
(1977) 07 AP CK 0008
In the Andhra Pradesh High Court
Case No : Writ Petition No. 150/76

Madapuram Errayya

APPELLANT

Vs

Sutari Vadra Venkat Narsaiah and others

RESPONDENT

Date of Decision : 12-07-1977

Acts Referred:

Andhra Pradesh District Collectors Powers (Delegation) Act, 1961 — Section 3

Citation : (1977) 07 AP CK 0008

Hon'ble Judges : Gangadhar Rao, J

Bench : Single Bench

Advocate : Upendralal Waghray, for the Appellant;

Final Decision : Dismissed

Judgement

Gangadhar Rao

1. The petitioner, Madapuram Erayya, claims to be in possession of lands bearing S. No. 911, 1203 and 1204 of Naming Village, Madak TaluK, Medak District for over twenty five years as the owner. His name was recorded in the Record of Rights when it was prepared in the year 1954-55. While so, Sutari Pentaiah filed an application 27-12-1968 u/s 15 (2) of the Andhra Pradesh (Telaugana Area) Record of Rights in land Regulation 1358 Fasli, (hereinafter called the Regulation) before the District Collector, Medak, stating that he was the pattedar of those lands, that he was serving in the Military during the period 1954-1955 when the Khasra Pahani was prepared, that the Patwari had maliciously entered the name of the petitioner in Column 18 of the Khasra Pahani prepared in 1954-1955. That at the time of its preparation he was in possession and enjoyment of the lands and, therefore the entries in the Khasra Pahani might be corrected. In support of his contention, he filed a certified extract of the Pahani Patrika of 1954 pertaining to one year earlier than the Khasra Pahani, The personal Assistant to the Collector, Medak District, issued notice to the petitioner herein. The petitioner filed his counter. He stated that Sutari Pentaiah was nominally the Pattadar years back, that Bando Bust Shunwai of the village was done in 1950 and changes

were effected in the year 1952 and that it was a Jagir Village. He further submitted that during the year 1356 fasli, the Jagir authorities sold those lands in open auction for recovery of land revenue arrears and he had purchased them in that auction and since then he is in possession and enjoyment of those lands. He also contended that the petition was barred by limitation Sutari Pentaiah died on 25-5-1975 during the pendency of the petition So, his son, Venkata Narsaiah and his widow Ramaayya, respondents 1 and 2 in this writ petition were brought on record. They also filed certified extracts of the Vaisool Baqi Bando bust of 1950. The present petitioner did not produce any evidence oral or documentary, including the sale certificate of 1356 fasli evidencing his purchase as alleged by him. The certified extract of the Pahani Patrika of 1954 which is of one year prior to the preparation of the Khasra Pahani indicated that Sutari Pentaiah was the pattedar and was also in possession of the lands. The entries in Col. 8 of the certified extract of the Khasra Pahani of 1954-55 showed that he was the pattedar. However, the entries in Columns 13, 14 and 18 showed that the present petitioner is the purchaser and was in actual possession of S. No. 91, only but not the other two survey numbers. The certified extracts of the Vasool baqui Bandobust of 1950 showed that Narsimhulu, the father of Pentaiah was the Pattedar of the three survey numbers. The Personal Assistant to the Collector held that in the absence of any documentary and oral evidence produced by the present petitioner in support of his claim, Pentaiah was the occupant in lawful possession and enjoyment of the lands during 1954 and 1955 and his name should be substituted in Column 13 of the Khasra Pahani and Column 11 of the Pahani Patrikas by deleting the name of the present petitioner. Hence he allowed the petition and directed the Tahsildar to take steps accordingly Questioning that order the petitioner filed this writ petition.

2. Sri Upendralal Waghray, the learned counsel for the petitioner impeaches the order on the following grounds; First the Personal Assistant to the Collector has no jurisdiction to pass the impugned order u/s 15 (2) of the Regulation. It is submitted that only the Collector is authorised to take action and there is no delegation, according to law, that power to the Personal Assistant to the Collector. But the Government Pleader has placed before me G.O. Ms. No. 11 Revenue Department dated 22-1-1968 issued by the Government of Andhra Pradesh, Notification II is Annexure of that G.O. shows in exercise of the powers conferred by Section 3 of the Andhra Pradesh District Collectors Powers (Delegation) Act 1961 (A. P. Act 32 of 1961) has authorised the Personal Assistants to the Collectors to exercise all the powers vested in the District Collectors by or under the laws mentioned in the Annexure relating to a matter enumerated in List I or List III in the Seventh Schedule of the Constitution and having the force of law in any part of the State of Andhra Pradesh. Item 7 of the Annexure refers to the Andhra Pradesh (Telangana Area) Record of Rights in Land Regulation, 1358F. (Regulation LVIII of 1358 Fasli). In view of this order, I hold that there is valid delegation of the power under the Regulation to the Personal Assistant to the Collector and therefore, he is competent to entertain

and dispose of the petition.

3. Next it is submitted that the Personal Assistant to the Collector did not entertain the case suo motu but on an application by Venkataiah. Under Sub-section (3) of Section 4 of the Regulation a person affected by an entry in the Record of Rights has to apply for rectification within a period of two years from the date of the notification referred to in subsection (2). In this case, since the respondents did not file an application within two years from the date of the notification it is contended that his petition is barred by limitation. It is also submitted that even as an appeal under S. 15 (1) it was not filed within one month as prescribed thereunder, therefore it is barred by limitation.

4. But sub-section (2) of Section 15 says that the Talukdar may, of his own motion or on the application of a party, call for and examine any records made u/s 4 or Section 6 and pass such orders as he may think fit; provided that no order which would adversely affect any person shall be passed except after hearing that person. This shows that the Collector can call for and examine the records suo motu or on an application of a party. Only it must be a record made u/s 4 of section 6. It does not prescribe any period of limitation. It is a revisional power conferred on the Collector. It is different from the appeal provided under sub-section (1) of Section 15. Therefore, I do not agree with the learned counsel for the petitioner that the petition is barred by limitation.

5. In the alternative, it is submitted by the learned counsel for the Petitioner that the Collector should exercise his revisional powers within a reasonable time when even no time limit is fixed. In this connection he relied upon state of Gujarat v. Patel Achav Natha and others 1970 (1) SCR 333. In that case, it was held by the Supreme Court that no period of limitation was prescribed by Section 211 of the Bombay Land Revenue Code, 1879 and read with Sections 65 and 211 together it must be held that the Commissioner also must exercise his revisional powers within a reasonable time of the Collector's order. It was further held that what was reasonable time would depend on the facts of the case and the nature of the order which was being revised.

6. The provisions of the Bombay Land Revenue Code that fell in for consideration that decision are different from the provisions of the Regulation with which I am dealing in this petition. Apart from that, in this case, Sutari Pentaiah filed the application on 27-12-1968. The petitioner has not placed before me that petition. The order of the Collector shows that he was in the Military. In these circumstances, I am not able to decide whether there was justification for preferring of the petition in 1968.

7. Lastly, it is submitted that the order of the Personal Assistant to the Collector does not show that there was a mistake in preparing the Record which required correction and, therefore, his order is bad. But the power of the Collector under Sub-section (2) of Section 15, which I have already extracted, is wide. He can call for and examine any record made u/s 4 or Section 6. Section 4 relates to the

preparation and maintenance of Record of Rights. The case of Pentaiah before the Collector was that his name should have been entered, instead of the name petitioner in the Record of Rights. It means he has saked for rectification of the entries. On evidence on record the Personal Assistant held that the name of Pentaiah should have been entered since he was the pattedar and was in lawful possession and enjoyment of the suit land during 1954-1955. Hence I reject this contention. In the result, this writ petition is dismissed, but in the circumstances of the case without cost.