

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.23594 OF 2011

ORDER:

This Writ Petition is filed seeking to declare the order passed by respondent No.2 vide proceedings No.E3/1652/2011, dated 09.08.2011, cancelling the assignment made in favour of the petitioner in respect of the land admeasuring Ac.5-00 covered by Survey No.134 situated at Battisavargaon Village, Adilabad Mandal and District, as illegal and arbitrary.

2. The case of the petitioner is that he belongs to Battisavargaon Village and has completed his HSC in the year 1963. As he was not having any source of income, he started cultivating the subject land in the year 1967, as it was vacant and waste land. As the subject land was not fit for cultivation, he has developed the same by spending huge amount and made it fertile, and requested the revenue officials to grant patta in his favour in respect of the same. Pursuant to the same, the revenue officials granted patta in his favour in the year 1970, by virtue of which, he became absolute owner and possessor of the subject land and his name was also incorporated in the pattadar pass book. After assignment, he further developed the land by spending huge amounts. It is his case that at the time of making application or on the date

of taking possession of the subject land, he was not having any source of income and subsequently, he secured the job, drawing salary of Rs.50/- per month. As the value of the land enhanced abnormally, Villagers bore grudge against him and filed false complaint against him stating that he has encroached upon the subject land, which is a Government land. Based on the said complaint, respondent No.2 issued show-cause notice, dated 08.07.2011, under Section 166-B of Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli (for short, 'the Act'), to which, he has submitted his explanation on 25.07.2011 and respondent No.2, instead of conducting enquiry, without following the procedure, by impugned order, dated 09.08.2011, cancelled the assignment made in his favour. Aggrieved by the same, he filed the present Writ Petition.

3. Counter affidavit is filed stating that the petitioner is having lands to an extent of Ac.1-25 guntas and Ac.1-10 guntas in Survey Nos.35/3/2 and 35/3/3 situated at Battisavargaon Village. It is also stated that the petitioner was appointed as Secondary Grade Teacher in the year 1970 in SB High School, Adilabad and though he was well aware of the assignment Rules, he has filed an application for assignment of the subject land by misrepresenting the revenue officials and got assignment patta in the year 1970. It is also stated that as per the

assignment Rules, the petitioner is not eligible for assignment of Government land and hence, the same was cancelled by the impugned order. It is also stated that the subject land was taken back by conducting panchanama on 12.08.2011 and hence, sought for dismissal of the Writ Petition.

4. Learned counsel for the petitioner submits that at the time of making application for grant of patta, petitioner was not employed and subsequently, he was appointed as Secondary Grade Teacher, that too drawing a meagre salary of Rs.50/- per month. He also submits that basing on the possession and application of the petitioner, he was granted patta in the year 1970 and on 08.07.2011, the show-cause notice was issued under Section 166-B of the Act, which cannot be invoked after lapse of 41 years. He also submits that the patta was granted basing on the possession of the petitioner in the year 1967, which is prior to appointment of the petitioner as Teacher. He also submits that in the show-cause notice, except stating that the assignment is irregular, nothing is elicited that the petitioner has played fraud and a person drawing salary of Rs.50/- per month cannot be said to be ineligible for grant of patta. He also submits that basing on the report of respondent No.3, without conducting any enquiry, the impugned order was passed, which is in violation of the

principles of natural justice. The learned counsel, in support of his submissions, has relied on the decisions of this Court in **S. Santhanam v. State of A.P. and others**^[1], **Golla Narasappa @ Bhutappa v. Joint Collector, Ananthapur, Ananthapur District and others**^[2] and **G. Shymala Raju and others v. Commissioner, Appeals, Office of the Chief Commissioner of Labour Administration, Hyderabad and others**^[3].

5. On the other hand, learned Government Pleader for Assignment submits that as the petitioner is a Teacher by the time patta was granted in his favour and as the patta was obtained by misleading the revenue authorities, the impugned show-cause notice was issued. He also submits that as the patta was obtained by playing fraud, there cannot be any limitation and thereby, it vitiates the proceedings as void *ab initio*. The learned counsel, in support of his contentions, has placed reliance on the decisions of the Honourable Apex Court in **Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and others**^[4], **Madhukar Sadbha Shivarkar v. State of Maharashtra and others**^[5] and **Badami (deceased) by her LR v. Bhali**^[6].

6. The case of the petitioner is that he was in possession of the subject land since 1967, by which time he was unemployed, and based on the application made by him along with others for grant of patta, he was granted patta in the year 1970. Though it is stated in the counter affidavit that the petitioner misrepresented the facts and obtained patta, when the file is produced before this Court, no such application made by the petitioner is found. Even in the show-cause notice, except stating that the patta granted in favour of the petitioner is irregular, no fraud is alleged and it also does not show that any misrepresentation is made by the petitioner, and it is only stated in the counter. When petitioner's name was incorporated in the revenue records and when his assertion is that he has developed the subject land by cultivating the same although, in the absence of application of the petitioner, it cannot be said that the petitioner misrepresented the revenue officials. As the petitioner is entitled to grant of patta basing on his possession along with others, pursuant to his application, he was granted patta. Section 166-B of the Act reads as under:

“166-B. Revision:-- (1) Subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 F, the Government or any Revenue Officer not lower in rank to a Collector the Settlement Commissioner of Land Records may call for

the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may make suitable order in that behalf;

Provided that no order or decision affecting the rights of the ryots shall be modified or annulled unless the concerned parties are summoned and heard.

(2) Every Revenue officer lower in rank to a Collector or Settlement Commissioner may call for the records of a case or proceedings for a subordinate department and satisfy himself that order or decision passed or the proceeding taken is regular, legal and proper and if, in his opinion, any order or decision or, proceedings should be modified or annulled, he shall put up the file of the case with his opinion to the Collector or Settlement Commissioner as the case may be. Thereupon the Collector or Settlement Commissioner may pass suitable order under the provisions of sub-section (1).

(3) The original order or decision or an authentic copy of the original order or decision sought to be revised shall be filed along with every application for revision.”

Though no limitation is pleaded in the aforesaid provision, this Court in **S. Santhanam’s case (supra 1)** held that the respondents therein could not have exercised the power of revision under Section 166-B of the Act after lapse of 30 years, when the original assignment was made in the year 1953. In the present case also, assignment was made in the year 1970 and the show-cause notice was issued in

the year 2011 i.e., after lapse of 41 years.

7. In **G.Shymala Rajus's case (supra 3)**, this Court held thus:

“6. Let me examine this issue from another perspective. If a person owns wet land up to 2.50 acres and does not have the income from other sources, he is eligible for assignment. But, if a person, who owns no land at all and one of his family members is employed as a last grade employee as in this case, it would be a travesty of justice to render him ineligible for grant of assignment by branding him as a person who is not poor, because in the case of a person, who owns up to 2.50 acres of wet land, his income would ordinarily be not less than the annual income of a lowly paid last grade employee and at any rate, in the year 1979, when the application for assignment was made in the instant case, a person, who was owning wet land of 2.50 acres would not have been earning less than Rs.5,000/- to Rs.6,000/- per annum even on a conservative estimate. Therefore, it would be wholly unreasonable to treat the family of the petitioners as ineligible for grant of assignment either in the year 1979, when the application was made, or in the year 1985, when the assignment was granted, merely on the ground that the husband of the assignee was working as an attender.”

8. In **Golla Narasappa's case (supra 2)**, this Court held thus:

“12. Though on the basis of the report of Mandal Revenue Inspector, respondent No.3 arrived at the finding that the petitioner's

family own Ac.23.69 cents of the land, the petitioner had consistently questioned the said finding before respondent Nos.2 and 1 in the appeal and revision respectively. Unfortunately, neither of the two respondents have gone through the record and given specific findings in this regard. It is the obligation of respondent Nos.1 and 2, who act as quasi-judicial bodies, to adjudicate the dispute on the basis of the facts available on record and not on surmises or the reports submitted by the subordinate officers. In this view of the matter, I am of the view that respondent No.1 has not decided the revision in the manner in which he ought to have decided.”

9. In the present case, merely relying on the report of respondent No.3, the impugned proceedings were issued by exercising the power under Section 166-B of the Act after a long lapse of 41 years and hence, there is no justification in issuing such proceedings. No doubt, when fraud is played, the proceedings emanated from the same are void *ab initio*, but in the present case, no fraud is alleged and only in the counter it is stated that the petitioner misrepresented the revenue authorities and obtained patta. Though the petitioner asserted that he made an application before he got employment, no such application is found in the records produced before this Court and filing of such application is not denied. The judgments relied on by the learned Government Pleader for Assignment have no application to the present case. It

is also pleaded that a person basing on his possession is entitled to patta, even if he is subsequently employed and it cannot be a ground for cancellation of patta. Further, in this case, what is the criterion for grant of patta in the year 1970 is also not placed before this Court. In view of the above facts and circumstances and law laid down in the above referred judgments, I do not see any justification for invoking the *suo motu* power under Section 166-B of the Act after a period of 41 years.

10. Hence, the Writ Petition is allowed and the impugned order, dated 09.08.2011, is set aside. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

A. RAJASHEKER

REDDY, J

March 15, 2016
MD

[\[1\]](#) 2006 (2) ALD 566 (DB)

[\[2\]](#) 2008 (6) ALD 194

[\[3\]](#) 2008 (6) ALD 577

[\[4\]](#) (2003) 8 SCC 311

[\[5\]](#) (2015) 6 SCC 557

[\[6\]](#) (2012) 11 SCC 574