

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.1460 of 2017
(OLD W.P.No.10629 of 2014)

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent assailing the order, dated 19.02.2011, of the learned Joint Collector, Mahabubnagar District, passed in Case No.F2/IA-6/2004.

2. I have heard the submissions of *Sri Ravi Kondaveeti*, learned counsel for the petitioner, and of *Sri L.Harish*, learned counsel for the fourth respondent. No submissions are made on behalf of the official respondents. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

Aggrieved of the Occupancy Rights Certificate ('ORC', for brevity) issued to the revision petitioner by the Revenue Divisional Officer, Mahabubnagar, vide proceedings, dated 02.09.1989, the fourth respondent herein filed the appeal in case No.F2/1A-6.04, under Section 24(1) of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955, only in respect of Ac.19.27 guntas in Survey No.44, by claiming rights in the said property but not disputing the other properties in other survey numbers covered by the said Certificate. However, the 4th respondent herein filed the said appeal with some delay and not within the time allowed under law. After the appeal was registered, a note was placed before the

Joint Collector/appellate authority that the appeal is filed with a request to condone delay of 20 days in filing the appeal. The Joint Collector by order, dated 30.10.2014, directed for preparation of draft notice to be issued to both the parties and to address a letter to the Revenue Divisional Officer, Medak, to send the connected records. Subsequently, the matter underwent several adjournments as on most of the occasions the Joint Collector was busy and the case has to be adjourned. Thus, the case was adjourned from time to time till 12.03.2010. On that day, the docket order passed by the Joint Collector reads verbatim as follows:

'Case called. Appellant advocate present, filed and civil suit order adjourned to 01.05.10'.

There is no recording in the said order as to whether the respondent (revision petitioner herein) or his counsel was present or absent and whether or not the notice of the filing of the document and also a copy of the document are served on the respondent. The Subsequent docket order made on 01.05.2010 verbatim reads as follows:

'Case called. Appellant was present. Respondent absent. RFO.'

The docket order thereafter passed on 19.02.2011 verbatim reads as follows:

'Pronounced Judgment in open Court'.

Aggrieved by the said judgment, the respondent therein, that is, the revision petitioner filed this revision.

4. The learned counsel for the petitioner mainly contends that admittedly even as per the note file placed before the joint Collector, the appeal was filed with a request to condone the delay

of 20 days. The ORC is of the year 1989 and the appeal was filed in the year 2004. How the appellant therein and the office of the Joint Collector arrived at the number of days of delay at 20 days remains unexplained. The Docket sheet copy filed before this Court along with the material papers does not disclose that a formal order was passed condoning even that delay before taking up the appeal for hearing on merits. On a number of occasions, when the counsel for the revision petitioner appeared before the Joint Collector, the case was not taken up and on several other occasions, even when both the parties were absent the case was adjourned; and on some other occasions, the case was adjourned as the Joint Collector was otherwise busy. The case was not taken up for hearing and disposal from the year 2004 till March, 2010; but, suddenly the Joint Collector for reasons best known to him started showing great urgency for disposing of the matter. On 12.03.2010, when the counsel for the appellant therein appeared before the Joint Collector, and made a request to receive on file an order in a civil suit, even without serving notice and a copy thereof on the respondent therein, the joint collector received the same on file without giving an opportunity to the respondent therein. On 01.05.2010, even without hearing the submissions of the counsel for the appellant, by simply noting that the appellant was present and respondent was absent, the matter was reserved for orders (RFO). And, thereafter, the impugned order was pronounced in February, 2011. The very approach of the Joint Collector and the way the matter was dealt with by him are sufficient indicia of the arbitrariness and illegality of the Order. For all the reasons, the order impugned in this appeal is liable to be set aside and the

matter deserves to be remitted to the Joint Collector for disposal afresh.

5. Learned counsel for the fourth respondent-successful party before the Joint Collector, while supporting the orders of the Joint Collector, *inter alia* contended as follows:

The ORC was granted in the year 1989 without notice to the concerned persons including this respondent's predecessor-in-interest. While obtaining the ORC in respect of various other undisputed survey numbers, the land in Survey No.44 of an extent of Ac.19.27 guntas was also fraudulently and clandestinely introduced in the subject matter of the ORC proceedings and thus, the certificate was also obtained for the subject land of Ac.19-27 guntas in Survey No.44, without any entitlement to the said land in the said survey number. The fourth respondent herein filed suit O.S.No.7 of 2005 against the revision petitioner herein for declaration of title, recovery of possession and mesne profits. The said suit was decreed after elaborate trial. And, after the dismissal of the first and second appeals, the decree and judgment in the said suit between the parties became final and are binding on the parties. The persons whose names are referred to in the ORC Proceedings, dated 02.09.1989, viz., Venkatacharyulu and Tirumalacharyulu have nothing to do with the subject land in Survey No.44 of Ac.19-27 guntas. Since the ORC was issued without notice to the interested party or the 4th respondent's predecessor in interest and as the said ORC was obtained by fraud and as fraud vitiates every solemn act, the ORC proceedings and ORC Certificate are vitiated by fraud in so far as the subject land

in S.No.44. The Joint Collector was right in setting aside the ORC to the extent of the subject land in Survey No.44 of Ac.19-27 guntas and in giving further directions. As it is settled law that an order obtained by fraud can be questioned in collateral proceedings also, the respondent herein can successfully contend and show that the ORC in so far as the subject land was rightly set aside. Hence, the order of the Joint Collector need not be interfered with.

5.1. He also placed reliance on a decision in **Habeeb Yahiya and another v. Government of A.P and others**¹ in support of the contention that when a benefit is obtained by playing fraud, the rule that a revisional jurisdiction shall be exercised within a reasonable time has no application and that therefore, the order which was passed is sustainable, even if it was passed directly on merits without considering the aspect of delay and condoning the delay.

6. I have given earnest consideration to the facts and submissions.

7. Admittedly, the ORC, dated 02.09.1989, was granted in respect of the subject land in S.No.44 also in favour of the revision petitioner vide proceedings, dated 02.09.1989 by the Revenue Divisional Officer, Mahabubnagar. Assailing the said proceedings and ORC, the fourth respondent herein filed the aforestated appeal before the Joint Collector, Mahabubnagar. And that appeal was admittedly filed with a delay. Though the number of days of delay is in dispute, the Joint Collector did not pass an order formally condoning the delay before taking up the appeal for hearing and

¹ 2003(5) ALD 215

disposal on merits. However, the Joint Collector disposed of the appeal on merits. What is to be noted is that one of the contentions of the respondent herein is that the ORC and the ORC proceedings are obtained insofar as the subject land are concerned by playing fraud and that, therefore, the Joint Collector, is not required to look into the aspect of delay in filing the appeal. As rightly contended by the learned counsel for the petitioner herein the issue of fraud is a mixed question of fact and law and the plea of fraud must be pleaded in detail and established by cogent evidence and that unless fraud is established, the person relying upon the plea of fraud is not entitled to succeed. Even in a case where the appellant is having a strong case on merit in the main proceeding, either on grounds of fraud or otherwise, yet the merits of the main case cannot be looked at without first considering the request for condonation of delay and without condoning the delay. In **Ram Kali Devi vs. Manager, Punjab National Bank, Shamshabad**² the facts and law laid down are as follows: 'A District Judge dismissed the appeal on the ground of limitation; the High Court without giving any reasons for condonation of the delay in filing the appeal has considered the case on merits; the Supreme Court held that the merits of the case cannot be looked at without condoning the delay; and, remanded the case to the High Court with a direction to look into the matter and give a final judgment on all points including point of limitation.' In **Barla Prabhakar Reddy v. Joint Collector, Ranga Reddy District**³ this Court, having noted that the Joint Collector did not advert to either grounds urged in support of the request for condonation of

² (1998) 9 Supreme Court Cases 558

³ 2009 (2) ALD 681

delay or the grounds urged by the opposite party against the request for condonation of delay and that the record also does not disclose that there exists any separate order condoning the delay, held that there is a serious infirmity in the order passed by the Joint Collector. Hence, this Court set aside the order of the Joint collector on the ground that he did not deal with the aspect of condonation of delay and remanded the matter to the Joint Collector, for fresh consideration and disposal, with a specific direction that the question of limitation in presenting the appeal shall be dealt with specifically with reference to the objections raised by the petitioner therein. The ratios in the decisions squarely apply to the case on hand.

8. Further, in view of the fact that the docket orders on the docket sheet maintained in the appeal by the joint collector lay bare that the Joint Collector, while exercising quasi judicial functions enjoined upon him did not act in a manner expected of him, it must be held that his approach to the matter is not appreciable.

9. Coming to the contention that subsequent to the order of the Joint Collector, the RDO has issued consequential mutation and ROR proceedings, it is to be noted that when once the main order of the Joint Collector is found unsustainable and is set aside, the consequential order made pursuant to the said order would automatically go, as rightly contended by the learned counsel for the revision petitioner [see: **State of Kerala vs. Puthenkavu N.S.S. Karayogam** [(2001) 10 SCC 191]].

10. On the above analysis this Court finds that the Joint Collector's orders, which are unsustainable, require to be set aside. The said orders are accordingly set aside without going into the merits of the issues involved in the appeal.

11. In the result, the Civil Revision Petition is allowed and the order, dated 19.02.2011, of the learned Joint Collector, Mahabubnagar District, passed in Case No.F2/IA-6/2004 is set aside and the said appeal is remitted to the Joint Collector for disposal afresh in strict accordance with procedure established by law. The Joint Collector, Mahabubnagar, is accordingly directed to give an opportunity of hearing to both the sides and then specifically deal with and decide the issue with regard to the delay in presenting the appeal after taking into consideration the explanation offered by the appellant for the delay and the objections raised by the respondent.

Pending miscellaneous petitions, if any, shall stand closed.
There shall be no order as to costs.

M. SEETHARAMA MURTI, J

27th March, 2017
LMV