

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6525 of 2016

ORDER:

This Civil Revision Petition under Section 28 of AP (Telangana Area) Abolition of Inams Act, 1955 (for short “ the 1955 Act”) is filed by the revision petitioner challenging the Order in F3/1753/2013-F3/13/INAM/2013, whereby the Joint Collector, Medak at Sangareddy-cum-appellate authority under the 1955 Act directed the parties to approach the Civil Court for settlement of their claims as the suit in O.S.No.57 of 2013 is pending on the file of Junior Civil Judge, Siddipet, with regard to rights in Sy.No.1334 and liberty is given to the parties to put forth their claims before the Civil Court and seek appropriate relief.

It is the case of the revision petitioner that one Narasimhulu, who was the Inamdar of the land in Sy.No.1334 for an extent of Ac.0.39 gunts situated at Dubbaka Village and Mandal, Medak District, died leaving his three sons namely Balrajaiah, Vishwanatham and Chandraiah as his legal heirs. Chandraiah went in adoption during his childhood and after death of Narasimhulu, Balrajaiah and Vishwanatham succeeded the estate of the deceased—Narasimhulu, being legal heirs. The names of the above two branches were shown as Inamdars jointly for the land in question i.e., Sy.No.1334 for an extent of Ac.0.39 guntas. However, during 1986-2005, 18 ½ guntas were registered in the name of each of the legal heirs namely Balrajaiah and Vishwanatham in the revenue records. Later, for the year 2006-2013, 19 guntas were registered in the name of Balrajaiah and 20 guntas were registered in the name of legal heirs of Vishwanatham, who died. In the year, 1991, a certificate of ORC (Occupancy Rights Certificate) was issued in the name of legal heirs of Vishwanatham by Revenue Divisional Officer, without giving notice to the petitioner, as required under Rule 6 of the 1955 Act. As the Order of issuing OR is against the principle of natural justice and without notice as required under Rule 6 of the rules framed under the 1955 Act, an appeal was

preferred before the Joint Collector-cum-appellate authority under the 1955 Act. But, the Appellate authority, without considering the objection raised by the petitioner, directed the parties to agitate their grievance before the Court in O.S.No.57 of 2013 which is pending on the file of Junior Civil Judge, Siddepet.

The contention of the learned counsel for petitioner before this Court is that Civil Court has no jurisdiction to decide the rights of Inamdars under the provisions of the 1955 Act and when the ORC was issued without following the Rule 6 of the rules framed under the 1955 Act, the order is liable to be set aside and issuing a direction to agitate their claim before the Civil Court in pending suit is contrary to the law as the Civil Court lacks inherent jurisdiction to decide issues pertaining to Inams under the 1955 Act. In support of his contentions, he placed reliance on two judgments of this Court reported in *Shivareddypally Ananthaiah (died) per LRs. V. Joint Collector, Ranga Reddy District, Hyderabad and another¹* and *Mir Sadath Ali v. Joint Collector, Ranga Reddy District, Hyderabad and others²*.

Notice was served on the respondent, but none appeared.

In view of the contentions raised before this Court by the learned counsel for petitioner, the point that arise for consideration is:

“ whether the Order passed by the Joint Collector-cum-appellate authority in case No. F3/1753/2013-F3/13/INAM/2013 confirming the Order in file No.H/3248/89, dt.29.09.1991 passed by RDO, Siddipet, is in accordance with law, if not, liable to be set aside?

POINT: Undisputedly, a certificate in Form No.2 under Sub Rule 3 of 6 of 1955 Act was issued in favour of Kodakandla Siddaramulu and Ramagiri, both the sons of Vishwanatham for an extent of Ac.3.15 cents by Proceedings

¹ 2015(3) ALD 200

² 2009(2) ALD 124

Dt.29.09.1991, including the land in dispute in Sy.No.1334 for an extent of 39 guntas of wet land, but the petitioner claiming equal share to both the branches viz., Balarajaiah and Vishwanatham.

According to Rule 6 of the 1955 Act, whenever an application is received under Rule 5 or in *suo motu* enquiry, the Collector shall issue a notice in Form-II to every person claiming interest or having interest in the land specified in such notice, fixing a date on which an enquiry is to be held and calling for objections, if any, within a period of fifteen days from the date of publication of such notice. Thus, a notice for issuing a certificate under Sub Rule 2 of Rule 6 of 1955 Act is mandatory and issuance of certificate is preceded by such notice. But, in the present case, proceedings were directly issued in Form No.3 without issuing any notice and there was no reference in the entire proceedings about issuance of notice, as required under Sub Rule 1 of Rule 6 of the rules framed under the 1995 Act. However, it is an undisputed fact that the property originally belongs to Narasimhulu, father of Chandraiah, Balrajaiah and Vishwanatham. But, Chandraiah went into adoption and therefore, Chandraiah is disentitled to any share in the property of Narasimhulu. Vishwanatham and Balarajaiah were alone entitled to claim equal rights. Their names were registered in Inam register for several years, referred to supra, and a Certificate was issued in Form No.3 exercising power under Sub Rule 3 of Rule 6 of the 1955 Act, without issuing notice, as required under Section 6 (1) of the 1995 Act. Thus, the order dt. 29.09.1991 passed by RDO in Form No.3 is against the principles of natural justice and against Sub Rule 1 of Rule 6 of the 1995 Act and on this ground alone, the Order is liable to be set aside. But the Joint Collector, being the appellate authority, did not consider the contention of the learned counsel for the petitioner before him regarding non-compliance of Sub Rule 1 of Rule 6 of the 1955 Act and it is violation of principles of natural justice before issuing a Certificate in Form No.3 dt. 29.09.1991.

The Joint Collector while dismissing an appeal in case No. F3/1753/2013-F3/13/INAM/2013, directed the parties to agitate their claims before Junior Civil Judge, Siddipet where O.S.No.57 of 2013 is pending. The direction issued by the Joint Collector is contrary to the law declared by this Court in *Mir Sadath Ali*'s, referred to above, wherein this Court held in para No.35 as follows:

“ In my considered view, respondent No.2, is therefore, conferred with the power of deciding all the issues, which arise in the course of enquiring into the claims under Sections 4 to 8, including the issue relating to succession, and it is not necessary to relegate the parties to the Civil Court for adjudication of the issue of succession, as such a course would defeat the very purpose and object of creating the hierarchical machinery by the Act and conferring wide power on them”.

A similar view is expressed in the latter judgment of this Court in *Shivareddypally*'s case, referred to above.

However, there is no dispute regarding the ouster of jurisdiction of Civil Court under the provisions of the 1955 Act and an identical question came up before the Apex Court in a decision of larger Bench consisting of 7 judges of Hon'ble Apex Court reported in *M/s. Kamala Mills Ltd. Vs. State of Bombay*³, wherein their Lordships Justices P.B. Gajendragadkar C.J., K.N. Wanchoo, J.C. Shah, Raghubar Dayal, S.M. Sikri, R.S. Bachawat and V. Ramaswami, held that:

“Exclusion of jurisdiction of civil court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then court will enquire whether remedies normally available in civil court are prescribed by such statute.”

In the judgment reported in *Dhulabai Vs. State of Madhya Pradesh*⁴, Their Lordships Justice M.Hidayatullah, Justice R.S.Bachawat, Justice

³ AIR 1965 SC 1942

⁴ AIR 1969 Supreme Court page 78

A.Vaidialingam, Justice K.S.Hegde and Justice A.N.Grover laid down the following seven guide lines:

- “(1) *Whether the statute gives finality to the orders of the special tribunals the Civil Court’s jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
- (2) *Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decision to sustain the jurisdiction of the Civil Court.*

Where there is no express exclusion the examination of the remedies and scheme of particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all the questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.
- (3) *Challenge to the provisions of the particular Act is ultra vires cannot be brought before Tribunals constitutes under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.*
- (4) *When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.*
- (5) *Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.*
- (6) *Questions of the correctness or the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the order of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case, the scheme of the particular Act must be examined, because it is a relevant enquiry.*

- (7) *An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”*

The judgments of the Hon’ble Apex Court in ***Dhulabai***’s case, referred to supra, is a classic judgment on the issue of jurisdiction of a Civil Court, still it is good law. In view of the guideline No.2, when adequate machinery is provided under the special statute, the Civil Court’s jurisdiction is ousted. But, issuing a direction to agitate their rights before the Civil Court, which lacks inherent jurisdiction under the provisions of the 1995 Act, is the illegality committed by the Joint Collector-cum-Appellate Authority under the Act. Therefore, the Order passed by Joint Collector is hereby set aside and the matter is remanded to the Joint Collector directing to decide the validity of the Order dt. 29.09.1991 in Form No.3, without issuing the Notice, as required under Sub Rule 1 of Rule 6 of the 1955 Act, so also the jurisdiction of the Civil Court and pass appropriate order, after affording an opportunity to both the parties, according to law.

With the above observation, this Civil Revision Petition is allowed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 19-04-2017.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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