(1999) 02 AP CK 0064

In the Andhra Pradesh High Court

Case No : WA No. 1465 of 1993

Khairuddin Ali and Others APPELLANT

Vs

State of A.P. and Others RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 166(B), 87
Constitution of India, 1950 — Article 226

Citation : (1999) 2 ALD 496 : (1999) 2 ALT 727

Hon'ble Judges : P. Venkata Rama Reddi, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : Mr. N. Subba Reddy, for the Appellant; Government Pleader for Revenue, for the Respondent

Judgement

P. Venkatarama Reddi, J.—The appellants herein are petitioners in Writ Petition No.1760 of 1993. In that writ petition, the appellants questioned the legality of the order passed by the State Government in G.O. Ms. No. 15, Revenue (ASN.III) Department, dated 6-1-1992 and the further order dated 8-10-1992 passed by the Government in the review petition preferred by the appellants. The writ petition having been dismissed, the present writ appeal is filed.

2. The order of the Government assailed in the writ petition is the one passed by treating the communication sent by the District Collector to the Secretary to Revenue Department as a revision u/s 166(B) of the A.P. (Telangana Area) Land Revenue Act. The Collector requested the Government to set aside the order of the Commissioner of Survey and Settlement passed on 26-4-1990 and communicated to him on 7-5-1990. By that order, the Commissioner of Survevand Settlement, to whom the matter was remitted by the Government at the instance of appellants'' G.P.A. Holder, directed the Assistant Director of Land Revenue, Ranga Reddy District to issue a supplemental ''Scthwar in the names of the petitioners (Appellants herein) and other share-holders for the balance area of Ac.98.22 guntas out of Survey Nos.184 and 185 of Cherlapalli village. The said

direction was given based on the Muntakhab No.2081 of 1357 Fasli issued by Sarfekhas authorities under which the ancestors of the petitioners were granted patta for an extent of 300 bighas, equivalent to about Ac.225.00. It was observed by the Commissioner that the said Muntakhab was given effect to by the Revenue authorities and by the Government as well in G.O. Ms. No.388, Revenue (R) Department, dated 5-4-1971 wherein the classification of the lane . " Government Kancha Land was held to be illegal in view of the Muntakhab. It may be mentioned that a supplemental Sethwar was issued in favour of one of the writ petitioners i.e., Mohd, Ali on an application filed by him on the basis of Muntakhab. The said petitioner filed application in the year 1956, soon after the survey was finalised, seeking rectification of the entry that it was Government Kancha Land. Accepting the request, the Land Records Assistant issued the Supplement Sethwar in the course of Jamabandi, 1958 recognising the petitioner as pattadar in respect of Ac. 126.17 guntas covered by Survey Nos.186 and 182 (old Survey No.141). The Sethwar issued by the Land Records Assistant was affirmed by the Government, overruling the objections of the Collector." 11 years after the said Government Order was passed, the appellants represented by the General Power of Attorney Holder, (who is the appellant herein) filed an application before the Government (Revenue Department) seeking directions to issue Supplemental Sethwar for the balance extent of Ac.98.22 guntas as per the Mtintakhab. The Government rejected the petition on 22-1-1985 by a non-speaking order. Thereafter, the General Power of Attorney Holder filed another revision petition before the Honourable Minister for Revenue requesting him to issue orders for issuance of Supplemental Sethwar for an additional extent of Ac.98-.22 guntas in Survey Nos. 184 and 185. By an order dated 20-9-1986, the Government declined to pass any orders on merits on the ground that the matter pertains to rectification of survey errors and, therefore, remitted the case to the Commissioner of Survey and Settlement for disposal u/s 87 of the A,P. (Telangana Area) Land Revenue Act. The Commissioner then heard the Counsel for the parties and passed an elaborate order upholding the petitioner''s G.P.A.''s contention and allowing his claim. Against this order dated 26-4-1990, as already stated, the Collector filed a petition to the State Government, who by an order dated 6-1-1992, set aside the order of the Commissioner while holding that the extent of Ac.98.22 guntas is a Government Land and that the Muntakhab is not a valid and genuine one. The review petition filed u/s 166 of the Act by the petitioners'' General Power of Attorney Holder was rejected on 8-10-1992. Questioning the said two orders dated 6-1-1992 and 8-10-1992, the writ petition giving rise to the present writ appeal, was filed.

3. No doubt, there is considerable force in the contention of the learned Counsel for the appellants that the order passed by the Government is bald and laconic. The basis for characterising the Muntakhab, which was earlier upheld by the Government itself and acted upon in respect of an extent of Ac.126.00 guntas as not genuine, is not spelt out in the order of the Government. The order of the Government makes elaborate reference to the earlier proceedings, contentions

raised by the parties, but the findings are contained in a few sentences in the concluding para. The said para contains conclusions rather than reasons for conclusions. The observation that the Commissioner of Survey and Settlement had not taken the evidence offered by the Government is also without basis. The learned senior Counsel appearing for the appellants - Mr. N. Subba Reddy vehemently contended that in view of the incurable lacuna in the order, this is a fit case to direct the Government to reconsider the matter and to pass a fresh reasoned order. On a deeper consideration, we are unable to accede to the contention of the learned Counsel. The mere fact that the order of the Government impugned in the writ petition is defective does not automatically entitle the writ petitioners to the relief which they are seeking. While considering the question whether the order of the Government has to be set aside and sent back for fresh consideration, we cannot disregard certain facts apparent from the record. Before setting aside the order of the Government, we have to necessarily consider whether the order of the Commissioner, which was challenged before the Government was within the jurisdiction of the Commissioner; otherwise, we will be restoring an illegal order passed without jurisdiction after quashing another unsustainable order and this course, we are reluctant to adopt in exercise of jurisdiction under Article 226 of the Constitution.

4. The Government white declining to pass any order on merits u/s 166(B) of the Act felt that a case of this nature could be dealt with by the Commissioner of Survey and Settlement in exercise of delegated powers u/s 87 of the A.P. (Telangana Area) Land Revenue Act. The Government while passing the order dated 20-9-1986 did not apply its mind to the crucial question whether the pre-requisites for invoking Section 87 were satisfied. For the reasons hereinafter mentioned, the Government assumed a non-existent jurisdiction to remand the case to the Commissioner and purported to confer jurisdiction on the Commissioner which he did not possess in law.

5. On a perusal of Section 87 and keeping in view the admitted facts of the case, we are unable to see how Section 87 is attracted, even assuming that the Commissioner of Settlement is the competent authority u/s 87 which itself rests on a doubtful premise. u/s 87, the competent authority can correct any clerical error or error admitted by the party concerned. The section further empowers the competent authority to hear the applications made within two years after introduction of settlement for correction of any wrong entry of pattadar''s name in the register prepared by the Survey Officer and correct Such error. Moreover, no such application for correction of a wrong entry relating to the pattader''s name can be made after two years unless there is reasonable explanation for the delay and the sanction of the Government is obtained for the proposed correction. The power of the Government to grant such sanction is delegated to the Settlement Commissioner u/s 87-A. It is nobody''s case that there was any clerical error or admitted error in the instant case in the Sethwar that was granted. Secondly, the question of correction of entry relating to pattedar''s name does not arise. Such correction has already been made and the

Government confirmed the proceedings of the Survey Officer in the year 1971. Mr. Mohammad All filed an application in the year 1956 itself soon after the survey was finalised, challenging the classification of land as ''Government Kancha Land'' and seeking inclusion of his name as pattedar. The request was conceded and Sethwar was issued accordingly. At that time, the said applicant (one of the pattedars) did not raise any objections as regards the extent of land. Only in the year 1982, i.e., 25 years later and 11 years after the Government confirmed the proceedings granting the supplemental Sethwar, the power of attorney holder of the writ petitioners/ pattedars raised the dispute as regards the extent of land. There was no explanation for the delay at all, not to speak of the propriety of the power of attorney holder in approaching the Government straightaway. Viewed from any angle, Section 87 is not at all attracted and the Commissioner of Settlement in passing an order in favour of the writ petitioners ostensibly u/s 87 of the Act. Clutched at the jurisdiction which he did not possess. That was obviously because the Government by its order dated 20-9-1986 remanded the case to the Commissioner of Survey and Settlement for disposal u/s 87 of the Act. As noted earlier, the power of the Government u/s 87 was only to accord sanction for rectification of errors as regards the pattedar''s name if the application was filed before the competent authority beyond two years of the preparation of the Survey Register and that power of the Government was delegated to the Commissioner u/s 87-A. The application of the nature filed on 9-9-1982 by the G.P.A. holder of Mohammad Ali - one of the grantees, could not have been filed before the Government because the Government was not exercising any original or primary jurisdiction. Even the power of the Government or its delegate to give sanction for the correction of errors was confined only lo the correction of wrong entry relating to pattedar''s name. By virtue of the remand order of the Government passed on 20-9-1986, the Commissioner cannot derive the powers and authority which he did not possess nor even the delegator i.e., the Government. Another point which may be noticed at this stage is that if the application leading to the order passed by the Government on 20-9-1986 is treated as a revision application u/s 166-B, the insuperable obstacle in the way of the applicant is that the Government had already rejected a similar application filed by the GPA holder on 9-9-1982. That order of rejection passed by the Government on 22-1-1985 was not challenged by the writ petitioners/ GI''A holder. There was no provision for filing a second revision. The application cannot also be construed as a review petition u/s 166-B as it is not seriously disputed that the ingredients of the said section are not satisfied. Thus, the Government assumed jurisdiction which it did not possess and proceeded to remand the case to the Commissioner of Survey and Settlement. Again, the Government acted without jurisdiction in entertaining the second revision petition filed on 9-9-1982 was rejected and it became final. The Government is therefore justified in invoking the revisional power at the instance of the District Collector to nullify the order passed by the Commissioner of Settlement without jurisdiction and contrary to the provisions of Section 87.

6. Though the grounds on which the orders were set aside are not backed up by any reasoning and the jurisdictional error committed by the Settlement Commissioner was not pointed out in the order, as already stated, we should have an overall view of the matter. Even if there is an infirmity in the impugned order of the Government as regards the manner of decision-making, the writ need not issue ''ex debito justitiae''. We cannot condemn an order which is vitiated by certain infirmities and thereby allow a patently illegal order passed without jurisdiction, to hold its sway. In a matter of this nature, we cannot adopt a truncated approach and bring about a result leading to miscarriage of justice.

7. It is also pertinent to notice the observation of the learned single Judge that the request of the GPA holder in his application dated 7-3-1968 was only to implement the zamin Sethwar for S.Nos.182 and 186 (new) corresponding to old S.No.141 measuring 200.00 bighas. The GPA holder did not earlier claim patta for the land in S.Nos.184 and 185 which he is now claiming. We need not go into the other aspects on which the decision of the learned single Judge is based i.e., whether the grant under the Munthakhab was in perpetuity and whether in the absence of validation of Munthakhab under the A.P. (Telangana Area) Atiyat Enquiry Rules, the Munthakhab can be acted upon.

8. In view of the foregoing discussion, we see no merit in this writ appeal and the same is dismissed without costs.

9. Before closing the case, we would like to make mention of the fact that the writ appeal was dismissed earlier by this Court and on appeal to the Supreme Court, their Lordships having noted that the appeal was heard in the absence of the advocate for the appellants, thought it fit to give one more opportunity to advance the arguments and therefore set aside the judgment and remitted the case to the High Court for fresh disposal on merits. That is how the appeal is before us.

