

IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADERSH

WRIT APPEAL No.394 of 2009

Between:

Lanka Mohan and 2 others

.....Petitioners

And:

The State of Telangana, represented by its Chief
Commissioner of Land Administration, Nampally
Road, Hyderabad and 2 others

..... Respondents

JUDGMENT PRONOUNCED ON : 23-03-2017

HON'BLE SRI JUSTICE : V. RAMASUBRAMANIAN

AND

HON'BLE Ms. JUSTICE : J. UMA DEVI

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? : Yes/No
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals? : Yes/No
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? : Yes/No

***THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

+Writ Appeal No.394 of 2009

% 23-03-2017

Lanka Mohan and 2 others

.... Appellants

AND

The State of Telangana, represented by its
Chief Commissioner of Land Administration,
Nampally Road, Hyderabad and 2 others

.... Respondents

! Counsel for petitioner: Mr. Y.V. Raviprasad,

^ Counsel for respondent: Mr. K. Raghuveera Reddy, Govt. Pleader
For Assignment

< Gist:

> Head Note:

? Cases referred:

1) 2015 (3) ALD SC

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Reserved on: 01-03-2017 & Delivered on: 23-03-2017

Coram:

**The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI**

Writ Appeal No.394 of 2009

Between:

- 1) Lanka Mohan, S/o Lanka Narsimhlu,
R/o Khanapur, Harijanwada, Adilabad.
- 2) Lanka Rajaram, S/o Lanka Narsimhulu
R/o Khanapur, Harijanwada, Adilabad.
- 3) Lanka Ashanna, S/o Lanka Rajamallu,
R/o Khanapur, Harijanwada, Adilabad.

... Appellants

Vs.

- 1) The State of Telangana, represented by its
Chief Commissioner of Land Administration,
Nampally Road, Hyderabad
- 2) The Joint Collector, Adilabad District, Adilabad
- 3) The State of Telangana, represented by its
Principal Secretary Revenue (Assignment)
Secretariat, Hyderabad.

(R-3 is impleaded as per court order dated 29-08-2016
In WAMP.No.1452 of 2016)

... Respondents

For Petitioner : Mr. Y.R. Raviprasad,
Senior Counsel

For Respondents : Mr. K. Raghuveera Reddy, G.P.
for Assignment (Telangana)

Mr. D. Prakash Reddy, learned
Senior counsel appearing for
the proposed respondents.

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE MS. JUSTICE J. UMADEVI**

Writ Appeal No.394 of 2009

ORDER: *(per V. Ramasubramanian, J.)*

This appeal arises out of an order passed by the learned single Judge dismissing a writ petition filed by the appellants herein, questioning the correctness of the orders cancelling the Pattas issued to them way back in the year 1961.

2. We have heard Mr. Y.V. Ravi Prasad, learned senior counsel appearing for the appellants and the learned Government Pleader for Assignment for the State of Telangana appearing for the respondents 1 to 3 herein.

3. The case on hand has a chequered history, without bringing on record which, the questions raised in the appeal cannot be answered. Therefore, let us now have a look at the facts out of which the present proceedings arise:

- a) by the proceedings of the Tahsildar dated 12-05-1961, the agricultural lands of an extent of Ac.5.00 guntas was assigned to the forefathers of each of the appellants herein in Survey Nos.21/1, 21/36, 21/37 and 21/38 of Dasnapur village, Adilabad Mandal and District;
- b) based upon the assignment made on 12-05-1961, certificates of patta were also issued on 19-09-1961, as per the revised assignment policy under G.O.Ms.No.1406 of 1958;

- c) In the meantime, the Government issued an order in G.O.Ms.No.1122 Revenue dated 29-06-1961, revising its policy with regard to assignment of certain lands in the District Headquarters and Municipal towns. Under Para 2 (i) of the said Government Order, it was mandated that in all District Headquarters, Towns and also in Municipal towns, within a belt of 1 mile from the limits of such towns, no Government vacant land with the descriptions given in the Government Order should be disposed of by assignment, along with lease exceeding 5 years to private individuals. But paragraph 3 of the said Government Order made it clear that the restrictions indicated in paragraph 2 may be relaxed in favour of landless poor persons including harijans, for the purpose of assignments to them for house sites purposes only;
- d) After more than 10 years of the said assignment, the District Revenue Officer, Adilabad issued a show cause notice dated 05-01-1972 calling upon the appellants as well as a few others to show cause as to why the pattas granted by the Tahsildar should not be cancelled. The ground on which the pattas were sought to be cancelled was that as per G.O.Ms.No.1122, dated 29-06-1961, assignment of government land within a radius of 1 mile from the limits of such towns was prohibited.
- e) Thereafter, the District Revenue Officer, describing himself as In Charge Collector passed an order on 11-06-1975 (after more than 3 years of the show cause notice), cancelling the assignment, in exercise of the powers conferred by Section 166

B (1) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli.

- f) It appears that as against the said order, the petitioners filed an appeal to the District Collector. During the pendency of the appeal, there was an attempt to dispossess the appellants, but the same was prevented by the Mandal Revenue Officer by his proceedings dated 29-09-1986.
- g) Thereafter, the appellants filed a writ petition in W.P.No.13501 of 1987 on the file of this Court. The said writ petition was disposed of by a learned single Judge by an order dated 19-01-1990, directing the District Collector to treat the representations made by the appellants as an appeal and dispose of the same within a period of 2 months. Since an interim stay of dispossession had been granted at the time of ordering notice in the writ petition, the said stay was also directed to be continued, when the writ petition was disposed of on 19-01-1990.
- h) Pursuant to the said order, the Joint Collector, Adilabad took up the representation as an appeal and rejected the same by an order dated 04-09-1991 both on the ground that the assignment was in violation of G.O.Ms.No.1122, dated 29-06-1991 and on the ground that the possession of the lands have already been taken over by the Government and entries altered in the revenue records.
- i) Aggrieved by the said order of the Collector dated 04-09-1991, the appellants filed an appeal before the Commissioner of Land Revenue. On 27-12-1991, the Commissioner of Land Revenue

granted an interim stay of operation of the order of the Joint Collector. Thereafter the Commissioner of Land Revenue allowed the appeal by an order dated 09-10-1998, setting aside the order of the Joint Collector and remanding the matter back to the Joint Collector for a fresh consideration specifically with regard to the plea of limitation.

- j) After the order of remand, the Joint Collector again passed a fresh order dated 26-12-1998, upholding the cancellation of the assignment. However, there was no whisper in the order of the Joint Collector dated 26-12-1998 about the issue of limitation.
- k) Therefore, the appellants filed a revision before the Commissioner of Land Revenue. This revision was dismissed by the Commissioner by an order dated 22-03-2000, on the short ground that pattas were cancelled after following the procedure and that the possession of the land had also been resumed in 1979 itself. In other words, the Commissioner of Land Revenue did not deal with the correctness of the cancellation of the pattas.
- l) Aggrieved by the said order of the Commissioner of Land Revenue dated 22-03-2000, the appellants filed a writ petition in W.P.No.6846 of 2000 on the file of this Court. This writ petition was finally heard and dismissed by a learned Judge, by an order dated 04-11-2008, solely on two grounds namely: i) that pattas were issued on 19-01-1961 in violation of the procedure prescribed by G.O.Ms.No.1122, dated 29-06-1961 and ii) that the possession of the land has also been resumed to the

Government. However, the learned Judge granted a small reprieve to the appellants by making an observation that since the assignment was cancelled only due to the failure of the Tahsildar to take prior permission of the Government, it was always open to the appellants to make an application for assignment and it was open to the Government to consider the same and take a decision in accordance with law.

m) But in the light of the tough stand taken by the respondents consistently for the past 40 years, the appellants have come up with the above writ appeal challenging the order of the learned Judge, contending that even if they make any application, it may not be of any use.

4. Basically the action of the Original Authority in cancelling the assignment granted in favour of the appellants is challenged by the appellants on 3 grounds namely: i) that the cancellation ordered on 11-06-1975 was by an incompetent authority; ii) that the basis for cancellation of assignment was also factually incorrect; and iii) that in any case the power under Section 166 B could not have been exercised after more than 10 years of assignment.

Contention No.1: (Incompetent authority):

5. As we have pointed out earlier, the cancellation of assignment on 11-06-1975 was ordered by the District Revenue Officer, who was acting as in-charge Collector. The cancellation was purportedly done in exercise of the power conferred by Section 166-B of the Act.

6. Section 166-B reads as follows:

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 proceedings 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.

7. A careful look at Section 166-B of the Act would show that it speaks of a power of revision. Sub-section (1) of Section 166-B speaks of one type of revision. Sub-section (2) of Section 166-B speaks of another type of revision. These two types of revisions, in brief are as follows:

- (1) Under sub-section (1), the Government or any Revenue Officer not lower in rank to a Collector or the Settlement Commissioner of Land Records, is entitled to call for the record of a case or proceedings from a subordinate department and pass suitable order, if there was any irregularity, illegality or impropriety;

(2) Under sub-section (2), every Revenue Officer lower in rank to a Collector or a Settlement Commissioner may call for the record of a case or proceedings from a subordinate department and put up the file of the case with his opinion to the Collector or Settlement Commissioner, for passing appropriate orders.

8. Therefore, it is clear that the power of revision under Section 166-B can be exercised only by (1) the Government, (2) or the Collector and (3) or the Settlement Commissioner. Under sub-section (1), these 3 authorities may exercise the power of revision by themselves. Under sub-section (2), the Collector and the Settlement Commissioner would exercise the power upon receipt of the file put up by an officer lower in rank to the Collector or Settlement Officer along with his opinion (such subordinate officer's opinion).

9. Keeping the above in mind, if we get back to the facts of the present case, it is seen that the show cause notice for the cancellation of patta was issued by the District Revenue Officer on 05-01-1972 and it was District Revenue Officer, who passed the order of cancellation dated 11-06-1975. Though this District Revenue Officer, is described in the order as "In-charge Collector", he could not have been considered as "any Revenue Officer not lower in rank to a Collector", as required by sub-section (1) of Section 166-B. A District Revenue Officer, it is needless to point out, is an officer lower in rank to a Collector. Merely because he was acting in-charge on a particular date, he may not become a Revenue Officer not lower in rank to a Collector. The emphasis under sub-

section (1) of Section 166 B is not on “the office”, but on the “officer”. If Section 166-B (1) contains a reference only to the office and not to the officer, perhaps, a person acting in-charge as Collector may invoke the power under sub-section (1). In this case, the officer who passed the order 11-07-1975 was the District Revenue Officer and in his order he exercised the power under sub-section 166-B (1), despite his incompetence to do so. Hence, the first contention of the appellants deserves to be upheld.

Contention No.2:

10. The second contention of the appellants is that the only ground on which the assignment was cancelled was that the assignment was in violation of G.O.Ms.No.1122. G.O.Ms.No.1122 was issued on 29-06-1961. The respondents have all along gone on the impression that the patta certificates granted to the appellants were dated 19-09-1961 and that therefore, the assignment ought to have satisfied the requirements of a valid assignment.

11. But on facts it appears that the assignment was actually made on 12-05-1961. The relevant extract from the revenue records produced before us show that the Tahsildar's proceedings granting assignment to the forefathers of the appellants were dated 12-05-1961. It is only after the orders of assignment were issued on 12-05-1961 that patta certificates were issued on 19-09-1961 and mutation effected in the revenue records. Therefore, the learned senior counsel for the appellants is right in contenting that the violation of G.O.Ms.No.1122 has been wrongly held against the appellants, when the assignment had been made at least one month before the

issue of the Government Order. But unfortunately, the appellants were also partly to share the burden in this regard. The appellants did not canvass this plea before the learned single Judge. But nevertheless in matters of this nature where agricultural lands have been assigned to harijans, we do not think it is proper to defeat their claims by invoking strict rules of pleadings. Therefore, the second contention, on facts has to be upheld.

Contention No.3:

12. The third contention of the appellants is that though no period of limitation is prescribed under Section 166-B for the invocation of the power of revision, the respondents are duty bound to invoke such a power, within a reasonable period of time. What is reasonable period of time may depend upon several factors.

13. As a matter of fact an identical case came up before the Supreme Court in ***Joint Collector, Ranga Reddy District v. D. Narsing Rao***¹. After adverting to the provisions of Section 166 B, the Supreme Court held in Para-11 as follows:

“No time limit is prescribed in the above Regulation for the exercise of suo motu power but the question is as to whether the suo motu power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed order reserving 477 acres of land in Survey Nos. 36 and 37 of Gopanpally village for house-sites to the government employees. In other words the Government had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24.9.1991 but no exception was taken to the entries found. Further the respondents herein filed Writ Petition No.21719 of 1997 challenging the Government order dated 24.9.1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter, the purchasers of land from respondent Nos.1 and 2 herein filed a civil suit in O.S.No.12 of 2001 on the file of Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors

¹ 2015 (3) ALD SC

of certain plots of land in survey No.36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned Notice dated 31.12.2004 the suo motu revision power under Regulation 166B referred above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.....”

14. In a separate but concurring opinion of the other Hon’ble Judge forming part of the Bench, the position in law was summarised in paragraphs 24 and 25 of the judgment as follows:

24. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

25. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed.....”

15. Therefore, the third contention of the appellants is also liable to be upheld.

16. In the light of the above, the very cancellation of assignment in the first instance by the order dated 11-06-1975 (1) was by an incompetent authority; (2) done beyond a reasonable period of time; and (3) also on the basis of a Government Order inapplicable to the case of the appellants. The appellants are Harijans to whom agricultural lands were assigned for a purpose. The same cannot be defeated after a long period of time. Therefore, the appeal is liable to be allowed.

17. It was strenuously contended by the learned Government Pleader that as per the finding of fact recorded by the Commissioner of Land Revenue and this Court, the possession of the land had been taken over way back in 1979 and that it may not be fair to gift the appellants with valuable lands almost after 40 years. Despite all the legal points in favour of the appellants, this argument of the learned Government Pleader troubled our conscience. Therefore, we summoned the records from the office of the respondents to find out if in fact, possession of the lands had been resumed. But to our shock we found that at all points of time, the appellants have had the benefit of interim stay orders, both from this Court as well as from the Revenue Authorities themselves. The records produced by the Government Pleader do not show how possession of the land was taken. On the contrary there was a memo dated 25-9-1992 issued by the Collector, Adilabad to the Mandal Revenue Officer to make an inspection of the land and submit a report as to whether the

appellants continued to be in possession. In response, the Mandal Revenue Officer called for a report from the Village Administrative Officer, who confirmed by his memo dated 05-11-1992 that the appellants were in possession. Therefore, these records belie the claim that the possession had been resumed by the Government in 1979 itself.

18. There is also a D.O. letter dated 11-03-1999 issued by the District Revenue Officer directing the Mandal Revenue Officer to take possession of the lands into Government custody. If the respondents had already taken possession in 1979 itself, the question of the revenue authorities themselves granting a stay and the revenue authorities themselves confirming the continuance of possession of the appellants even in the year 1998 would not have arisen.

19. Without producing all these records, the respondents appear to have simply led the learned single Judge to believe that possession had already been taken over in 1979, which led to the learned Judge dismissing the writ petition.

20. Therefore, we are of the considered view that the appeal deserves to be allowed. Accordingly, the writ appeal is allowed, the order of the learned single Judge is set aside and the writ petition filed by the appellants is allowed. No costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

Date: 23-03-2017

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