thus, the order of Inams Deputy Tahsildar is in violation to the

mandate of the Act and is *ex facie* illegal and void. Since the order passed by the Inams Deputy Tahsildar was in exercise of power vested him under Section 3A of the Act, the appeal was preferred challenging the said order.

12. In reply, learned counsel for the petitioner submitted that orders were passed by the Inams Deputy Tahsildar after affording opportunity to the respondents and was not an *ex parte* order. It is evident from reading of the order that in spite of granting opportunity, Tahsildar has not produced the relevant records in support of their stand. The order passed by the Inams Deputy Tahsildar was published in District Gazette in the year 1984 and such publication in the gazette amounts to communication and appeal filed after 20 years was not maintainable. In the grounds of appeal, there was no pleading of fraud. Even in the counter-affidavit in the writ petition, there is no specific plea of fraud. No material is brought on record to show that fraud was committed by the petitioners and that patta was not granted in favour of the petitioner by the competent authority.

13. Shorn of details, the contention of the petitioner against the orders impugned in this writ petition is that appellate authority entertained the appeal beyond the period of limitation prescribed under Section 7(2) of the Act, 1956, whereas there is no such power vested in him to entertain appeal filed beyond the time limit prescribed. It is further contended that even without an application praying to condone delay and without issuing prior notice and opportunity to the petitioner, straightaway the delay was condoned.

14. The defence put up by the learned Government Pleader is that the order of the Inam Deputy Tahsildar was not communicated to the respondents and the limitation of 60 days as prescribed in Section 7(2) of the Act, 1956 start operating from the date of communication of the order only. The respondent authorities came to know passing of such order only in the year 2004 when the relevant records were verified in pursuant to the directions issued by this Court in a different litigation.

15. The principle of law is well settled that if the statute does not vest power in the

appellate authority to condone the delay, he cannot condone the delay and entertain the appeal. The provisions of the Limitation Act are not attracted to the Act, 1956. This Court on two occasions, referred to hereunder, concerning the same issue held that no such power is vested in the Revenue Divisional Officer to entertain the appeal filed beyond the period of 60 days.

16. The same village and classification of lands was subject of several rounds of litigation. There was litigation among various individuals and litigation between individuals and State. The very same gazette notification was subject of W.P.Nos.2661 and 7677 of 1987. The said Writ Petitions were contested by the District Collector. The same gazette publication concerning another village was also subject matter of another round of litigation, where the Revenue Divisional Officer was respondent. Thus the issue for consideration in this writ petition is no more *res integra.*

17. In **R.Balasubramanyam Reddy and others vs. The District Collector, Chittoor and others** similar issue has fallen for consideration. Concerning different extents of land in different survey numbers, the Inams Deputy Tahsildar granted ryotwari pattas. Those notifications were also published in the same gazette dated 03-09-1984. One such order was assailed before the appellate authority by the respondent authorities, which was the subject matter in above case. There also appeal was filed beyond the limitation period prescribed and identical plea was raised as raised in this case.

18. The Court noticed that after order was passed by the Inams Deputy Tahsildar under Section 3(3) of the Act, 1956, it was also communicated to the Tahsildar for the purpose of publication in the notice board. Court held that communication to the Tahsildar for publication in the notice board amounts to sufficient communication. Therefore the stand of the respondent authorities that there was no communication and therefore there was no delay in filling appeal was rejected. As the appeal was preferred 2½ years after communication of the decision this court held that the appeal was time barred. Court held that appellate authority has no power to condone the delay as no such power was conferred on the appellate authority under the Act, 1956 to condone the delay if the appeal is filed beyond the time limit and Section 5 of the Limitation Act has no application.

19. This decision was considered by the Division Bench of this Court in **Veerappa v. Revenue Divisional Officer, Chittoor and another**. Identical order was passed by the appellate authority in that case as was passed in this case. Learned single Judge directed the Revenue Divisional Officer to cause notice and to give opportunity of hearing and pass orders.

20. Aggrieved thereby writ appeal was filed. The Division Bench has upheld the view taken by the single judge in **R.Balasubramanyam Reddy** case and held that no power is vested in the Revenue Divisional Officer to entertain appeal to condone the delay after expiry of 60 days. The Division Bench also found fault with the Revenue Divisional Officer in passing straight away an order condoning the delay and entertaining the appeal, though filed after long lapse of time. In the said case, the delay was 2555 days. Court in fact ordered to take appropriate action against such person. Having regard to the fact that such appeal was not maintainable, Division Bench held that allowing the petitioner to subject to the jurisdiction of the said authority for consideration on the issue of maintainability of the appeal and on the question of affording opportunity of hearing regarding the delay in filing the appeal would not arise.

21. Since specific plea was raised in this case also on the question of communication of the order of the Inams Deputy Tahdildar, which was subject matter of appeal by the respondents, this Court called for records of W.A.No.857 of 2001 and W.P.Nos.2661 and 7677 of 1987. The gazette filed in that case was verified. It is seen that the relevant survey numbers in those cases and the survey numbers in this case were notified in the same gazette. Therefore, even assuming that the order of Inams Deputy Tahsildar in this case was not communicated to the Tahsildar, the fact that respondent authorities preferred Appeals to the Revenue Divisional Officer challenging the decisions of the Inams Deputy Tahsildar passed simultaneously, which were also notified in the same gazette on 03.09.1984, belies their claim that they were not aware of such order till the year 2004. Such appeal was filed in the year 1987, insofar as **R.Balasubramanyam Reddy** case is concerned and by the time appeal was filed in the case of **Veerappa**, the delay was 2555 days. In the instant case, the delay is 20 years.

22. There was no specific averment in the grounds of appeal before the appellate authority regarding non-communication of the decision of Inams Deputy Tahsildar. The only plea raised was that no opportunity of hearing was afforded to the Tahsildar, Chandragiri and they were not aware of the orders passed by the Inams Deputy Tahsildar. Further contention urged was subject land is classified as communal land and covered by Section 2-A of the Act, 1956 and, therefore, question of grant of ryotwari patta does not arise. In the counter-affidavit, for the first time plea of non-communication of order of Inam Deputy Tahsildar is raised.

23. Perusal of the order passed by the Inams Deputy Tahsildar, dated 06.12.1980 would show that notices were issued to Tahsildar, Chandragiri to file his objections if any and also published the notices on 20.11.1980 by beat of tom-tom in the village and the notices were affixed on the notice boards of Taluk office, Grampanchayat Office and Grama Chavadi. This could not have happened without the knowledge of the concerned Tahsildar. The order also goes to show that Senior Clerk of the Taluk Office, Chandragiri attended the enquiry whenever held and on 24.11.1980 he has filed some of the revenue accounts of Tiruchanoor. Inams Deputy Tahsildar also noted that the Tahsildar, Chandragiri has not filed counter or statement and in spite of giving sufficient opportunity, the Tahsildar Office has not produced the relevant material.

24. The Inams Deputy Tahsildar has also gone into the nature of the land. He held that land in question was cultivable inam lands and not required for any communal needs of the village and the Government interest are not involved. He was informed by the senior clerk that pre-abolition village accounts are not in Taluk office. On verification of the relevant records, the Inams Deputy Tahsildar held that subject lands are not communal lands. Thus, it is not a case where the respondent authorities were not aware of the proceedings conducted by the Inams Deputy Tahsildar leading to issuance of ryotwari patta in favour of the petitioner.

25. The total non-application of mind is palpable in the decision impugned in this Writ Petition. The Revenue Divisional Officer refers to decision of this court in **R**

Balasubramanya Reddy case. In the said judgment, the gazette publications were upheld and the contention that lands are attracting the provisions of Section 2A of the Act and they are classified as communal lands, thus question of granting patta would not arise were rejected. The appeal filedd by respondent authorities was held beyond the period of limitation. Thus, the said decision does not come to the aid of the respondents.

26. The Revenue Divisional Officer erred in entertaining the appeal, when such an appeal was filed after 20 years from the day of the order without affording opportunity of hearing to the petitioner.

27. For all the aforesaid reasons, the decision of Revenue Divisional Officer dated 05.08.2004 impugned in the writ petition is *ex facie* illegal, is in excess of jurisdiction and is liable to be set aside and it is accordingly set side.

28. Accordingly the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 01.05.2015

kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.3240 of 2005

Date: 01.05.2015

kkm