THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.15909, 17062 of 2004 & 14933 of 2005

COMMON ORDER:

In these three Writ Petitions, the proceedings of the Revenue Divisional Officer, Hyderabad East Division in L.R.No.A2/2638/99 dt.03-05-2003 as confirmed by the Joint Collector, Ranga Reddy District in his order dt.27-04-2004 in Case No.B5/5023/2003 and Case No.B5/5649/2003 passed under the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act') in respect of land admeasuring Ac.28.00 gts in Sy. Nos.3 and 5 of Gudur village, Kandukur Mandal, Ranga Reddy District between the same parties, are under challenge. Therefore they are being disposed of by this common order.

THE BRIEF FACTS

2. The petitioners in these three Writ Petitions are the sons of one N.Narasimha by name N.Prakash Rao, N.Gowri Shankar, N.Pochaiah, N.Surender and N.Narender. N.Narender, who is the 2nd petitioner in W.P.No.15909 of 2004 died and his legal representatives have been brought on record not only in that Writ Petition but also in the other two Writ Petitions where he is arrayed as a respondent.

3. According to the petitioners in W.P.Nos.14933 of 2005 and W.P.No.15909 of 2004, their father Narasimha purchased Ac.12.09 gts in Sy. No.3 and Ac.16.38 gts in Sy. No.5 of Gudur village in the name of N.Pochaiah, his eldest son, who was a minor at that time, and later it was distributed among all the petitioners who are legal heirs of Narasimha on his death. They alleged that the land was distributed to each of them equally and their names were also mutated in the revenue records.

4. However, they allege that N.Pochaiah, without the consent of the Writ Petitioner, executed agreement to sell dt.31-08-1967 in favour of Namani Chandraiah, son of Muttaiah agreeing to sell the Ac.28.00 gts in Sy. Nos.3 and 5 at the rate of Rs.300/- per acre; that the total consideration was Rs.8,400/-; later another agreement of sale dt.03-09-1967 was also executed by N.Pochaiah in his favour after receiving sum of Rs.8,400/-; but no sale deed was executed in respect of the said land; that respondent Nos.4 to 6 claim through the said Namani Chandraiah; and they applied in 1989 to the Mandal Revenue Officer, Kandukur Mandal, Ranga Reddy District for regularization of the same under Section 5-A of the Act on the basis of the said agreements of sale.

5. N.Pochaiah, who is the petitioner in W.P.No.17062 of 2004 admits that he did execute the two agreements of sale referred to above, but contends that sale consideration was not paid, that the

said agreements of sale did not fructify into regular sale deeds, that they were never acted upon and when application was filed by respondent Nos.4 to 6 under Section 5-A of the Act before the Mandal Revenue Officer, he and the petitioners in the other two Writ Petitions opposed the same.

6. Here I may point out that no statutory appeal against an order passed under Section 5-A of the Act was provided prior to introduction of Section 5-B in the Act by the A.P. Act 9 of 1994 with effect from 31-10-1993 and a Revision under Section 9 of the Act also came to be provided for the first time only against orders passed under Section 5A and Section 5B by the same Amending Act. Thus, there was no remedy of appeal or revision prior to 31-10-1993 against orders under Section 5A of the Act passed by a Mandal Revenue Officer.

7. Be that as it may, an appeal under sub Section (5) of Section 5 of the Act was filed by petitioners against the proceedings dt.02-04-1991 to the Revenue Divisional Officer, Hyderabad East Division, Ranga Reddy District. Such appeal was in fact not maintainable as explained supra.

8. The said appeal was numbered as L/4336/1991 and was allowed on 29-06-1992 and the matter was remitted back to the Mandal Revenue Officer for *de novo* enquiry on the ground that there was no documentary evidence adduced by the respondent

Nos.4 to 6 about payment of sale consideration of Rs.8,400/- to N.Pochaiah.

9. After remand, the Mandal Revenue Officer passed an order dt.07-01-1995 in Case No.B/1219/89 rejecting the claim of respondent Nos.4 to 6 for regularization stating that agreements of sale cannot be construed as 'alienations' or 'transfers' under Section 5-A since there is no regular sale deed between the parties and there is also no evidence of payment of full consideration to the vendor.

10. This was questioned before the Revenue Divisional Officer in proceedings A2/6382/1995 by the respondent Nos.4 to 6 by way of appeal. The said appeal was allowed on 15-09-1997 and the matter was again remitted back to the Mandal Revenue Officer for re-enquiry. He held that the Mandal Revenue Officer has not appreciated the material aspects, facts and law and that respondent Nos.4 to 6 had filed O.S.No.111 of 1992 before the District Munsif, Ibrahimpatnam and obtained an injunction order on 24-06-1992 and the suit was pending.

11. On 09-06-1999, the suit O.S.No.111 of 1992 filed by respondent Nos.4 to 6 against the petitioners was dismissed for default and was not restored thereafter.

12. Subsequent to the remand, the Mandal Revenue Officer, vide proceedings Case No.B/1219/89 dt.03-07-1999 again rejected the

claim of respondent Nos.4 to 6 for regularization on the ground that there is no evidence of payment of sale consideration by them to N.Pochaiah and that there was no "sale transaction receipt".

13. Challenging the order dt.03-07-1999 of the Mandal Revenue Officer, the respondent Nos.4 to 6 preferred an appeal in Lr.No.A2/2638/1999 before the Revenue Divisional Officer.

14. He allowed the said appeal on 03-05-2003 and restored the 13-B Certificate issued to the respondent Nos.4 to 6 by the Mandal Revenue Officer, Kandukur on 02-04-1991. He held that there was evidence on record to show that the sale consideration was paid and was so recorded in the subsequent agreement of sale dt.03-09-1967 and that respondent Nos.4 to 6 were in possession in the land.

15. This was questioned by the petitioners before the Joint Collector, Ranga Reddy District in Case No.D5/5023/2003 under Section 9 of the Act. The said Revision was dismissed on 27-04-2004 by the Joint Collector confirming the Revenue Divisional Officer's order dt.03-05-2003.

16. Assailing the same, the present Writ Petitions are filed.

CONTENTIONS OF PETITIONERS

17. Learned counsel for the petitioners Sri C. Ramachandra Raju and Sri Ch.Dhananjaya contended that without any enquiry, vide proceedings File No.B/1219/89 dt.02-04-1991, Form 13-B

certificate was issued under Sec.5A of the Act by the Mandal Revenue Officer validating the agreements of sale in favour of respondent Nos.4 to 6 as if it were a regular sale transaction without registration. They contended that there was no notice to the petitioners inviting objections and no reasoned order was passed by the Mandal Revenue Officer and his action in issuing 13 B certificate to respondent Nos.4 to 6 under sec.5A of the Act is therefore null and void and in violation of principles of natural justice.

18. They contended that Section 5-A of the Act refers to "alienation" or "transfer", that an agreement for sale cannot convey any right, title or interest in immovable property, that therefore on the basis of such agreements for sale, the respondent Nos.4 to 6 could not have applied for regularization under Section 5-A of the Act before the Mandal Revenue Officer, Kandukur and the issuance of 13-B Certificate in proceedings No.B/1219/89 dt.02-04-1991 by him is without jurisdiction, contrary to law and unsustainable. They relied upon **Konkana Ravinder Goud and others Vs. Bhavanarishi Co-operative House Building Society and others**[1] and **Mukhala Kotilingam (died) by L.Rs. Vs. Joint Collector, R.R.District, Hyderabad and others**[2].

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[1] 2003 (5) ALD 654
[2] 2005 (2) ALD 838

19. They contended that the unregistered agreements of sale dt.31-08-1967 and 03-09-1967 are not admitted documents, that petitioners are disputing the validity and genuineness of the said documents and therefore Section 5-A of the Act will not get attracted. They also contended that there is no signature of the vendee in the agreement of sale dt.31-08-1967 and therefore no rights flow from such a document.

20. They contended that the property was allegedly purchased by one Chandraiah, but respondent Nos.4 to 6 are not related to him and they have not produced any proof of their entitlement of the land. They also contended that mere payment of full consideration or delivery of possession will not amount to 'alienation' or 'transfer' entitling respondent Nos.4 to 6 to invoke Section 5-A, that respondent Nos.4 to 6 ought to have filed a suit for specific performance against their vendor and obtained sale deed for the subject land, and that both the Revenue Divisional Officer in his order dt.03-05-2003 in File No.A2/2638/99 as well as the Joint Collector in his common order dt.27-04-2004 in Case No.D5/5023/2003 and D5/5649/2003 lost sight of this fundamental aspect and wrongly held in favour of respondent Nos.4 to 6.

CONTENTIONS OF RESPONDENTS

21. Learned Government Pleader for Revenue supported the orders passed by the Revenue Divisional Officer and Joint Collector.

22. Sri Vedula Venkataramana, learned Senior Counsel, appearing for respondent Nos.4 to 6 contended that on 02-04-1991, the 13-B Certificate under Section 5-A of the Act was issued by the Mandal Revenue Officer to his clients; that against the said action of the Mandal Revenue Officer, there was no remedy of appeal to the Revenue Divisional Officer provided till 31-10-1993 when Section 5-B was introduced by amendment to the Act; that the appeal under Section 5 (5) filed by the petitioners before the Revenue Divisional Officer, which resulted in the order of the first remand on 29-06-1992, was not maintainable,; that such order dt.29.6.1992 of the Revenue Divisional Officer is without jurisdiction and is a nullity as he is a *coram non judice*; that therefore all consequential orders including the order dt.03-05-2003 of the Revenue Divisional Officer and order dt.27-04-2004 of the Joint Collector impugned in the Writ Petitions, are null and void and are liable to be ignored. According to him, the 13-B Certificate dt.02-04-1991 will continue to stand.

23. He relied upon the decisions in **M.B.Ratnam and others Vs. Revenue Divisional Officer, Ranga Reddy District, East Division at Hyderabad and others**[3], **T.Santosh Kumar and another Vs. Joint Collector, Mahabubnagar and others**[4], **Dwarka Prasad Agarwal (D) by LRs. and another Vs.**

[3] 2003 (1) ALT 688 (D.B.)
[4] 2014 (6) ALT 51

B.D.Agarwal and others[5]**, Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and others**[6] and **Sushil Kumar Mehta Vs. Gobind Ram Bohra (dead) through his LRs.**[7]

24. It is contended that the appeals preferred by respondent Nos.4 to 6 on 18-12-2001 are not maintainable even though Section 5-B of the Act had come into force by then since there was no right of appeal available as on the date when the 13-B certificate was issued on 02-04-1991 by the Mandal Revenue Officer.

25. It is further contended that when the certificate is valid, if the Writ Petition is allowed, it would revive the first remand order dt.29-06-1992 which set aside the certificate dt.02-04-1991 and this is impermissible in law. Reliance is placed on **Aligarh Muslim University and others Vs. Mansoor Ali Khan**[8] and **Gadde Venkateswara Rao Vs. Government of Andhra Pradesh and others**[9]

26. It is asserted that since all Revenue records disclose the names of the respondent Nos.3 to 5 as pattedars and possessors of the subject land, it has to be presumed that there is a transaction of sale otherwise than by registered instrument.

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[5] (2003) 6 S.C.C. 230
[6] (2007) 2 S.C.C. 355
[7] (1990) 1 S.C.C. 193
[8] AIR 2000 SC 2783 = (2000) 7 SCC 529
[9] AIR 1966 SC 828

27. It is also stated that jurisdiction of the Court to issue a Writ of Certiorari has to be exercised in accordance with the principles laid down in **Syed Yakoob Vs. K.S. Radha Krishnan and others**[10] and **Surya Dev Rai Vs. Ram Chander Rai and Others**[11].

REPLY CONTENTIONS OF PETITIONERS

28. Learned counsel for petitioners, in reply, contended that the record reveals that no notice was given to the Writ petitioners in W.P.Nos.14933 of 2005 and 15909 of 2004 before issuing the 13-B certificate under Section 5-A of the Act to respondent no.s4-6; that Rule 22(3) of the Rules framed under the Act require a notice to be issued to 'persons interested' in the land; petitioners are such 'persons interested', but they were not given any notice; the notice addressed to N.Pochaiah, the petitioner in W.P.No.17062 of 2004, who is the elder brother of the petitioners in the other two Writ Petitions, is recorded as having been affixed in the Gram Panchayat office; this procedure is not contemplated under the Act or the Rules; and therefore issuance of 13-B certificate to respondent Nos.4 to 6 is in violation of principles of natural justice and is null and void. So the respondent Nos.4 to 6 cannot contend that the 13-B certificate issued on 02-04-1991 remains intact.

29. They further contended that notice in form-XII to persons interested is intended to be given so that there is an enquiry into the

[10] AIR 1964 SC 477
[11] 2003 (6) SCC 675

matter and if objections are received, they have to be considered by a reasoned order, but no such reasoned order exists and therefore the action of the Mandal Revenue Officer in issuing 13-B certificate without inviting objections and considering them through an enquiry by passing a reasoned order is also in violation of mandatory procedure under the Act and is null and void.

30. They contended that at no point of time did respondent Nos.6 to 8 question the remand order dt.29-06-1992 of the Revenue Divisional Officer on the ground that the appeal before him was not maintainable and even assuming for the sake of argument without conceding that the said order is void, it continues to be in *de facto* operation, and the same can be ignored by respondent Nos.4 to 6 at their own risk and peril; that such void orders continue to hold the field and will have the effect in law like all other lawful orders until the same is set aside in a properly instituted proceedings at the instance of an aggrieved person; and that even a void order cannot be wished away. They relied on **Smith Vs. East Elloe Rural District Council**[12], **Calvin Vs. Carr**[13] and **M.B. Ratnam** (3 supra) cited by learned counsel for respondent Nos.4 to 6.

THE POINTS FOR CONSIDERATION

31. In view of the rival contentions, the following points arise for consideration:

[12] (1956) 1 All England Reports 855
[13] (1979) 2 All England Reports 440

(a) Whether persons claiming under agreements for sale such as respondent Nos.4 to 6 can seek regularization invoking Section 5-A of the Act?

(b) Whether in the facts and circumstances of the case, the Mandal Revenue Officer before issuing the 13-B certificate complied with the procedure under Section 5-A and Rule 22 of the Rules, and if not, what is the consequence of the same?

(c) Whether the orders dt.27-04-2004 of the Joint Collector in case Nos.D5/5023/2003 and D5/5649/2003 and the order dt.03-05-2003 of the Revenue Divisional Officer, Ranga Reddy East Division are valid and sustainable?

(d) Whether the 13-B certificate dt.02-04-1991 issued by the Mandal Revenue Officer to respondent Nos.4 to 6 is valid and operative?

Point (a)

32. Section 5-A of the Act insofar as it is relevant, states:

"Regularisation of certain alienations or other transfers of lands:

(1) Notwithstanding anything contained in this Act, the Transfer of Property Act, 1882, the Registration Act, 1908 or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or effected otherwise than by registered document, the alienee or the transferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.

(2) On receipt of such application, the Mandal Revenue Officer shall after making such enquiry as may be prescribed require the alienee or the transferee to deposit in the office of the Mandal Revenue Officer an amount equal to the registration fees and the stamp duty that would have been payable had the alienation or transfer been effected by a registered document in accordance with the provisions of the Registration Act, 1908 as fixed by the Registering Officer on a reference made to him by the Mandal Revenue Officer on the basis

of the value of the property arrived at in such manner as may be prescribed.

Provided that the Mandal Revenue Officer shall not require the alienee or the transferee to deposit the amount under this sub-section unless he is satisfied that the alienation or transfer is not in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977.

(3) Nothing contained in sub-section (1) and sub-section (2) shall be deemed to validate any alienation where such alienation is in contravention of the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, the Urban Land (Ceiling and Regulation) Act, 1976, the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 and the Andhra Pradesh Assigned lands (Prohibition of Transfers) Act, 1977.

(4) The Mandal Revenue Officer on deposit of an amount specified in sub-section (2) shall issue a certificate to the alienee or the transferee declaring that the alienation or transfer is valid from the date of issue of certificate and such certificate shall, notwithstanding anything in the Registration Act, 1908 be evidence of such alienation or transfer as against the alienor or transferor or any person claiming interest under him.

(5) The recording authority, shall on the production of the certificate issued under sub-section (2) make any entry in the pass book to the effect that the person whose name has been recorded as an occupant is the owner of the property."

33. This provision is a special provision introduced in the Act to enable persons in occupation of the land by virtue of alienation or transfer made or affected otherwise than by registered documents to obtain a certificate declaring such alienation or transfer to be valid.

34. In **M.B. Ratnam** (3 supra), it was explained that this provision was introduced by the legislature to mitigate hardship caused to agriculturists who remained in possession of land after purchasing the same under unregistered documents, and whose title was imperfect, and who were thus disabled from applying for and obtaining loans from credit agencies since they did not possess evidence of title. The Bench explained that it overrides the provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908 which mandate that an alienation or transfer should be only by a registered instrument. In the said case it was also held that it is a comprehensive provision which confers jurisdiction on the Mandal Revenue Officer to determine the substantive rights of the parties.

35. In **Konkana Ravinder Goud** (1 supra), another Division Bench held that an 'agreement of sale' cannot be treated as an 'alienation' or 'transfer' within the scope and meaning of Section 5-A of the Act. It held that only *completed acts of sale* can be considered as "alienation or transfer" under Section 5-A of the Act; that the word "transfer" is to be construed to mean transfer as is understood in general sense of the term as defined in the Transfer of Property Act, 1882 which is the statute that governs all transfers of immovable properties; that even a contract of sale, in view of Section 54 of Transfer of Property Act, 1882, does not by itself

create any interest in or charge on the property and it is only on registration of such completed contract under the provisions of the Registration Act, 1908 that title passes in the property; that a Division Bench of this Court in **K.Seetharama Reddy and another Vs. Hassan Ali Khan and others**[14] has also taken a view that an agreement of sale simpliciter is not enough for regularization of the document under Section 5-A of the Act and that only those transactions, where formalities of registration remain to be completed, can be regularized under Section 5-A of the Act. It concluded that the only right a person acquires by execution of agreement of sale is not an interest in the property, but a right to seek enforcement of the agreement by resorting to the provisions of the Specific Relief Act, 1963 and filing a suit to enforce the agreement of sale. It also referred to the judgment in **Babulal Vs. Hazari Lal**[15] and held that the Supreme Court declared therein that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree holder and the right and title passes to the decree holder only on the execution of the deed of sale either by the judgment debtor himself or by the Court in case the judgment debtor fails to execute the sale deed. The Division Bench went on to hold that even in those cases where pursuant to agreement of sale, the transferee takes possession of the land in part performance of the agreement of sale,

[14] 2003(1) ALD 563
[15] AIR 1982 SC 818

such an act does not confer any title in the land in favour of the transferee and relied on the decision of the Supreme Court in **Patel Natwarlal Rupji Vs. Shri Kondh Group Kheti Vishayak and another**[16].

36. The Division Bench thus held that the intent and purport of the Act is that what was sought to be validated was only a *completed contract of sale,* which for want of registration, in view of the provisions of the Registration Act, 1908 had not the effect, of conveying rights, title or interest in favour of the purchaser. It held that there is no machinery or mechanism provided in the Act enabling even a person, who has entered into an agreement of sale and in case sale is not completed, but he has been put into possession of the property even on payment of entire sale consideration, to approach the Mandal Revenue Officer for grant of a certificate under Section 5-A of the Act.

37. It held that the Mandal Revenue Officer in such a case cannot proceed to hold an enquiry as to whether agreement of sale has been complied with or not; and on the failure on the part of the vendor to complete the sale transaction, a person in whose favour there is an agreement of sale can only seek specific performance of it so as to convey right, title or interest of the vendors. It held that

[16] AIR 1996 SC 1088

the machinery provided under the Act is not appropriate machinery for perfecting title merely on the basis of agreement to sell.

38. The decision in **Konkana Ravinder Goud** (1 supra) was followed by a learned Single Judge of the Court in **Mukhala Kotilingam** (2 supra).

39. Counsel for respondent Nos.4 to 6 however, relied on decision of a learned Single Judge of this Court in **T.Santosh Kumar** (4 supra).

40. In that case, even after noticing the decision in **Konkana Ravinder Goud** (1 supra) and **K.Seetharama Reddy** (14 supra), the learned single Judge took a view that a person claiming under an agreement of sale-cum-G.P.A. comes within the definition of "owner" and can invoke Section 5-A of the Act if the said document is not registered. Thus this decision in **T.Santosh Kumar** (4 supra) runs contrary to the two Division bench decisions in **Konkana Ravinder Goud** (1 supra) and **K.Seetharama Reddy** (14 supra).

41. Also it runs contrary to view of the Supreme Court in **Suraj Lamp and Industries Limited (2) Though Director Vs. State of Haryana and another**[17] wherein the Supreme Court once again reiterated that neither an 'agreement of sale' creates by itself any interest in or charge on immovable property nor a 'power of attorney' is an instrument of transfer in regard to any right, title or

[17] (2012 1 SCC 656

interest in immovable property. It clarified that a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property, that the power of attorney is creation of an agency whereby the grantor authorises the grantee to do the acts specified therein on behalf of grantor, which when executed will be binding on the grantor as if done by him (see Section 1-A and Section 2 of the Powers of Attorney Act, 1882) and that it is revocable or terminable at any time unless it is made irrevocable in a manner known to law. It held that even an irrevocable attorney does not have the effect of transferring title to the grantee.

42. I therefore hold that the said decision in **T.Santosh Kumar** (4 supra) does not represent the correct legal position and is not good law.

43. In view of the Division Bench judgment in **Konkana Ravinder Goud** (1 supra), it is clear that on the basis of agreements of sale, respondent Nos.4 to 6 could not have invoked jurisdiction of the Mandal Revenue Officer under Section 5-A of the Act even if the full consideration was paid and even if possession was delivered to them thereunder. The Mandal Revenue Officer can exercise the power under Section 5-A of the Act and issue 13-B certificate only if there is an alienation or transfer i.e. a completed contract of sale.

44. By wrongly deciding the jurisdictional fact i.e. whether there is an alienation/transfer or not, he cannot confer jurisdiction on

himself and invoke his power under Section 5-A of the Act and issue 13-B certificate.

45. In **Raza Textiles Ltd. v. ITO**[18], the Supreme Court declared:

> *"3. …. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the Jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned Single Judge has done in this case, that the Income Tax Officer had clutched at the Jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income Tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion, the Appellate Bench is wholly wrong in opining that the Income Tax Officer can "decide either way".* (Emphasis supplied)

46. This was reiterated by the Supreme Court in **Shrisht Dhawan (Smt) v. Shaw Bros.**[19], wherein it explained:

> *"19. …. A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated."*

[18] (1973) 1 SCC 633
[19] (1992) 1 SCC 534

47. I therefore hold that the Mandal Revenue Officer wrongly conferred jurisdiction on himself to invoke Section 5-A of the Act by wrongly deciding the jurisdictional fact i.e. that an agreement of sale is an alienation or transfer and therefore his action in issuing 13-B certificate to respondent Nos.4 to 6 is without jurisdiction.

48. I hold on point (a) that persons claiming under agreements for sale such as respondent Nos.4 to 6 cannot seek regularization invoking Section 5-A of the Act, that an application under Section 5-A of the Act on the basis of the agreement of sale dt.31-08-1967 and 03-09-1967 could not have been maintained by respondent Nos.4 to 6 before the Mandal Revenue Officer, and consequently, the Mandal Revenue Officer had no jurisdiction to issue 13-B certificate dt.02-04-1991 in file No.B/1219/89.

Point (b)

49. Under this point I will deal with the question whether the 13-B certificate dt.02-04-1991 was issued by the Mandal Revenue Officer in compliance with the statutory procedure contained in Section 5-A of the Act and Rule 22 of the Rules.

50. I have already extracted Section 5-A of the Act above.

51. Under Rule 22 of the Rules framed under the Act, the Mandal Revenue Officer is to issue a general notification in Form-IX calling for applications from the persons who are recorded as

occupants in adangal/pahani or in the Record of Rights prepared earlier by virtue of an alienation or transfer made or effected otherwise than by registered document for declaring such alienation as valid. Under sub-Rule (3), if application is received, the Mandal Revenue Officer shall issue notice to the alienor or transferor in form No.XI specifying the date on which and the time at which he proposes to enquire into the application and he shall also *issue notice in form No.XII to all other persons believed to be interested in the land*. Under sub-Rule (4), he shall conduct an enquiry on the day appointed, hear the parties, examine their documents and witnesses and take such further evidence as he may consider necessary to satisfy himself that the alienation or transfer is not in contravention of the provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or the Urban Land (Ceiling and Regulation) Act, 1976 or the Andhra Pradesh Assigned Land (Prohibition of Transfers) Act, 1977. Under sub-Rule (5), he should require the alienee or transferee to deposit through challan in the Treasury an amount equal to the registration fee and stamp duty payable under the Registration Act, 1908 and on deposit of such amount, he shall issue certificate in Form No.XIII-B of the Act declaring the alienation or transfer as valid from the date of issue of certificate.

52. The record produced by the learned Government Pleader shows that notice in form-XII was issued to N.Pochaiah on

12-07-1989 but it was not served on him personally and it was only affixed on the notice board of the Gram Panchayat. Such a mode of service of notice in form No.XII on persons interested in the land is not contemplated under sub-Rule (3) of Rule 22. The normal mode of service of notice is by Registered Post by Acknowledgment Due and no explanation is forthcoming as to why this mode of service of notice in Form No.XII was not adopted for service of notice on N.Pochaiah. There is admittedly no service of notice on the petitioners in W.P.15909 of 2004 or in W.P.14933 of 2005. Therefore it has to be held that there has been a violation of principles of natural justice by the Mandal Revenue Officer.

53. The record however reveals that N.Pochaiah did oppose the grant of 13-B certificate to respondent Nos.4 to 6 by addressing a letter to the Mandal Revenue Officer, Kandukur. However, it mentions 11th day of July, but does not mention the year when it was given. Since the matter had been remanded more than once to the Mandal Revenue Officer, it is possible that it might have been given either after the first remand on 29-06-1992 by the Revenue Divisional Officer or after the second remand on 15-09-1997 by the said Officer. This is because the 13-B certificate issued on 02-04-1991 does not advert to any objection received from N.Pochaiah or consideration thereof.

54. Section 5-A as well as Rule 22 speak of an enquiry to be conducted by the Mandal Revenue Officer before issuing 13-B certificate to an applicant for such certificate. Sub-Rule (4) of Rule 22 directs the Mandal Revenue Officer to hear the parties including the persons interested in the land for which application under Section 5-A of the Act has been made, examine their documents and witnesses and satisfy himself that the alienation or transfer is not in contravention of the provisions of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or the Urban Land (Ceiling and Regulation) Act, 1976 or the Andhra Pradesh Assigned Land (Prohibition of Transfers) Act, 1977.

55. In **M.B. Ratnam** (3 supra), it was held by this Court that Section 5-A of the Act is a comprehensive provision which confers jurisdiction on the Mandal Revenue Officer to *determine the substantive rights of the parties* and provide for regularization for alienations or transfers. Therefore he exercises quasi judicial power and his determination can only be by a reasoned order which would indicate that the Mandal Revenue Officer had applied his mind to the claims of the rival parties and also the question whether issuance of 13-B certificate would violate the provisions of the above statutes.

56. There is no such order in the record supplied by the learned Government Pleader disclosing application of mind to the claims of both parties and to the question whether issuance of 13-B certificate

would violate the provisions of the above statutes. This is also a factor which totally vitiates the issuance of the 13-B certificate dt.02-04-1991 by the Mandal Revenue Officer to respondent Nos.4 to 6.

57. Therefore I hold on point (b) that, in the facts and circumstances of the case, the Mandal Revenue Officer before issuing the 13-B certificate did not comply with the procedure under Section 5-A and Rule 22 of the Rules. On this ground also his action is vitiated and unsustainable.

Point (c) and (d)

58. I will now consider the points (c) and (d) which are as under:

> *(c)Whether the orders dt.27-04-2004 of the Joint Collector in case Nos.D5/5023/2003 and D5/5649/2003 and the order dt.03-05-2003 of the Revenue Divisional Officer, Ranga Reddy East Division are valid and sustainable?*
>
> *(d) Whether the 13-B certificate dt.02-04-1991 issued by the Mandal Revenue Officer to respondent Nos.4 to 6 is valid and operative?*

59. Sri Vedula Venkata Ramana, learned Senior Counsel contended that no appeal was provided against issuance of 13-B certificate under Section 5-A of the Act till 31-10-1993, and therefore the appeal preferred by the petitioners to the Revenue Divisional Officer under Section 5(5) of the Act challenging the 13-B certificate dt.02-04-1991 issued by the Mandal Revenue

Officer to the respondent Nos.4 to 6 was not maintainable and that the Revenue Divisional Officer's order dt.29-06-1992 remanding the case back to the Mandal Revenue Officer is without jurisdiction and null and void.

60. He contended that in **M.B. Ratnam** (3 supra), the Division Bench held that if there is no right of appeal on the date when the proceedings were initiated and orders passed, appeals filed even after Section 5-B was introduced (w.e.f. 31-10-1993) would be without jurisdiction.

61. According to him, the order dt.29-06-1992 of the Revenue Divisional Officer setting aside 13-B Certificate dt.02-04-1991 issued under Section 5-A of the Act to the respondent Nos.4 to 6 is an order without jurisdiction since the Revenue Divisional Officer exercised appellate powers invoking sub Section (5) of Section 5 of the Act which has no application at all and since a regular remedy of appeal was provided only subsequently w.e.f. 3-10-1993 by amending the Act and introducing Section 5-B providing remedy of appeal against orders/certificates under 13-B issued by Mandal Revenue Officer invoking Section 5-A of the Act.

62. He contended that the order dt.29-06-1992 of the Revenue Divisional Officer and all subsequent orders of the respondent Nos.1 to 3 which flow from it including the order of the Revenue

Divisional Officer dt.03-05-2003 and that of the Joint Collector dt.27-04-2004 are null and void.

63. He cited **Sushil Kumar Mehta** (7 supra) wherein the Supreme Court held that a decree passed by a Court without jurisdiction over the subject matter or on other grounds which go to the root of its exercise or jurisdiction, lacks inherent jurisdiction, that it is *a coram non judice,* that such a decree passed by a Court is a nullity and is *nonest* and its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. In that case, the Court held that the defect of jurisdiction strikes at the authority of the Court to pass a decree which cannot be cured by consent or waiver of the party and pointed out that if the Court has jurisdiction but there is a defect in its exercise *which does not go to the root of its authority,* such a defect like pecuniary or territorial, could be waived by the party. This principle was also reiterated in **Dwarka Prasad Agarwal (D) By LRs and another** (5 supra) and **Hasham Abbas Sayyad** (6 supra).

64. While there is no quarrel with the above proposition, in my considered opinion, firstly the said principle may not apply in the case of *quasi judicial* authorities unlike Civil Courts. Decisions of such *quasi judicial/statutory* authorities, unless challenged and got set aside by an appropriate method, continue to be valid as if they

had been passed by authorities having jurisdiction for *no order will carry the stamp of invalidity on its forehead.*

65. Lord Radcliff in **Smith** (12 supra) declared:

> *"74. ... An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders".*

66. In **Calvin** (13 supra) also, it was held that a decision made contrary to natural justice, though void, until it is so declared by a competent body or Court, has some effect or existence in law.

67. Recently, the Supreme Court in **Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group**[20], reiterated the principle in **Calvin** (13 supra), in the following terms:

> *" It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In **State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil**[21] **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd**[22], **M. Meenakshi v. Metadin Agarwal**[23]**and Sneh Gupta v. Devi Sarup**[24] this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.*

[20] (2011) 3 SCC 363
[21] (1996) 1 SCC 434
[22] (1997) 3 SCC 443
[23] (2006) 7 SCC 470
[24] (2009) 6 SCC 194

*17. In **State of Punjab v. Gurdev Singh**[25] this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in **Smith v. East Elloe RDC**, wherein Lord Radcliffe observed: (AC pp. 769-70)*

> *"… An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

*18. In **Sultan Sadik v. Sanjay Raj Subba**[26] this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.*

19. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person."

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[25] (1991) 4 SCC 1
[26] (2004) 2 SCC 377

68. In **Kandla Port v. Hargovind Jasraj**[27], again the Supreme court reiterated that no order carries the stamp of invalidity on it's forehead and it has to be challenged by a person aggrieved by it and if he does not do so, it binds him. It held:

> *"26. Mr Ahmadi next argued that the termination of the lease being illegal and non est in law, the respondent-plaintiffs could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the court competent to do so. We are not impressed by that submission.*
>
> ***27.** The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so."*

69. Since the respondent Nos.4 to 6 have never questioned the order dt.29-06-1992 or the order dt.15-09-1997 of the Revenue Divisional Officer remanding the matters back to the Mandal Revenue Officer on the ground that such orders are without jurisdiction and that the Revenue Divisional Officer is *coram non judice*, they continue to be valid and bind the respondent Nos.4 to 6.

70. The 13-B certificate issued to respondent Nos.4 to 6 vide Proceedings B/1219/89 dt.02-04-1991 merges in the order dt.29-06-1992 or the order dt.15-09-1997 and does not survive.

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[27] (2013) 3 SCC 182

71. Even otherwise, I have already held on point (a) that persons claiming under agreements for sale such as respondent Nos.4 to 6 cannot seek regularization invoking Section 5-A of the Act, that an application under Section 5-A of the Act on the basis of the agreement of sale dt.31-08-1967 and 03-09-1967 could not have been maintained by respondent Nos.4 to 6 before the Mandal Revenue Officer, and consequently, the Mandal Revenue Officer had no jurisdiction to issue 13-B certificate dt.02-04-1991 in file No.B/1219/89.

72. Since the orders dt.27-04-2004 of the Joint Collector in case Nos.D5/5023/2003 and D5/5649/2003 and the order dt.03-05-2003 of the Revenue Divisional Officer, Ranga Reddy East Division both proceed on the basis that 13-B certificate can be issued to Respondent Nos.4 to 6 on basis of agreements of sale dt.31-08-1967 and 03-09-1967, for the same reasons given by me under Point(a) to declare the 13-B certificate dt.02-04-1991 in file No.B/1219/89, these orders are also without jurisdiction and unsustainable.

73. So the decisions **Aligarh Muslim University and others** (8 supra) and **Gadde Venkateswara Rao** (9 supra) cited by the respondents have no application.

74. The decisions relating to scope of Writ of Certiorari in **Syed Yakoob** (10 supra) and **Surya Dev Rai** (11 supra) cited by the

respondents also have no application since the petitioners sought Writs of Mandamus and not Writs of Certiorari.

75. Therefore I reject the contentions of the respondent Nos.4 to 6 that the order dt.29-06-1992 or the order dt.15-09-1997 of the Revenue Divisional Officer which resulted in the impugned orders of the Joint Collector and the Revenue Divisional Officer are void and that the 13-B certificate would revive and survive and bind the petitioners.

76. I therefore hold on Point (c) that the orders dt.27-04-2004 of the Joint Collector in case Nos.D5/5023/2003 and D5/5649/2003 and the order dt.03-05-2003 of the Revenue Divisional Officer, Ranga Reddy East Division are not valid and sustainable and on Point (d) that the 13-B certificate dt.02-04-1991 issued by the Mandal Revenue Officer to respondent Nos.4 to 6 is not valid and operative.

CONCLUSION

77. Accordingly the Writ Petitions are allowed and the orders dt.27-04-2004 of the Joint Collector in case Nos.D5/5023/2003 and D5/5649/2003 and the order dt.03-05-2003 of the Revenue Divisional Officer, Ranga Reddy East Division as well as the 13-B certificate dt.02-04-1991 issued by the Mandal Revenue Officer to respondent Nos.4 to 6 are set aside. No costs.

78. As a sequel, miscellaneous petitions, if any pending in these Writ Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-04-2017
Kvr/Vsv