

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE TWENTY THIRD DAY OF JANUARY
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION NO: 10188 OF 2019

Between:

1. Chennagalla Jangaiah, S/o. Late Ch. Chenna Narsimhulu Aged 42 years, Occ Agriculture, R/o. Nandigamu Village, Kothuru Mandal Ranga Reddy District
2. Chennagalla Swamy, S/o. Late Ch. Chenna Narsimhulu Aged 39 years, Occ Agriculture, R/o. Nandigamu Village, Kothuru Mandal, Ranga Reddy District
3. Chennagalla Raju, S/o. Late Ch. Chenna Narsimhulu Aged 35 years, Occ Agriculture, R/o. Nandigamu Village, Kothuru Mandal, Ranga Reddy District
4. Chennagalla Ashok, S/o. Late Ch. Chenna Narsimhulu Aged 34 years, Occ Agriculture, R/o. Nandigamu Village, Kothuru Mandal, Ranga Reddy District

...PETITIONERS

AND

1. The State of Telangana, Rep., by its Principal Secretary Revenue Department, Secretariat, Hyderabad
2. The Joint Collector, Ranga Reddy District, Lakdikapool, Hyderabad
3. The Revenue Divisional Officer, Shadnagar (earlier Mahabubnagar District), Ranga Reddy District.
4. The Tahsildar, Nadigam, (Earlier Kothur), Ranga Reddy District
5. The Station House Officer, Nadigam Police Station, Ranga Reddy District.
6. R.Bheem Reddy, S/o R. Sai Reddy, Age 65 years, Occ Business, R/o. H.No.13-6-432/10/A, Crystal Garden, Srinivasnagar Colony, Mehdiapatnam, Hyderabad.
7. Smt. Radhika, W/o S. Vasu, Age 35 years, Occ Business, R/o. H.No.13-6-432/10/A, Crystal Garden, Srinivasnagar Colony, Mehdiapatnam, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant an order, direction or writ, more so in the nature of Writ of certiorari calling for records pertaining to orders dated 20.04.2019 in case No. F1/5725/2016 passed by the 2nd Respondent herein in dismissing the application filed by the Petitioner under section 5 of the Limitation Act in an appeal filed under section 24 of A.P. (T.A) Abolition of Inams Act, 1955 as illegal, arbitrary, highhanded apart from being violative of Article 14 and 300-A of Constitution of India and being contrary to the provisions of A.P. (T.A) Abolition of Inams Act, 1955 and consequently to set aside orders dated 20.04.2019 in case No. F1/5725/2016 passed by the 2nd Respondent herein

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Direct the Respondents to not to interfere in the peaceful possession and enjoyment of the petitioner over property in Sy.No. 22, 39, 40, 42, 43, 44, 47 and 1400 admeasuring to an extent of Ac. 12.34 guntas of Nandigam Village, Kottur Mandal, Ranga Reddy District (Earlier Mahabubnagar District)

IA NO: 2 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Suspend the order in Case NoF1/5725/2016 dated 20.04.2019 passed by the 2nd Respondent

**Counsel for the Petitioners: SRI VEDULA SRINIVAS, COUNSEL FOR
SRI T. BALA MOHAN REDDY**

Counsel for Respondent Nos. 1 to 4: GP FOR REVENUE

Counsel for Respondent No. 5: GP FOR HOME

Counsel for Respondent Nos. 6 & 7: SRI V. RAVI KIRAN RAO

The Court made the following: ORDER

HONOURABLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION NO.10188 OF 2019

ORDER:

Heard Mr Vedula Srinivas for Sri T.Bala Mohan Reddy, learned counsel for petitioners, learned Government Pleader for Revenue for respondents 1 to 4, learned Government Pleader for Home for respondent no.5, and Mr. V.Ravi Kiran Rao, learned counsel for respondents 6 & 7.

2. This writ petition is filed challenging the Order dated 20.04.2019 passed by Joint Collector (2nd Respondent) dismissing application filed under sec.5 of Limitation Act in an appeal under Section 24 of A.P. (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the Act, 1955).

3. Petitioners claim lands bearing Sy.Nos.22, 39, 40, 42, 43, 44, 47 and 1400 admeasuring an extent of Acs.12.34 guntas of Nandigam Village, Kottur Mandal, Ranga Reddy District (earlier Mahabubnagar district)] was enjoyed with exclusive possession by Sri Chennagalla Baligadu, cultivator who purchased it through sale deed dt.2.12.1966 until his death in 1984, then by his son Chennagalla Narsimhulu until death in 2005. He was an illiterate, rustic villager who was not aware of the entries in revenue records and procedure for rectification. The above lands are recorded as Inam lands in pahanis for the year 1954-1955 and the crucial dates on which Inam and Inamdar over lands to be decided i.e., 20th July 1955 and 01.11.1973, the name Ch. Baligadu was shown in revenue records. When the respondent caused illegal interference in 2006, petitioners came to know that their names are wrongly reflected in the revenue records. They preferred

revision petition vide No.D1/34/2006 under Section 9 of the Telangana Record of Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'Act, 1971'). By then, petitioners were still not aware that an Occupancy Right Certificate (ORC) was granted in favour of Respondents vide order dated 30.01.1981 and the said lands were classified as Inam lands. It is claimed that the ORC was granted without issuing notices and conducting enquiry while the petitioners were in possession at the time. The revision filed under Section 9 of the Act, 1971 was dismissed on 28.12.2013 on the ground that since ORC was granted to respondents and no appeal under Section 24 of 1955 Act was made, revision cannot be entertained for rectification unless the said order was set aside. Having come to know illegal orders granting ORC to respondents were made behind their back, appeal was filed by petitioner F2/JA-57/2012 on the file of 2nd respondent along with condonation of delay application. The application to condone delay was allowed vide order 21.01.2014 and *status quo* order dated 25.01.2014 was passed.

4. Respondents 6 and 7 filed Writ Petition No.6255 of 2014 challenging the orders granting stay and the order condoning the delay. The writ petition was disposed of directing the Joint Collector, Mahabubnagar to consider objections of writ petitioners in respect of limitation as well as on merits. Challenging the decision of learned single Judge, Writ Appeal No.589 of 2014 was preferred. The Division Bench was pleased to dispose of the Writ Appeal setting aside orders dated 21.01.2014 and 25.01.2014 of the appellate authority and directed the appellate authority/ Joint Collector to decide application for condonation of delay and after

deciding this, if delay is condoned, then to hear the appeal on merits.

5. On remand, the appellate authority rejected the application to condone the delay holding that appeal under Section 25 of the A.P. (Telangana Area) Abolition of Inams Act, 1955 against granting ORC was not preferred within 30 days from the date of the order and 33 years delay in preferring appeal cannot be said as reasonable time.

6. The learned counsel Sri Vedula Srinivas for petitioners would submit that the appellate authority erred in dismissing the appeal holding as inordinate delay in preferring appeal. Petitioners were not aware of granting ORC till 2006 when they were sought to be dispossessed. Immediately, they preferred revision under Section 9 of the Act, 1971. Till the year 2013, revision was pending. While revision was pending, petitioner preferred appeal under the Act, 1955. The date of knowledge is crucial to consider the delay in preferring appeal and within no time steps were taken to challenge illegal entries in revenue records and issue of ORC. These facts are to be looked into in considering the delay. He would submit, when substantive right to property is affected and cogent reasons are assigned to condone the delay, the appellate authority could not have rejected the appeal by mechanically referring to date of granting ORC. He would submit that on 01.05.2019 respondents 6 and 7 along with 20-30 people came to the subject land and tried to erect poles in the presence of the respondent no.5 (Station House Officer), compelling them to institute this Writ Petition. The fact that respondents 5 and 6 sought to dispossess them on

01.05.2019 would clearly demonstrate that petitioners are in possession all along.

7. Learned counsel for respondents 5 & 6 supports the view taken by the appellate authority in dismissing the appeal. He would submit that there was inordinate and unexplained delay in preferring the appeal. Against ORC granted on 30.01.1981 appeal was filed in the year 2012. According to learned counsel for respondents, when petitioners filed the revision petition in 2006, they were aware that the lands were Inam lands. In fact, the respondents had filed copy of ORC in the Revision in File No.D1/34/2006 and also through his counsel filed Memo dated 08.10.2010 bringing to the notice of this Hon'ble Court in the earlier round of litigation that the name of the respondent no.6 was mutated as owner of subject lands based on ORC issued in File No.K/5869/1980, dated 30.01.1981. Thus, the petitioners kept mum even from the year 2006 and filed the appeal only in 2012 December. He would further submit that according to the ages mentioned in the revision petition filed by petitioners, at the time of passing order granting ORC dated 30.01.1981, petitioner No.1 was only a year old and others were not even born. Therefore, issue of notice to them did not arise. They further assert that they are enjoying the possession of the lands since 1981.

8. The appeal preferred by the petitioners was dismissed on the ground that there was inordinate delay in preferring the appeal. In view thereof, the only question for consideration is whether the decision arrived at by the appellate authority in rejecting the appeal on the ground of inordinate delay is justified.

9. Section 24 of the Act, 1955 confers right to prefer appeal by an aggrieved person against the decision of the competent authority in granting ORC under Section 10 of the Act. Section 24 prescribes 30 days time to prefer such appeal from the date of decision. However, the Act vests discretion to condone delay in preferring the appeal. Thus, while the Act fixes the time limit to prefer appeal, it also confers discretion in the competent authority to condone the delay if sufficient cause is made out for not preferring the appeal within the time prescribed.

10. To assess whether decision to dismiss application for condonation of delay was validly made, it is necessary to note the reasons assigned for not filing appeal within the time prescribed and to condone the delay in preferring the appeal before the appellate authority.

11. Along with the appeal, petitioners filed affidavit, deposed on 15.12.2012 to condone the delay. In paragraph-3 of the said affidavit, petitioners contended that grandfather and father were rustic, innocent and illiterate villagers and were not aware of the revenue entries and had no knowledge of the revenue records. It is also contended that they were not aware that the said lands are inam lands and that the inams were abolished. In other words, according to this averment, the status of the land as inam land was not known to the grandfather and the father of the petitioners. Contrary to this averment, the averments in the appeal preferred by the petitioners would disclose that petitioners' aver father and grand father knew the status of the land as inam land and Sri Madugula Laxmaiah was the inamdar and Sri Chennagalla Baligadu was the cultivator. Sri Chennagalla Baligadu continued

his actual and exclusive possession and enjoyment over the said inam lands till his death. It is further averred that Chennagalla Baligadu purchased the said land from the original inamdar through private sale deed dated 02.12.1966.

12. In the affidavit filed praying to condone the delay, it was further averred that the delay caused was neither intentional nor deliberate, but due to their ignorance and not knowing the legal implications and as they were not apprised of the fact of issuance of ORC in favour of the 1st respondent therein and, therefore it is an *ex parte* decision and, therefore, sought for condonation of delay.

13. In the affidavit filed in support of the writ petition, the specific allegation of the respondents before the appellate authority that petitioners were aware of the ORC granted on 30.01.1981, at least, by the time the revision was preferred in the year 2006, is not denied nor they have given effective explanation, except contending that they were not aware of the ORC granted and the status of the land as inam land even by the time they preferred revision under Section 9 of the Act, 1971.

14. It is also interesting to note the averments made in paragraph-4 of the affidavit filed before the appellate authority to condone the delay. Petitioners admitted that their counsel has informed them that if the ORC obtained by the 1st respondent therein remained unchallenged, it would cause hardship and injury to their rights and, therefore, the appeal was preferred. It is silent as to when and in what context such advice was given. Contrary to this statement, in the written arguments filed before

appellate authority, different plea is raised with reference to the reason to prefer appeal. It is now contended that the earlier Advocate by name Sri P.Jagan Mohan Reddy died and in his place, Advocate Sri T.Vijaya Bhasker Reddy was engaged and he was appraised the fact that appeal has to be filed under Section 24 of the Act, then obtained carbon copy of ORC and filed appeal. It is thus seen, while earlier it was pleaded that Advocate advised them to prefer appeal, in the written arguments it is pleaded that they requested the Advocate to prefer appeal. These averments do not disclose *bona fides* in prosecuting the grievances of the petitioners *per se*.

15. Assuming that petitioners were not put on notice, that they were not aware of the status of the land as inam land, that they came to know for the first time only in the year 2006 and, therefore, the view expressed by the appellate authority that petitioners kept quiet for 33 long years is not valid, the fact remains that even by the year 2006 at least petitioners were aware of the ORC granted on 30.01.1981, and there is no explanation as to why petitioners kept quiet at least from the year 2006 till 15.12.2012, when appeal was preferred. More than six years delay in preferring the appeal from the year 2006 also cannot be said as reasonable. Further, even in the written arguments filed by the petitioners before the appellate authority, they admitted the status of the land as inam land and claimed to have purchased from the inamdar and further claimed that as they purchased from the inamdar, they are entitled to ORC.

16. Material on record would disclose that appeal was preferred on 15.12.2012 challenging the ORC granted on 30.01.1981, after

more than 31 years. Even assuming that the date of knowledge is in the year 2006, the appeal was preferred after six years, whereas limitation prescribed to prefer appeal is only 30 days. Though power is vested in the appellate authority to condone the delay, such appeal has to be preferred within a reasonable time and cogent reasons have to be assigned why appeal could not be filed within the time prescribed in Section 24 of the Act. As noticed above, no cogent reasons are assigned for not preferring appeal within 30 days and on the contrary, conflicting statements are made on various aspects of the status of the land and knowledge of grant of ORC on 30.01.1981. In the facts of this case, it cannot be said that appellate authority has erred in not exercising his discretion to condone the delay and considering the appeal on merits.

17. No proper foundation is laid either before appellate authority or in this writ petition on the reasons for preferring the appeal after long lapse of time. Petitioners miserably failed to discharge their 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*. Court cannot

declare a decision made in exercise of discretion vested in a quasi-judicial authority unless such exercise is found to be patently illegal and perversity is writ large.

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

19.1. In **Commissioner of Police v. Syed Hussain**¹, 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.

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 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.

¹ (2006) 3 SCC 173

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.

19.2. In **Lalit Popli v. Canara Bank**², 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."

20. As seen from record, briefly noted above, the issue of delay and laches was considered and on application of mind, appellate authority dismissed the appeal on the ground of delay. Except making vague plea of not aware of the ORC and grand father and father were ignorant on the status of the land and grant of ORC, no other material is placed on record to support their stand on delay. Admittedly, ORC was issued on 30.01.1981 and appeal was preferred on 15.12.2012. For such long time petitioners allowed respondents to enjoy the status of ORC holder. The issue settled long ago sought to be affected by preferring appeal on 15.12.2012.

² (2003) 3 SCC 583

In the facts of this case, it can be safely assumed that by their conduct petitioners acquiesced of the fact of grant of ORC to respondents 5 and 6 and started litigating much later. They cannot seek to upset settled things after such long lapse of time. Delay and laches are staring at them. Thus, it cannot be said that decision arrived at by appellate authority is perverse. In the facts of this case, I do not see any error in the decision arrived at by the appellate authority in rejecting the plea to entertain the appeal on the ground of inordinate delay.

21. 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 appeal on the ground of delay. It is always open to petitioners to assert their right to ownership and possession of the subject property if the same is permissible under law. Pending miscellaneous petitions, if any, shall stand closed.

SD/- N.CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri T Bala Mohan Reddy Advocate [OPUC]
2. Two CCs to GP for Revenue, High Court for the State of Telangana (OUT)
3. Two CCs to GP for Home, High Court for the State of Telangana (OUT)
4. One CC to Sri V. Ravi Kiran Rao, Advocate (OPUC)
5. Two CD Copies

MBC

[Handwritten signature]

HIGH COURT

DATED: 23/01/2020



ORDER

WP.No.10188 of 2019

DISMISSING THE WRIT PETITION

WITHOUT COSTS

⑧
7/2/20
Hvt