

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.15691 of 2016 & 1591 of 2018

COMMON ORDER:

W.P.No.15691 of 2016 [hereinafter referred to as the first writ petition] is filed by the petitioners requesting to issue a writ of Mandamus declaring the action of the 3rd respondent - Joint Collector, Ranga Reddy District, Khairatabad, Hyderabad, in entertaining the revision in D.No. D1/540/2015 by exercising *suo motu* power under Section 9 of the A.P and Telangana Rights in Land and Pattadar Passbooks Act, 1971 & Amendment Act, 1989, and the Rules as amended and made thereunder as arbitrary, illegal, without jurisdiction and contrary to the provisions of the said Act and Rules as well as the Indian Limitation Act and to consequently set aside the same.

1.1 W.P.No.1591 of 2018 [hereinafter referred to as the second/latter writ petition] is filed by the non official 5th respondent in the first writ petition and her son requesting to issue a writ of Mandamus directing the respondents 1 & 3 to stop the illegal constructions being made by the writ petitioners in the first writ petition, that is, the non official respondents 5 to 9 in the 2nd writ petition, and to declare the inaction of the 4th respondent despite letter, dated 11.09.2017, as unconstitutional, illegal & arbitrary and to direct the respondents 5 to 9 to stop interference over the lands in Sy.Nos 1 to 5 of Sogbowli Village, Rajendernagar Mandal, owned by the petitioners in the 2nd writ petition and prevent infringement of their rights.

2. I have heard the submissions of Ms. M.L. Neelima, learned counsel appearing for the writ petitioners in WP.No.15691 of 2016 & respondents 5 to

9 in WP.No.1591 of 2018; of Sri Md. Faseehuddin Saheb, learned counsel appearing for the 5th respondent in WP.No.15691 of 2016 & the writ petitioners in WP.No.1591 of 2018, and of the learned Government Pleader for Revenue appearing for the official respondents in both the writ petitions. I have perused the material record.

3. The parties in these writ petitions shall be referred to with reference to the array of parties in the first writ petition.

4. The genesis of these two writ petitions is the action of the Joint Collector, Ranga Reddy District, that is the 3rd respondent in both the writ petitions, in taking up *suo motu* revision, under Section 9 of Telangana Rights in Land and Pattadar Passbooks Act of 1971 [for short 'Act of 1971'], in Case No.D1/540/2015 for correction of entries in respect of lands in Sy.nos.1 to 5 of Sogbowli village, Rajendranagar Mandal, and issuance of a notice, dated 05.10.2015, at his instance by the Tahasildar for appearance of the parties to the said case, that is, the petitioners and the 5th respondent in the first writ petition, along with documentary evidence and records before him for enquiry.

5. The case of the writ petitioners in the first writ petition, who are aggrieved of the Joint Collector's afore-stated action, in brief, is as follows:

The petitioners 1 & 2 are husband and wife. The petitioners 3 to 5 are their children. They are the absolute owners of the lands of an extent of 14.27 guntas out of the total extent of Ac.16.27 guntas in Sy.nos.1,2,3,4 & 5 of Sagbowli village, Rajendranagar mandal, having purchased the said lands under various registered sale deeds from the rightful owners. Originally, the said land of a total extent of Ac.16.27 guntas belonged to one Gulam Yaseen Saheb,

S/o.Gulam Mohammed, resident of Kattedan village, Hyderabad Rural. The said land is a dry agricultural land. In the year 1966-67, the said Yaseen Saheb applied to the Tahasildar, Hyderabad West Taluk, for grant of permission under Sections 47 & 48 of Hyderabad Tenancy Agricultural Land Act XXI of 1950, to alienate the said lands in favour of seven persons by names (i) PVG. Krishnamacharyulu, So/P. Seshacharyulu; (ii) M. Shakuntala Devi, W/o. M.V. Rao; (iii) P. Narasimhacharyulu, S/o. P. Seshacharyulu; (iv) C.R. Sundaram, S/o.C.D. Ramalingam; (v) Hymavathamma, W/o. Jonnalagadda Narayanaiah; (vi) Pushpa, W./o.M.R. Bala Krishnan; and, (vii) D. Appa Rao, S/o. D. Purnaiah. The Tahasildar granted permission to Yaseen Saheb to alienate the said extent of land in favour of the afore-stated seven persons vide proceedings bearing D.Dis.A4/6233/66, dated 27.02.1967. In pursuance of the said permission proceedings, Yaseen Saheb sold Ac.16.27 guntas in favour of the above said seven persons and received full consideration and delivered physical possession of the respective lands to the respective purchasers. The details of the said purchases/purchasers are as follows: “(1) Dr.C.R.Sundaram, S/o.C.D.Ramalingam, purchased an extent of Ac.1.00 guntas in Sy.no.1 of Sagbowli village *vide* registered sale deed bearing document no.714/1967, dated 12.06.1967. (2) J. Hymavathamma, W/o. Jonnalagadda Narayanaiah purchased an extent of Ac.4.00 guntas in Sy.no.1 of Sagbowli village *vide* registered sale deed bearing document no.712/1967, dated 12.04.1967. (3) D. Apparao, S/o.D. Purnaiah purchased an extent of Ac.1.00 guntas situated in Sy.no.1 of Sagbowli village *vide* registered sale deed bearing document no.715/1966, dated 27.07.1966. (4) M. Pushpa, W/o.M.K. Balakrishna purchased an extent of Ac.1.00 guntas in Sy.no.2 and 4 of Sagbowli village *vide* registered sale deed

bearing document no.711/1967, dated 12.04.1967. (5) P.V.Y. Krishnamacharyulu, S/o.Seshacharyulu purchased an extent of Ac.5.20 guntas in Sy.nos.2,3,4 & 5 of Sagbowli village *vide* registered sale deed bearing document no.716/1966, dated 27.07.1966. (6) K. Ramachandra Rao, S/o.Sri Krishna Rao purchased an extent of Ac.3.07 guntas in Sy.nos.2,3,4 & 5 of Sagbowli village *vide* registered sale deed bearing document no.713/1967, dated 12.04.1967. (7) M. Shakuntala Devi W/o.M.V. Rao purchased an extent of Ac.1.00 gutnas in Sy.nos.4 & 5 of Sagbowli village *vide* registered sale deed bearing document no.710/1967, dated 12.04.1967.” While so, J. Hymavathamma, who is the purchaser from Yaseen Saheb, under the second sale deed, dated 12.04.1967, referred to above, executed GPAs in favour of the petitioners 1 & 2; that is, for an extent of Ac.2.00 guntas in favour of the 1st petitioner, on 01.08.1990, and for an extent of Ac.2.00 guntas in favour of the 2nd petitioner, on 06.03.1990, and delivered possession of the said properties to them. The petitioners 1 & 2 purchased, under registered sale deed bearing document no.1149 of 1991, dated 16.12.1991, an extent of Ac.1.00 guntas in Sy.Nos.2 and 4 from M. Pushpa, who is the purchaser from Yaseen Saheb, under the fourth sale deed, dated 12.04.1967, referred to above, and have taken possession of land from her after payment of full consideration. Further, the petitioners 1 & 2 purchased Ac.5.00 guntas covered by Sy.nos.2,3,4 & 5 from Gayatri Education and Cultural Trust represented by its Chairman Kandukuri Sivananda Murthy, under a registered sale deed bearing document no.5916 of 1990, dated 09.05.1990, and took possession of the said extent of land. The said Trust was constituted and registered with nine members including PVG Krishnamacharyulu, S/o. Seshacharyulu, who contributed Ac.5.20 guntas of

land purchased by him from Yaseen Saheb under the fifth sale deed, dated 27.07.1966, referred to above. Petitioners 3 to 5 along with their deceased sister, by name Premalatha Reddy, who is the daughter of petitioners 1 & 2, purchased under a registered sale deed bearing document no.7793 of 1994, dated 19.09.1994, an extent of Ac.3.07 guntas covered by Sy.no.2/B, 3, 4/A & 5/A of Sagbowli Village, Rajendranagar Mandal, from K. Ramachander through his GPA holder. Petitioners 1, 2 and 4 & 5 also purchased an extent of Ac.1.00 guntas covered by Sy.no.4/1, 5/1 from Sakuntala Devi @ Sakuntala Rao, under registered sale deed bearing document no.877 of 2003 dated 07.02.2003, and have taken possession of the said land. Since the dates of the said purchases of the said total extent of Ac.14.27 guntas, the petitioners have been in possession and enjoyment of the said total extent and they have been cultivating the same by taking water from the bore-well by obtaining electricity service connections from the concerned authorities. Prior to the petitioners, their respective vendors have been in continuous possession as rightful owners and their names were also incorporated in the revenue records of the village. Pattadar passbooks and title deed documents were also issued in their favour after mutating the respective properties in their names in the revenue records. In the year 1974, a survey was conducted by the Deputy Inspector of Survey and Land Records, Chevella, with respect to survey nos.1 to 5 of Sagbowli Village, and the boundaries were fixed after giving notices to all the parties. In the year 1994, K. Ramachandra Rao, Yadi Reddy, Suvarna, J. Hymavathamma and Gayatri Education & Cultural Trust filed separate statements under Section 6(1) of Urban Land (Ceiling & Regulation) Act, 1976, declaring the properties in Sy.nos.1 to 5 of Sagbowli village and they were declared as non surplus

holders by the Spl.officer and competent authority vide proceedings no.D1/144/148/94, dated 23.12.1994. In the year 1992-93 the Government had acquired Ac.3.02 guntas of total extent of Ac.14.27 guntas for the purpose of formation of inner ring road and an award was passed in Award No.1/1214/3/90, dated 04.01.1995, and compensation was paid to the petitioners. The petitioners 1 & 2 leased out an extent of 2500 Square Yards in Sy.Nos.2 and 3 to Indian Oil Corporation Limited, which is a Government Corporation, for installation of petrol station in the year 2004 and a registered lease deed was also executed on 28.06.2004 with the terms and conditions mentioned therein after taking necessary permission from the concerned authorities like HUDA & GHMC and on payment of necessary charges. Now, the Indian Oil Corporation's filling station is in existence in the said survey nos.2 & 3. Property tax, electricity consumption charges and other taxes are also being paid to the concerned authorities with respect to the said extent of land. In the year 2011, the petitioner applied to the Government to change the land use from recreation [open spaced used zone] to commercial used zone in respect of an extent of Ac.4.00 guntas covered by Sy.nos.2,3 & 4 and parts of Sagbowli village. In pursuance of the said application, the HMDA, after following procedure prescribed under HMD Act, 2008, and after collecting necessary charges and fees, granted permission for construction of commercial building. GHMC had also issued Occupation Certificate in the year 2012 for the multi storied building, which was given to M/s Bharat Wal-Mart Pvt.Ltd., in Sy.nos.2,3,4 & 5 of Sagbowli village. The remaining extent is vacant and is in possession of the petitioners. Some portion of the land was given for development of Nursery and some portion was given to private transport

authorities for parking their vehicles. While so, the Deputy Commissioner, GHMC Circle – 6, South Zone, Hyderabad, issued notice, dated 09.02.2015 to M/s.Wal-mart (Best Price) on the ground that the 5th respondent made a complaint, dated 09.02.2015, stating that the Wal-Mart has been constructed without permission and agreement of land owners. The Dy. Commissioner directed the Wal-Mart (Best Price) to submit the registered ownership documents and copy of the sanctioned layout/building sanctioned plan, if any, in respect of M/s.Wal-Mart (Best Price) Ground Floor structure in premises bearing Sy.nos.3,4 & 5 situated at Sivampally village, Rajendranagar. In response to the said notice, the 1st petitioner submitted a detailed reply stating that the writ petitioners are the absolute owners of the subject lands having purchased under various registered sale deeds and that they constructed structures by taking necessary permissions from the concerned authorities and the municipal authorities issued NOC vide order No.10432/HO/SZ/Cir-6/2011, Fir NOC.261/AD/FPW/GHMC/2013 and Building permit order No.10432/HO/SZ/Cir-6/2011 and requested the Dy. Commissioner to drop the proceedings as the complaint filed by the 5th respondent is false, baseless and as the 5th respondent has no right or grievance to file the complaint against the petitioners. In the month of October, 2015, the petitioners were served with a notice, dated 05.10.2015, by the 3rd respondent calling upon them to appear before the said authority, on 07.11.2015, *inter alia*, exercising *suo motu* powers under Section 9 of Act of 1971 along with all documentary evidence for correction of entries in respect of the land in Sy.no.1,2,3,4 & 5 of Sagbowli village, Rajendranagar Mandal, basing on the petition filed by the 5th respondent. The petitioners appeared before the Joint Collector on the said

date and also filed memo of objections, on 26.03.2016, stating that the 5th respondent, who filed the petition is neither the owner of the subject property or lands nor has she been in possession of the lands at any point of time since 1966-67 and that she has no right or cause of action to file the petition before the Joint Collector and that the owner of the said lands, Gulam Yaseen Saheb, sold the property after taking permissions from the Tahasildar under the provisions of Hyderabad Tenancy and Agricultural Act XX of 1950. The 3rd respondent – Joint Collector has no right or jurisdiction to entertain the revision after lapse of five decades, that is, after 49 years by exercising *suo motu* powers under Section 9 of Act 1971. The petitioners in their objections categorically stated all the facts narrated above. They also submitted a petition under the provisions of RTI Act to furnish the documents filed by the 5th respondent along with the petition before him as no documents were given to the petitioners along with the notice, dated 05.10.2015. The same were furnished to the petitioners in the last week of April, 2016. On receiving the documents, the petitioners came to know the following details: “That the 5th respondent submitted a petition, in the month of December, 2014, to the Dy.Chief Minister of Telangana with false allegations that the name of Gulam Yaseen was shown since 1955-56 to 1971-72 in pahanies and that his name was not shown thereafter and that some unconnected persons names had been entered in the pahanies and that they are interfering with the possession and are trying to encroach the same; that the said representation was forwarded to the 2nd respondent/District Collector to look into the matter; that consequently, the 2nd respondent addressed a letter, dated 09.03.2015, to the Dy.Collector/Tahasildar to take necessary action in the matter in respect of

representation submitted to Dy.Chief Minister and requested the Tahasildar to enquire on the content of the said petition and submit a detailed report; and, that pursuant to the letter of the 2nd respondent, the 4th respondent submitted a report to the 2nd respondent stating that the pahanies from 1954-55 to 1971-72 are not available in the office and that after 1972-73 various persons names were recorded as pattadars and possessors of the said lands and that the entire land in Sy.nos.1 to 5 of Sagbowli village is recorded in the name of Yaseen Sahab as pattedar from the year 1955-58 to 1971-72 and that the 5th respondent is not in possession of the land being claimed by her.” In the present case, neither the Tahasildar nor the RDO passed any orders in respect of the subject matter. Therefore, the revisional authority is not entitled to entertain a revision in the absence of orders passed by his subordinates. The 5th respondent has not questioned any orders passed by the said authorities. Therefore, *suo motu* revision ought not to have been entertained by the Joint Collector. 5th respondent has no *locus standi* to question the sale deeds executed by Yaseen Sahab in favour of vendors of the petitioners after 49 years. *Suo motu* revision taken up by the 3rd respondent – Joint Collector without there being any order passed by the MRO/RDO is not maintainable and is illegal, arbitrary and without any authority of law. The civil Court has jurisdiction to decide the validity of transactions and any attempt by the Joint Collector to decide the validity would amount to entering into jurisdiction of civil Court. The powers under Section 9 of the Act have to be exercised within a reasonable time but not after lapse of decades of time. Reopening of settled matter after gap of 49 years amounts to abuse of process of law and it is against the ratios in the decisions of the Supreme Court. The issuance of notice, dated 05.10.2015,

after entertaining a *suo motu* revision is arbitrary and unsustainable in view of the ratios in the decisions of the Supreme Court. Hence, the writ petition is filed.

6. On 08.06.2016 this Court admitted the first writ petition and granted interim stay as prayed for in WPMP.No.19399 of 2016. Since the second writ petition is connected to the first writ petition, it was directed to be listed along with the first writ petition. The 5th respondent filed a vacate stay petition in W.V.M.P.No.3348 of 2016 in the first writ petition requesting to vacate the interim order. However, a joint request was made that instead of the vacate petitions, the writ petitions may be heard and disposed of on merits. Therefore, submissions are heard in both the writ petitions.

7. Before adverting to the case of the 5th respondent and her son, it is pertinent to note that the Assistant Director of Mines and Geology has written a letter, dated 11.09.2017, to the Tahasildar, Rajendranagar Mandal, *inter alia* stating that the 5th respondent submitted a petition and that by the said petition it was informed that the first writ petitioner in the first writ petition has manipulated documents and deeds in his name and in the names of his family members and that they illegally occupied the lands in Sy.nos.1 to 5 of Sagbowli village and that an application is given by the 5th respondent to the District Collector and that an enquiry is taken up by the Joint Collector under Section 9 of ROR Act, 1971, against Yadi Reddy (1st writ petitioner) and his family members and that they are illegally doing mining in the disputed lands. Further, in the said letter, the Assistant Director of Mines and Geology made a request to the Tahasildar, Rajendranagar Mandal, to depute the Mandal

Surveyor and Mandal Revenue Inspector, on 18.09.2017, for conduct of joint inspection of the area in Sy.nos.1 to 5 of Sagbowli village so as to take further necessary action in the matter. Complaining inaction in the above regard on the part of the Tahasildar concerned, the 5th respondent in the first writ petition and her son filed the second writ petition for implementation of the request in the said letter addressed by the Assistant Director, Mines and Geology.

8. Now it is apt to refer to the case of the 5th respondent and her son which is as follows:

The petitioners are not the owners of the subject land of an extent of Ac.14.27 guntas out of total extent of 16.27 guntas in Sy.nos.1 to 5 of Sagbowli village. To grab the land, they created the sale deeds by forging the signature of late Gulam Yaseen, who is the original pattedar of the said land. They further created several *inter se* sale deeds to create multiplicity of proceedings. All the sale deeds relied upon by the petitioners are false documents and they are created to deprive the original pattedar of his enjoyment over the said property. Late Gulam Yaseen might have sought permission from the competent authority for sale of the subject mentioned property, but, in-fact, he has not sold the property to anyone of the persons whose names are mentioned by the petitioners. The sale deeds referred by the petitioners in the names of seven purchasers are false, fabricated and bogus. The sale deeds are not filed into Court lest the truth will be revealed. They are liable to be charged for cheating. They purposefully avoided filing of the registered sale deeds. Having appeared before the 3rd respondent in the *suo motu* revision case, when the matter is posted for counter and filing documents, they filed this writ petition to avoid

inquiry before the said authority and sought stay of all further proceedings. It is for the petitioners to establish their ownership as the case of the 5th respondent is that late Gulam Yaseen has not executed any sale deeds; and, hence, the subsequent sale deeds are baseless and fake. Execution of GPA and delivery of possession by J. Hymavathamma in respect of Ac.2.00 guntas of land and subsequent execution of sale deeds by Pushpa, on 16.12.1991, are all allegations without any basis and such sale deeds cannot be considered when the original sale deeds said to have been obtained from Gulam Yaseen are fake and created ones. Similarly, the allegation that the land to an extent of Ac.5.00 guntas was purchased from Gayatri Educational Trust by the petitioners 1 & 2 is false. The said allegation, without giving any details of the extents of land in each survey number, is a vague allegation and the said document is created to grab the property. A number of sale deeds are created by the 1st writ petitioner in his name and in the names of his wife & children to create confusion, in case of arising of litigation in future. The petitioners have not produced any documents before the 3rd respondent and this Court; however, an impression is being created that several sale deeds are there. Such fake sale deeds need not be considered. The petitioners falsely alleged that they are cultivating the lands. They played fraud before the revenue authorities and got their names mutated by presenting fake sale deeds. Most of the lands are open lands and are not in possession of the petitioners. On the basis of land ceiling proceedings, the petitioners cannot substantiate their claim. Such records in land ceiling proceedings are not produced. Records were manipulated in connivance with the officials of revenue department for claiming compensation. The permissions from Urban Development Authority and GHMC with reference to

lease of land of 2500 Square yards in Sy.nos.2 and 3 to Indian Oil Corporation in 2004 are managed by the petitioners using fraudulent documents. Mere permission or illegal occupation does not give any authority of title to anyone. The allegations regarding occupation certificate issued by the GHMC for the multi storied building, which was given to M/s Bharat Wal-Mart Pvt.Ltd., in Sy.nos.2,3,4 & 5 of Sagbowli village, are false. Proceedings before the municipal authority cannot be the basis for claim of title. 3rd respondent has absolute power under Section 9 of Act of 1971 to entertain the revision. In the instant case fraud is played by the petitioners to grab the land of the 5th respondent. Hence, issue of limitation cannot be a bar to proceed to enquire into the legality of the mutation proceedings in the names of the petitioners. The issue is as to whether or not the entry in the revenue records, that is, deletion of the name of late Gulam Yaseen as original pattadar from the original records and substitution of the name of the petitioners is in accordance with law. Since the petitioners played fraud and created sale deeds in respect of subject land, the revision is entertainable by the Joint Collector. The petitioners are having sale deeds only for Ac.14.27 guntas. They have no *locus* to halt the proceedings for the land of an extent of Ac.2.00 guntas in Sy.no1 of Sagbowli village. They are unconcerned with the land of an extent of Ac.2.00 guntas. The petitioners have no claim in respect of Ac.2.00 guntas of land in Sy.no.1 of Sagbowli village. The said extent of land is of the 5th respondent at present. Original pattadar's name was recorded in the year 1954-55 and continued till 1971-72. Entries made in revenue records without any basis and without any notice can always be created and for such creation report of the Tahasildar is sufficient. The law provides a provision under which the illegal

action of the lower authority can be corrected by the higher authority; the same cannot be prevented by anybody including the writ petitioners. When the special law is in force, civil Court will have no jurisdiction. The right of the rightful owner does not get extinguished by mere passage of time. The petitioners have to prove that title accrued to them. The powers under Section 9 of the Act of 1971 are exhaustive. The petitioners have no *locus standi*. Ac.2.00 guntas of land is the subject matter of the impugned proceedings; and, the persons concerned with the said Ac.2.00 guntas of land are not parties in this writ petition. The entries in respect of the land to an extent of Ac.2.00 guntas seem to be in the fictitious names of C.R.Sundaram & D. A. Rao. They are not parties to the proceedings before this Court. Hence, proceedings insofar as Ac.2.00 guntas shall go on during the pendency of the writ petition and despite pendency of the writ petition and even in the case of success of the writ petitioners, as their claim is not related to the remaining Ac.2.00 guntas of land. Hence, the interim order may be vacated and the writ petition may be dismissed.

9. Since the second writ petition is sequential to the first writ petition and as the subject matter of the second writ petition is only related to the right of the respondents therein, that is, the writ petitioners in the first writ petition to make constructions in the disputed land and as the decision in the second writ petition depends upon the result of the first writ petition and as the pleaded cases of the parties in the second writ petition are also the same, there is no need to reiterate the very same contentions in this common order.

10.1 Learned counsel for the 5th respondent contended as follows: 'The writ petitioners played fraud before the revenue authorities and got their names mutated by presenting fake sale deeds. Since the alleged seven sale deeds executed in favour of the predecessors/vendors of the petitioners are fake and forged sale deeds, no title or right is created in favour of the writ petitioners, who are subsequent purchasers. As the writ petitioners played fraud and created sale deeds in respect of subject land and as the mutation entries were made on the basis of such fraudulent sale deeds, the *suo motu* revision is entertainable by the Joint Collector. Hence, it follows that the Joint Collector had rightly entertained the revision and issued notices. The writ petitioners having entered appearance in the proceedings before the Joint Collector filed this writ petition with false and untenable allegations.'

10.2 Per contra, the main submissions made on behalf of the writ petitioners are as follows: - 'The 5th respondent is not disputing the proceedings of the competent authority by which Yaseen Saheb obtained permission for sale of his property to seven prospective purchasers. Yet, she is contending that having obtained such permission, he did not execute any sale deeds. In-fact, the said Yaseen Saheb executed seven registered sale deeds between the years 1966 and 1967. Thereafter, the property changed hands by subsequent sale transactions under regular registered sale deeds. On account of the above and other subsequent events stated by these writ petitioners, if the Joint Collector is allowed to exercise the *suo motu* revisional powers after 49 years of execution of the seven registered sale deeds, it would lead to anomalies leading to uncertainty and complications seriously affecting the rights of the parties over the immovable properties. Further, the orders which had attained finality and

certainty as regards title & rights of the parties must have sanctity. Therefore, the entertainment of *suo motu* revision resorted to by Joint Collector is unjust, arbitrary, illegal and contrary to settled legal position & principles of natural justice.

11. I have given earnest consideration to the fact and submissions.

12.1 To begin with, it is to be noted that both the parties are stating that the original owner of the property of a total extent of Ac.16.27 guntas in the Sy.nos.1 to 5 at Sagbowli village, Rajendranagar Mandal, is Yaseen Saheb. The 5th respondent is not disputing the fact that the Tahasildar concerned granted permission to Yaseen Saheb to alienate the said extent of land in favour of the afore-stated seven persons (prospective purchasers) *vide* proceedings bearing D.Dis.A4/6233/66, dated 27.02.1967. However, the 5th respondent is contending that having obtained such permission the said Yaseen Saheb did not execute any documents and has not alienated the property and that the seven sale deeds stated to have been executed by Yaseen Saheb are forged and fabricated. However, the writ petitioners contended that pursuant to the said permission proceedings for alienation, Yaseen Saheb had sold Ac.16.27 guntas in favour of the above said seven persons and received full consideration and delivered physical possession of the respective lands to the respective purchasers under the said seven sale deeds. The dates of the seven sale deeds in favour of the seven purchasers (whose details are already referred to supra) are 12.06.1967; 12.04.1967; 27.07.1966; 12.04.1967; 27.07.1966; 12.04.1967 and 12.04.1967. The copies of the said sale deeds as well as certificates of encumbrance (3 in number) are filed along with additional material papers.

The writ petitioners also filed copies of their respective sale deeds executed on 16.12.1991, 09.05.1990, 19.09.1994, 07.02.2003 and 15.12.1995 by the purchasers who purchased from Yaseen Saheb or their successors in interest or their power of attorney holder/s as the case may be. I have carefully gone through the said and other relevant documents of both sides. In the sale deed, dated 16.12.1991, in favour of writ petitioners 1 & 2, there is a reference to the antecedent registered sale deed bearing no.711 of 1967 in favour of M. Pushpa, one of the seven purchasers under one of the seven sale deeds said to have been executed by Yaseen Saheb. Similarly, in the sale deed, dated 19.09.1994, in favour of the said writ petitioners 1 & 2, there is a reference to the antecedent registered sale deed bearing no.713 of 1967, dated 12.04.1967, in favour of K. Ramachandra Rao, one of the seven purchasers under one of the seven sale deeds said to have been executed by Yaseen Saheb. Likewise in the sale deed, dated 07.02.2003, in favour of writ petitioners 1,2 4 & 5, there is a reference to the sale deed bearing document no.710 of 1967, dated 12.04.1967 in favour of M. Shakuntala Devi, one of the seven purchasers under one of the seven sale deeds said to have been executed by Yaseen Saheb. Further, in the registered sale deed, dated 15.12.1995, in favour of writ petitioners 4 & 5, executed by P. Leelamma, W/o.late P. Krishnamacharyujlu, one of the seven purchasers from Yaseen Saheb, there is a reference to G.O.Ms.No.733, Revenue (UCI) Department, Dated 31.10.1988, with regard to necessary exemption. Further, the copy of the registered lease deed, dated 28.06.2004, between writ petitioners 1 & 2 and Indian Oil Corporation Ltd., reflects that the writ petitioners 1 & 2 leased out 2,500 Square Yards of their land in Sy. nos 2 & 3 of the subject village. Further, it is borne out by the record that in the

year 1974, a survey was conducted in respect of the lands in Sy.nos.1 to 5 of Sagbowli village, by the Deputy Inspector of Survey & Land Records, Chevella, and that the boundaries were fixed after giving notices to all concerned and that in the year 1994, K.Ramachandra Rao, the writ petitioners 1 & 2 and Gayatri Educational & Cultural Trust filed separate statements under Section 6(1) of Urban Land (Ceiling & Regulation) Act, 1976, declaring the properties in Sy. nos. 1 to 5 of Sagbowli village and that they were declared as non surplus holders by the Special Officer and the competent authority, under proceedings dated 23.12.1994. The copy of Form 9 – Notice of Award under Section 12(2) of Land Acquisition Act, 1894, dated 31.10.1995, related to Award 1/1214/90 issued by Land Acquisition Officer-cum-RDO, Chevella Division, reflects that an Award has been passed in respect of 14,762 Square yards of land (= Ac.3.02 guntas) referred to in the writ petition in the subject survey numbers and that compensation of more than Rs.13.00 lakhs and odd was paid to the persons interested in the said land, namely the writ petitioners 1 & 2 and Hymavathamma & Ramachandra Rao, two of the seven purchasers who were said to have purchased lands originally from Yaseen Saheb. The writ petitioners also contend that their request for change of land use ie., from recreation (open space used zone) to commercial used zone in respect of Ac.4.00 guntas covered by Sy.nos.2, 3 & 4 was granted after collecting necessary charges & fee and that permission for construction of building was also accorded and that an occupation certificate was issued in the year 2012 in respect of the constructed multi-storied building and it was given to M/s. Bharat Wal-Mart Private Limited and that the remaining extent, which is vacant, is in their possession and that some portion of the land was given for

development of nursery and another portion was given to Transport Authority for parking vehicles. The writ petitioners also submit that when a complaint was made by the 5th respondent as regards the Wal-Mart building, an enquiry was held and that NOC & Building Permit were submitted to the competent authority. Thus, the writ petitioners contend that the earliest sale deeds, which are more than four decades old, are valid and are acted upon. Having relied upon all the chronology of events borne out by public record, the writ petitioners contend that the overwhelming documentary proof lays bare that the contentions being raised by the 5th respondent and her son are without any merit and that on their contentions, the Joint Collector cannot permit them to question the validity of the sale deeds or sale transactions, which had taken place more than 44 years ago, as he has no jurisdiction to examine the validity of such sale deeds and set them aside. Accordingly, the writ petitioners contend that the said *suo motu* revision ought not to have been entertained by the Joint Collector to examine the transactions under registered sale deeds, which attained finality, as the transactions which are more than four and a half decades old must have sanctity. As rightly contended by the writ petitioners, in the event, the 5th respondent & her son are aggrieved of the sale transactions, which are several decades old, it is for them to seek a common law remedy before a competent civil Court and that it is not for the Joint Collector who is a quasi judicial authority to examine the questions related to the validity of the sale transactions and the sale deeds and title as the said function is a judicial function to be performed by a Civil Court. In the light of the facts, contentions based on the afore-stated documents, it is indisputable that the *suo motu* revision is entertained by the Joint Collector on the complaint of the 5th

respondent referred to by the Deputy Chief Minister, wherein she *inter alia* questioned the truth and validity of the registered sale deeds said to have been executed by Yaseen Saheb several decades back, that is, during the years 1966 and 1967 in favour of seven individual purchasers that too pursuant to the grant of permission by the competent authority for sale of the said properties to the seven prospective purchasers. Therefore, the 5th respondent is seeking adjudication of the validity or otherwise of the said sale deeds of the years 1966 & 1967 obtained by the predecessors-in-interest of the writ petitioners in the first writ petition as well as the subsequent registered sale deeds obtained by the writ petitioners in the first writ petition on the ground that Yaseen Sahab has not executed any sale deeds and that the sale deeds in favour of the seven purchasers are created, fake and forged. Taking into account the pleaded cases of the parties and the circumstances, what is to be noted is that if the Joint Collector is allowed to proceed with the adjudication of the revision *suo motu* entertained by him, he would be called upon and would be required not only to adjudicate the issues of title but also would be required to deal with the issues of validity of the sale deeds including the sale deeds executed nearly four and a half decades back and cancellation of such registered sale deeds and subsequent sale deeds between private parties. In the considered opinion of this Court, allowing the Joint Collector to continue to entertain the revision and decide such questions would amount to allowing him to exercise judicial functions entrusted to Courts. If such functions namely cancellation of registered sale deeds, conveyances or deeds, which are entrusted to Courts, are exercised by the Joint Collector invoking the power under the Act of 1971 the same violates the doctrine of separation of powers.

12.2 In a recent decision in **Kutchi Lal Rameswar Ashram Trust v. Collector, Haridwar and others**¹, the Supreme Court considered the question as to whether a District Collector can assume the power of a civil Court and adjudicate title to the property i.e., vesting of property in the State by escheat under Section 29 of the Hindu Succession Act, 1956, and held as under:

‘21. To allow administrative authorities of the State – including the Collector, as in the present case – to adjudicate upon matters of title involving civil disputes would be destructive of the rule of law. The Collector is an officer of the State. He can exercise only such powers as the law specifically confers upon him to enter upon private disputes. In contrast, a civil Court has the jurisdiction to adjudicate upon all matters involving civil disputes except where the jurisdiction of the Court is taken away, either expressly or by necessary implication, by statute. In holding that the Collector acted without jurisdiction in the present case, it is not necessary for the Court to go as far as to validate the title which is claimed by the petitioner to the property. The Court is not called upon to decide whether the possession claimed by the trust of over forty-five years is backed by a credible title. The essential point is that such an adjudicatory function could not have been arrogated to himself by the Collector. Adjudication on titles must follow recourse to the ordinary civil jurisdiction of a Court of competent jurisdiction under Section 9 of the Code of Civil Procedure, 1908.’

12.3 On this ground alone, this Court finds that the writ petitioners in the first writ petition are justified in approaching this Court by raising an objection to the Joint Collector exercising *suo motu* power of revision in the present case.

13. Dealing with the aspect of delay and the justification in the matter of the Joint Collector exercising *suo motu* power after long delay of nearly four and a half decades, it is necessary to refer to BSO 15(18), which reads as under:

“18. Revision: - (1) The order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of is final and no second appeal shall be admitted. But if, at any time after the passing of the original or appellate decision, the collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation he may set aside, cancel or in any way modify the decision passed by an officer sub-ordinate to him. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him.

2. The Commissioner of Land Revenue may at any time either *suo moto* or on an application made to him call for and examine the records relating to any decision or order passed or proceeding taken by the Collector under the preceding sub-paragraph for the purpose of satisfying himself as to the

¹ AIR 2018 SC 614

legality or propriety of such decision or order or as to the regularity of such proceedings and pass such order in reference without giving the respondent a notice to show cause against the action proposed to be taken adversely to him. The Commissioner of Land Revenue may stay the execution of any such decision, order or proceedings pending the exercise of his powers under this subparagraph in respect thereof.

3. The State Government may at any time, either suo-moto or on an application made to them, call for and examine the records relating to any decision or order passed or proceeding taken by any authority or Officer subordinate to them under the preceding sub-paragraphs for the purpose of satisfying themselves as to the legality or propriety of such decision or order or as to the regularity of proceeding and pass such order in reference thereto as they think fit. No order should be reversed or modified adversely to the respondent without giving the respondent a notice to show cause against the action proposed to be taken adversely to him. The Government may stay the execution of any such decision order or proceeding pending the exercise of their powers under this sub-paragraph in respect thereof.

4. All revision petitions in darkhast cases should be stamped with a court fee label to the value of the rupees two.”

Though earlier a period of limitation of three years was provided, no doubt, there is no provision for limitation for entertaining a revision either *suo motu* or on an application, after the amendment of the provision. In the considered view of this Court, in matters of this nature, even though there is no statutory provision imposing any time limit for entertaining a revision, such power shall be exercised within a reasonable time. In the further considered view of this Court, even in cases where orders are sought to be revised on the ground of fraud, the exercise of power must be within a reasonable period from the date of discovery of fraud. For the above propositions, if any authority is required, suffice if it is said that there are a number of decisions of the Supreme Court, including the decisions referred to *infra*.

13.1 In **Joint Collector, Ranga Reddy District v. D. Narsing Rao and others** [(2013) 3 SCC 695], the Supreme Court while dealing with the regulations under the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 Fasali, having noted that no time limit is prescribed in the above regulations for the exercise of *suo motu* power, considered the question as to whether *suo motu* power could be exercised after a period of 50 years. The

Supreme Court while affirming the decision of the Division Bench of this Court in W.A.Nos.273 and 323 of 2010 summed up the legal position as follows:

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

13.2 In the above decision, the Supreme Court referred to the decision in **Ibrahimpattam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy** [AIR 2003 SC 3592] wherein the scope of the *suo motu* revisional power under Section 50B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the 1950 Act') fell for consideration. In this cited decision, the vital question that fell for the consideration before the Supreme Court was - ‘whether the Collector could exercise *suo motu* power under Section 50-B(4) of the 1950 Act at any time or the power is required to be exercised within a reasonable time?’. The factual matrix of the cited case is that various sale deeds were executed by owners of land in favour of several persons on plain paper and possession was delivered to such vendees; the vendees filed applications under Section 50-B of the 1950 Act for validation of the sales; the Tahasildar concerned issued validation certificates; the same were challenged in appeals filed by the Special Tahasildar and the Authorized Officer (Land reforms) before the Joint Collector of the District; the said appeals were

dismissed in the year 1988; thereafter the Joint Collector issued notices purportedly in exercise of *suo moto* power under Section 50-B(4) of the 1950 Act, to the vendors and vendees to show cause why the validation certificates issued in 1974 or earlier should not be cancelled; after considering the objections filed thereto, the Joint Collector had set aside the validation certificates, in the year 1989; against the same, some persons filed Revisions and others Writ Petitions, before the High Court; a learned single Judge of the High Court allowed the writ petitions on the ground that the *suo motu* power of revision should have been exercised within a reasonable period though the statutory provision does not impose any time limit for such an exercise; against the orders of the learned single Judge, the Vyavasaya Coolie Sangham, the appellant before the Supreme Court (impleaded party in the writ petition) preferred Writ Appeals; a Division Bench of the High Court concurred with the finding of the learned single Judge and dismissed the appeals. The Supreme Court approved the conclusions recorded by the learned single Judge as affirmed by the Division Bench of the High Court and held that the exercise of *suo motu* power after 14 or 15 years is ipso facto unreasonable and that the exercise of *suo motu* power with unexplained delay would arbitrarily unsettle settled fact situations and expectations.

14. Having regard to the facts and circumstances of the instant case and in the light of the well settled legal position, in the considered view of this Court, the exercise of *suo motu* revisional powers and entertaining the revision by the Joint Collector, after a lapse of about 49 years, is unsustainable as exercise of such power of *suo motu* revision after a long lapse of time would arbitrarily unsettle the settled fact situation and expectations. The writ petitioners in the

first writ petition also contend that the questioning of revenue entries and seeking change of revenue entries by the 5th respondent and her son would be of no avail to them as they are admittedly not in possession and that they are required under facts & law to approach a competent civil Court for recovery of possession by seeking cancellation of the sale deeds. Learned counsel for the writ petitioners also contended that in the event the 5th respondent and her son initiate proceedings before the civil Court of competent jurisdiction, the writ petitioners would be entitled to raise an alternative defence of adverse possession and, therefore, the Joint Collector ought not to have entertained revision after about 49 years, more particularly when the 5th respondent and her son could not show, by even a single document, their possession at any point of time over the subject land within the statutory period. While so contending learned counsel for the writ petitioners pointed out the observation in the report of the Tahasildar that the 5th respondent is not in possession of the property. Be that as it may.

15. It is also profitable to note that the learned counsel for the writ petitioners relied upon the decision in **Sri Bhavanarishi Co-operative House Building Society, Hyderabad, v. Joint Collector, R.R. District, Hyderabad and others**² in support of the proposition that under Section 9 of the Act, as amended by Act 9 of 1994 (w.e.f 03.10.1993), the Joint Collector cannot reopen the matters and cases, which till then were deemed to be finally decided, and that the finality attained to the order passed by the Mandal Revenue Officer cannot be taken away. In the light of the above settled legal

² 2002(5) ALD 398

position and in the facts and circumstances of the present case, it is to be held that the Joint Collector is not justified in entertaining a *suo motu* revision.

16. However, as already noted, learned counsel for the 5th respondent also contended that the sale transactions under the seven sale deeds of the years 1966 & 1967 and the subsequent sale transactions under the registered sale deeds adverted to in the pleadings of the writ petitioners are obtained by fraud and that, therefore, the power of revision is exercisable in the present case after any length of time as fraud ought to benefit none. The law is well settled that fraud is an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another and that in fraud one gains at the loss of another and that even most solemn proceedings stand vitiated if they are actuated by fraud and that fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in *rem* or in *personam*. [See: **A.V. Papayya Sastry and others v. Government of A.P and others [(2007) 4 SCC 221]**. No doubt merely on the ground that there is long lapse of time, the plea of fraud cannot be utilized as an engine of oppression by dishonest and fraudulent litigants but in the case on hand, it is apt to note that there was no foundation for the contentions based on fraud & deceit and no details of fraud are pleaded and it is merely stated that the sale deeds are forged, fabricated and that the writ petitioners played fraud. The material placed on record does not disclose even remotely that fraud was played or deceit was practiced in the year 1966 or 1967 by the purchasers under the seven sale deeds who were said to have purchased from Yaseen Saheb. On the other hand, there is evidence (including evidence in the form of public records) brought on record that the said sale deeds are acted upon. In the decision in **Ibrahimpatnam Taluk**

Vyavasaya Coolie Sangham [supra], dealing with the aspect of fraud the Supreme Court held as follows: -

‘In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents.’

Further, dealing with the words ‘at any time’ in sub-section (4) of Section 50-B of the Act, the Supreme Court held as follows:

‘Use of the words “at any time” in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case.’

The Supreme Court in this cited case further held as follows:

‘In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and within what period the suo-motu powers is to be exercised, in sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo-motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of dictionary meaning of words "at any time", the suo-motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo-motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.’

Having regard to the facts and overwhelming documentary evidence in the form of registered documents starting from the years 1966 & 1967, this Court

finds that the Joint Collector is not justified in entertaining the *suo motu* revisional powers in the case on hand.

17. Before parting, there is one more incidental aspect to be dealt with. The writ petitioners are claiming only an extent of Ac.14.27 guntas excluding therefrom, an extent of Ac.3.02 guntas of land, which was acquired and for which, compensation was paid to the writ petitioners 1 & 2 in the first writ petition and others as already noted and undisputed. However, as the total extent of land originally owned by Yaseen Saheb is Ac.16.27 guntas, the 5th respondent, *inter alia*, contends that the Joint Collector is entitled to entertain and continue the *suo motu* revision proceedings atleast in respect of Ac.2.00 gutnas of land over which the writ petitioners have no claim. What is to be noted in this regard is that the seven sale deeds of the years 1966 & 1967 were said to have been executed by Yaseen Saheb for the total extent of Ac.16.27 guntas in favour of the seven purchasers under the seven sale deeds as is evident from the respective extents mentioned in the said seven sale deeds. If the extent sold under the seven sale deeds are added up, the total extent of land sold away under the said seven sale deeds works out to total Ac.16.27 guntas. Thus, a plain perusal of the seven sale deeds said to have been executed by Yaseen Saheb during the years 1966 and 1967 reflect that the total extent sold by the said Yaseen Saheb under the said seven sale deeds executed in favour of the seven purchasers is Ac.16.27 guntas and that, therefore, he is left with no land out of the said extent of Ac.16.27 guntas. Therefore, the contention of the 5th respondent that the Joint Collector is entitled to entertain and continue the *suo motu* revision petition in respect of the so called remaining two extents of land does not arise as it is *prima facie* established that by virtue of the seven

sale deeds, Yaseen Saheb sold his entire extent of Ac.16.27 guntas and was left with no land whatsoever. In the light of these facts and for all the reasons afore-stated including the inordinate delay, the contentions of the 5th respondent and her son do not advance their case any further.

18. On the above analysis, this Court finds that the exercise of *suo motu* revisional powers and entertaining the revision by the Joint Collector after lapse of about 49 years is unsustainable in the totality of the facts and circumstances of the case. Accordingly, this Court holds that the first writ petition deserves to be allowed.

19. This takes us to the second writ petition wherein the complaint is with regard to constructions that are made and the alleged mining operations being undertaken by the writ petitioners and the inaction of the Tahasildar in not acting upon the letter of the Assistant Director of Mines and Geology/3rd respondent which reflects that on the complaint of the son of the 5th respondent, that is, the 2nd writ petitioner in the second writ petition, the said authority requested the Tahasildar to depute Mandal Surveyor and Mandal Revenue Inspector for conduct of joint inspection of the area in survey nos. 1 to 5 of Sagbowli village. However, the writ petitioners in the first writ petition contend that to facilitate making of constructions they removed the boulders or stones and that no mining activity was undertaken and that therefore, the second writ petition is liable to be dismissed. Their further contention is that the officials, who are aware of the facts have not rightly proceeded further in the matter.

19.1 No counters are filed by the official respondents in the second writ petition.

19.2 Therefore, having regard to the findings in the first writ petition, this Court finds that the second writ petition is also liable for dismissal, however, leaving open the matter of alleged Mining to be investigated, if necessary, by the authority/authorities concerned.

20. In the result and accordingly, W.P.No.15691 of 2016 is allowed; and, as a sequel, WP.No.1591 of 2018 is dismissed. It is made clear that the 5th respondent and her son are at liberty, if they so choose and if they are so advised, to avail the remedy of a comprehensive suit before the civil Court of competent jurisdiction for the reliefs of setting aside sale deeds, declaration of title and recovery of possession etcetera or any other reliefs, which they wish to seek. It is also made clear that this Court did not express any final opinion in the matter; and that in the event any proceeding is brought by the 5th respondent and her son before a competent Court or Forum, the same shall be decided uninfluenced by the observations, if any, made in this order. It is also made clear that if the authority concerned of the mining department is desirous of proceeding further in the matter, on the basis of the complaint in the second writ petition, the said authority is at liberty to do so, however, by following the procedure established by law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

04.09.2018

Vjl