HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.7682 OF 2019

Date: 16.04.2019

Between:

Gollapalli Ravi Easwar S/o.G.Ramesh,
Aged 61 yrs, Occu : Private Service,
R/o.H.No.1-4-432, Bholakpur,
Musheerabad, Hyderabad.
Rep., by G.P.A.Holder,
Syed Nazeer Hussain, S/o.Syed Gaffar,
Aged 49 yrs, Occu : Business,
R/o.H.No.1-8-449/4/1,
Noorbagh Colony, Patigadda,
Secunderabad 500 003

.....Petitioner

And

The State of Telangana,
Rep., by the Secretary,
Revenue Department,
Hyderabad & others.

.....Respondents

The Court made the following:

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ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for revenue for respondents 1 to 3.

2. The Revision filed by the petitioner under Section 9 of Telangana State Rights in Land and Pattadar Pass Books Act 1971 (for short 'the Act, 1971') is rejected on the ground of inordinate delay in preferring such revision.

3. Having regard to the view taken by the revisional authority in dismissing the Revision on the ground of delay and latches, heard learned counsel for the petitioner on the said aspect.

4. Briefly noted facts relevant to the case are, petitioner claims that land to an extent of Ac.165-24 guntas in various survey numbers mentioned in paragraph No.2 of the affidavit filed in support of writ petition of Babaguda Village, Shamirpet Mandal, Medchal-Malkajgiri District, belongs to his grandfather by name late Sri G. Raja Narsaiah. After the death of his grandfather in the year 1964, his father late Sri G.Ramesh succeeded to the said land. After the death of late Sri G.Ramesh in the year 1980, petitioner claimed to have succeeded to the said land. According to petitioner the unofficial respondents herein in collusion with the village Officers and Patwari, got their names illegally entered in the revenue records from the year 1970 onwards. According to petitioner though illegally such entries were made in the revenue records, the family of petitioner has been in continuous possession and enjoyment of the said land. Petitioner was shocked to know

when he verified the revenue records that illegal entries are made in the revenue records without following the due process. Neither the petitioner nor his father are aware of such illegal entries made and petitioner came to know for the first time only recently when he went to the office of Mandal Revenue Officer and verified the revenue records. Surprised by the said illegal entries, he went before the Revenue Divisional Officer to rectify the records. As he refused to correct the revenue records, he was compelled to file the Revision under Section 9 of the Act, 1971. In the said revision, petitioner sought to rectify the revenue records.

4.1. The Revision filed by petitioner was opposed by the unofficial respondents. According to them various extents of land in issue was self-acquired property of late Raja Narsiah. He alienated these lands from 1950 onwards through unregistered sale deeds. After full fledged enquiry, by issuing notices to *inter se* parties, taking necessary statements required in law and collecting stamp duty they were validated under Section 50 (B) of A.P (Telangana Area) Tenancy Agricultural Lands Act, 1950 (for short 'the Act, 1950'). The Tahsildar issued certificate of ownership by confirming the sales executed by late Sri G.Raja Narsiah in favour of ancestors of unofficial respondents. It was further contended that after granting ownership Certificates, Jamabandhi was also affected incorporating the names of ancestors of unofficial respondents and also entered in the Paisal Patti for the year 1969-70 confirming ownership rights of the ancestors of unofficial respondents respectively. Based on the corrections made in the revenue records, pattadar pass books and title deeds were issued. The unofficial respondents also denied the claim of petitioner as succeeding to the properties of late Sri G.Raja Narsiah. They opposed the Revision petition on the ground of inordinate delay and also on maintainability of such Revision, when the Certificate was issued to them under Section 50 (B) of the Act, 1950, which was the basis for undertaking corrections in the revenue records.

4.2. Accepting the contentions of unofficial respondents and holding that Revision was not preferred within reasonable time the same was dismissed.

5. Along with the writ petition, only the order of revisional authority, impugned in the writ petition, is filed and no other documents are enclosed including the Revision petition preferred before the Joint Collector.

6. Learned counsel for petitioner contends that there is no limitation prescribed in Section 9 of the Act, 1971 and in Section 166 of the Telangana State Land Revenue Act. Therefore, Revision could not have been dismissed on the ground that it was preferred after more than 40 years. As no time limit is prescribed in Section 9 of the Act, 1971, Revision can be entertained at any time. It is further contended that petitioner is entitled to seek rectification of entries as and when it comes to his notice of such illegal entries made on the properties belonging to the family of petitioner. It is further contended that the revisional order under challenge is also liable to be set aside on the ground that it is a cryptic order and does not assign reasons in support of the decision. He would further submit that when the exercise undertaken by the competent authority altering the revenue records is vitiated by

fraud, the aggrieved party can seek rectification at any time and limitation is not attracted when fraud is played.

7. Section 9 of the Act, 1971 reads as under:

> Section 9 Revision: The Collector may either suo motu or on an application made to him, call for and examine the record of any Recording Authority, Mandal Revenue Officer or Revenue Divisional Officer under Sections 3, 5, 5-A or 5-B, in respect of any record of rights prepared or maintained to satisfy himself as to the regularity, correctness, legality or propriety of any decision taken, order passed or proceedings made in respect thereof and if it appears to the Collector that any such decision, order or proceedings should be modified, annulled or reversed or remitted for re-consideration, he may pass orders accordingly.-- Provided that no such order adversely affecting any person shall be passed under this section unless he had an opportunity of making a representation.

8. A plain reading of this section makes it clear that, Act does not prescribe limitation to exercise power of revision by the revisional authority. Such power can be exercised *suo moto* or on an application. It vests powers in him to verify the concerned record and assess as to regularity, correctness, legality or propriety of decisions taken by his subordinates. It is a sweeping power. Such power can be invoked to rectify any injustice caused to a person at the hands of his subordinates. It vests wide discretion.

9. There are similar such provisions in various enactments vesting power in an authority to exercise revisional jurisdiction without stipulating time limit.

10. On the scope of availing of statutory remedy, more particularly, revisional jurisdiction, to enforce right vested in a person, the principle of law is well settled. Such right has to be assailed within a reasonable time.

11. From the long line of precedent decisions, it is manifest that though Constitutional Courts have conceded revision power perse but were concerned about manner of exercise of such power in individual cases. Courts expressed displeasure in invoking such power after long lapse of time and upsetting settled issues. This is to ensure that availing such remedy after long lapse of time would upset legitimate expectation flowing out of a decision made by executive authority long ago; accrual of certain rights flowing out of such decisions; accrual of third party interests; and that there should not be perpetual uncertainty on any issue. In other words, there must be some finality to an issue. Therefore, courts have laid down limits to exercising such power. Courts have held that even in the absence of fixing time limit to avail remedy such remedy ought to be exercised within reasonable time. However, what is reasonable time is left to be decided in individual cases.

12. In **Ithagani Lachaiah and others Vs Joint Collector and Additional District Magistrate, Nalgonda and others**[1], relied upon by learned counsel for petitioner, on review of precedent decisions on the scope of entertaining revision after long lapse of time, this Court held that

> "33. In the several decisions uniformly it is held that whenever there is inordinate delay in invoking the provisions of a statute, an application should be rejected on that ground alone. Principle reiterated from time and again that even if no time limit is prescribed in the statute for exercise of power, such power has to be exercised within reasonable time and what is reasonable time depends on the facts of each case. In the cases discussed above, the delay in filing an application

[1] 2015 (4) ALD 490

> for suo moto exercise of power ranged between five years in one case to 12 to 15 years in another case and delay of 20 years and more in other cases. The Supreme Court held it is unreasonable to exercise power in such cases.

13. At this stage, it is appropriate to note the observations of Hon'ble Sri Justice T.S.Thakur, as he then was, while concurring with view taken by *Sri Justice C.Nagappan* in **Joint Collector, R.R.District and another Vs D.Narsing Rao and others**[2]. It reads as under :

> "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."

14. Respondents have made extensive averments opposing the revision resulting in order impugned.

15. According to the averments of unofficial respondents as recorded by the revisional authority, the Certificate under Section 50 (B) of the Act, 1950 was issued by following the due procedure wherein, the son of late Sri G.Raja Narsiah, confirmed the sale executed by his father in favour of ancestors of those unofficial respondents and based on such Certificate, the revenue records

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[2] 2015 (3) ALD 1 (SC)

were corrected. The Certificate issued under Section 50 (B) of the Act, 1950 is not under challenge. These assertions are not denied.

16. Except for making a vague allegation that by playing fraud the revenue records were corrected, petitioner has not made any specific averment as to how fraud was committed. Even according to petitioner, the original owner late Sri G.Raja Narsiah, died in the year 1964. After the death of late Sri G.Raja Narsiah, late Sri G.Ramesh succeeded and died in the year 1980. If what is contended by learned counsel for petitioner is correct that illegally revenue records were altered from the year 1970 onwards, nothing prevented late Sri G.Ramesh to raise objection on such entries in the revenue records. At the time of death of Sri G.Ramesh also petitioner was a major and he also did not raise any objection on the entries made in the revenue records, but kept quiet till the year 2010 i.e., for 30 years. Except contending that late Sri G. Raja Narsiah, was the original owner, succeeded by late Sri G.Ramesh and after his death petitioner succeeded to the said properties, no material is shown that he is the person entitled to succeed to the said properties. No material is placed on record to prove ownership and possession. This is all the more necessary when specific objection was raised by unofficial respondents on entitlement of claim, *per se*, by the petitioner and contending specifically that he is not the successor of the properties owned by late Sri G.Raja Narsiah. Further, having regard to objection on maintainability of revision due to delay, burden lies heavily on petitioner to prove that he was not aware of the changes affected in the revenue records but he continued to be in possession and enjoyment.

17. Thus, no foundation is laid either before revisional authority or in this writ petition on the contention of entertaining revision after long lapse of time. He miserably failed to discharge his initial burden.

18. In exercise of power of judicial review under Article 226 of the Constitution of India an order of administrative authority, more particularly made in exercise of quasi-judicial power, can be tested and writ court may interfere only if Court comes to a conclusion that there is error of jurisdiction or decision is perverse. Writ Court does not sit as appellate authority over such decision. Thus, judicial review is confined to jurisdictional error and perversity of decision. The scope of judicial review is confined to decision making process and not to the decision *per se*.

19. The following two decisions succinctly put the scope of judicial review of administrative decisions.

20.1. In **Commissioner of Police v. Syed Hussain[3],** dealing with scope of judicial review of administrative action, Supreme Court held as under:

> "10. It is one thing to say that order passed by the statutory authority is wholly arbitrary and thus violative of Article 14 of the Constitution and thus liable to be set aside, but it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior court while exercising its power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.
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> 11. It is not the contention of the learned counsel for the respondent that the impugned order of punishment smacks of arbitrariness so as to attract the wrath of Article 14 of the

[3] (2006) 3 SCC 173

Constitution. The jurisdiction of the disciplinary authority to impose such punishment is also not in question.

12. Thus, even assuming that a time has come where this Court can develop administrative law by following the recent decisions of the House of Lords, we are of the opinion that it is not one of such cases where the doctrine of proportionality should be invoked. In *ex p* Daly [(2001) 3 All ER 433 (HL)] it was held that the depth of judicial review and the deference due to the administrative discretion vary with the subject-matter. It was further stated: (All ER p. 447, para 32)

It may well be, however, that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd.

As for example in *Huang* v. *Secretary of State for the Home Deptt.* [(2005) 3 All ER 435] referring to *R.* v. *Secretary. of State of the Home Deptt.*, *ex p* Daly (supra), it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corporation.*, (1947) 2 All ER 680 : (1948) 1 KB 223 (CA)], but involves a full-blown merits judgment, which is yet more than [what] *ex p* Daly (supra) requires on a judicial review where the court has to decide a proportionality issue.

13. It is, therefore, beyond any doubt or dispute that the doctrine of proportionality has to be applied in appropriate case as the depth of judicial review will depend on the facts and circumstances of each case.

20.2. In **Lalit Popli v. Canara Bank[4],** Supreme Court delineated scope of judicial review as under:

"17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority."

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[4] (2003) 3 SCC 583

21. As seen from record, briefly noted above, the issue of delay and latches was considered and on application of mind, revisional authority dismissed the revision on the ground of delay. Except making vague plea of fraud, no other material is placed on record to show semblance of right and title available to the petitioner or possession of land by the petitioner at least till filing of revision. Apparently, the alleged corrections were made long ago and even according to petitioner from 1970 onwards. Thus, it cannot be said that decision arrived at by revisional authority is perverse. In the facts of this case, I do not see any error in the decision arrived at by the revisional authority in rejecting the plea to entertain the Revision on the ground of inordinate delay. Thus, the Writ Petition is liable to be dismissed and accordingly dismissed. However, it is made clear that there is no expression of opinion on merits. Only issue decided is on decision of Joint Collector dismissing revision on the ground of delay. It is always open to petitioner to assert his right to ownership and possession if the same is permissible under law. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

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