

(1997) 11 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7593 of 1996

Laxminarayana and another

APPELLANT

Vs

Joint Collector, Khammam and Another

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 166

Citation : (1998) 3 ALD 107 : (1998) 2 ALT 258

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : Mr. E. Ella Reddy, for the Appellant; Government Pleader for Assignments, for the Respondent

Judgement

1. The petitioners originally belonged to Madhya Pradesh and migrated to Yellandu village, Khammam District. In Madhya Pradesh they were categorised as Scheduled Tribes belonging to "Bhill" community. They have migrated as agricultural coolies. On 17-10-1984, 5.00 acres of land each in S.No.549 Rompad village was assigned to the petitioners. Ever since, they are in possession of the land. They have used a part of land for purpose of cultivation and in another part of land they have constructed Tiles Industry by borrowing money from the Bank. They were granted temporary pattas. However, on 1-2-1994 show-cause notice was issued proposing to cancel patta. The petitioners filed written explanation. They were heard by the Collector who issued the show-cause notice. Thereafter, the impugned order was passed on 30-3-1996 cancelling the assignment in favour of the petitioners u/s 166-B of Andhra Pradesh (Telangana Area) Land Revenue Act. Aggrieved by the same, the present writ petition is filed.

2. The argument of the learned Counsel for the petitioners is that the show-cause notice was issued on 1-2-94 and the petitioners filed explanation on 25-2-1994. The petitioners were heard by one Joint Collector while the order was passed by another Joint collector on 30-3-1996. Therefore, the order is vitiated on account of violation of principles of natural justice.

3. Initiating proceedings after the petitioners developed the land, that too after a period of ten years is in violation of not only principles of natural justice but also beyond the period of limitation and the show-cause notice is therefore liable to be set aside. In support of his contention .he relied on Soni Reddy v. Joint Collector, Medak and others, 1986 (1) ALT 33 (NRC), P. Mangamma v. Women's Co-op. Housing Society Ltd., Smt. P. Mangamma and Others Vs. The Women's Co-operative Housing Society Ltd. and Others, , A. Kodanda Rao v. Govl of A.P., 1981 (2) ALT 158.

4. While the Counsel for the respondents contended that the assignment was made on the basis of the representation that the petitioners belong to Scheduled Tribe while actually they do not belong to Scheduled Tribe community and therefore, it is open to the respondents to cancel the assignment on the ground that the original assignment was made on the basis of misrepresentation. Therefore, no period of limitation is applicable. As and when the respondents came to know of the misrepresentation, it is open to them to cancel the assignment and the limitation starts running from the date on which they came to know of the misrepresentation.

5. The learned Counsel for the respondents also contended that since the show-cause notice was issued by one Joint Collector and the matter was heard by the same Joint Collector and the orders were passed by different Joint Collector the matter has to be remanded for reconsideration after giving an opportunity of personal hearing to the petitioners.

6. It is not disputed that the show-cause notice was issued by a joint Collector and arguments were heard by the same Joint Collector and the order was passed by a different Joint Collector. It is now well settled that if one person hears and another decides then the personal hearing becomes an empty formality. In this context the observations made in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, are relevant which reads as follows :

"Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned arguments to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore, hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

Therefore, the impugned order is in violation of principles of natural justice. On this ground alone the writ petition is liable to be allowed. However, both the Counsel for the petitioners as well as the respondents argued the matter on merits elaborately. Therefore, I am dealing the matter on merits also.

7. The contention is that since one of the assignees is a minor the assignment is liable to be set aside. In Soni Reddy v. Joint Collector, Medak (supra) it was held that "the assignment of land in favour of a minor cannot be said to be illegal as

the minors are also entitled to the assignment provided they are actually engaged themselves in cultivation." There is no dispute that the petitioners were cultivating the land at the time when the assignment was made. The Counsel for the petitioners submitted that the assignment cannot be cancelled after a period of ten years. In *A. Kodanda Rao v. Govt. of A.P.* (supra) a Bench of this Court consisting of Justice Madhava Reddy (as he then was) and Justice Raghuvir held that :

"But nonetheless, merely because power is vested in an authority to revise the orders of the subordinate authorities suo motu, the power has to be exercised within a reasonable time. In cases where no period of limitation is prescribed under the statute or the Rules made thereunder for exercise of Revisional powers suo motu, the question for consideration is not whether the exercise of the power is barred by limitation for in the absence of a period of limitation prescribed under the Act, the question of bar of limitation cannot arise. It is a question of the reasonable period of limitation within which that power should be exercised where the limitation within which that power should be exercised where the question is one exercising that power within a reasonable time and what is reasonable period would undoubtedly be dependant upon the facts and circumstances of each case."

It was also observed that the revisional jurisdiction suo motu must be exercised to advance the cause of justice and not to upset settled rights. In that case it was held that revisional power suo motu cannot be exercised after a period of 12 years. Admittedly, in this case, the power of revision is exercised after a period of ten years and there is no allegation in the show-cause notice that the assignment was obtained by playing fraud or misrepresentation. In the absence of such averment in the show-cause notice the power of cancellation of assignments cannot be exercised after a period of ten years. Admittedly, in this case, the petitioners have spent sufficient money for improving the land and they have also constructed a Tiles factory with their funds.

8. Under these circumstances, it would be unjust and unreasonable to cancel the assignment made in favour of the petitioners. Therefore the arguments of the learned Counsel for the respondents to remand the matter for reconsideration is rejected. The respondents are directed to issue title deeds to the petitioners as early as possible.

9. The W.P. is accordingly allowed with costs. Advocate's fee Rs.1,000/-.