

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

* * * *

WRIT PETITION No.26399 of 2007

Between:

Mudavath Tharya

....Petitioner

And

The State of Andhra Pradesh,
Rep.by its Principal Secretary, Revenue Department,
Secretariat, Hyderabad and others

....Respondents

JUDGMENT PRONOUNCED ON: 14.09.2018

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

*** THE HON'BLE SRI T.AMARNATH GOUD**

+ WRIT PETITION NO.26399 OF 2007

% DATED 14TH SEPTEMBER, 2018

Mudavath Tharya

.. Petitioner

Vs.

\$ The State of Andhra Pradesh,
Rep.by its Principal Secretary, Revenue Department,
Secretariat, Hyderabad and others

.. Respondents

<Gist:

>Head Note:

! Counsel for the petitioner : Sri J.Ugra Narasimha.

^Counsel for the Respondents 1 and s : Government Pleader for Revenue

Counsel for respondents 3 to 8 : Sri K.Ram Mohan

? CASES REFERRED:

1. (1995) 3 SCC 291
2. AIR 1964 SC 477
3. (2015) 1 SCC 417
4. 2007(2) ALD 28
5. (1992) 2 SCC 598
6. (1998) 8 SCC 1
7. (2009) 1 SCC 168
8. (1986) 4 SCC 566
9. 2012 (5) ALD 781
10. (2014) 1 SCC 603
11. AIR 1959 SC 107

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.26399 OF 2007

ORDER:

This writ petition is filed challenging the order of the second respondent dated 30.09.1993 in file No.J/4529/1993.

2. It is the case of the petitioner that he is the legal representative of one late Mudavath Chinna Laxman (died on 15.08.2007), who was the occupant of land admeasuring Ac.40.00 guntas in Sy.No.93/2, situated at Phulmamidi Village, Kandukur Mandal, Ranga Reddy District, and the said land is Inam land covered by the provisions of the A.P (Telangana Area) Inams Abolition Act, 1955 (hereinafter referred to as "the Act") and that he is entitled for grant of Occupancy Rights Certificate (herein after referred to as "ORC"). The father of the petitioner during his life time submitted representation dated 19.05.2006, apart from several other representations, before the second respondent for grant of ORC, but the second respondent did not pass any order in this regard. While the matter stood thus, respondents 3 to 8 interfered with the possession of the petitioner in the month of May, 2007, for which, the petitioner resisted the same.

3. It is further stated that on verification of revenue records, the petitioner came to know that the second respondent granted ORC to respondent Nos. 3 to 8 by the impugned order dated 30.09.1993 basing on the fabricated documents, without issuing any notice to him and hence the said order is without jurisdiction and is in violation of the principles of natural justice and suffers from

blatant error which is apparent on the face of the record. It is further stated that the second respondent, having found that the father of the petitioner was the occupant (entitled for grant of ORC), granted ORC to respondents 3 to 8 on the ground that they purchased the land from the occupant, which is illegal. It is further stated that unless and until there is a re-grant by determining the occupancy rights as on 1.11.1973, there cannot be any sale, and that even if there is any such transaction, the same is null and void and it does not confer or pass any right, title or interest in relation to the Inam land to the purchasers and as such, the impugned order is liable to be set aside.

4. Respondent Nos. 3 to 8 filed their counter affidavit stating that the writ petition is filed after a lapse of 14 years of granting ORC in their favour by respondent No.2 on 30-09-1993 and that the father of the petitioner sold the said land to respondent No.7 under a registered sale deed vide document No.3763 of 1988 dated 19.11.1988 and through various other registered sale deeds in the years 1988-89. After conducting a detailed enquiry and after obtaining no objection from the father of the petitioner and by following the procedure under the Act, ORC has been granted by respondent No.2 in favour of respondents 3 to 8 and therefore, prayed to dismiss the writ petition.

5. Heard.

6. Sri J.Ugra Narasimha, learned counsel appearing for the petitioner, argued that the writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, in which

jurisdictional error has to be looked into whether on the crucial date i.e., on 01.11.1973 all the lands vest with the Government and subsequently, the Government can issue grant (re-grant) to the occupants. The father of the petitioner was not granted re-grant under Section 3 of the Act by the Government and thus, the Government is the owner. Moreover, the second respondent has not recognized the rights of Mudavath Laxman (father of the petitioner). Thus, the sale deeds said to have been executed by the father of the petitioner are null and void as the vendor had no transferring title upon the lands to transfer the same to the vendees i.e., the unofficial respondents herein, and hence the unofficial respondents cannot claim better title. It was further argued that respondents 3 to 8 obtained ORC on the strength of bogus and fabricated documents. In support of his arguments on the issue of grant of ORC, he relied on the judgments in **Lokraj V. Kishan Lal¹, Syed Yakooob V. K.S.Radhakrishnan², N.Padmamma V. S.Rama Krishna Reddy³ and Chama Narasimha Reddy V. Joint Collector, Ranga Redy District, Hyderabad⁴**. He also relied on the judgment in **M/s.Dehri Rohtas Light Railway Company Limited V. District Board, Bhojpur⁵** on the ground of condonation of delay and laches and **Whirlpool Corporation V. Registrar of Trade Marks, Mumbai⁶** on the ground of dispensing alternative remedy.

¹ (1995) 3 SCC 291

² AIR 1964 SC 477

³ (2015) 1 SCC 417

⁴ 2007(2) ALD 28

⁵ (1992) 2 SCC 598

⁶ (1998) 8 SCC 1

7. Per contra, Sri K.G.Krishna Murthy, learned Senior Counsel appearing on behalf of Sri K.Ram Mohan, learned counsel for respondent Nos.3 to 8, submitted that ORC was granted on 30.09.1993 in favour of respondents 3 to 8 after complying with required formalities of law and by issuing a notice and also after conducting enquiry. The father of the petitioner also gave no objection for the alienation of the property in favour of un-official respondents. Subsequently, sale deeds were executed on several occasions and land has been changed many hands. First time, the land was alienated by virtue of a sale deed in the year 1964 and second instance of alienation by way of sale deed took place during the year 1988-89. No objection by the father of the petitioner to grant ORC in favour of un-official respondents 3 to 8 is binding on the petitioner. He further submitted that the petitioner approached this Court by suppressing the facts. In pursuance of the latest Supreme Court judgments, the law laid down in **Lokraj** case (1 supra) is no longer a good one and therefore, the writ petition is liable to be dismissed on the ground of laches. Apart from the same, the petitioner has not availed the remedy of statutory appeal and approached this Court by filing this writ petition on 9.12.2007 with an abnormal delay of more than 14 years. He further submitted that the lands were divided into plots and most of them have been sold to others and because of hike in the prices of lands, the petitioner is intending to make unlawful enrichment and filed this writ petition, which is unjust and the same has to be dismissed with costs.

8. The learned Government Pleader for Revenue submitted that there is no infirmity in the impugned order as the same has been passed after following due procedure contemplated under the Act and after considering all documentary evidence including re-grant and that the Revision Divisional Officer, being the competent authority, passed the impugned order which is in conformity with law.

9. For the purpose of convenience, the relevant provisions of Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 are extracted hereunder:-

2. Definitions: – (1) In this Act, unless there is anything repugnant in the subject or context-

(a) “*Collector*” means the Collector of a district and includes any other officer, not below the rank of a Deputy Collector, who may be authorised by the Government by notification in the Official Gazette, to discharge the functions of a Collector under this Act;

(b) the expression “*date of vesting*” when used-

(i) in sub-section (1), sub-section (2) with reference to clauses (a), (b), (c), (e) and (f) and sub-section (3) of Section 3 and in Section 34, means the date of publication of this Act in the Official Gazette;

(ii) “*elsewhere in this Act*” means the date appointed by the Government under clause (b) of sub-section (3) of Section 1;

(c) “*inam*” means land held under a gift or a grant made by the Nizam or by any Jagirdar, holder of a Samsthan or other competent grantor and continued or confirmed by virtue of a muntakhab or other title deed, with or without the condition of service and coupled with the remission of the whole or part of the land revenue thereon and entered as such in the village records and includes:

(i) arazi makhta, arazi agrahar and seri inam; and

(ii) lands held as inam by virtue of long possession and entered as inam in the village records:

Provided that in respect of former Jagir areas, the expression inam shall not include such lands as have not been recognised as inams by the Government after the abolition of the Jagirs.

(d) “*inamdar*” means a person holding an inam or a share therein, either for his own benefit or in trust and includes the successor in interest of an inamdar, and

(i) where an inamdar is a minor or of unsound mind or an idiot, his lawful guardian;

(ii) where an inamdar is a Joint Hindu family, such joint Hindu family;

(e) “*kabize-e-khadim*” means the holder of inam land, other than an inamdar, who has been in possession of such land at the time of the grant of inam or has been in continuous possession of such land for

not less than twelve years before the date of vesting and who pays the inamdar only the land revenue;

(f) “*land revenue*” means the land revenue assessed by the Government under the Land Revenue Act, 1317 Fasli and the rules thereunder, and where no land revenue has been assessed, the amount of land revenue that could be reasonably assessed if the land had been liable to payment of revenue;

(g) “*non-protected tenant*” means a tenant other than a permanent tenant or a ‘protected tenant’;

(h) “*permanent tenant*” means a person who, from a date prior to 10th June, 1950, has been cultivating the inam land on a permanent lease from the inamdar whether under an instrument or an oral agreement;

(i) “*prescribed*” means prescribed by rules made under this Act;

(j) “*protected tenant*” means the protected tenant as defined in 1[the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950]; (Act XXI of 1950.)

(k) “*Special Tribunal*” means a Special Tribunal constituted under Section 22 of this Act;

(l) “*Judi*” or “*quit-rent*” means the amount fixed by and payable to Government by the Inamdar out of the land revenue assessed, on inam land-

(2) Words and expressions used in this Act but not defined therein shall have the meaning assigned to them in the Land Revenue Act, 1317 Fasli, [the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950], Act XXI of 1950 and [the Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952], Act X of 1952 and the rules thereunder.

10. Enquiry by Collector in certain cases:. – The Collector shall examine the nature and history of all lands in respect of which an inamdar kabiz-e-kadim, permanent tenant, protected tenant or non-protected tenant, claims to be registered as an occupant under Sections 4, 5, 6, 7 and 8 as the case may be, and decide-

(a) in whose favour, and in respect of which inam lands, the claims should be allowed:

(b) the land revenue and the premium payable in respect of such lands.

24. Appeals from orders under Section 10 to prescribed authority:. – (1) Any person aggrieved by a decision of the Collector under Section 10 may, within thirty days from the date of decision, or such further time as the prescribed authority may for sufficient cause allow, appeal to the prescribed authority and its decision shall be final.

(2) If any question arises whether any building or land falls within the scope of Section 9 the same shall be referred to the prescribed authority whose decision shall be final.

10. Respondents 3 to 8 are successors-in-interest in getting ORC.

The father of the petitioner, who purchased the land for valid sale consideration from the legal heir of original inamdar through registered sale deed dated 18.11.1964, was in possession of the land as on 1.11.1973 and he gave statement before the Revenue Divisional Officer that he has no objection for granting ORC in

favour of respondents 3 to 8. As per Section 10 of the Act, the Revenue Divisional Officer is the competent authority for grant of ORC. By virtue of said power and by following due procedure, respondent No.2 granted ORC in favour of respondents 3 to 8 on 30.09.1993. Section 24 of the Act provides for statutory appeal to the Joint Collector, but the petitioner has not availed efficacious alternate remedy available to him.

11. The subject lands were purchased by the father of the petitioner from the daughter of the inamdar by way of a registered sale deed vide document No.379/64, dated 18-11-1964. Later, he sold the said lands to respondent Nos.3 to 6 under four registered sale deeds dated 29-04-1989, vide document Nos.1273/1989, 1275/1989, 1274/1989 and 1272/1989 respectively, and respondent No.7, vide document No.3763/1988, dated 19-11-1988. The petitioner has not established his *locus standi* to question the impugned proceedings. He is not a party and has not filed any document to show that he is the only legal heir of Mudavath Laxman to challenge the said proceedings.

12. It is seen from the record filed by the un-official respondents that further alienation has been taken place on 21.7.2006 and the lands are now the subject matter of the sanctioned lay out by Hyderabad Metropolitan Development Authority by proceedings dated 21.01.2011 and plots have been sold to several individuals and obviously rights of third parties are also involved.

13. The learned Government Pleader for Revenue has filed the extracts of revenue records from the office of the Tahsildar,

Kandukur Mandal for the year 2017-18, showing the un-official respondents as pattadars:-

Sl. No.	Sy.No.	Extent	Khatha No.	Name of the pattadar (Col.No.12)	Name of the possessor (Col.No.13)
1	932/A8/3	5.00	484	Mudavath Thavurya S/o Laxman	Mudavath Thavurya S/o Laxman
2	93/2/E	5.00	122	M.Satyanarayana Raju S/o Subba Raju	M.Satyanarayana Raju S/o Subba Raju
3	93/2/Ee	5.00	192	M.Savithri Devi W/o Surya Raju	M.Savithri Devi W/o Surya Raju
4	93/2/U	5.00	226	M.Suraparaju S/o Ramaraju	M.Suraparaju S/o Ramaraju
5	93/2/Uu	5.00	261	M.Ramakrishna Raju S/o Suraparaju	M.Ramakrishna Raju S/o Suraparaju
6	93/2/Ru	5.00	269	M.Umasathyanagaveni Rajeswari W/o M.R.K.Raju	M.Umasathyanagaveni Rajeswari W/o M.R.K.Raju
7	93/2/Ruu	15.00	289	Kola Krishna Murthy S/o Yenkanna	Kola Krishna Murthy S/o Yenkanna

14. The argument of the learned counsel for respondents 3 to 8 that reasonable inference has to be drawn that because of the development in respect of the subject lands the petitioner approached this Court for unlawful gain, cannot be ruled out. The disputed question of facts contended by the petitioner with regard to the signatures and thumb impressions in the enquiry proceedings and other documents cannot be gone into by this Court under writ jurisdiction. The issue of laches under the garb of writ of Certiorari cannot be entertained and the petitioner cannot overcome the act of his laches. The petitioner has not ventilated any cogent reasons in the affidavit in support of his argument on the point of laches.

15. The Supreme Court in **City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwal**⁷ held as follows:

“26. It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of

⁷ (2009) 1 SCC 168

a High Court to issue appropriate writs particularly a writ of mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.

27. The appellant in its reply opposing the admission of writ petition in clear and categorical terms pleaded that the writ petitioner has kept silent for more than 35 years and filed a belated writ petition. It was asserted that on account of inordinate delay and laches the writ petition suffers from legal infirmities and therefore is liable to be rejected in limine. The High Court did not record any finding whatsoever and ignored such a plea of far-reaching consequence.

28. As noticed hereinabove, the High Court obviously was impressed by the oral statement made during the course of the hearing of the writ petition and some vague and self-defeating averments made in the affidavit filed by the appellant in the High Court.

29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

16. The Supreme Court also in **State of M.P. V. Nandlal Jaiswal**⁸ held as follows:

“If there is inordinate delay on the part of the petitioner in filing a writ petition, and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

17. This Court in **K.R.Shankar Singh V. The Presiding Officer of the Industrial Tribunal-cum-Labour Court, Godavarikhani, Karimnagar District**⁹, held:

“The principle on which the Court refuses relief on the ground of laches or delay is that the rights accrued to others by the delay in filling the petition should not be disturbed, unless there is a reasonable explanation for the delay, because Court should not harm innocent parties if their rights had emerged by the delay on the part of the petitioner.”

18. The delay is not properly explained and the sale deeds are not cancelled by any competent civil Court. The petitioner could have preferred the appeal under Section 24 of the Act to ventilate all the disputed question of facts, legal issues including the issue of jurisdictional act if any before the appellate authority, but the

⁸ (1986) 4 SCC 566

⁹ 2012 (5) ALD 781

petitioner has not explained the reason for not availing the effective alternate remedy.

19. The Supreme Court in **Commissioner of Income Tax V.**

Chhabil Dass Agarwal¹⁰ held:

“Though vested with discretion to grant relief under Article 226 despite existence of alternative remedy, High Court must not interfere if an adequate efficacious alternative remedy is available to petitioner unless an exceptional case warranting interference is made out or sufficient grounds exist to invoke extraordinary jurisdiction under Article 226.”

20. As pleaded by the counsel for the petitioner, writ of Certiorari cannot be considered. The impugned order passed by the second respondent does not fall for adjudication within the scope of writ of **Certiorari** and decide the same under Article 226 of the Constitution of India. The Constitution Bench of Supreme Court in **Radheshyam V. State of M.P**¹¹ held:

“There are three requisites in order that the act of a body may be said to be quasi-judicial act, namely that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judiciously. Since a writ of Certiorari can be issued only to correct the errors of a court of a quasi-judicial body it would follow that the real and determining test for ascertaining whether an act authorized by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition. The

¹⁰ (2014) 1 SCC 603

¹¹ AIR 1959 SC 107

question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case.”

The counsel for the petitioner has not denied that the official respondent has no legal authority to pass the impugned order. The petitioner has not demonstrated as to what rights of the petitioner are affected. It is not in dispute that the petitioner is not a party before the official respondent and to the sale deeds, no objection issued by the father of the petitioner, therefore, it is construed that his rights are not affected. The official respondent has acted judiciously and there is no error committed by him in passing the impugned order.

21. The father of the petitioner executed registered sale deeds in favour of the un-official respondents in the year 1988-89 and they are still holding good as they are not challenged before any competent civil Court. The representation dated 19.05.2007 is not filed and no legal steps were taken by the petitioner or his late father to act upon the said representation. The petitioner is neither an occupant nor vendor of the lands and has not been declared as only legal heir by any competent civil Court in respect of the subject lands. The petitioner has not approached this Court with clean hands, and for the reasons indicated above, he is not entitled for the relief claimed in the writ petition. The writ petition is devoid of merits and is liable to be dismissed.

22. For the reasons indicated above, the writ petition is accordingly dismissed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date:14-09-2018.

Note:

L.R. Copy to be marked.

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