

**HIGH COURT FOR THE STATE OF TELANGANA :: AT
HYDERABAD**

WRIT PETITION NO.10558 OF 2018

Between:

Pamshetty Jojappa (died per LRs'),
Pamshetty Marthamma w/o. late Jojappa,
Aged 45 years, r/o. Jammapuram village,
Bhongir Mandal, Nalgonda district and
others.

.....Petitioners

and

The State of Telangana, rep.by its Prl. Secretary,
Revenue Department, Secretariat, Hyderabad and
others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 23.01.2020

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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.... Respondents

!Counsel for the petitioners : Sri K.Manik Prabhu

Counsel for the Respondents : Govt.Pleader for Revenue for
respondents 1, 2, 11 and 12;
Sri A.Venkatesh for respondents
3 to 5

<Gist :

>Head Note:

? Cases referred:

2003 (1) ALT 688 (D.B)
2014 (4) ALD 631
2017 (5) ALD 273
2003 (5) ALD 654
2007 (6) ALD 348
AIR 1987 SC 2235
AIR 1089 SC 1972
(1997) 1 SCC 134
1997 (6) ALD 277

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 10558 OF 2018

ORDER:

Heard Sri K.Manik Prabhu learned counsel for petitioners, Sri A.Venkatesh learned counsel for respondents 3 to 5 and learned Government Pleader for respondents 1, 2, 11 and 12.

2. According to petitioners, their father and brothers of his father jointly purchased land to an extent of Ac.6.25 guntas in Survey No. 34, Kunuru village of Bhongir mandal, Nalgonda district by way of sada sale deed dated 26.6.1979 from Mulle Rajeshwar and Kalakuntla Venkata Narsaiah for a valid sale consideration and in pursuant thereof, possession was vested in them. In the family partition between brothers, land to an extent of Ac.3.05 guntas fell to the share of father of petitioners and land to an extent of Ac.3.20 guntas fell to the share of brothers of father of petitioners i.e., Saloman. After death of their father, the property devolved upon them and after death of Soloman, his share of property devolved upon respondents 7 to 10. Under Section 5-A of The Telangana Rights in Land and Pattadar Pass Books Act, 1971 (for short the Act, 1971), they applied for validation of sada sale deed. By following the procedure as required by the Act, 1971 and Rules made thereunder, the sada sale deed was validated and Section 13-B certificate was issued to the father of petitioners and father of respondents 7 to 10 vide proceedings dated 5.2.2007. In view thereof, petitioners and respondents 7 to 10 have become absolute owners and are in possession and enjoyment of the said property. Their names were also mutated in the revenue records deleting the name of late

Rajeshwar Rao and pattadar passbooks and title deeds were issued to them. On 22.11.2010, the Revenue Divisional Officer-12th respondent granted no objection certificate to father of petitioners and his brother to sell land to an extent of Ac.3.20 guntas and legal heirs of Saloman sold land to Sri Sri Homes Private Limited-13th respondent vide registered sale deed dated 28.6.2012. While so, respondents 3 to 5 claiming themselves as legal heirs of late Rajeshwar Rao, filed appeal before the Appellate Authority under Section 5 (5) of the Act, 1971 and sought cancellation of the proceedings dated 5.2.2007 and pattadar pass books and title deeds. The Revenue Divisional Officer, cancelled the proceedings of validation of sada sale deed, pattadar pass books and title deeds and consequential entries in the revenue records, allowed the appeal and remitted the matter to the Tahsildar for conducting denovo enquiry. Aggrieved thereby, petitioners preferred revision under Section 9 of the Act, 1971. The Revisional Authority, confirmed the order of remand by order dated 30.1.2018, impugned in this writ petition.

3.1. According to learned counsel for petitioners against validation of unregistered sale deed under Section 5-A of the Act, 1971, remedy of appeal is available only under Section 5-B of the Act, 1971 and not under Section 5 (5) of the Act, 1971, whereas, appeal was preferred under Section 5 (5) of the Act, 1971 before the Revenue Divisional Officer and the same is not maintainable and the Revenue Divisional Officer ought to have dismissed the same on that ground. The Appellate Authority and Revisional Authority, failed to appreciate this aspect and orders are vitiated on this ground alone.

3.2. He further contended that Rule 22 of the Telangana Rights in Land and Pattadar Passbooks Rules, 1989 prescribe procedure of service of notice on any application made for correction of entries in the revenue records/ updation of entries in the revenue records. In terms thereof, notice has to be served on the person to the known address and for any reasons the person is not available, the notice can be affixed on the notice board of the Gram Panchayat. The revenue records reflect the name of Sri Rajeshwar Rao and his death was not informed to the revenue authorities. The legal heirs have not taken steps for amendment of the revenue records reflecting their names, therefore, Rule 22 was complied by affixing notice on the notice board of the Gram Panchayat as there was no one available in the given residential address of Rajeshwar Rao in the village, therefore, it cannot be said that there is violation of principles of natural justice/ affording of due opportunity before passing orders.

3.3. He would further submit that order of the Tahsildar was dated 5.2.2007 and appeal was preferred after more than 6 years and the same is not maintainable as it was filed beyond the limitation prescribed under Section 5 (5) of the Act, 1971 / Section 5-B of the Act, 1971. After expiry of limitation, Appellate Authority has no jurisdiction to entertain the appeal. He would further submit that as father of petitioners purchased the land in the year 1979 and they have been in continuous possession for more than 30 years, there is clear presumption in favour of petitioners that they are owners of the property and document executed in their favour is valid.

3.4. By placing reliance on the decision of Division Bench of this Court in **M.B.Ratnam Vs. Revenue Divisional Officer and others**¹, he would submit that an appeal is maintainable only under Section 5-B and not under Section 5(5) of the Act, 1971, therefore, appellate order is liable to be declared as illegal as no appeal was preferred under Section 5-B.

4.1. *Per contra*, Sri A.Venkatesh learned counsel for respondents 3 to 5 submitted that Section 5-A of the Act, 1971 is exception carved out to the mandate imposed by Section 17 of the Registration Act, 1908. When a person seeks to validate an unregistered sale deed by availing the exception carved out in Section 5-A of the Act, 1971, it is his bounden duty to ensure that the vendor authenticates the sale transaction, participates in the validation proceedings and endorses the sale. Ex-parte, no decision can be made by the Tahsildar to validate a sale deed. While petitioners were aware that Rajeshwar Rao died no efforts were made to find out their successors and to effect service of notices on them. He would further submit that after death of vendor, assuming that the valid sale transaction took place, there cannot be validation of sale deed without bringing legal representations on record, service of notice on legal representatives and ensuring their presence before the Tahsildar for validation of unregistered sale deed. After death of their father, unofficial respondents 3 to 5 are not living in the village, therefore, they were not aware of the exercise undertaken by Tahsildar to validate an unregistered sale deed claimed to have been executed by their father, behind their back.

¹ 2003 (1) ALT 688 (D.B)

4.2. He would submit that as soon as the validation of unregistered sale deed came to their notice, they have submitted appeal before the Revenue Divisional Officer for cancellation of said decision. He would submit that there was no delay on the part of respondents 3 to 5 as they were not aware of the proceedings issued by Tahsildar in the year 2007.

4.3. He would further submit that a bare look at the document relied on by petitioners, it is seen that it is not an agreement of sale. It was not executed by owner of the land. It is a document signed by a person by name Kalakuntla Venkata Narsaiah claiming as son of Rajeshwar, thus, it is not a document executed by Rajeshwar Rao; further, it is not a sale deed but it is an agreement promising to execute sale deed as and when full sale consideration is received. He would therefore submit that this document does not fall into the category of document which can be validated under Section 5-A, therefore, Revenue Divisional Officer, has rightly set aside the said order, affirmed by the revisional authority.

5. In support of the contention, learned counsel Sri A.Venkatesh placed reliance on the following judgments:

- i) **Susheela Bai v. The Joint Collector**²;
- ii) **Sajid Qureshi v. M.Narsing Rao**³; and
- iii) **Konkana Ravinder Goud and Ors., v. Bhavanarishi Co-operative House Building Society and Ors.**⁴

² 2014 (4) ALD 631

³ 2017 (5) ALD 273

⁴ 2003 (5) ALD 654

6. Three issues require consideration in this writ petition:
- i) Whether appeal under Section 5 (5) of the Act, 1971 is maintainable against an order validating unregistered sale deed under Section 5-A of the Act, 1971; alternatively can the appeal preferred under Section 5 (5) of the Act, 1971 be treated as an appeal under Section 5-B of the Act, 1971 ?
 - ii) Whether there was inordinate delay in preferring the appeal against the order of validation of sale deed ?
 - iii) Whether the document can be called as sada sale deed to attract provision in Section 5-A of the Act, 1971 to hold the validation as legal and valid ?
7. Right to property is a valuable right vested in a person and same cannot be taken away/ deprived by any means without following the due process of law. Transfer of ownership of immovable property is only with free consent of the person, who claims to be the owner on receiving valid sale consideration or he intends to transfer the property owned by him for any other reason in favour of any other person. There has to be a clear intention to transfer/sell the property. The transaction has to be transcribed and signed with free will in the presence of independent witnesses. Then only it can be treated as concluded contract. However, any sale transaction on immovable property whose value is 100/- or more has to be registered under Section 17 of the Registration Act, 1908 on payment of requisite stamp duty. As per Section 49 of the Registration Act, 1908, unless such document is registered it would not affect immovable property and it has no legal validity. Thus, person in whose favour, the document is stated to have been

executed cannot claim to have acquired right to the said property, unless it is registered. Registration of the document per force, requires execution of the document by both parties, present physically before the registering authority and authenticate their signatures to the document in the presence of the registering authority.

8. If a vendee places reliance on unregistered sale deed to claim that property was sold to him on payment of full sale consideration and possession was vested after execution of the document, but formally document was not registered, he can take advantage of the provision introduced in Act, 1971 in the form of Section 5-A to seek validation of unregistered sale deed. It is an exception carved out to the mandate of Section 17 of the Registration Act. However, it does not relax essential ingredients to register a document which seeks to convey passing on title. The object and intent of Section 5-A of the Act, 1971 is to enable the purchaser of the property to overcome the restriction imposed by Sections 17 & 49 of the Registration Act to enjoy the property acquired properly except to the factum of registration of the document as per the Registration Act. Thus, validation/regularisation, per force, requires that there was a valid sale transaction with the consent of both parties.

9. Two primary requirements to apply the provision in Section 5-A of the Act, 1971 are the person who applies for validation must be in possession of the subject land by virtue of valid alienation or transfer made or effected except registration of the document executed and applies for validation within the time prescribed for a

certificate declaring that such alienation or transfer is valid. To validate such sale transaction, notice to the vendor of the property / his successors and persons interested is mandatory and without notice and without his/their presence physically during the process of validation, the transaction cannot be said as valid and property cannot be treated as a validly transferred to the so-called vendee.

10. In the background of above legal position, before appreciating the respective contentions, it is necessary to look into the document in issue.

11. Reliance is placed on document stated to have been executed by Sri Rajeshwar Rao on 26.6.1979. From the reading of Telugu version of typed copy, it is interesting to note the contents of the document. Document was executed by Kalakuntla Venkata Narsaiah. He states that he purchased the land to an extent of Ac.7.00 guntas in Survey No. 34 from Sri Rajeshwar Rao on payment of sale consideration and has sold the same land to the persons named therein. He further states that he received part sale consideration and balance sale consideration to be paid in instalments. He further states that it is agreed that on payment of final instalment of sale consideration, he would take the responsibility to register the document. In other words, it is a promise made by Kalakuntla Venkata Narsaiah agreeing to execute sale deed on receipt of full sale consideration. In other words, *prima facie*, it is not a sale deed. It is also interesting to note that in the body of the document, he refers to himself as son of Narsaiah but while signing the document, he claims that his father

is Rajeshwar, both are contrary statements. However, it is apparent from the reading of the first paragraph of the document, wherein he claimed to have purchased from Rajeshwar, he is not son of Rajeshwar. Further, while the name of pattadar was Rajeshwar Rao, the document refers to as Rajeshwar. No sale deed is placed on record to support the claim of Kalakuntla Venkata Narsaiah that Mr Rajeshwar Rao sold the land to him after receipt of full sale consideration and he became the owner. In other words, by the time this document was signed by Kalakuntla Venkata Narsaiah, he was not the owner of the land. Thus, *prima facie*, he cannot execute sale deed, even if it is called so, and even on behalf of owner of the land merely on the assumption that he paid the sale consideration to purchase the property from him. It is thus apparent that there was no transaction between the petitioners father, father's brother and Mr Rajeshwar Rao. Validation of unregistered sale deed under Section 5-A of the Act, 1971, perforce, would arise only if document was executed by the owner in favour of the person claiming to be in occupation of the subject property after having paid full sale consideration to the owner of the property. Thus, on *prima facie* consideration of the document in issue, it is seen that these conditions are not attracted and, therefore, the validation is *ex facie* illegal.

12. In **Konkana Ravinder Goud** (supra) an identical issue i.e., nature of document which can be validated under Section 5-A of the Act, 1971 came for consideration before the Division Bench. The respondent society claimed that on entering into two agreements of sale by paying entire sale consideration on land to an extent of Acs.81.04 guntas, land stood transferred to the society

and possession vested in the society. It was also contended that irrevocable General Power of Attorney was also executed in the name of office bearers of the society. Thereafter, two applications were filed under Section 5-A of the Act to validate sale transaction and to issue the certificates. By collecting requisite stamp duty, the Mandal Revenue Officer granted the certificates. In other words, agreement of sale was validated under Section 5-A of the Act (paragraph 61).

13. Learned Division Bench noted that agreement to sell cannot be termed as complete contract to sell. Division Bench held agreement to sell does not convey any right, title or interest in the property (paragraph 62). From the intent and purport of the Act, it is clear that what was sought to be validated is only a completed contract of sale, which for want of registration, in view of the provisions of the Registration Act, had not the effect of conveying right, title or interest in favour of the purchaser (Paragraph 66).

14. In paragraph-67, the Division Bench held:

“67. In the instant case, we are concerned with the purport and meaning of the word “transfer” as contained in Section 5-A of the Act in the light of the objects and reasons in introducing the said provision, namely, to regularise an unregistered sale transaction, which would not mean to regularise incomplete transfers. There is no machinery or mechanism provided in the Act that even a person who has entered into an agreement of sale and in case sale is not completed but he has been put into possession of the property even on payment of entire sale consideration that can approach the Mandal Revenue Officer for grant of a certificate under Section 5-A of the Act. The Mandal Revenue Officer in such a case cannot proceed to hold an enquiry as to whether agreement of sale has been complied with or not. On the failure on the part of vendor to complete the sale transaction, a person in whose favour there is an agreement of sale can seek specific performance of the agreement of sale so as to convey right, title or interest of the vendors. The machinery provided under the Act is not the appropriate machinery for perfecting title merely on the basis of agreement to sell. We are, therefore, of the view that the finding of the learned Judge that there is a valid transfer of immoveable property under agreements of sale cannot be sustained. Thus, we have no hesitation in holding that the agreement of sale relied upon by the Society is not covered by the

term transfer and cannot be treated as an “alienation” or “transfer” within the scope and meaning of Section 5-A of the Act and we answer the first question accordingly.”

15. Here also the document validated is not a completed contract and was not executed by the owner of the land. It is at the most a promise to ensure execution of sale deed. Therefore, the view taken by the Division Bench in **Konkana Ravinder Goud** is complete answer to the contentions urged by learned counsel for petitioners.

16. Further, as valuable right to property is sought to be affected in this manner, notice on the vendor/his successor(s) and persons interested is mandatory. Rule 22 of the Rules made under the Act, 1971 prescribes various modes of issuing notice before accepting the request to validate unregistered sale deed. It also requires notice in Form-XI to alienor/transferor and any other person interested. Rule 22(3) read with Form XI presupposes that alienor/transferor is alive and is silent on a situation where alienor/transferor is not alive when such application is made. It cannot be assumed that after the death of original pattadar his legal heirs need not be heard. Thus, perforce, notice in Form-XI has to be issued to them. Alternatively, they are also the persons interested in the property having succeeded to the original pattadar and therefore, they have to be issued notice in form-XII. Either way, notice has to be issued to legal heirs. From the material averments of the petitioners, it is noted that petitioners were aware of death of original pattadar, that the unofficial respondents are legal heirs and that they were not residing in the village. Admittedly, no notice was sent to them in Form-XI/ Form-XII. The Revenue Divisional Officer and the Joint Collector

have recorded that proper procedure was not followed by Tahsildar. This is a serious flaw going to the root and vitiates the entire process and decision is void *ab initio*.

17. Dealing with recording of rights under Section 5 of the Act, Full Bench in **Chinnam Pandurangam v. The Mandal Revenue Officer, Serilingampally Mandal and others**⁵ emphasized the primary requirement of putting on notice the persons interested or affected. The requirement to put on notice legal heirs of original pattadar to validate alleged unregistered sale deed under Section 5-A of the Act, cannot be of less important when claim is based on alleged completed contract of sale of immovable property affecting their right to property.

17.1. Its apt to note the law declared by the Full Bench. It reads as under:

“7. The above analysis of the relevant statutory provisions shows that proviso to Section 5(1) and Section 5(3) represent statutory embodiment of the most important facet of the rules of natural justice i.e. audi alteram partem. These provisions contemplate issue of notice to the persons likely to be affected by the action/decision of the Mandal Revenue Officer to carry out or not to carry out amendment in the Record of Rights. Proviso to Section 5(1) lays down that if the Mandal Revenue Officer decides not to make an amendment in the Record of Rights, then he shall pass appropriate order only after giving an opportunity of making representation to the person, who gives intimation regarding acquisition of any right referred to in Section 4. Section 5(3) provides for issue of written notice to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment. Similarly, a notice is required to be issued to any other person whom the recording authority has reason to believe to be interested in or affected by the amendment. A copy of the amendment and the notice is also required to be published in the prescribed manner. The publication of notice in the prescribed manner is in addition to the notice, which is required to be given in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to any other person whom the recording authority has reason to believe to be interested in or affected by the amendment. To put it differently, the publication of a copy of the amendment and the notice is only supplemental and not the alternative mode of giving notice to the persons whose names are entered in the Record of Rights and

⁵ 2007 (6) ALD 348

who are interested in or affected by the amendment and to any other person to whom the recording authority has reason to believe to be interested in or affected by the amendment. If the Legislature thought that publication of a general notice in Form-VIII will be sufficient compliance of the rules of natural justice, then there was no occasion to incorporate a specific requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to other person whom the recording authority has reason to believe to be interested in or affected by the amendment. ***In our considered view, the requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to any other person whom the recording authority thinks to be interested in or affected by the amendment clearly negates the argument that publication of notice in Form-VIII is sufficient.***

(emphasis supplied)

18. In the background of above assessment, it is necessary to consider two objections raised by learned counsel for petitioners.

19. Firstly, on the competence of the Revenue Divisional Officer on entertaining the appeal under Section 5 (5) of the Act, 1971 against an order passed under Section 5-A of the Act, 1971 and secondly on the question of delay.

20. Perforce, delay also relatable to the claim of service of notice. It is not in dispute that by the time, document was sought to be validated, Rajeshwar Rao was no more and unofficial respondents 3 to 5 have succeeded to him, but they were not living in the village. No notice was served on them before the exercise to validate the unregistered sale deed was taken up. Rule 22 of the Rules, 1989 requires service of notice on the owners of the property after receiving an application for validation of unregistered sale deed. This Rule has to be read in consonance with requirements of Section 5-A of the Act, 1971. Section 5-A of the Act, 1971 requires strict interpretation, as it takes away the right of the person to property based on claim by another person that there was unregistered sale deed, on payment of full sale

consideration and the possession was vested thereof and he was in continuous possession. In other words, a document which is not otherwise valid in law, can be validated only on recognition of the factum of continuous possession after payment of full sale consideration and but for registration under the Registration Act there was completed contract of sale and such exercise has to be undertaken in the presence of the vendor.

21. Though validation claim was made after death of Rajeshwar Rao, notices were generated on his name and legal heirs were not put on notice. The Revenue Divisional Officer noticed serious infirmities in taking out notices. The Joint Collector also observed that proper procedure was not followed before issuing certificate under Section 5-A of the Act. Therefore, the exercise undertaken by Tahsildar to validate an unregistered sale deed, assuming that the document is answering the description of unregistered sale deed, per force, was not in accordance with law. Since, unofficial respondents 3 to 5 were not put on notice and original pattadar late Rajeshwar Rao was no more, it cannot be assumed that the unofficial respondents 3 to 5 were aware of the transaction made behind their back. It is also not the case of petitioners that unofficial respondents 3 to 5 were aware of the orders of Tahsildar. Further, in the facts of this case, when it is admitted that the unofficial respondents 3 to 5 were not residing in the village and there was no communication to them nor petitioners were in touch with those persons, it cannot be said that there was delay in preferring the appeal to nullify the order of the Appellate Authority on that ground. From the date of knowledge only the limitation

has to be computed and therefore, it cannot be said that appeal was not preferred within the limitation period.

22. The facts in **Susheela Bain** (supra) are identical. An unregistered sale deed alleged to have been executed by dead person without serving notice on successors who were not living in the village was held to be illegal. As no notice was served on the legal heirs of the original pattadar, learned Judge found fault with the procedure followed in validating the unregistered sale deed.

23. Further, in the appeal, provision mentioned was Section 5(5) of the Act. Fact remains that Section 5-B was introduced before the appeal was preferred and remedy of appeal under Section 5-B was available to respondents 3 to 5 by the time they preferred the appeal. It is settled principle of law that when remedy of appeal is available and Revenue Divisional Officer is vested with power, wrong mention of provision in the appeal filed by appellants does not make the appeal *per se* illegal and does not vitiate the exercise undertaken by the appellate authority, if it is otherwise in order. It is also relevant to note that though appellants mentioned Section 5(5) in their appeal, the appellate authority treated the same as an appeal under Section 5-B of the Act, and considered the appeal accordingly. Thus, the proceedings of the Revenue Divisional Officer affirmed by the Joint Collector cannot be invalidated on that ground.

24. In **Sajid Qureshi** learned single Judge held that mere reference to wrong provision do not invalidate an order otherwise legal.

25. I have carefully considered the decision relied by learned counsel for petitioners. The decision of Division Bench in **M.B.Ratnam**, at the first blush, seem to support the petitioners on the aspect of delay in filing of appeal.

26. In paragraphs 50, 51 and 52, Division Bench held as under:

“50. In our considered opinion, even in the absence of communication of the orders by the Mandal Revenue Officer as required under the Rules, the appeal under Section 5-B of the R.O.R. Act by an aggrieved person is required to be filed within a reasonable time. The appeals are to be filed within a reasonable time from the date of knowledge of the order. We have already noted that consequent upon the orders and the certificate issued by the Mandal Revenue Officer, necessary entries were made in the pass books recording the names of the petitioners herein as owners of the property. The names were incorporated in the faisalpatties (revenue account) and they were accordingly made liable to pay the land revenue payable in respect of land to the Government. It is difficult to accept that the respondents herein did not have the knowledge of the Mandal Revenue Officer issuing the certificate in the light of the necessary changes and modifications carried in the revenue records and the village records. The material available on record discloses that the respondents never had any connection whatsoever with the lands ever since the date of orders of Mandal Revenue Officer. Evidently, they were not even paying the land revenue. The belated attempt on the part of respondents herein to impugn the orders passed by the Mandal Revenue Officer is nothing but an after-thought. Settled legal rights cannot be permitted to be unsettled in this fashion. Such course is not permissible in law. If such a course is permitted, there will be no end to the litigation and no finality can be attached to any of the orders of the Courts or Tribunals, as the case may be.

51. The entries in the record of rights are made after holding public enquiries. The entries made in the record of rights carry with them a great evidentiary value, sometimes they constitute the only evidence available in order to establish one's title to the lands. The record of rights is thus prepared, maintained and updated by public servants in discharge of their official duties. It would be impossible to accept that the entries made in the record of rights in the instant case which remained in the record for a period of over 10 years have not been noticed by the respondents until they have preferred the appeals before the appellate authority. The vague explanation offered by the respondents about the entries and the orders passed by the Mandal Revenue Officer, is totally unacceptable.

52. For the aforesaid reasons, we are of the considered opinion that the so-called appeals preferred by the respondents herein ought not to have been entertained by the appellate authority after long lapse of more than 10 years virtually unsettling the settled rights of the parties. The rights accrued in favour of the petitioners cannot be set aside resulting in miscarriage of justice.”

27. There is no quarrel with the view expressed by the Division Bench, but on a close scrutiny, the decision is distinguishable on facts. It is seen from the judgment that on land to an extent of Acs.50.39 guntas, there were five sale transactions covering different extents of land, one agreement of sale, two unregistered sale deeds and two registered sale deeds from same owners. Full sale consideration was paid and possession was delivered. The unregistered sale deed covered Acs.39.32 guntas. It was validated under Section 5A of the Act, 1971. Consequently, revenue records were updated and pattadar passbooks were issued. Except to the allegation of forgery of signature there was no serious challenge to the execution of documents in issue. The pleadings noted by Hon'ble Division Bench do not disclose that original owners pleaded that they were not residing in the village; that they were unaware the exercise undertaken resulting in validating the registered sale deed; and they were in physical possession of the land in issue. Therefore, the Division Bench took serious note of delay of more than 10 years in preferring the appeal.

28. Further, in **M.B.Ratnam**, the unregistered sale deed was validated before Section 5-B was introduced and appeal was preferred under Section 5(5) of the Act, 1971. The Division Bench held that Section 5 (5) of the Act, 1971 is not available against an order made by Tahsildar under Section 5-A and Section 5-B was introduced later and therefore the appeal preferred under Section 5 (5) was not valid. Further, there was no cloud on the document. On the contrary, in this case, *per se* the document in issue cannot be treated as a sale deed.

29. Even assuming that what is contended by the learned counsel for petitioners is valid and that appeal was not preferred within the time prescribed and that appeal under Section 5 (5) of the Act, 1971 was not maintainable, and that there was inordinate delay in preferring the appeal, in view of the patent illegality noticed above, the said contentions pale into insignificance. Accepting such contentions would result in affirming *ex facie* illegal decision of the Tahsildar. As noted above, *prima facie*, it does not appear to be a sale deed; *prima facie* the sale transaction was not completed; it also appears the document was not executed by the owner of the property i.e., Rajeshwar Rao; and it was an undertaking given by a person who has written the document stating that he would execute the sale deed on receipt of full sale consideration, in whom property was not vested. Thus, document does not answer the description of a sada sale deed, to attract Section 5-A of the Act, 1971. The entire transaction is vitiated with several illegalities.

30. Writ remedy is discretionary remedy and equitable remedy. Granting of relief depends on the facts of a given case. Where injustice is palpable writ Court would come to the rescue of affected person and would grant relief. It is not bound by procedural limitations/delay. However, over a period of time Court opted to self-imposed restraint on its jurisdiction. Further, even when petitioners make out a point against sustainability of an order, writ Court need not grant relief if granting of relief would result in restoring another illegal decision. It must be exercised with great caution and only in furtherance of public interest or to set right grave illegality.

31. While considering the grievance in a petition under Article 226, the writ court need not grant relief merely because the petitioner makes out a legal point. *'It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point'* [**RAMNIKLAL N BHUTTA Vs. STATE OF MAHARASTRA**⁶]. *'Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved [RASHPAL MALHOTRA Vs SATYA RAJPUT MRS AND ANOTHER⁷ and COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT⁸]'.*

32. In the following three leading decisions this very issue was considered by the Hon'ble Supreme Court.

32.1. In **GADDE VENKATESWARA RAO V. GOVERNMENT OF A.P.**⁹, the Panchayat Samithi passed resolution on 25.08.1960 to locate a primary health centre at Dharmajigudem. It passed another resolution on 29.05.1961 to locate it at Lingapalem. On a representation, Government passed orders on 07.03.1962 setting aside the second resolution of Panchayat Samithi and thereby restoring the earlier resolution dated 25.08.1960. On a review, Government passed orders on 07.03.1962 accepting shifting of primary health centre to Lingapalem. The earlier order was without notice to the Panchayat Samithi and later order was passed without notice to villagers of Dharmajigudem, on whose representation Government passed orders on 07.03.1962.

⁶ (1997) 1 SCC 134

⁷ AIR 1987 SC 2235

⁸ AIR 1089 SC 1972

⁹ AIR 1966 SC 828

32.2. To the extent relevant for the case on hand, Supreme Court observed at page 189 as under:

“Both the orders of the Government, namely, the order dated 7-3-1962, and that dated 18-4-1963, were not legally passed: the former, because it was made *without giving notice* to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did *not give notice* to the representatives of Dharmajigudem village.”

32.3. Supreme Court further observed that if the High Court quashed the order of Government dated 18.04.1963, it would have restored another illegal order and it would have given health centre to a village contrary to the valid resolution passed by the Panchayat Samithi and upheld the decision of High Court in not exercising its extraordinary discretionary jurisdiction.

32.4. In **S.L.KAPOOR V. JAGMOHAN**¹⁰, principal contention was that the order of supersession of New Delhi Municipal Corporation of Delhi made by Lt. Governor was in complete violation of principle of natural justice and total disregard of fair play. No notice to show cause was issued and no opportunity was afforded on the allegations made for such supersession. Supersession resulted in premature termination of tenure of members of the Municipal Committee. Supreme Court held opportunity needs to be given before superseding Committee and that the Municipal Corporation was not put on notice before exercising power to supersede the committee and held such action as illegal.

¹⁰ (1980) 4 SCC 379

32.5. The observations of Hon'ble Supreme Court in paragraph-24 are apt to note at this stage. Supreme Court held,

"24. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

32.6. The view expressed by the Supreme Court in **S.L.Kapoor** (supra) is referred to and relied upon in subsequent decisions.

32.7. In **M.C.MEHTA VS. UNION OF INDIA AND OTHERS**¹¹, Bharat Petroleum Corporation Limited (BPCL) assailed cancellation of retail petroleum outlet on the ground that prior to such cancellation, no notice or opportunity was afforded to BPCL. Earlier the very same piece of land was allotted to Hindustan Petroleum Corporation Limited (HPCL). This allotment was cancelled, and allotment was in turn made to BPCL. By order dated 10.03.1999, the plot was restored to HPCL withdrawing from BPCL. Both have contended that principles of natural justice violated when allotment was cancelled.

32.8. In the above factual background, Supreme Court observed as under:

"15. It is true that whenever there is a clear violation of the principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this Court because the orders of the Department were consequential to the orders of this Court. **The question however is whether the Court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no de facto prejudice is established.** On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10-3-1999 order will restore an earlier order dated 30-7-1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10-3-1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather

¹¹ (1999) 6 SCC 237

than one for which it has no right after the passing of the latter order of this Court dated 7-4-1998? ”
(emphasis supplied)

32.9. In **M.C.Mehta**, by referring to **Gadde Venkateswara Rao**, Supreme Court observed,

“17. The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. **The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.**”

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21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.”

(emphasis supplied)

32.10. This principle is applied in all subsequent decisions by the Hon’ble Supreme Court.

33. In **KALASAGARAM, SECUNDERABAD CULTURAL ASSOCIATION Vs STATE OF ANDHRA PRADESH**¹², learned single Judge of this Court, as he then was, later elevated to Hon’ble Supreme Court, considered the very issue and held as under:

“10. There is no controversy whatsoever about the nature of the land granted to the petitioner by the respondent-Corporation on lease. The land itself admittedly, does not belong to the Corporation. The land belongs to Government Employees Co-operative Housing Society and forms part of sanctioned layout. In the layout the land in question is admittedly reserved for the purpose of play ground, park etc. May be, under the provisions of the layout Rules and the Hyderabad Municipal Corporation Act, after the reservation of land for parks and play grounds, the lands stood vested in the Municipal Corporation.

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14. Even if it is to be assumed that the impugned order suffers from some infirmities, should the Court grant relief to the petitioner and issue writ as prayed for? Whether the petitioner is entitled for any relief from this Court? It is settled law that this Court does not issue writs in exercise of its jurisdiction under

¹² 1997 (6) ALD 277

Article 226 of the Constitution of India, as a matter of course. The Court exercising jurisdiction under Article 226 of the Constitution of India is also a Court of equity. The relief to be granted in exercise of such power is an equitable one. Mere infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of Mandamus. ***The Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law'*** (See *A.P. State Financial Corporation v. Gar Re-Rolling Mills*, (1994) 2 SCC 647 at 662. ***Writ of Mandamus is highly discretionary remedy as the aggrieved person has to not only establish the infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of a judicially enforceable right. The existence of a right is the foundation of the jurisdiction of Court to issue a writ of Mandamus.***

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16. Be that as it may, the Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the Government or statutory authorities to act in an illegal manner".
(emphasis supplied)

34. The following principles can be deduced from the treasure trove of precedents:

(A) In exercise of power of judicial review under Article 226 of the Constitution of India, it being discretionary and equitable remedy, Writ Court may decline to grant the relief to a petitioner, in the given facts of a case, even if legal flaw in the decision of competent authority is made out.

(B) Even when there are procedural infirmities in taking a decision by statutory authority affecting the petitioner adversely, Court need not grant the relief prayed for, if setting aside the decision assailed would result in restoring another illegal decision.

35. Guided by plethora of precedent decisions, primarily it is seen from the facts of this case that prior to validating so-called unregistered sale deed, the successors to the original pattadar late Rajeshwar Rao were not put on notice and were not afforded

opportunity to contest the claim of the petitioners on the alleged sale deed, executed by late Rajeshwar Rao, and the said action of the Tahsildar vitiates the entire exercise undertaken by him to validate the sale deed. Therefore, accepting the contention of the learned counsel for petitioners would result in restoring the *ex facie* illegal decision of the Tahsildar. In exercise of power of judicial review and equity jurisdiction, no such relief can be granted. Therefore, on this ground also, Writ Petition is liable to be dismissed.

36. I, therefore, see no merit in the contentions of learned counsel for petitioners. Writ Petition is accordingly dismissed. It is made clear that there is no expression of opinion on merits of respective claims. What is discussed herein above is for consideration of respective submissions and to test the validity of decision of Revenue Divisional Officer remanding the matter to Tahsildar, affirmed by the Joint Collector. The Tahsildar shall consider the claim of petitioners to issue certificate under Section 5-A of the Act, 1971 objectively uninfluenced by the observations made in this judgment. He shall complete the exercise within eight weeks from the date of receipt of copy of this order after putting on notice both parties and after giving opportunity of hearing and pass orders by assigning reasons in support of the decision. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 23.01.2020
kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.10558 OF 2018

Date: 23.01.2020

kkm