

**(2002) 08 AP CK 0004**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Appeal No. 1064 of 2000**

Kalla Rajaiah

APPELLANT

Vs

District Collector and Magistrate and Others

RESPONDENT

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**Date of Decision :** 01-08-2002

**Acts Referred:**

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 4(1)  
Constitution of India, 1950 — Article 226  
Laoni Rules, 1950 — Rule 19

**Citation :** (2003) 1 ALT 45

**Hon'ble Judges :** S.R. Nayak, J; Dalava Subramanyam, J

**Bench :** Division Bench

**Advocate :** P. Giri Krishna, for the Appellant; Government Pleader for Assignments, for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.R. Nayak, J.—This Writ Appeal filed by the unsuccessful writ petitioner has had a long and chequered history. The petition schedule land admeasuring Ac. 4.04 guntas comprised in Survey No. 31 of Kamareddy village, was assigned to the petitioner-appellant vide Patta Certificate dated 5-6-1977 by the then Tahsildar, Kamareddy under the Laoni Rules, 1950. The petition schedule land was assigned to the petitioner subject to certain conditions incorporated in the patta Certificate itself. According to those conditions, the land assigned to the petitioner is only heritable, but, not alienable. The other condition was that the petitioner schedule land should be brought under cultivation within three years from the date of assignment and the petition schedule land should not be leased out in any manner. When the matter stood thus, the Mandal Revenue Officer, Kamareddy issued show cause notice to the petitioner on 13-9-1987 for cancellation of the patta alleging that the petition schedule land had not yet been brought under cultivation much less within three years from the date of assignment as stipulated in the Patta Certificate. The petitioner submitted his reply to the show cause notice. The Mandal Revenue Officer, not being satisfied

with the reply of the petitioner, passed Office Order dated 9-11-1987 cancelling the assignment on the ground that the petition schedule land was not brought under cultivation within the stipulated time. In recording that finding, the Mandal Revenue Officer placed reliance on the sanction of lay out in respect of petition schedule land by the Gram Panchayat. The petitioner being aggrieved by the said order of the Mandal Revenue Officer, dated 9-11-1987 filed Writ Petition No. 17602 of 1987. That Writ Petition and certain other Writ Petitions were allowed by this Court on 4-4-1990 setting aside the cancellation orders. However, by the same order, this Court reserved liberty to the authorities to take appropriate fresh steps to cancel the patta. Thereafter, the 4th respondent issued fresh notice on 22-12-1990 to the petitioner proposing to cancel patta on the allegation that he did not bring the petition schedule land under cultivation within three years from the date of grant of patta and in fact, the petitioner and other assignees had approached the Gram Panchayat for sanction of lay out plan to convert the assigned land into house sites and the Gram Panchayat passed a resolution on 22-12-1987 sanctioning the lay-out. The petitioner filed his reply denying the allegations contained in the show cause notice. The 4th respondent, on consideration of the reply, passed orders on 21-3-1991 cancelling the patta. The petitioner preferred an appeal before the Revenue Divisional Officer, Kamareddy, Nizamabad District and the same was dismissed by him on 2-12-1991. Thereafter, a Revision was preferred by the petitioner before the Joint Collector, Nizamabad District and that revision was also dismissed on 15-4-1993. Being aggrieved by the said order of the Joint Collector, the petitioner filed Writ Petition No. 10884/93. This Court disposed of that writ petition and certain companion writ petitions on 22-1-1997 and directed the respondent authorities to re-hear the parties and pass appropriate orders within three months from the date of receipt of the orders. As directed by this Court, the Mandal Revenue Officer again issued notice on 9-7-1997 to the petitioner and other assignees alleging that they did not bring the subject land under cultivation and calling for explanation as to why the pattas should not be cancelled and the land should not be resumed to the Government. The petitioner submitted his reply to the show cause notice on 2-8-1997. Thereafterwards, the Mandal Revenue Officer issued a notice to the petitioner to appear before him for enquiry on 4-9-1997 either personally or through a Counsel. The petitioner engaged an advocate and contested the case before the Mandal Revenue Officer. After holding necessary enquiry, the Mandal Revenue Officer passed the order on 31-12-1997 cancelling the patta. That led the petitioner to filing of appeal before the Revenue Divisional Officer, Kamareddy and subsequently a Revision Petition before the District Collector, but, in vain. Being aggrieved by the orders of the authorities, the petitioner filed Writ Petition No. 18291 of 1999 out of which this Writ Appeal arises.

2. We have heard the learned counsel for the appellant and the learned counsel for the respondents.

3. The learned counsel for the appellant placing reliance on the judgment of a

learned Single Judge of this Court rendered in B. Adinarayana Murthy Vs. Collector Ananthapur Dist. and another, contended that the authorities below ought not to have cancelled the patta granted to the petitioner as far back as on 5-6-1977 and that it was impermissible for the respondent authorities to cancel patta under any circumstances after 5 or 6 years from the date of grant of patta. The learned Counsel next contended that under Rule 19 of the Laoni Rules, 1950, the Mandal Revenue Officer before cancelling the patta did not give the petitioner three months time to bring the land under cultivation as required under the proviso to that rule. The learned Counsel next contended that the claim of the respondents that since the land was not brought under cultivation by the petitioner and since the land was lying fallow, the possession of the same was taken over in the month of December, 1990, as stated in paragraph (3) of the counter affidavit filed in W.P.No. 18291 of 1999, is a false statement and if that is so, there was no need for the Mandal Revenue Officer to direct the Mandal Revenue Inspector, Kamareddy to take the land into Government custody in his order dated 31-12-1997.

4. It is not that this Court under Article 226 of the Constitution of India should step in, in each and every case where the Court finds certain irregularities or defective reasoning in recording a finding. The crux of the matter is that the petition schedule land was assigned to the petitioner with certain specific conditions. One of the conditions was that the assignees should bring the land under cultivation within a period of three years from the date of assignment. Admittedly, assignment was made on 5-6-1977. The question is whether the petitioner had brought the land under cultivation on or before 5-6-1980. It is trite that this question is a pure question of fact. Of course, if the finding recorded by the authorities even on pure question of fact is found to be perverse, the Court, under Article 226 of the Constitution, would step in and correct the record. However, if the finding could be sustained on the basis of some substantive legal evidence, this Court cannot assume the role of an appellate authority and would (not) go into the question of adequacy or sufficiency of the evidence. Therefore, the only thing to be seen is whether the finding recorded by the original authority, affirmed by the appellate authority and the revisional authority as well as the learned Single Judge of this Court that the petition schedule land was not brought under cultivation within a period of three years, is based on some substantive legal evidence. All the authorities below have found, as a matter of fact, that the petitioner did not bring the land under cultivation. In support of this finding, they have cited the circumstance of the petitioner applying to the Gram Panchayat for lay out sanction and the Gram Panchayat according such permission by passing necessary resolution. In paragraph 5 of the impugned order of the Joint Collector dated 31-12-1998, it is stated:

"The Respondents herein submitted the record of the Gram Panchayat in which the petitioners applied before the Gram Panchayat for conversion of land into plot. The Gram Panchayat has passed resolution on 20-2-1987 and recommended the same to the Director of Town Planning, Hyderabad for

approval. The conversion of the Plot by the petitioners is against assignment rules as such the Revision Petitioners cannot seek relief on this aspect."

5. The correctness of the observation made by the Joint Collector in paragraph 5 is not contested in the pleading of the petitioner. A perusal of the records would disclose that the petitioner and other assignees had in fact, applied to the Gram Panchayat for lay out sanction and the Gram Panchayat in response to that application passed resolution on 22-12-1987 recommending for grant of approval to the Director of Town Planning, Hyderabad. This piece of evidence is a relevant piece of evidence on the basis of which, the finding now recorded by the authorities below could rest and it cannot be said that such a finding is perverse or based on "no evidence". Looking from that angle also, we have no good reason to interfere with the concurrent factual finding recorded by all the authorities below as well as the learned single Judge.

6. Be that as it may, we too do not find any merit in any of the contentions now advanced before us by the learned Counsel for the appellant. The field of assignment of land or cancellation of the assigned land is covered by a legislation enacted by the competent legislature. The Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (for short "the Act") does not prescribe any limitation before which the State authorities could take steps to cancel the assignment and seek restoration of the assigned land in favour of the State in the event of an assignee breaching conditions of grant. If the statute does not prescribe any limitation, it is not permissible for the Court to say that necessarily, the cancellation of assignment should be resorted to by the State authorities only within 5 or 6 years from the date of assignment. It is true that the learned Single Judge at paragraph 18 of the Judgment, was pleased to observe thus:

"On this ground alone, I must say, the power of resumption of assigned lands cannot be extended beyond a reasonable period, in any event, not later than five to six years. Even within five to six years when the power has to be exercised, there must be necessary inspection by the authorities on the basis of which a decision to resume the lands be taken preceding a notice to the parties concerned. Section 4(1)(b) of the Act envisages that even if there is violation of certain terms and conditions by the assignee, the land shall be restored to the assignee or his legal heirs as the case may be and if there is a violation of the terms of assignment for the second time, it would be open to the authorities to resume the lands. I have, therefore, no hesitation to say that the respondents have no authority to resume the lands after long lapse of more than 34 years on some flimsy grounds. The first question is answered accordingly."

Except the statement that the assignments could be cancelled only within 5 or 6 years from the date of assignment, the learned Judge has not stated any reasons, authority-wise or reason-wise as to how such a prescription could be made by the Court. It is trite to state that if a statute enacted by a competent legislature permits the donee (sic. donor) of the power to pursue an action in the event of the assignee violating conditions of grant, without prescribing any

limitation, the Court cannot, as a general rule, hold that under no circumstance, assignment could be cancelled after 5 or 6 years from the date of assignment. It may be that in a given fact-situation, the Constitutional Reviewing Court may find that the power exercised by the donee (sic. donor) of the statutory power at a particular distance of time is unreasonable having regard to subsequent developments in the case and involvement of third party interests. Therefore, the sweeping statement made in paragraph (18) of the judgment without giving any reasons that cancellation of the patta could be possible only within 5 or 6 years from the date of the grant of patta is not acceptable to us inasmuch as we do not find any sound reasons to accept such proposition as correct one.

7. The second contention of the learned Counsel for the appellant is that the Mandal Revenue Officer before cancelling the assignment in terms of proviso to Rule 19 of the Laoni Rules ought to have given three months time to bring the petition schedule land under cultivation and since he has failed to do so, the cancellation of the assignment could not be sustained. As pointed out supra, while narrating the facts of this case, the first notice was issued by the Mandal Revenue Officer as far back as on 13-9-1987. After several rounds of litigation, the order impugned in this writ petition was made by the District Collector on 31-12-1998. It is not the case of the petitioner that he brought the land under cultivation during this interregnum. The petitioner has had sufficient opportunity to bring the petition schedule land under cultivation during this long period of more than 11 years. Secondly, the petitioner should stand or sink with his stand in the pleadings. It is the specific case of the petitioner that as required under the conditions of patta, he had brought the petition schedule land under cultivation within the stipulated period of three years. Therefore, he cannot be permitted to approbate and reprobate. It is not the case of the petitioner that he did not bring the petition schedule land under cultivation within the stipulated period of three years for certain unavoidable circumstances and, therefore, before cancelling the patta, the primary authority ought to have given him three months to bring the petition schedule land under cultivation. The ground now urged, in our opinion, seems to be desperate attempt of a sinking man.

8. Before concluding, the last contention of the learned counsel for the appellant is required to be noticed only to be rejected. The argument is that if the claim of the respondent authorities that they took possession of the land in the month of December, 1990 is correct, there was no need for the Mandal Revenue Officer in his order dated 31-12-1997 to direct the Mandal Revenue Inspector, Kamareddy to take the possession of the land into custody of the Government. From the above direction of the Mandal Revenue Officer in the operative portion of the order, it cannot be said that the plea taken in the counter by the respondent authorities is false or destructive. The Mandal Revenue Officer having cancelled the patta, in normal course, but without noticing the fact that possession was taken over in December, 1990 itself has directed to take necessary steps to take over the possession of the land. Be that as it may, even assuming that on the date of the order of the Mandal Revenue Officer i.e., 31-12-1997, the petitioner

was in possession of the petition schedule land that fact itself would not come to the rescue or defence of the petitioner. The question is not whether the petitioner was in possession or not. The relevant question is whether petitioner has brought the petition schedule land under cultivation within a period of three years in terms of conditions of grant of patta. Therefore, the fact whether the petitioner was in possession as on 31-12-1997 or not is not germane to the decision making in the instant case. Looking from that angle also, the last contention of the learned Counsel for the appellant is not well founded. There is no merit in the Writ Appeal. It is accordingly dismissed, with no order as to costs.