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

W.P.No.19551 of 2008

ORDER:

This is a petition filed under Article 226 of the Constitution of India, seeking a Writ of Prohibition, to declare the action of the 3rd respondent/ Commissioner of Appeals, office of the Chief Commissioner of Land Administration in entertaining and adjudicating the Revision bearing Ref.No.V3/253/1989 arising out of the Endorsement 15.9.1986 passed in L.Dis.No.C.3118-86 by the 4th respondent/Sub-Collector under Act 37/1956, Madanapalle Division, Madanapalle, Chittoor District as illegal and without jurisdiction and for a consequential direction to the 3rd respondent not to adjudicate the same.

2. Heard Sri P.Gangaiah Naidu, learned Senior Counsel representing Sri N.Bharath Babu, learned Counsel for the petitioner on record, learned Government Pleader appearing for Respondents 1 to 5 and Sri V.V.Subrahmanyam, learned counsel for Respondents 6 and 7, apart from perusing the material available on record.

3. According to the petitioner, Chowdepalli village of Chowdepalli Mandal, Chittoor District was an Inam village and was a part of Punganur Zamindari and was notified as such under the provisions of the A.P.(Andhra Area) Inams Abolition and Conversion into Ryotwari Act, 1956 (herein after called 'the Act'). On 15.6.960 the Inams Deputy Tahsildar granted Ryotwari Patta in favour of the petitioner's father under section 7(I) of the Act and the father of the petitioner passed away on 31.12.1985 and after his death an extent of Ac.2.07 cents in Pamaish No.9 fell to the share of the petitioner by virtue of partition list and old pamaish No.9 and 254 have been given new S.Nos.151/5 and 46/4 after revision survey. The respondents 6 and 7 filed an application dated 18.7.1984 before the 4th respondent-Sub-Collector, who returned the same vide Endorsement L.Dis.No.C.3118-86 dated 15.9.1986. As

against the same, the respondents 6 and 7 filed a revision under section 14-A of the Act before the 3rd respondent, who numbered the same as Ref.No.V3/253/1989 and issued notices to the petitioner.

4. Calling in question the very entertainment and adjudication of the said revision as illegal and without jurisdiction, the present writ petition has been instituted before this court, seeking a Writ of Prohibition. This Court, while issuing rule nisi on 9.9.2008, granted interim stay. Responding to the rule nisi issued by this Court, counter affidavits have been filed by the respondents, denying the averments in the writ affidavit and in the direction of justifying the impugned action.

5. <u>Submissions/contentions of the learned senior counsel appearing for the petitioner.</u>

(1) Subject land was given to Sri K.M.Ramaiah, father of the petitioner, by way of a patta on 11.02.1947 by Zamindar of Punganur and from that date he was in possession of the property and after the advent of Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'the Inams Act), the Inams Tahsildar, Punganur issued notice in the Form-V on 18.12.1959, fixing the date of enquiry as 28.01.1960 and in response to the same petitioner's father and the respondents 6 and 7 participated in the said enquiry and on 15.6.1960 patta was granted in favour of the father of the petitioner viz., Sri K.M.Ramaiah.

(2) As per Section 7 (2) of the Inams Act, the limitation for filing appeal is 60 days, but in the instant case, respondents 6 and 7 filed appeal on 16.7.1984 i.e., after 2½ decades without assigning sufficient cause and reasons for the said delay.

(3) No revision lies against the endorsement dated 15.09.1986 given by the Revenue Divisional Officer.

(4) No reason for filing a revision on 27.03.1989 i.e., after 2 ½ years

against the endorsement dated 15.09.1986 and if the revisional authority is allowed to proceed with and in the event of the matter being remanded by the appellate authority, the same would tantamount to condoning abnormal delay of 48 years in filing the appeal under Section 7 (2) of the Inams Act.

(5) The revisional authority ought not to have entertained the revision as the impugned endorsement dated 15.09.1986 is not a decision as stipulated under Section 7 (3) of the Inams Act.

(6) The respondents 6 and 7 ought to have availed Section 14 of the Inams Act, by instituting a suit as it is the case of the respondents 6 and 7 that by playing fraud, the petitioner's father got the subject land assigned in his favour.

(7) The condone delay application filed before the appellate authority was not supported by any affidavit of the party, as such, the said appeal was an incompetent appeal.

(8) The alleged cancellation deed signed 9.9.1950 is of no significance as Ponganur Estate was notified on 7.9.1950 itself. In support of his submissions and contentions, learned counsel places reliance on ***SUBHASH KUMAR LATA v. R.C.CHHIBA AND ANOTHER***[1]***, SHIV CHANDER KAPOOR v. AMAR BOSE***[2] and ***S.B.NORONAH v. PREM KUMARI KHANNA***[3]**.**

6. Submissions/contentions of Sri P.Rajasekhar, learned counsel for the respondents 6 and 7.

(1) The present writ petition is not maintainable since the authority under Section 14-A of the Inams Act i.e., the Commissioner of Appeals has jurisdiction to enquire into the genuineness of the patta in question.

(2) The very basis for the claim of the petitioner is the patta given by the Jamindar of Punganur Estate on 11.02.1947 and the said patta was

cancelled by virtue of cancellation deed dated 07.09.1950 executed by the Raja of Punganur, as such, the petitioner is not entitled for any relief from this Court basing on the said patta.

(3) In view of Nowkari agreement dated 04.06.1932 and the statement prepared by the Punganur Jamindar on 06.02.1940 under Section 38 of the Madras Hindu Religious and Endowment Board Act (Madras Act 11 of 1927) and Madras Act XX of 1869 and a trust deed dated 30.09.1943 executed by Raja of Punganur, the petitioner herein is not entitled for any relief from this Court.

(4) Since the father of the petitioner late Sri K.M.Ramaiah was the Chairperson of the subject temples, he got assignment made in his favour.

(5) Writ in the nature of Writ of Prohibition is not maintainable in the absence of any jurisdictional error. Learned counsel for the respondents 6 and 7 places reliance on ***THE SUB-DIVISIONAL OFFICER (COMPENSTION OFFICER) MIRZAPUR AND OTHERS v. RAJA SRINIVAS PRASAD SINGH***[4], ***UNION OF INDIA AND OTHERS v. UPENDRA SINGH***[5], ***S.GOVINDA MENON v. UNION OF INDIA AND ANOTHER***[6] and ***TIRUMALA TIRUPATI DEVASTHANAMS AND ANOTHER v. THALLAPPAKA ANANTHA CHARYULU AND OTHERS***[7].

(6) Since the appellate authority abdicated its duty under Section 7 of the Inams Act and since it failed to exercise its jurisdiction, the respondents 6 and 7 approached the revisional authority, as such, there is no illegality nor any procedural impropriety in entertaining the revision by the revisional authority.

7. As per the provisions of Section 7(2) of the Inams Act against the orders passed by the Inams Tahsildar, appeal lies to the Revenue Court under Section 7 (2) of the Act and the decision thereon shall be final

under Section 7(3) of the Act and as per Section 14-A of the Act, which the legislature inserted by virtue of Amendment Act, the revisional power is given to the Commissioner (Appeals)/third respondent herein.

8. In the instant case, admittedly, after a lapse of 2½ decades the respondents 6 and 7 herein filed appeal before the Revenue Court under Section 7 (2) of the Inams Act and the material available on record also shows that an application was also filed by the respondents 6 and 7 under Section 5 of the Limitation Act to condone the delay in filing the appeal. A copy of the said application filed under Section 5 of the Limitation Act is also placed on record by the learned counsel for the respondents 6 and 7, which clearly shows that the said application was filed in the form of verified petition by the learned counsel, appearing for the respondents 6 and 7 herein before the appellate authority. It is also to be noted that the Revenue Divisional Officer/Sub-Collector by way of an endorsement bearing L.Dis.C.3118-86 dated 15.09.1986 advised the respondents to address the Endowments Department and to seek redressal in the civil Court. The said endorsement, as rightly submitted by the learned counsel for the petitioner, is not a decision on merits as provided under Section 7 (3) of the Inams Act. Being a quasi judicial authority under the provisions of the legislation, the appellate authority is supposed to render its decision after going through the material available on record and after giving reasons and after giving notice and opportunity to all the stake holders.

9. In the instant case, even though the respondents 6 and 7 herein filed appeal under the provisions of Section 7 (2) of the Inams Act, the Sub-Collector merely gave an endorsement dated 15.09.1986 without adjudicating various issues raised in the said appeal. It is to be noted that the said appeal was filed by the respondents 6 and 7 herein after a lapse of nearly 2 ½ decades. It is the case of the respondents 6 and 7 herein that seeking condonation of delay in filing the said appeal, a petition was filed before the appellate authority. It is to be noted at this

juncture that it is the categorical contention of the counsel for the petitioner that the appellate authority under the provisions of the Act has no jurisdiction nor power to condone the delay under Section 5 of the Limitation Act and there is no provision for such condonation conferred on the appellate authority to condone the delay.

10. On the other hand, it is the case of the respondents 6 and 7 herein that the appellate authority in the instant case is a Revenue Court, as such, the provisions of Limitation Act including Section 5 of the Act are applicable to the proceedings before the appellate authority. In the instant case, the appellate authority did not go into all these aspects and merely gave an endorsement, suggesting the respondents 6 and 7 herein to approach the civil Court by addressing the Endowments Department. In the definite opinion of this Court, such action, on the part of the appellate authority is not in accordance with law. This Court also finds sufficient force in the arguments of the learned counsel for the petitioner that as against such endorsement, as the same being not a decision under Section 7 (3) of the Act, no revision lies to the revisional authority. According to respondents 6 and 7, their appeal is pending consideration before the 4th respondent- Revenue Court i.e. Sub-Collector. When that being so, pending appeal before the appellate authority, the revisional authority cannot go into the subject matter. Therefore, in order to put a quietus to the entire issue, this Court deems it appropriate to direct the appellate authority to consider the appeal filed by the respondents 6 and 7 herein and pass appropriate orders, in accordance with law. It is also made clear that it is obligatory on the part of the appellate authority to consider the aspect of delay and also maintainability of the delay application under Section 5 of the Limitation Act in view of submissions made by the counsel for the petitioner as well as the respondents 6 and 7 herein with regard to maintainability. It is also made clear that it shall be open for the respondents 6 and 7 herein to file an affidavit of the concerned persons, explaining the delay in filing the appeal.

11. For the aforesaid reasons, the writ petition is disposed of directing the fourth respondent herein/Sub-Collector to first take up the delay application filed by the respondents 6 and 7 herein filed for condonation of delay in filing the appeal against the grant of patta in favour of the father of the petitioner herein and pass appropriate orders on the said application. It is made clear that the appellate authority shall not go into the merits of the matter without deciding the condone delay application. Respondents 6 and 7 are given liberty to file affidavits, explaining the delay in filing the said appeal. The appellate authority shall issue notice to the petitioner herein before consideration of application for condonation of delay and the petitioner herein is also entitled to file counter affidavit, opposing the said condonation delay application. It is also made clear that if the appellate authority is satisfied with the reasons for condoning the delay, then only the appellate authority can go into the merits of the appeal. It is further declared that in view of the above direction given to the appellate authority, the revisional authority i.e., the third respondent herein shall not proceed with the revision. As a sequel, the miscellaneous petitions, if any, shall stand closed. No order as to costs.

A.V.SESHA SAI, J

Date: 20.1.2015
DA/GRK

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

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WRIT PETITION No. 19551 OF 2008

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Between:

Kadiyala Mohan Ram

… Petitioner

and

State of Andhra Pradesh represented by Principal
Secretary, Revenue Department,
Secretariat, Hyderabad & others.

… Respondents

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[1] (1988) 4 SCC 709

[2] AIR 1990 SC 325(1)

[3] AIR 1980 SC 193 (1)

[4] AIR 1966 SC 1164

[5] (1994) 3 SCC 357

[6] AIR 1967 SC 1274

[7] AIR 2003 SC 3290