

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.31251 of 2014

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to grant a Writ of Mandamus declaring the order, dated 06.09.2014, of the 2nd respondent, Joint Collector, Kurnool, passed in Pc.D5/ 2983/ 2010 as illegal, irregular, ultra vires, unjustified, unconstitutional and unsustainable and set aside the same holding that the petitioners are entitled to hold and enjoy the lands admeasuring Ac.3.04 cents in Sy.No.378/ B and Ac.1.96 cents in Sy.No.380/ 1B situated at Bukkapuram village, Mahanandi Mandal of Kurnool District.

2. I have heard the submissions of Sri Vedula Srinivas, learned senior counsel appearing for the petitioners, of the learned Government Pleader for Revenue, appearing for respondents 1 & 3, of the learned Government Pleader for Assignment appearing for respondents 2 & 4; and of Sri K. Rathangapani Reddy, learned counsel appearing for the 5th respondent. I have perused the material record.

3. The case of the petitioners and the submissions made on their behalf, in brief, are as follows: - 'The petitioners are natural brothers. They purchased an extent of Ac.3.04 cents in Sy.No.378/ B and an extent of Ac.1.96 cents in Sy.No.380/ 1B situated in Bukkapuram village from Ch.Pedda Subba Rayudu. The said purchase was made for valid consideration and under *bona fide* belief that the vendor has got absolute title and right in respect of the said property and that he has a right to transfer the land in favour of the petitioners by virtue of the said sale deed. To the extent of 1/3rd share each of the petitioners, they submitted applications separately to the MRO for issuance of pattadar passbooks to them. After conducting enquiry, as no objections were

received, the MRO issued separate pattadar passbooks to the petitioners in respect of 1/3rd share each out of the said lands, on 14.08.1998. While things stood thus, the 5th respondent and one Dudekula Phakeeranna @ Pujari Phakheeranna, tried to interfere with the possession and enjoyment of the petitioners over their respective lands by making false claims. Then, the petitioners filed OS.No.509 of 2009 on the file of the Court of the learned Principal Junior Civil Judge, Nandyal, against the 5th respondent and the said Phakeeranna for perpetual injunction. They also filed an Interlocutory Application for temporary injunction. The said suit and the application are pending. While so, the 5th respondent appears to have raised a dispute before the 3rd respondent, Revenue Divisional Officer, with reference to land of an extent of Ac.6.56 cents in Sy.No.380 of Bukkapuram village, *inter alia*, stating that 'the same originally belonged to Chavva Venkat Reddy, his grandfather; that it was a private patta land as per the Re-Settlement Register (RSR) of the village; that it was subdivided into Sy.No.380/1 consisting of Ac.3.99 cents; and, 380/2 consisting of Ac.2.57 cents in the Register of Holdings (RH) in the names of Chavva China Sarabha Reddy and Chavva Pedda Sarabha Reddy, sons of Venkat Reddy; that the entire land is under his cultivation; that he noticed recently that there is an entry lateral to Sy.No.380 in the copy of RSR wherein the land was subdivided into 380/1A, 380/1B and 380/2 with the extents of Ac.2.03 cents, 1.96 cents and 2.57 cents respectively vide 8A/42/79 and that the said extents of lands shown in Sy.No.380/1A and 380/1B were assigned to Hafeeza Bee and Subbarayudu in the year 1969 treating them as Government lands and that the assignees got pattadar pass books and title deed documents.' On that, the RDO, however, treated the subdivided lands as assigned lands on the basis of the Tahasildar's report, dated 23.09.2009, *vide* Rc.No.123/2009 and issued proceedings, dated 26.06.2010, in Rc.B.No.1166/2010. Aggrieved thereof, the 5th respondent filed a revision *vide*

Rc.D5/ 2983/ 2010 under BSO 15(18) before the 2nd respondent. On that dispute raised by the 5th respondent, the 2nd respondent issued notices to the petitioners as well as the other assignee. The petitioners, having entered appearance through a counsel, filed their written submissions along with their documents. After lapse of four years from the date of filing of the said revision, the 2nd respondent passed the impugned order and set aside the orders of the RDO, *inter alia*, holding that the assignment made in favour of Pedda Subba Rayudu and other assignee were made irregularly and under mistake of fact. He, therefore, cancelled not only the assignments made but also the Pattadar pass books and title deed documents issued in favour of the petitioners. The 2nd respondent has no competence to cancel the pattadar passbooks and title deeds issued in favour of the petitioners. The revision before him was filed under BSO 15(18). Therefore, the power, as a revisional authority, is provided and restricted to him only to the extent of the order against which the revision is filed before him. The assignment made in favour of the vendor of the petitioners and the other assignee was not under challenge. Similarly the issuance of pattadar passbooks and title deeds to the petitioners was also not the subject matter before the 2nd respondent. The order of the Tahasildar issuing pattadar passbooks and title deeds to the petitioners was not questioned by the 5th respondent either in the revision or by any separate application. In the absence of seeking any such relief and without calling for records from the office of the Tahasildar in respect of the said issue, it is not open to the 2nd respondent to cancel the pattadar passbooks and title deeds issued to the petitioners. The order impugned passed by the 2nd respondent is illegal, irregular, arbitrary, unjustified and unsustainable. The 5th respondent also filed OS.No.307 of 2012 against the petitioners herein for declaration of title and for cancellation of sale deed, dated 03.08.1994, under which the petitioners purchased the property. He also filed I.A.No.595

of 2012 for a temporary injunction. Initially *ex parte* temporary injunction was granted, but, on filing of counters and raising a contest by the petitioners, the learned Principal Senior Civil Judge, by an order, dated 04.02.2014, dismissed the said Application. Against the said orders, the 5th respondent preferred CMA.No.2 of 2014 before the Court of the learned III Additional District Judge, Kurnool at Nandyal. However, no interim order is granted in favour of the 5th respondent in the said CMA. The filing of the civil suit by the petitioners herein and the other assignee against the 5th respondent; and, the filing of the suit by the 5th respondent and dismissal of application for temporary injunction in the suit filed by the 5th respondent are all suppressed by the 5th respondent before the 2nd respondent. In-fact, in the written submissions filed on behalf of the petitioners, all the said facts were clearly narrated and brought to the notice of the 2nd respondent. However, the 2nd respondent, without considering the said facts and without addressing to the various contentions raised by the petitioners, passed the impugned order. The 2nd respondent can exercise powers of revision within three years from the date of original/ appellate decision, that too, if there is any material irregularity in the procedures 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. The land is under the enjoyment of the vendor of the petitioners since 1969 and later under the enjoyment of the petitioners after their purchase of the same in the year 1994. Neither the grandfather nor the father of the 5th respondent ever raised a dispute and questioned the enjoyment of the land by the petitioners. After nearly 45 years, 5th respondent cannot be permitted to raise a dispute pertaining to subdivision of land and assignment of the same to landless poor persons, which was done in the year 1969. The 2nd respondent, at this point of time, cannot decide the validity of the assignment done 45 years ago. The aggrieved party

has to assert the rights in a civil Court by filing a suit for declaration, but, cannot resort to summary proceedings under BSO 15 (18). However, the 2nd respondent passed the impugned order, dated 06.09.2014, accepting the case of the 5th respondent and holding that the subdivision of the land in Sy.No.380/ 1 into Sy.No.380/ 1A and 380/ 1B in the year 1969 is erroneous and not backed by any proceedings. Accordingly, he further held that assignment of the land to the vendor of the petitioners and another is untenable and consequently cancelled the pattedar pass books and title deeds issued in favour of the petitioners. Therefore the impugned proceedings, of the 2nd respondent, are clearly illegal, without jurisdiction and are barred by limitation. A revision *suo motu* or an application of aggrieved party cannot be entertained after passage of 45 years. 5th respondent and his predecessors have kept quiet for the last 45 years is a factor which would act against them and they are estopped from questioning the assignment done in the year 1969 in favour of the vendor of the petitioners at this distance of time having acquiesced their rights; and, even adverse possession will act against them. Hence, the writ petition is filed.'

4. This Court, on 18.10.2014, while directing to post this writ petition along with WP.No.29174 of 2014, directed the parties to maintain *status quo* existing as on that day.

5. Seeking to vacate the said order, the 5th respondent filed vacate stay petition. The case of the 5th respondent and the submissions made on his behalf, in brief, are as follows:

The entire land admeasuring Ac.6.56 cents in Sy.No.380 of Bukkapuram village is classified as private patta land right from RSR of the village wherein the name of Chavva Venkat Reddy, great grandfather of this respondent, was recorded. Later the said land was subdivided as Sy.No.380/ 1 with an extent of Ac.3.99 cents and Sy.No.380/ 2 with an extent of Ac.2.57 cents and names of

Chavva Chinna Sarabha Reddy and Chavva Pedda Sarabha Reddy were shown as pattadars as per RH. Hence, beyond any doubt, this respondent's land is a patta land and this respondent's title is traceable to the oldest revenue record of RSR etcetera. The petitioners herein, who are not having any manner of right over the lands, have been claiming right under the pretext of purchasing the land from their vendor, to whom allegedly a false & fabricated D form patta was granted, under the guise that it is a Government land. The alleged assignment and sub division etcetera are false and fraudulent. The same is very clear from the impugned orders of the 2nd respondents, wherein it was categorically stated as follows: - 'That the petitioner's land is a private patta land; that there is no record of conversion of patta land into Government land which will be done only under specific circumstances; that neither the assignees nor the legal heirs are in possession of the land; that conversion of the patta land into Government land is void and hence, alleged assignments also become irregular; and, that the contentions of the writ petitioners herein are unsustainable'. The contentions, which are raised by the writ petitioners, are rejected by the 2nd respondent. The order passed by the 2nd respondent is a well considered and reasoned order and does not warrant interference in this writ petition. The contention that the 2nd respondent entertained the revision beyond three years provided under BSO is also misconceived as the word 'three years' was deleted by inserting the word 'if at any time' by way of amendment *vide* G.O.Ms.No.192 Revenue (B), dated 02.03.1985. In the factual background of fraud and misrepresentation in trying to depict the private patta land as Government land by the writ petitioners and others, the 2nd respondent has every power to invoke his powers and pass orders. Hence, the writ petition is liable to be dismissed.

6. The case of the 2nd respondent, who passed the impugned order, and the submissions made on his behalf, in brief, are as follows: - 'Survey No.380

admeasuring Ac.6.56 cents is recorded as patta land as per revenue records. It is not known how this survey number was sub divided as Sy.Nos.380/ 1A and 380/ 1B treating the same as Government land and how it was assigned to the vendor of the writ petitioners and one Hafeeza Bee in the year 1969. No connected records are available about the conversion of this land to Government land. Generally, the patta lands will undergo change of classification in the following circumstances: (1) On acquisition of private patta land; (2) On relinquishment made by the Pattadar; (3) On account of Patta lands bought in for Government, due to default in payment of Land Revenue; and, (4) On account of escheat of the property. As per records available, no such action has taken place. Automatic conversion of patta land as Government land is not possible. The whole conversion of Sy.No.380/ 1 with an extent of Ac.3.99 cents to Government land and its assignment to landless poor persons has absolutely no basis. Therefore, in the absence of connected evidences, the conversion of patta land to Government land becomes void. As there is clear fraud and irregularity and in view of the material available on record, the power vested in this respondent under BSO 15(18) was exercised and the assignments made in favour of the vendor of the writ petitioners and another were cancelled and consequently pattadar pass books and title deeds in favour of such assignees and writ petitioners were also cancelled duly setting aside the orders of RDO, dated 26.06.2010. Though there was long lapse of time and assignees are in possession of the land, however, as the pattas were obtained without any basis for treating patta lands as Government land, this respondent has invoked the provision under BSO 15(18) and passed the impugned orders. The contentions of the writ petitioners are untenable. The writ petition is liable to be dismissed.'

7. I have given earnest consideration to the facts and submissions. The crux of the matter, which comes to the fore on analysis of facts and

submissions, is this: 'It is a matter of record that Sy.No.380 admeasuring Ac.6.56 cents was subdivided into Sy.Nos.380/ 1 and 380/ 2 with respective extents of Ac.3.99 cents and Ac.2.57 cents. It is also a matter of record that, in the year 1969, under D-patta, land admeasuring Ac.2.03 cents in Sy.No.380/ 1A was assigned in favour of one Hafeeza Bee and another extent admeasuring Ac.1.96 cents in Sy.No.380/ 1B was assigned to Ch.Pedda Subbarayudu (vendor of the writ petitioners herein), treating them as Government lands and that both the assignees were given pattadar passbooks and title deed documents in respect of the respective assigned lands. There is also entry in respect of Sy.No.380 in the RSR showing that the land was subdivided into Sy.No.380/ 1A, 380/ 1B and 380/ 2 with respective extents of Ac.2.03 cents, Ac.1.96 cents and Ac.2.57 cents but only lands in Sy.No.380/ 1A and 380/ 1B were assigned to the said Hafeeza Bee and Subbarayudu in the year 1969 treating them as Government land. The assignees were also given pattadar pass books and title deed documents. Even in the impugned order, it is noticed that there is an entry lateral to Sy.No.380 in the copy of RSR showing that the land was subdivided into 380/ 1A, 380/ 1B and 380/ 2 with extents of Ac.2.03 cents, Ac.1.96 cents and Ac.2.57 cents respectively *vide* 8A/ 42/ 79 and that the said extents of land shown in Sy.No.380/ 1A and 380/ 1B were assigned to Hafeeza Bee and Subbarayudu in the year 1969 treating them as Government lands and that the assignees got pattadar pass books and title deed documents. Having regard to these aspects, which are a matter of record, it appears that 5th respondent having come to know of the same, raised a dispute before the 3rd respondent stating that the land in a total extent of Ac.6.56 cents in Sy.No.380 including the extents of lands, which are assigned, as stated supra, are private patta lands right from RSR of the village and that his great grandfather, Venkat Reddy's name was recorded and that the land was subdivided as 380/ 1 with an extent of Ac.3.99 cents and 380/ 2 with an extent

of Ac.2.57 cents and names of Chinna Sarabha Reddy and Pedda Sarabha Reddy were shown as pattadars as per RH and hence beyond any doubt, the land is patta land and the title is traceable to the oldest revenue record of RSR etcetera. However, the 3rd respondent treated the subdivided lands as assigned lands based on the report of the Tahasildar and issued proceedings, dated 26.06.2010, in Rc.B.No.1166 of 2010. Thereupon, the 2nd respondent entertained a revision petition in RC.D5/ 2983/ 2010 filed by the 5th respondent under BSO 15(18) against the orders of RDO, dated 26.06.2010, whereby the lands in subdivision 380/ 1A and 380/ 1B of Bukkapuram village were treated as assigned lands on the basis of the report, dated 23.09.2009, of the Tahasildar. It is also a matter of record that the Tahasildar *vide* his letter, dated 07.01.2014, in Rc.B.123/ 2009, that was communicated to the petitioners, stated verbatim as follows: -

‘As per 1B register of Bukkapuram Village of Mahanandi Mandal Khata No.83 was issued in favour of Sri Shavva Sharabha Reddy, S/o.Konda Reddy of Abbipuram village of Mahanandi Mandal with only one entry i.e., to an extent of Ac.2.57 cents in Sy.No.380/ 2.

Sy.No.380 of Bukkapuram Village of Mahanandi Mandal was subdivided as follows:

Sub Division No.	Extent A.C
380/ 1A	2.03
380/ 1B	1.96
380/ 2	2.57
Total	6.56

As per 1B register of Bukkapuram village of Mahanandi Mandal, the following members have issued pattadar pass book on 14.08.1998 as shown below.

Sy.No.	Khata No.	Extent	Name of the Pattadar	Unique No assigned
380/ 1B	752	0.65	Vadde Sampangi Pedda Subarayudu	219136, 480585
380/ 1B	753	0.66	Vadde Sampangi Chinna Subbarayudu	219136, 480586
380/ 1B	754	0.65	Vadde Sampangi Venkateswarlu	219136, 480586

The said letter of the Tahasildar addressed to the petitioners shows that the petitioners are in enjoyment of lands of an extent of Ac.0.65 cents each in Sy.No.380/ 1B and that they were issued pattadar pass books, on 14.08.1998 and that Sy.No.380 was subdivided into 380/ 1A, 380/ 1B & 380/ 2. However, in the impugned orders, the 2nd respondent observed verbatim as follows: -

‘Even in the Register of Holdings maintained in Sub Registrar’s Office this survey number was subdivided as 380/ 1 measuring an extent of Ac.3.99 cents stands in the name of Chavva Chinna Sarabha Reddy and 380/ 2 measuring an extent of Ac.2.57 cents stands in the name of Chavva Pedda Sarabha Reddy. Further, these lands were mortgaged in favour of SBI, Nandyal in the year 2005. On verification of records it is observed that there is an entry lateral to Sy.No.380 as it was subdivided into 380/ 1A, 380/ 1B and 380/ 2 with an extent of Ac.2.03 cents, Ac.1.96 cents and Ac.2.57 cents respectively vide 8A/ 42/ 79 and that the land in Sy.No.s380/ 1A & 380/ 1B were assigned in the year 1969. Survey No.380/ 1A with an extent of Ac.2.03 cents was assigned to S.Hafeez Bee and Sy.No.380/ 1B was assigned to

Sampangi Pedda Subba Rayudu. The assigned land in Sy.No.380/ 1B given to Pedda Subbarayudu was alienated subsequently through registered document. Jangala Seethamma was assigned the land given to Hafeeza Bee. In this case, it is observed that Sy.No.380 measuring an extent of Ac.6.56 cents is recorded as patta land as per Revenue Records. It is not known how this survey number was subdivided as Sy.Nos.380/ 1A & 380/ 1B treating as Government land and assigned to Hafeeza Bee and Pedda Subbarayudu in the year 1969.'

Having so observed he further held that automatic conversion of patta land to Government land is not possible; that neither the assignees nor the legal heirs of the assignees are in possession of the land; that the conversion of patta land to Government land is void in the absence of connected evidences; that consequently assignment made over the subject land and issuance of pattadar passbooks and title deeds become irregular and needs to be cancelled. Thus, for non availability of records, he held that in the absence of connected evidence, the conversion of patta land to Government land is void. For the loss of record required to be maintained in a Government office, that too, when the issue was raised about 45 years after issuance of pattas to the vendor of the petitioners and another, the petitioners or their vendor and the other assignee cannot be blamed and no adverse inference shall be drawn against them for no fault of theirs more particularly when there is other record by means of entries in records evidencing sub division and assignment besides report of the Tahasildar that the assignees are in possession and enjoyment of the lands and that pattadar pass books and title deed documents were also issued to the original assignee and his name is entered in the revenue records. Mutation of the assigned properties in the names of the assignees including the

assignee concerned in the present matter was affected by competent authorities and pattadar pass book and title deed document were issued to the petitioners in the year 1998 by the competent authorities under A.P. Rights in Land and Pattadar Passbooks Act, 1971, and possession of the petitioners is confirmed by the Tahasildar in his report. Thus, indisputably, the power of revision was exercised with regard to assignments made in the year 1969, as borne out by the record, after 45 years only on the ground that the records with regard to conversion of patta land into Government land are not available, however, by ignoring the other overwhelming evidence on record.

8. Learned senior counsel appearing for the petitioners also contends that it is not uncommon for the revenue authorities to say before Courts that the records, particularly old records are not available. He also submits that for the reason that the records are not available, an order adverse to the interests of the assignees in whose favour the lands were assigned and pattadar passbooks and title deed documents were given cannot be expected to be passed that too in a revision entertained after 45 years. Therefore, the vital question is as to whether the 2nd respondent is justified in entertaining the revision and passing the impugned order canceling the assignments made in the year 1969, after 45 years of the said assignments, mainly on the ground that the records with regard to conversion of patta land into Government land are not available and by *inter alia* making observations that the assignee or the successor of the assignee as the case may be is not in possession.

9. In this regard, 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 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*.

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.

In the above decision, the Supreme Court referred to the decision in Ibrahimpatnam 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.

10. 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 impugned order passed by the 2nd respondent canceling the assignments made in the year 1969, after a lapse of 45 years, is unsustainable as exercise of power of revision after a long lapse of time would arbitrarily unsettle the settled fact situation and expectations.

11. However, learned counsel for the 5th respondent contended that the assignment was procured and the pattadar passbooks & title deed documents were obtained by the original assignees and later by the petitioners by resorting to clear fraud and there is irregularity in assignment of private patta lands, without any evidence for conversion of the same into Government land, and that, therefore, the power of revision is entertainable in the present case after any length of time as fraud ought to benefit none. However for mere reason that there is no recorded evidence available for conversion of private patta land as Government land, the orders impugned were passed and therefore there is no foundation for the contention of fraud and deceit. In fact, the evidence in the form of entries showing sub division of Sy.No.380 into three sub division numbers with distinct extents and also assignment of two distinct extents in two such distinct sub division numbers is ignored though such record which relates to the year 1969 could not have been doubted at this distance of time. 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 as already noted, there was no foundation for the contentions based on fraud and deceit and the record does not disclose even remotely that fraud was played or deceit was practiced in the year 1969 by Hafeeza Bee, that is, the original assignee of the land in Sy.No.380/ 1A and the other assignee, Subbarayudu, in obtaining the assignment of lands in

respect of Sy.No.380/ 1B. The order, dated 26.06.2010, of the 3rd respondent in Rc.B.No.1166/ 2010 on a perusal reflects that the Tahasildar reported that sub division no.380/ 1A and 380/ 1B are assigned lands and the sub division no.380/ 2 is a patta land and that as per copy of Register Holding (RH) issued by the Joint Registrar, Chavva Sharaba Reddy is holding an extent of Ac.2.57 cents in sub division 380/ 2 and that Chavva Sharaba Reddy, legal heir of the RSR pattedar is trying to interfere with the peaceful enjoyment of the land of the assignees and creating problems over the land. The said order of the RDO also further reflects that as seen from the Tahasildar's report and copies of connected records and record of enquiry, it is observed that an extent of Ac.6.56 cents in Sy.No.380 of Bukkapuram is classified as patta land as per printed RSR and subsequently the land was subdivided as viz., 380/ 1A – Ac.2.03 cents; 380/ 1B Ac.1.96 cents; and, 380/ 2 – Ac.2.57 cents and that sub division entries are made in printed RSR and affected in adangal and lands in subdivision nos.380/ 1A and 380/ 1B are assigned to the beneficiaries and subdivision no.380/ 2 remained as patta land and that the entries of assignment are noted in the RSR and adangal and hence, it is clear that the subdivision nos.380/ 1A and 380/ 1B are assigned lands and Sub division no.380/ 2 is patta land. Therefore, the RDO in the said orders directed the Tahasildar to take further action treating the sub division no.380/ 1A and 380/ 1B of Bukkapuram village as assigned lands and the sub division no.380/ 2 as patta land and requested the Tahasildar to take action for incorporation of changes in mandal and village accounts. 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.'

Therefore, both on facts and in law, the contention based on fraud and deceit has no place in this matter.

12. Further, it is also not in dispute that the original assignee, Subbarayudu, to whom the land in Sy.No.380/ 1B was assigned, sold the assigned extent to the writ petitioners and that when the 5th respondent and another tried to interfere with the possession of the writ petitioners, they filed OS.No.509 of 2009 on the file of the Principal Junior Civil Court, Nandyal; and, the said suit is pending and that the 5th respondent also filed OS.No.307 of 2012 against the writ petitioners for declaration of title, perpetual injunction and cancellation of sale deed, dated 03.08.1994, under which the writ petitioners purchased the property and that in that suit though initially temporary injunction was granted, subsequently it was vacated and the said application was dismissed by the learned Principal Senior Civil Judge, Nandyal, by his order, dated 04.02.2014 and that CMA.No.2 of 2014 preferred by the 5th respondent before the Court of the learned III Additional District Judge, Kurnool, is stated to be pending as on the date of institution of the writ petition though no interim order was granted. In-fact, in the counter of the 2nd respondent filed in this writ petition, it is stated to the effect that that the assignees are in possession even by the date of the passing of the impugned orders. Therefore, there is no basis for the observation in the impugned order that neither the assignees nor their legal heirs/ successors in interest are in possession of the assigned land; however, on the other hand, there is record to show that the writ petitioners are in possession of the land assigned to their vendor. It is trite to observe that the impugned order, which is sketchy and is based on *ipse dixit* of the 2nd respondent, brooks interference.

13. The quasi judicial authority exercising the revisional jurisdiction in a matter of this nature is not supposed to enquire into the merits of the rival claims of title to the property in dispute. Admittedly, a suit for declaration of title and cancellation of sale deed is pending before a competent civil Court. The said fact is brought to the notice of the 2nd respondent-revisional

authority. Hence, he was not required to enter into a field of investigation of the matter, which is more appropriate for a civil Court in the properly instituted civil suit. Hence, the 2nd respondent ought not to have entertained a revision in a matter where the disputed facts have to be investigated and where rights claimed are not capable of being established in summary proceedings. It is well settled that a revision entertained by the 2nd respondent cannot be converted into a suit to resolve factual controversies. Therefore, the 2nd respondent ought to have refrained from entering into the complex questions of fact related to dispute of title that too when the issue was raised after a long lapse of 45 years from the date of issuance of pattas to the assignee, from whom the petitioners herein purchased the property under a regular registered sale deed. Learned senior counsel for the petitioners also contended that in the proceedings that are before the civil Court of competent jurisdiction, the petitioners would be entitled to raise an alternative defence of adverse possession and, therefore, the 5th respondent's revision ought not to have been entertained after 45 years, more particularly when the 5th respondent could not show, by even a single document, his possession at any point of time over the subject land within the statutory period. Be that as it may.

14. On the above analysis, this Court finds that the impugned order passed by the 2nd respondent canceling the assignments made in favour of the assignees in the year 1969, after lapse of 45 years, in exercise of power of revision, is unsustainable in the totality of the facts and circumstances of the case and is liable to be set aside.

15. For the afore-stated reasons, the Writ Petition is allowed. The impugned order passed by the 2nd respondent is set aside leaving open the issues involved in the dispute to be resolved in the pending suits and also leaving it open to the parties to the *lis*, if they so choose, to avail the remedy

of a comprehensive suit before the civil Court of competent jurisdiction for resolving the dispute and giving a quietus to the dispute once and for all. It is made clear that this Court did not offer any final opinion in the matter; and, in the event any proceeding is brought before a competent Court or Forum, the same shall be decided uninfluenced by the observations, if any, made in this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

16.07.2018
Vjl

M.SEETHARAMA MURTI, J

