

(1999) 09 AP CK 0136

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 5684 of 1988 and 15544 of 1989

Kola Mahalaxmi

APPELLANT

Vs

Agent to Government, Khammam and others

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Section 3
Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 — Rule 8(1)
Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 50B
Transfer of Property Act, 1882 — Section 53A

Citation : (1999) 6 ALD 718 : (1999) 6 ALT 174

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mrs. P. Murali, for the Appellant; Mr. A. Sudershan Reddy and Government Pleader for Social Welfare, for the Respondent

Judgement

1. Both these writ petitions involve common questions of fact and law. Hence I am disposing of both of them by this common order. For the purpose of convenience, I will first deal with WP No.15544 of 1989 and in view of the legal position ascertained in this writ petition, I propose to dispose of other writ petition in WP No. 5684 of 1988.

2. WP No.15544 of 1989 is filed by a non-tribal being aggrieved by the order dated 8-3-1989 passed by the Agent to Government, Khammam on CMA No.1 of 1989. By the impugned order, the appellate Court confirmed the order of the Special Deputy Collector (TW), Paloncha dated 20-5-1988 passed on Case No 417/88/PNK. The learned Counsel appearing for the petitioner strenuously contended that both the impugned orders are illegal and without jurisdiction. He submitted that the petitioner purchased the land on 11-3-1963 through an unregistered sale deed and ever since he has been in possession. He further submitted that the said sale deed dated 11-3-1963 was prior to the commencement of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 (in short "the Regulations"). The lands in this case are situated in

Tetangana Area and in this Telangana Area, the Regulations came into force from 1-12-1963, and whereas the petitioner has purchased the same on 11-3-1963, prior to the commencement of the Regulations. Therefore, the authorities had no jurisdiction to set aside the said sale. He further submitted that the father of the respondent No.1-tribal had filed a petition before the Special Deputy Collector (Tribal Welfare), Khammam in Case No 472 of 1972. But the said Special Deputy Collector vide order dated 24-5-1973 rejected the petition in view of the admission made by the respondent No.1's father that the sale took place on 11-3-1963, prior to the commencement of the Regulations. Therefore, the son could not maintain the present petition once again over the concluded case and he is bound by the order suffered by his father. Against the said order dated 24-5-1973, no appeal or revision was filed and as such, the said order has become final. But the appellate Court in the impugned order chooses to set aside that order dated 24-5-1973 also. The appellate authority could not have done so and it has no jurisdiction to set aside that order. The learned Counsel for the petitioner further submitted that in view of the Full Bench Judgment of this Court reported in Gaddam Narsa Reddy and Others Vs. Collector, Adilabad District and Others, , the authorities under the Regulations have no jurisdiction or power to decide the validity of a sale that had taken place prior to the commencement of the Regulations. Lastly he also contended that to reopen a concluded matter after a period of twelve years is unreasonable and contrary to the law declared by this Court. Thus he contended that the impugned orders are liable to be set aside.

3. On the other hand the Counsel appearing for the contesting respondent and also the Counsel appearing for the Government strenuously supported the impugned order. They contended that as held by this Court in the decision reported in G. Raghavulu v. Agent to Government 1994 (2) An.WR 216, the principle of res judicata does not apply to the authorities under the Regulations and for Tribunals. They further submitted that the alleged sale though appears to be prior to the commencement of the Regulations, but it was not a valid sale as held by the authorities below and, therefore, the said orders do not call for any interference. They further contended that the intendment of the Regulations is to protect the tribals who were being exploited since long time as against non-tribals. Therefore, it is not a fit case for interference of this Court.

4. In support of the respective contentions, both the Counsel for the petitioner and also the Counsels for the respondents relied on certain judgments, which I will be referring in the course of this order.

5. I have gone through the impugned orders. On the basis of these orders and also on the basis of the contentions urged on both sides, I find that there are few facts which are admitted. It is admitted that the sale in question has taken place on 11-3-1963, prior to the commencement of the Regulations, which have come into force in Telangana Area from 1-12-1963. The Government Advocates also concedes as to the date of the commencement of (he Regulations in Telangana

Area. It is also not disputed that in this case vide earlier order dated 24-5-1973, the competent authority had earlier dismissed the petition filed by the tribal for declaring the sale dated 11-3-1963 as void in Case No.472 of 1972. It is also an admitted fact that the sale deed dated 11-3-1963 is an unregistered deed and the present proceedings are initiated on the basis of the report of the Special Deputy Tahasildar (TW) Paloncha dated 6-4-1988. The present writ petition relates only to Sy.No.44 measuring Ac. 3-12 is situated in Potlapalli village of Pinapaka Mandal in Khammam District, though there are other survey numbers noted in the order.

6. So far as the validity of the Regulations is concerned, they have already been upheld by the Hon"ble Supreme Court in the decision reported in P. Rami Reddy and Others Vs. State of Andhra Pradesh and Others, , in which the Apex Court noted the history of legislation right from the year 1970 starting from Andhra Pradesh Scheduled Area Land Transfer (Amendment) Regulations, 1970. Taking the entire history of the legislation, ultimately the Apex Court held that the Regulations are valid and they are intended to protect the tribals, who were exploited by the non-tribals. In the decision reported in Dy. Collector and Another Vs. S. Venkata Ramanaiah and Another, , the Hon"ble Supreme Court ruled that Section 3(1) of the Regulations are prospective, but not retrospective. I think it appropriate to extract the relevant part of the said judgment as under: -

"Therefore, we agree with the submission of Mr. Bodbe, learned Counsel for respondents, that the provisions of Section 3(1) of the Regulations are purely prospective in nature and do not affect past transactions of transfers effected between tribals and non tribals or between non-tribals and non-tribals themselves in the Agency Tracts at a time when neither Regulation I of 1959 nor Regulation II of 1963 or Regulation I of 1970 was in force. Such past transactions remained untouched by the sweep of the aforesaid subsequently enacted Regulations,"

From the above judgment of the Supreme Court it is clear that the Regulations do not affect the past transactions of transfers effected between the tribals and non-tribals or between tribals and tribals themselves and such a past transactions remained untouched by the sweep of the Regulations. In the instant case, admittedly the transfer has taken place on 11-3-1963 and in the Telangana area in which the lands in question are situated, the Regulations have come into force only with effect from 1-12-1963. Thus in view of the law declared by the Supreme Court, the said transactions dated 11-3-1963 cannot be challenged, being prior to the commencement of the Regulations. If that is so, the impugned orders cannot be sustained on this count alone.

7. But the learned Counsel for the contesting respondent and also the Counsel for the Government contended that the said sale dated 11-3-1963 was not valid for being not registered. As against this contention, the Counsel for the petitioner submitted that on the basis of the unregistered sale deed, the petitioner has been in possession alt alone right from the year 1963 and the validity of the sale

deed, if any, can be questioned only in civil Court, subject to the defence available to the petitioner and the validity of the sale as such cannot be considered by the authorities constituted under the Regulations. In support of his contention, he relied upon the Full Bench judgment of this Court reported in G. Narsa Reddy's case (supra). For immediate reference, I think it appropriate to extract the relevant part of the said judgment as under:

"We, therefore, hold that the provisions of Regulations II of 1963 and the provisions of Regulation I of 1970 amending the provision of Section 3(1) of Regulation 1 of 1959 have no retrospective operation and do not affect transfers made prior to the coming into force of the said amending regulations.

30. The question whether transfers made prior to the coming into force of the amending Regulations II of 1963 and I of 1970 are not valid either for want of registration under the Indian Registration Act or for non-compliance of the provisions of Section 47 or Section 50-B of the Hyderabad Tenancy and Agricultural Lands Act and whether the transferee would be entitled to the protection of Section 53-A of the Transfer of Property Act, can only be gone into in a forum constituted for deciding such questions in respect of lands in scheduled area.

31. To sum up our conclusions on the questions arising on this reference to the Full Bench are as follows:-

(1) A transfer of immovable property situate in agency tracts, made after the coming into force of the Andhra Pradesh Scheduled Areas Land Transfer Regulation I of 1959 or its amendment Regulation II of 1963 or Amendment Regulation I of 1970, even if made in compliance with the provisions of the Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto, is null and void, if it contravenes the provision of Section 3(1) of the Regulations I of 1959 or its amending regulations and u/s 3(2) of the said Regulation, the authorities mentioned therein can decree rejectment of the persons claiming under such transfer and pass orders restoring the lands to the transferors or their successors or pass orders for disposing of the said property as directed therein.

(2) Section 3(1) of the Regulation I of 1959 and its amendments by Regulation II of 1963 and I of 1970 have no retrospective operation and do not affect transfers made prior to the said Regulation or its amendments coming into force and the authorities u/s 3(2) of the Regulation have no jurisdiction to pass orders in relation to the immovable property covered by such transfers.

(3) The validity or otherwise of the transfers made prior to Section 3(1) or its amendments by Regulation II of 1963 or I of 1970, coming into force, cannot be adjudicated upon u/s 3(2) of the Regulation and the same has to be challenged in an appropriate forum constituted for deciding disputes relating to immovable property situated in Scheduled Areas.

32. Applying the said conclusions to the facts of the present case, the transfers in PP No.4202 of 1977 having been made prior to the coming into force of the Regulation, they do not contravene the provisions of Section 3(1) and, therefore, the Special Deputy Collector, Tribal Welfare as the District Collector-cum-Agent to the State Government have no jurisdiction to pass orders u/s 3(2) of the said Regulations declaring the said transfers as null and void.

33. Accordingly, the writ petition WP No.4204 of 1977 is allowed and the impugned order is quashed, but in the circumstances without costs. Advocate's fee Rs.150/-".

In view of the above judgment of this Court, in my opinion there is substance in the argument of the petitioner's Counsel. The fact that the sale has taken place on 11-3-1963 is not disputed. In fact, the contesting respondent's father himself had challenged the said sale before the competent authority under the Regulations. But the same was dismissed. If that is so, the fact that the sale has taken place on 11-3-1963 cannot be disputed. As held by the Full Bench of this Court, the validity of such a sale or otherwise has to be decided only by a competent Court. In other words, if there is any sale, which is in contravention of the Registration Act etc. it is only for the appropriate Court to decide its validity and no such powers are conferred on the authorities under the Regulations. The authorities have to simply see whether there are any transfers between the tribals and non-tribals or between tribals and tribals only after the commencement of the Regulations and if they are not in accordance with the Regulations, then declare such transfers as void in terms of the Regulations. Moreover, on verification I find that the Full Bench Judgment of this Court reported in G. Narsa Reddy's case (supra) was the very judgment that was under consideration before the Hon'ble Supreme Court in the decision reported in Dy. Collector's case (supra) and the Hon'ble Supreme Court has confirmed the law laid down by the Full Bench of this Court. Considering all the above judgments, another learned single Judge of this Court in the decision reported in G. Venkata Apparao v. Special Deputy Collector 1996 (3) ALD 287, also held that Regulations and its amendment are prospective and they do not apply to the transactions prior to the commencement of the Regulations. In this view of the matter, I cannot accede to the contention of the Counsel for the respondents that the said sale for not being registered was not valid, therefore, the same could be set aside by the authorities. "But in my considered view as long as the said sale deed is prior to the commencement of the Regulations, the authorities have no jurisdiction to consider the same as offending the Regulations. However, the Counsel for respondents relied upon an unreported judgment of this Court date 22-8-1989 passed in WP No.16934 of 1988 and also the reported judgment of this Court in Vaddi Veeraiah v. The Agent to Government, Khammam 1996 (1) ALD 107. From reading of these two judgments, it is clear that though it was pleaded on behalf of the non-tribals that the sale has taken place prior to the commencement of the Regulations, but the fact finding authorities gave a clear finding on the basis of the revenue records that the sale was after the

commencement of the Regulations, and that non-tribals came into possession according to the evidence on record only after the commencement of the Regulations. Therefore, in both the judgments a finding was given that the alleged transfers took place after the commencement of the Regulations and on the basis of that finding alone, in both the judgments this Court held that those sales were hit by the Regulations and accordingly declared that they were illegal and void. But in the instant case, as I have already notice above, it is an admitted fact on both sides that the sale took place on 11-03-1963, prior to the commencement of the Regulations on 01-12-1963. Therefore, these judgments relied upon by the Counsels for the respondents do not apply to the facts of this case.

8. Nextfy it is contended on behalf of the petitioner that the earlier order of the competent authority under the Regulations dated 24-05-1973 has decided the lis between the parties and the father of the respondent No.1 by name Bade Pullaiah has already suffered an order dated 24-05-1973, in which the authorities have held that the said sale being prior to the commencement of the Regulations could not be considered and accordingly rejected the petition. The respondent No.1 being his successor, is bound by the said order and the matter Cannot be re-opened at his instance. The learned Counsel for the petitioner further submitted that the present impugned orders passed on the basis of the report of the Special Deputy Tahsildar (TW), Paloncha is hit by the principles of res judicata. As against this contention, the learned Counsels for the respondents submitted that the principle so res judicata does not apply to the orders of the authorities like Tribunals and such a principle applies only to the Courts. In support of their contention, they relied upon the judgment of this Court reported in *G. Raghavulu v. Agent to Government* (supra). After going through the entire judgment, I find that the learned single Judge of this Court has held that the principle of res judicata or a principle analogous thereto shall be applied with a caution and circumspection, dealing with the cases arising under the Regulations, which are meant for protection of the tribals. He further held that if the proceedings were dropped earlier for the reason that the respondent-tribal could not produce sufficient evidence, it does not preclude the authorities for a subsequent enquiry. From this judgement, it is clear that the earlier enquiry was dropped for lack of evidence and a subsequent fresh enquiry was started regarding the alleged violation of the Regulations. Having regard to these circumstances, this Court held that the principle of res judicata would not apply to that case. But in the instant case I find from the earlier order dated 24-05-1973, that the authorities rejected the petition filed by the respondent No.1's father on the ground that the sale deed dated 11-03-1963 though unregistered was prior to the commencement of the Regulations. Thus, the said Order was on merits and the respondent No.1's father himself was a party to the said order and the said order has become final and as such the principle of res judicata applies to this case.

9. In the instant case, the proceedings were initiated on the basis of the report of

the Deputy Tahsildar dated 6-4-1988 and in all probability, the said Officer did not notice the earlier order passed by the competent authority. Curiously enough the said order dated 24-5-1973 is set aside by the appellate authority without there being any appeal against that Order. The learned Counsel for the respondents contended that the appellate authority could set aside the said order by exercising its suo motu powers. On the other hand, the Counsel for the petitioner submitted that the suo motu powers, if any, could be exercised only by the original authority, but not by the appellate authority for reversing the earlier order, that too within a reasonable time. In order to appreciate this contention, I have to note the relevant provisions of exercise of suo motu powers under the Regulations as under:-

"3. Transfer of immovable property by a member of a Scheduled Tribe:-

(1)

(2) (a) Where a transfer of immovable property is made in contravention of subsection (1), the Agent, the Agency Divisional Officer or any other prescribed officer may, on application by any one interested, or on information given in writing by a public servant, or suo motu decree rejectment against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transfer or his heirs."

From the above provision it is clear that suo motu powers can be exercised either on application or on any information to the Agent, the Agency Divisional Officer or any other officer prescribed. The appellate authority being the agent to Government could exercise suo motu powers to initiate proceedings where transfer of immovable property is made in contravention of the Regulations. But in the instant case, that power of initiating proceedings suo motu was itself exhausted when earlier order dated 24-5-1973 was passed and it was on an application made by the tribal for declaring the sale dated 11-3-1963 as null and void and the authorities held that the said sale being prior to the commencement of the Regulations, was not hit by the Regulations. In this view of the matter, the initiation of the power for contravention of the Regulations stood exhausted and I do not think that there can be subsequent suo motu powers regarding the said sale.

The facts of this case reveal that the present proceedings were initiated on the basis of the report of the Deputy Tahsildar dated 6-4-1988, nearly after 15 years of the order dated 24-5-1973. Therefore, the impugned order of the Special Deputy Collector itself was the one without jurisdiction not his count also. At any rate, the appellate authority i.e., the Agent to Government could not have set aside that order dated 24-5-1973, when it was considering the appeal against the other order dated 20-5-1988, Rule 8(1) of the Andhra Pradesh Scheduled Areas Land Transfer Rules, 1969 (in short "the Rules") provides that an appeal was maintainable against any order passed under the Regulations. Neither under the Regulations nor under the Rules, there is any revisional jurisdiction to the

appellate authority. u/s 6 of the Regulations the revisional jurisdiction is conferred only on the State Government to revise the order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under the Regulations. Thus the said revisional powers have not been conferred on the appellate authority. The fact also remains that the Government has not chosen to revise the order of the Special Deputy Collector dated 24-5-1973. In this view of the matter, the said order dated 24-5-1973 could not have been set aside in the present appeal by the authority either under the Regulations or under the Rules to set aside the said order.

10. In the instant case, as I have already stated above, the authority of the first instance has exercised its jurisdiction to initiate these proceedings on the basis of the report of the Special Deputy Tahasildar (TW), Paloncha. Whereas, the sale has taken place on 11-3-1963. For exercising such a suo motu power by the authorities, the Regulations and the Rules have not prescribed any limitation. But the consistent view of this Court has been that, even where no limitation is prescribed, such a power shall be exercised "within reasonable time". A Division Bench of this Court in the decision reported in Smt. P. Mangamma and Others Vs. The Women's Co-operative Housing Society Ltd. and Others, , keeping in view of the judgment of Supreme Court reported in The State of Gujarat Vs. Patil Raghav Natha and Others, , and also the earlier Division Bench Judgements of this Court reported in A. Kodanda Rao v. Government of Andhra Pradesh 1981 (2) ALT 280, and S.B.Dharma Reddy v. The Director of Settlements, Andhra Pradesh, Hyderabad 1989 (1) ALT 51, has held that such revisional powers should be exercised "within a reasonable period" having regard to the facts and circumstances of each case. In the above judgments referred to by the Division Bench of this Court in P. Mangamma v. Workmen's Co-operative Housing Society Limited, (supra) were the cases in which the suo motu powers were exercised after 7, 12 and 27 years respectively. In this case, the Division Bench of this Court held that such an exercise of power was unreasonable. The other recent Division Bench Judgment of this Court reported in Commissioner of Survey, Settlements and Land Records, Govt. of A.P. and others Vs. G. Padmavathi and others, , also had an occasion to consider the principle of "within reasonable time", for the purpose of reviewing the earlier order by the competent authority, in this case, this Court has ruled that, for exercising such a suo motu power, the authorities should give reasons and they shall not act on any extraneous considerations and ultimately held that such a power should be exercised within reasonable time, even where no limitation is prescribed. In this judgment, the earlier judgment of this Court reported in Ibrahimpatnam Taluk Vyavasaya Cooli Sangam v. K.Suresh Reddy 1996 (2) ALD 945, is noted with all the approval. In Para 12 supra, this Court held as under: -

"The law is far too well settled that where power is conferred on an authority to exercise suo motu revisional power without setting out the time limit within which the power is to be exercised, the jurisdiction is of necessity required to be invoked within a reasonable time frame, though such reasonable time may vary

according to the facts of the case. Non stipulation of (he limitation for exercise of the suo motu power does not authorise the authorities vested with the power to invoke it after a lapse of any length of time since exercise of an administrative power or quasi-judicial power is necessarily linked to the concept of Rule of Law enshrined in the Constitution and exercise of such power after a long lapse of time is prima facie arbitrary. Absence of arbitrariness in exercise of vested power is only reiteration of the principles of prevalence of Rule of Law. Exercise of such power after 14 or 15 years is ipso facto unreasonable."

From the above judgments it is clear that exercising a suo motu power after a lapse of reasonable time would be arbitrary and contrary to the principle of "Rule of Law" enshrined in the Constitution and exercising such a suo motu power after 14 or 15 years would be ipso facto unreasonable. In the instant case, the sale deed is dated 11-3-1963 and it was upheld by the order of the Special Deputy Collector dated 24-5-1973 and as such the validity of such a sale deed cannot not be considered on the basis of the report of the Deputy Tahsildar dated 6-4-1988, by exercising the suo motu powers. By that date, 25 years had elapsed. Even otherwise, from the earlier order dated 24-5-1973, the exercise of suo motu powers on the basis of the report of the Deputy Tahsildar dated 6-4-1988, would be after a period of] 5 years. Therefore, the order of the first authority itself was after an unreasonable time and in view of the consistent law declared by this Court, the order of the first authority as well as the appellate authority are passed after an unreasonable time and, therefore, they are arbitrary and on this count they are liable to set aside.

11. For the above reasons, I find that this writ petition in WP No.15544 of 1989 is entitled to succeed.

12. Coming to the writ petition in WP No.5684 of 1988, the dispute involved in this writ petition also stands covered by the law declared above in the other writ petition. This writ petition is filed being aggrieved by the order dated 23-4-1987 passed by the Court of the Agent to Government Khammam on its file in CMA No.52 of 1976. By this order, the appellate authority confirmed the order of the Special Deputy Collector (TW) Paloncha dated 5-11-1974 in Case No.456 of 1974.

13. In this case, the proceedings were initiated suo motu by the Special Deputy Collector relating to the transfer of the land vide sale deed dated 15-3-1962 regarding an extent of Ac 2.36 guntas in Sy.No.5 of Pusugudem village of former Kothagudem Taluk, Khammam District. The said sale deed was executed by the tribal Dubba Kannappa in favour of Kola Maha Laxmi. The impugned order shows that the vendor Dubba Kannappa has died and his son by name Mallappa was present during enquiry. The vendor's son Mallappa denied the said sale deed dated 15-3-1962. In these circumstances, the Special Deputy Collector (TW) Paloncha held that the possession of the vendee Smt. Kola Maha Laxmi over the suit schedule land was deemed to be contrary to the provisions of the Regulations and accordingly he ordered the eviction of Smt. Kola Maha Laxmi.

14. From the above facts it is clear that the sale deed in question is dated 15-3-1962 and prior to the commencement of the Regulations Telangana area where it came to force with effect from 1-12-1963 and as per the law that I have noted above, the authorities have no power or jurisdiction to deal with the sale-deed dated 15-3-1962 under the Regulations. In this case the said sale deed dated 15-3-1962 is an unregistered sale deed. As I have already noticed above, the Full Bench of this Court held that if the sale is prior to the commencement of the Regulations, its validity on some other grounds like non-registration etc., could not be challenged before the authorities under the Regulation and that is matter for the competent Court to do so in an appropriate proceedings. The order of the first authority itself shows that these proceedings were initiated on the basis of the notices served on the vendee on 1-6-1974 and 15-6-1974. The sale deed is admittedly dated 15-3-1962 and initiating proceedings on the basis of the notices served on 1-6-1974 and 15-6-1974 was clearly beyond the period of twelve years and such an initiation of proceedings after a period of 12 years is unreasonable as per the law consistently declared by this Court in the judgments which I have referred to above. From this it follows that for the same reasons, that I have given in the earlier writ petition, even the impugned orders in this writ petition are also liable to be set aside.

15. For the above reasons, I pass the order as under:

WP Nos.5684 of 1988 and 15544 of 1989 are allowed and the impugned orders in both the writ petitions are hereby set aside. Having regard to the facts and circumstances of the case, the parties shall bear their own costs.