

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 8895 of 2008

ORDER:

1) The present writ petition came to be filed challenging the order dated 15.04.2008, passed in Case No.B2/ 05/ 1997, wherein and whereunder the first respondent allowed the appeal filed by the fourth respondent and consequently *set aside* the orders passed by the Sub-Collector, Gadwal in file No.404/ 75/ 4072/ 1975 dated 10.05.1978.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner herein claims to be owner and possessor of land admeasuring Ac.1.21 gts., in Sy.No.1176 and Ac.4.00 in Sy.No.1188 of Wanaparthi Village and Mandal, Mahabubnagar District. It is said that the said lands are inam lands which are recorded under the provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short "Inams Act"). On an application made by the petitioner seeking issuance of Occupancy Right Certificate, the second respondent, while holding that the petitioner is in possession of the property as on the date of the cut off date, granted Occupancy Rights Certificate in Form No.III on 10.05.1978. Since then the petitioner claims to be in possession of the property. While things stood thus the fourth respondent-Andhra Pradesh Bhoodan Yagna Board, issued a letter to the first respondent, to treat the said letter as

an appeal, stating that the land admeasuring Ac.1.21 gts., in Sy.No.1176 of Wanaparthi Town, originally belonged to one Ayyaluri Narasimha Chary, who donated the same in favour of fourth respondent and hence seeks re-delivery of the said land to the fourth respondent by canceling the Occupancy Rights Certificate granted in favour of the petitioner. This appeal was moved in the year 1997 ie. nearly 19 years after the grant of Occupancy Rights Certificate. Relying upon Rule 8 of the Andhra Pradesh Bhoodan and Gramdan Rules, 1965 (for short "the Rules), the first respondent, it is urged that without looking into the records, held that Ayyaluri Narasimha Chary donated the land in favour of fourth respondent transferring all the rights, title, interest of the donor over such land to the Board and as such pleaded that the alienation made by said pattadar in favour of the fourth respondent is null and void. Challenging the same, the present writ petition came to be filed.

3) By an order dated 23.04.2008, this Court while admitting the writ petition passed the following interim order:

"The 1st respondent-Joint Collector allowed the appeal filed by the fourth respondent-Bhoodan Yagna Board stating that if the petitioner herein is in a position to establish her case of forgery, she can approach the competent civil Court to prove her case.

Learned counsel for the petitioner has produced before this Court Form No.III certificate issued by the Assistant Collector, Gadwal, indicating the

possession of the petitioner over the subject matter of land by virtue of a certificate issued under Section 10 of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, in favour of the petitioner and the pahanies, which *prima facie* establish the possession of the petitioner.

In the circumstances, there shall be stay of all further proceedings, pursuant to the impugned order.”

4) A counter came to be filed by respondent No.1 stating that the land in Sy.No.1176 is classified as Inam Land. One Ayyaluri Venkata Chary was Inamdar and A.Narasimha Charyulu was the occupant, as per Khasra Pahani 1954-55. Inamdar is said to have donated the said land to fourth respondent on 11.02.1956. The Tahsildar, Wanaparthi, recorded the particulars in his office records about the relinquishment of the pattadar on 16.08.1964 and the said land was in the custody of the fourth respondent-Board. Since the same was not brought to the notice of Inam Tribunal, at the time of enquiry, and taking advantage of the same, the petitioner obtained Occupancy Rights Certificate on the ground that she purchased the said property and she is in physical possession. It is also stated that once the land was donated, the question of further transfer of alienation is invalid in the eye of law. The claim of the petitioner is that she purchased the land from the original inamdar and she is in possession of the same as on crucial date. But the said Inamdar donated the land to the fourth respondent, as such, he has no locus standi to alienate or transfer the said land. It is also stated that the petitioner

obtained Occupancy Rights Certificate by suppressing the fact of donation of the land to the fourth respondent. It is also stated that there is no procedural irregularity in any aspect and only after following due procedure, the impugned order came to be passed.

5) A counter came to be filed by respondent No.4 disputing the averments made in the affidavit filed in support of the writ petition. It is stated that the donor executed a relinquishment. Rajinama (Form-I) as per Rule 3 of the Rules. It is said that by virtue of Rule 3 of the Rules, no person shall be entitled to withdraw the Rajinama submitted by the donor to Tahsildar and the same is irrevocable. It is also stated that subsequent to the donation made in favour of the Board, the Tahsildar, Wanaparthi, notified the said lands in the list of Tahsil in the year 1964, indicating that the subject lands donated in favour of the Board. It is said that Rule 8 of the Rules states that on acceptance of Rajinama/ Relinquishment deed, the lands vests with the Government absolutely. By virtue of the Inams Act and as per the proviso to Section 35 of the Inams Act, all lands donated under the "Sri Acharya Vinobha Bave Sarvodaya Bhooyagna, Hyderabad Land Revenue Special Rules, 1951" stood vested in the Government before the commencement of the Act and after commencement of the Act, they deemed to be vested in the Board. It is said that since A.P.Bhoodan and Gramdan Act, 1965 came into force with effect from 10.05.1965, all the lands donated to the Board prior

to the said Act automatically stands with the Board and the same were to be recorded as Khariz Khata Boodan.

6) Reply affidavits came to be filed explaining the pleas taken in the counter.

7) Raising several issues, learned counsel for the respondents submits that the petitioner has no right or authority to claim right over the subject land.

8) The first ground urged by the learned counsel for the petitioner is that the first respondent could not have entertained an appeal under Section 24 of the Inams Act, 19 years after the date of issuing the Occupancy Rights Certificate. The second ground urged by the learned counsel for the petitioner is that since the alleged donation was in the year 1952, the authorities erred in accepting the same without following the procedure.

9) A perusal of the impugned proceedings would show that the appeal came to be filed by the Chairman of the fourth respondent under Section 24 (1) of the Inams Act in the year 1998, aggrieved by the Occupancy Rights Certificate granted by the Sub-Collector, Gadwal vide proceedings No.404/ 75/ 4072/ 1975, dated 10.05.1978, in respect of land admeasuring Ac.1.21 gts., in Sy.No.1176 of Wanaparthi Town.

10) Before proceeding further, it would be useful to extract Section 24 of the Inams Act, which reads as under:

“Section 24: Appeals from orders under Section 10 to prescribed authority :

1. Any person aggrieved by a decision of the Collector under Section 10 may, within thirty days from the date of decision, or such further time as the prescribed authority may for sufficient cause allow, appeal to the prescribed authority and its decision shall be final.
2. If any question arises whether any building or land falls within the scope of Section 9 the same shall be referred to the prescribed authority whose decision shall be final.”

11) A reading of Section 24 of the Inams Act would disclose that an appeal has to be filed within a period of 30 days from the date of order or such further time as the prescribed authority may for cause to allow. Therefore the period of 30 days time prescribed under Section 24 of the Act can be enlarged, at the discretion of the appellate authority. Thus, it is seen that, discretion is inherent in the appellate authority to extend the period of limitation but not excusing the delay in filing the appeal. Therefore, while entertaining an appeal after the statutory period, the authority should indicate in the order, some valid reasons as to why he is entertaining the appeal after the statutory period. Though the learned counsel for the respondent would submit that an application under Section 5 of the Limitation Act should have been filed along with the appeal, but since the section itself takes care of the situation, a separate application under Section 5 of the Act may not be necessary. But definitely,

the authority should give reasons as to why he is entertaining the appeal which is filed after the prescribed period.

12) Admittedly, the counsels appearing for all the respondents agree that the order is silent on the said aspect. The said issue definitely goes to the root of the matter. Though the learned counsel for the respondents relied upon the judgment of this Court in *A.Balaiah and others v. The District Collector, Hyderabad District and others*¹ but the situation in the said case was totally different. It was a case where the Court was considering filing of a petition under Section 5 of Limitation Act vis-à-vis Section 24 of the Inams Abolition Act.

13) It is true that the issue also involves complicated questions of fact and that the authority was right in deciding the same on merits, but when the appeal is filed with a delay of 19 years and no reason or explanation is forthcoming, either in the appeal filed or in the order passed, this Court is of the view that the same warrants interference.

14) Accordingly, the writ petition is allowed, the order under challenge is set aside and the matter is remanded back to the Joint Collector, with a direction to deal with the aspect of delay and if he is of the opinion that it is a case to condone the delay give reasons thereof and decide the case on merits after hearing all the concerned, in accordance with law, at the earliest.

¹ 1983 (1) ALT (NRC) 7 (D.B.)

15) There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

08.08.2017
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