

(1997) 11 AP CK 0060

In the Andhra Pradesh High Court

Case No : Rev. W.P.M.P. No. 22810 of 1997 and Batch

P. Neelakanteswaramma and Others

APPELLANT

Vs

Uppari Muthamma and Others

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 102, 38E, 43, 47, 50B
Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 — Section 4, 5
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 3(1)
Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 — Section 7(2)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 226
Hyderabad Tenancy and Agricultural Lands Act, 1950 — Section 50B
Transfer of Property Act, 1882 — Section 53
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20(1)

Citation : (1998) 1 ALD 234

Hon'ble Judges : N.Y. Hanumanthappa, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : Government Pleader for Revenue, Mr. M.V. Durga Prasad, Mr. Krovvidi Narasimham and Mr. S. Venkata Reddy, for the Appellant;

Judgement

N.Y. Hanumanthappa, J.—By an order dated 11-7-1997 we had disposed of V.P.Nos.4991 and 4026 of 1990 setting aside the order passed by the Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 (for short the Special Court), in L.G.C.NO.32/89, dated 5-3-1990 which was filed by Smt. P. Neelakanteswaramma and four others namely Respondents 3 to 6 in W.P.No.4991/90 against the Petitioners 1 to 10 L.G.C.No.32/90 one SnN.Srinivasa Rao, petitioner in W.P.No.4026/90, 11th Respondent in W.P.No.4991/90 and five other persons namely T. Syam Prasad Reddy, G. Ramesh, V.K.V. Prasad Rao, T. Rama Murthy and K. R. Bhagyanagar Co-operative housing Society Ltd, Hyderabad, in respect of land admeasuring 8866 Sq.yards

situated in Yousifguda village, Hyderabad, alleging that the above persons are intended to grab the schedule land which is under the occupation of Smt. Neelakanteswaramma and others. The said land Grabbing Case was contested by both the Parties. The respondents in the said LGC No.32/89 denied the claim of Smt. Neelakanteswaramma. The parties were led in evidence both oral and documentary. On behalf of the applicants one Y. Venkateswara Rao was examined as PW1 and 47 documents were marked as Exs. A1 to A47. On respondents' side namely petitioners in W.P.No.4991/90 and W.P. No.4026/90 six persons were examined as RWs.1 to 6. Smt Uppari Muthamma, the first petitioner in W.P.No.4991/90 was examined as RW1 and N. Srinivasa Rao, petitioner in W.P.No. 4026/90 was examined as RW4 and 20 documents were marked as Exs.B1 to B20 on behalf of the respondents. After considering the evidence, the Special Court found that the Respondents 1 to 17 entered into conspiracy to grab the schedule property from the applicants and in pursuance of the said conspiracy they brought into existence various General Powers of Attorney, agreements of sale and sale deeds. The 11th respondent (petitioner in W.P.No.4026/90) executed sale deeds in favour of Respondents 12 to 16, but they did not get possession of the land, whereas the applicants are still in possession of the schedule property. Thus, observing the Special Court allowed the application and ordered that all the respondents namely petitioners in both the writ petitions are liable for punishment under Sections 4 and 5 of the A.P. Land Grabbing (Prohibition) Act, 1982. Aggrieved by the said order two writ petitions were filed. W.P.No.4026/90 was filed by N. Srinivasa Rao who was 11th respondent in LGC No.32/89 whereas W.P.No.4991/90 was filed by the Respondents 1 to 10 in the said LGC case. Since the facts and questions involved in both the writ petitions were common and identical they were heard together. On completion of arguments both the writ petitions were disposed of by a common order. During the pendency of the proceedings of WP No.4991/90, Petitioners 3 and 7 died and as such their legal representatives were brought on record as Petitioners 11 to 18 and 19 to 21 respectively as per the orders of this Court in WPMP.No.9440/97 dated 17-4-1997, and Respondents 7 to 16 were impleaded as party respondents as per the orders of this Court in WPMPNo.11515/97, dated 30-4-1997.

2. After hearing the Counsel appearing for different parties and considering the entire material that was made available before us, we allowed both the writ petitions and set aside the order of the Special Court passed in LGCNo.32/89,dated 5-3-1990. On 7-8-1997, Respondents 2 to 6 filed review petition seeking to review our order for the grounds urged therein. Subsequently on 4-9-1997, they filed another application urging they may be permitted to raise additional ground as Ground No.8, whereas the petitioner in W.P.No.4026/90 filed an application WPMP No.24605/97 on 18-8-1997 requesting the Court to modify or clarify our order with regard to the observations made at Page Nos.50 and 51 to the effect that the said observations are not binding on him and inoperative as against his rights and interest in the schedule property so

as to enable him to work out his civil rights in Civil Court, if necessary. The petitioners in WP.Np.4991/90 filed their counter both to the review petition and the recalling application filed by the petitioner in WP No.4026/90.

3. Both the Review Petition and the Recalling Application were heard together. How far the review petition and the recalling application are relevant and whether they deserve to be accepted or not, a few facts as urged are necessary to be referred which are as follows:

The land in question is covered by S.Nos.65 to 74 of Yousifguda village belonging to one Kaneez Fatima Begum. Uppari Ramaiah was her tenant who was the husband of the 1st petitioner and father of Respondents 2 to 10 in WP.No.4991/91. Out of these survey numbers, Uppari Ramaiah purchased Ac. 14.06 guntas of land from Kaneez Fatima Begum under a sale deed dated 1-5-1961 for a consideration of Rs. 13,000/-. He obtained a certificate u/s 38E of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short the " Tenancy Act 1950 ") from the Revenue Divisional Officer, Hyderabad West Prior to the said transaction dated 1-5-61 tenant Uppari Ramaiah sold an extent of 20,086 Sq.Yards from out of the total extent of Ac. 14.06 guntas to One Mir Riyasat AH under a sale deed dated 8-2-1961. The said Ryasat Ali in turn had sold 8,866 Sq.yards to Smt P. Neelakanteswaramma, applicant No.1 in LGC.32/89 and to one Chandra Ramalingaiah under a sale deed dated 21 -11 -1961. The said Ramalingaiah died and his share in the land was devolved on his legal heirs namely Applicants 2 to 5 in LGCNo.32/89. Smt Neelakanteswaramma and the wife of Chandra Ramalingaiah who was applicant No.2 in LGC No.32/89 entered into an agreement of sale with Bhagyalakshmi Co-operative Housing Society. But in view of G.O.Rt.No.3591, dated 1-12-1975 and G.O.Ms.No.189, dated 17-1-1976, they could not have executed the sale deeds in favour of the said Housing Society even assuming that they had obtained exemption from alienation of the land u/s 7(2) of A.P. Vacant Lands in Urban Area (Prohibition of Alienation) Act, 1972. The applicant also filed an application u/s 20(1) of the Urban Land Ceiling Act, which is pending before the Government. It is contended that the said application for exemption is also the subject matter of the SLP before the Supreme Court wherein Bhagyalakshmi Co-operative Housing Society is a party.

4. The petitioners in W.P.No.4991/90 namely Respondents 1 to 10 in the original proceedings executed three General Power of Attorneys in favour of N. Srinivasa Rao, petitioner in W.P.No.4026/97 authorising him to sell the lands in question and execute sale deeds. In pursuance of the said General Power of Attorney the said Srinivasa Rao executed several sale deeds in favour of third parties in respect of the disputed lands. The petitioners in both the writ petitions even though they have no right or interest in the schedule land yet they are interfering with the possession of the applicants and hence they sought for a relief declaring the petitioners in both the writ petitions as land grabbers and convict them under the Land Grabbing Act. Whereas, the petitioners in both the writ petitions

contended that the lands in question was a tenanted one. Smt. Kaneez Fatima Begum was the landlord and late Uppari Ramaiah was her protected tenant for an extent of Ac. 14.06 guntas. The petitioners in W.P.No.4991/90 constitute a Hindu Joint Family and they themselves cultivated the land jointly. In the year 1980 they got the land mutated in their names and paid the land revenue to the Government. They sold some portion of the said land to third parties even during the life time of late Uppari Ramaiah but they never sold any land to the respondents at any point of time. They denied the purchase of the disputed land by the respondents under the alleged sale deed dated 21-11-1961 from Riyasat Ali. They also denied that late Uppari Ramaiah alienated 20,086 Sq.yards to Riyasat Ali under a registered sale deed dated 8-2-1961. According to them the so-called sale deeds were the stage managed documents obtained by playing fraud and as such not binding on them. It was their further case that taking advantage of illiteracy and innocence of the petitioners in W.P.No.4991/90 and blindness of their father Uppari Ramaiah, Mir. Riyasat Ali got executed sale deed for a sum of Rs.9,000/- in terms of square yards instead of acres and guntas in order to avoid permission for alienation of the land as required u/s 47 of the Tenancy Act, 1950, and without obtaining their consent. The said land is an agricultural land and any sale by Riyasat Ali to Neelakanteswaramma and Chandra Rama Chandraiah is hit by Section 47 of the said Act. As the lands were mutated in their favour during the year 1980, to establish the same they filed documents showing the entries made to that effect in Faisala Patti for the year 198-81, Pahani Patrika for the year 1979-80 and Pahani for the year 1980-81 which shows that the petitioner in W.P.No.4991/90 are in possession of the lands in question. They also referred to civil disputes between the parties. Whereas, the petitioner in W.P.No.4026/90 is concerned, he took a stand both before the Special Court and also before this Court that he was the General Power of Attorney holder of the legal heirs of late Uppari Ramaiah. He acted on behalf of his principles and any act done is only in accordance with lawful authority and as such he cannot be said as a land grabber. Whatever he had done was with a bonafide intention and to protect the interest of the principles and their property.

5. On the basis of the rival contentions, the following points raised before us for consideration:

1. Whether the petitioners are the owners of the application schedule property ?
2. If so, whether the respondents are not land grabbers ?
3. Whether the sale deed in favour of the applicants is invalid for want of permission u/s 47 of the AP. (Telangana Area) Tenancy and Agricultural Lands Act ?
4. Whether the sale deed executed by the father of R2 to R10 (i.e. late Uppari Ramaiah) valid ?
5. Whether the petition is barred by limitation?

6. Whether the petition is not maintainable?

7. To what relief?

6. In order to resolve the controversy, we went through the entire evidence both oral and documentary placed before the Special Court and the pleadings and contentions raised by both parties in the writ petitions. We took into consideration the effect of Section 38E, Section 47, Section 52B and other provisions of the Tenancy Act, 1950, Section 43, Section 53A and some other provisions of the Transfer of Property Act. We also took into consideration the effect of applicability of Sections 4 and 5 of the A.P. Land Grabbing (prohibition) Act, 1982 (for short the Land Grabbing Act). We also referred to some of the decisions relied on both sides namely Hattikudur Narain Rao and Others Vs. Andar Sayad Abbas Sahib, , Annada Mohan Roy Vs. Gour Mohan Mallik, (2), AIR 1928 262 (Nagpur) , Adhilakshmi Ammal Vs. T. Nallasivan Pillai (died) and Others, , The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah, , Ram Pyare Vs. Ram Narain and Others, , Pothuganti Chandramma v. Chepuri Sambaiah". 1988 (1) ALT 360, Mahipat Missir and Others Vs. Ganpat Sah and Others, , Manchegowda and Others Vs. State of Karnataka and Others, , Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, , Meram Pocham and Another Vs. The Agent to the State Government, (Collector), District Adilabad and Others, , "Ushanna v. Sambu Goud" 1985 (3) APLJ 32 and "P. Ramachandra Reddy v, Abdul Aziz. Ultimately, we held that the petitioners in W.P.No.4991/90 are the owners of the schedule property and the sale transaction took place on 21-11-1961 between the applicants before the Special Court and Riyasat Ali was not valid and hit by Section 47 of the Tenancy Act, 1950. The sale deeds executed by Uppari Ramaiah was not valid. Ultimately we held that the petitioners in both the writ petitions are not land grabbers. We further held that the petitioners in W.P.No.4991/90 were in lawful possession of the schedule property till 27-1-1982 on which date they entered into an agreement with the Godavari Co-operative House Building Society to alienate the said land and who in turn assigned the said land on 28-5-1984 to the impleaded Respondents 7 to 16 who came in possession and enjoyment of the schedule property by deriving right and interest from the persons who were lawfully entitled to be either in possession or to alienate the same. We also observed that neither the applicants before the Special Court nor others had any right to question the transaction, if any took place between the petitioners in W.P.No.4991/90 and other persons including the said Co-operative Housing Society and its assignees namely the impleaded Respondents 7 to 16. As far as the possession of the petitioner in W.P.No.4026/90 is concerned, taking into consideration the deposition given by him before the Special Court and the averments in the writ petition wherein he took a stand that he acted for and on behalf of the legal heirs of late Uppari Ramaiah and any transaction he made relates to other than the schedule property and he had no desire or plan to commit an act to grab the land, he acted as a Power of Attorney which made him to transfer certain other properties, we held that he is not a land grabber. Further having held that Exs.A1

and A3 are not valid as they are hit by Section 47 of the Tenancy Act, 1950, we also held that in the absence of validation certificate, transfer of the lands in favour of any one including the applicants did not confer any right or title on them. Further Section 43 of the Transfer of Property Act will not help those transferees who got transfer in the absence of prior permission or sanction of Tahsildar u/s 47 of the Tenancy Act, 1950 and such transfer is not valid.

7. In support of his Review petition, Sri Krovvidi Narasimham, learned Advocate urged that the decision relied upon by us in 11th cited supra is incorrect and contrary to the principles laid down by this Court in some of the following decisions namely in C.V. Narayan Reddy Vs. Katanguru Raghava Reddy and Another, which was followed in Meram Pocham and Another Vs. The Agent to the State Government, (Collector), District Adilabad and Others, has been referred, "Syed Tajuddin v. Syed Ahmad" 1982 (1) APLJ (SN) 4, "G.V.K. Rama Rao v. Bakelite Hylam Employees Co-operative House Building Society, Hyderabad" 1997 (4) ALD 294 wherein it is held that the sale deeds made prior, to 18-3-1969 are not void on the ground that previous sanction of the Tahsildar was not obtained. He lastly urged that in the application" filed by him on 4-9-1997 he sought permission of this Court to raise an additional ground, which reads as follows:

""This Court may be pleased to hold that the lands in question are urban land within the municipal limits of Hyderabad city even by 1951 as per the Notification No.44 of 1358 Fasli by the Local Self Government Secretariat, Hyderabad Government and the Notification No.23, dated 19-1-1951 published in Gazette Extraordinary, Hyderabad, dated 28-1-1951."

According to him when the writ petitions were heard, these documents were not in possession of the review petitioners, but subsequently after the disposal of the writ petitions they were discovered from A.P. State Archives Research Institute and these documents are very important for purpose of showing that the schedule lands which are situated in Yousufguda village were included in urban area of Hyderabad city municipal limits. Sri Narsimham contended that since Section 47 of the Tenancy Act, 1950 was deleted, as such there was no necessity for obtaining prior permission of the Tahsildar. He lastly contended that the decisions referred to by him in the writ petitions were not properly considered by this Court and we placed much reliance on the decision in " "M Pocham v. Agent, State Government, Adilabad" (supra) and in view of the Notifications now produced, the nature of the lands was not an agricultural one as the date of transaction, but urban land and as such permission u/s 47 of the Act was not required. Hence, according to him, the review of our order is a just one.

8. Whereas the petitioner in W.P.No.4026/90 sought for recalling of our order for deletion of certain observations made by us at Paras 50 and 51 of the order and to hold that the said observations are not binding and inoperative as far as the rights and interest of the petitioner are concerned and also observe that he is entitled to work out his rights before the Civil Court. His case is that he is the

person in possession of the schedule lands and at no time he was a land grabber. The so-called G.P.A. executed in his favour was not revoked at any time or cancelled. The impleading of the Respondents 7 to 16 was without his knowledge and that he was not a party to W.P.No.4991/90. As such he had no opportunity to meet the case of the impleaded respondents and that Exs.A32 to A35 and B17 to B19 including the receipts Exs.B1 to B7 and Ex.B20 were not disputed, the following observations made at Pages 50 and 51 of our order, namely:

"On the other hand the Respondents 1 to 10 were in lawful possession of the property throughout till 27-1-1982 on which date they entered into an agreement with Godavari Co-operative House Building Society to alienate the said land who in turn assigned the land on 28-5-1984 to Respondents 7 to 16, who came in possession and enjoyment of the same by deriving right and interest under persons who were lawfully entitled to be either in possession or alienate the same. If the material available is examined in the light of some of the statutes referred to above and their interpretations by the Court that the irresistible conclusion will be that the Respondents 1 to 10 in fact were in possession of the schedule land lawfully till the land was assigned to the Respondents 7 to 16"

may deprive the petitioner of his rights. His further contention is that Uppari Ratwiah died intestate in 1964 leaving behind the petitioners in W.P.Np. 4991/90. As they were unable to assert their rights in respect of the lands in question and to manage the affairs of the lands including to meet the expenses, they approached him to take up the responsibility to manage the affairs of the land for which he agreed. He was promised that he would be rewarded suitably for the said work and that all the expenses met by him would be reimbursed. In pursuance of the same they executed General Power of Attorney on 7-1-1978 12-11-1978 and 31-10-1980 wherein they empowered him to manage the affairs of the land and to sell the lands by executing necessary sale deeds. Possession of the land was handed over to him. They also declared that they would be entitled to 1/4th amount of the sale consideration after deducting the expenses as may be determined by the petitioner. They further declared that they have no right or claim over the lands in question and they shall be entitled to receive 1/4th amount that too by their mother as she spent some amount for their marriages. Pursuant to the said promise and understanding the petitioner not only started acquiring interest on the land but also striving hard to protect the limited interest of the petitioners in W.P.No. 4991/90. Sri Durga Prasad, the learned Counsel for this petitioner contended that the observation made by this Court in Pages 50 and 51 of its order shall be deleted. Otherwise they affect his claims, right and interest. According to him, when the impleaded Respondents 7 to 16 were not in possession of the lands in question, any observation made in their favour as to possession will deprive of this petitioner's right. The impleaded Respondents 7 to 16 were not necessary and proper parties. They were not parties before the Special Court. As such they were not affected by the orders of the Special Court, yet they were allowed to be impleaded as respondents which is incorrect. Till

April, 1997, the Respondents 7 to 16 did not produce any agreement showing their interest in the property. If these respondents acquired any rights, to get them established they should have gone to the Civil Court. As the petitioner being a power of attorney holder performed the acts as mentioned in the said attorney, his rights should have been protected. Any finding on lawful possession should have been only between the petitioner and the applicants before the Special Court. The application for permission to file two documents as additional ground No.8 filed by Mr. Narsimham cannot be accepted and even if accepted the same is hit by Section 102 of the Tenancy Act, 1950. According to him, the principles laid down by this Court in "Islamia Arabic College v. Shanta Bai", 1988 (1) ALT 74 at Page 88, is applicable to his case.

9. As an answer to review petition and the recalling application, Sri Srinivasa Reddy, learned Counsel for the petitioners in W.P.No.4991/90 contended that there is no merit in any one of the contentions raised by both the parties. According to him, the request made by the learned Counsel for the review petitioner that the principles laid down by this Court in some of the decisions referred to by us be once again considered, has no merit as on facts as the principles laid down by this Court in some of the decisions relied on by the learned Counsel, has no application. On the other hand, it is only the principles laid down by this Court in "M. Pocham v. Agent to the State Government, Adilabad" (supra) is applicable. He contended that there is no scope to review and the two Notifications now produced by the review petitioner to accept them as additional ground need not be accepted for the reason that mere expansion of the municipal limits will not change the nature of the lands in question. At no time or in any one of the documents, the review petitioner or the petitioner in W.P.No.4026/ 90 stated or proved that they are in possession of any portion of the disputed lands. There is no illegality in impleading the Respondents 7 to 16 who purchased the land from Godavari House Building Society. According to him, the present review petition and the recalling application have no merits and they are filed with a view to harass the respondents who are petitioners in W.P.No. 4991/90 in whose favour this Court gave verdict. Sri Srinivasa Reddy, learned Counsel submitted that the petitioner in W.P.No.4026/90 taking advantage of pendency of his application for recalling the order, he is harassing the petitioners and creating law and order problem in the schedule property with the help of gundas and other police officers and trying to trespass into the disputed land which was in possession of the petitioners in W.P.No.4991/90, and subsequently in possession the impleaded Respondents 7 to 16.

10. The review petition and the recalling application have been filed to review or re-examine or re-consider our common order passed in W.P.Nos.4991 and 4026 of 1990 by exercising the powers under Article 226 of the Constitution of India. The High Court has, under Article 226, an inherent power of review, as held by the Supreme Court in the case of "Shivdeo v. State of Punjab", AIR 1963 SC 1909 (page 1911) and in Ram Janam Singh Vs. State of Uttar Pradesh and another, . The scope to review is different from hearing an appeal. Review is

permissible only if it is made out that there is a mistake or error apparent on the face of the record or an order. The object behind such review has been well explained by the Supreme Court in "S. Nagaraj v. State of Karnataka", 1993 Suppl. (4) SCC 595, wherein their Lordships held as follows:

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to any one. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of process of miscarriage of justice. In AIR 1941 1 (Federal Court) the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rao v. Bijai Govind Singh* (1936) 1 Moo PC 117 : 2MIA 181 : 1 Sar.175) that an order made by the Court was final and could not be altered:

"... nevertheless, if by misprision in embodying the judgments, by the same power which the Courts of record and statute have of rectifying the mistake

which have crept in... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

Basis for exercise of the power was stated in the same decision as under:

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality.""

11. Thus the power to review is based on fundamental principles that justice is above all. Whenever it is found that injustice has been caused in passing an order, it is the bounden duty of the Court to rectify it by recalling its order. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so to meet the ends of justice. That is what slated in the above decision. However, exercise of review powers would not be in each and every case, but only in exceptional circumstances. The idea behind it is to see that the Court while exercising jurisdiction shall prevent miscarriage of justice or shall correct grave and palpable errors committed by it. Thus, the review can be sought not only by those who were parties to the order or even by third parties who were affected by such an order.

12. Order 47 Rule 1 CPC speaks about the review of judgment which reads as follows:

"(1)Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or of any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appearing from a decree or order may apply for a review

of judgment not with standing the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation :-The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

In Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, while explaining the scope of review, the Supreme Court observed that review proceedings cannot be equated with the original hearing of the case and the finality of the judgment rendered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in order by judicial fallibility. When on appreciation the Court took a view which the only possible view warranted in view of the circumstances explained it cannot be said that there is an error on the face of the record. A ground not urged when the matter was heard and not objected to, new ground is not permissible to be urged for purpose of review. Review can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) or any analogous ground. But review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court, This view is supported by the decision of the Supreme Court in Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others, . No review unless it is satisfied that there exists material error manifest on the face of the earlier order resulting in miscarriage of justice. This is supported by the decision of the Supreme Court in Col. Avtar Singh Sekhon Vs. Union of India (UOI) and Others, .

13. In the light of the above principles laid down by the Supreme Court on the scope of review, now we have to examine whether review or recall sought in the present case is permissible. To know how far the contentions raised by Sri Krowidi Narasimham, learned Counsel for the review petitioner, are relevant, it is proper to refer once again to the principles laid down in the decision relied on by us while disposing both the writ petitions. In "M Pochom v. Agent to the State Government, Adilabad" (supra), while interpreting the effect of Sections 47 and 50B of the Tenancy Act, 1950, Section 50B of the Hyderabad Tenancy Act, 1950 and Section 53A of Transfer of Property Act, the Supreme Court observed as follows:

"The lands in question were situated in Scheduled Areas in Telangana. There were contracts of sale in respect of lands in Scheduled Areas by tribals in favour of the petitioners, non-tribals, before 1-12-1963. Some amounts were paid under the contracts and possession also was delivered to the petitioners when the

contracts were executed. However, sanction of the appropriate authority was not obtained, u/s 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950, which was on the statute book at that time. After the A.P. Regulation of 1959 was extended to the Telangana Area on 1-12-1963, regular sale deeds were taken by the petitioners from their tribal vendors. No attempt was made to secure validation of the alienations u/s 50-B of the Hyderabad Tenancy Act 21 of 1950. The vendors challenged the validity of those sales under the provisions of the Regulation of 1959. The Special Deputy Collector upheld the objection and held that the alienations were invalid in view of Section 3 of the Regulation and consequently directed u/s 3(2)(a) that the lands be placed back in the possession of the vendors. In some of the cases appeals were preferred u/s 3(a)(iii) of the Regulation in the Agency Divisional Officer but they were rejected. No further revisions were filed before the State Government

The petitioners challenged the validity of the view of the Special Deputy Collector and of the Appellate Authority by writ petition, contending that the agreement in their favour were accompanied by simultaneous delivery of possession. Consequently by the time the Regulation came to be applied to the Telangana area in which the land were situate, their right to be in possession of the lands had come to be safeguarded by Section 53A of the T.P. Act and so, the transferor was debarred from enforcing against the petitioners any right in respect of the property. They maintained that every requirement of Section 53A of T.P. Act was satisfied in those cases and therefore despite the subsequent application of the Regulation to the Telangana Area on 1-12-1963 they continued to enjoy the protection of Section 53A.

Held : that possession given to the petitioners in pursuance of the contracts of sale, without obtaining previous sanction of the Tahsildar u/s 47, Hyderabad Tenancy Act was unlawful and Section 53A T.P. Act would not safeguard that possession.

Section 53A.T.P. Act, postulates taking possession of the property or continuing in possession of the property in part performance of the contract only in a lawful manner. It cannot be predicated that Section 53A purports to give protection to those transferees who have taken possession of the property in a manner contrary to the law which was in force and applicable to them. Section 53A protects only such possessions which were valid and lawful and does not safeguard possession which are invalid and unlawful.

There was no indefeasible title or right created in the petitioners before 1-12-1963 on which date the Regulation came to be applied to the Telangana Region. After 1-12-1963 the overriding provisions of Section 3 of the Regulation came into force. Section 3 of the Regulation had, on and from 1-12-1963, overriding effect despite any other enactment, rule or law in force in agency tracks in respect of transfer of immovable property situate in scheduled areas by a tribal in favour of a non-tribal. Those provisions had no doubt, no

restrospective effect. But then there was no indefeasible right in the petitioners by 1-12-1963. What all they had by that date was a contract of sale and unauthorised and illegal possession of the land. By virtue of Section 3 of the Regulation, they and the subsequent sale deeds, - which the petitioners obtained were null and void. The result was that the decision of the Special Deputy Collector, as upheld by the appellate authority, which was sought to be quashed, was in accordance with law. Syed Jalal and Others Vs. Tarrgopal Ram Reddy and Others, , ILR (1974) AP 119 and (1977) 2 APLJ 28, Rel. on: (1969) 2 AWR 217; (1976) 2 APLJ 103 and SA No.450/70 dated 21-9-72 (AP.), Overruled. Case Law discussed."

In K. Parvathamma Vs. The Commissioner of Excise (Board of Revenue), Govt. of Andhra Pradesh, Hyderabad and Others, , the Full Bench of this Court while referring to the effect of Section 47 of the Tenacy Act, 1950 before its amendment, held that prior sanction u/s 47 for sale in invitum is required only before confirmation of sale. After amendment, however, no sanction is at all necessary before confirming sale. In C.V. Narayan Reddy Vs. Katanguru Raghava Reddy and Another, the Division Bench of this Court while explaining Section 3(1) of the A.P, Land Reforms (Ceiling on Agricultural Holdings) Act, Section 47 and 50B of A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and Section 53A of T.P.Act and then contract of sale followed by possession to transferee, not obtaining permission u/s 47 or validation certificate u/s 50B its effect, held as follows:

"Subsequent to deletion of Section 47 of the Tenancy Act, it is needless to establish for the purpose of availing Section 53A of the T.P.Act, that the contracts of sale entered into during the period when Section 47 was in vogue were with permission. Since, it stood deleted, it is no more imperative to show that any such permission was obtained nor the absence would invalidate either the transaction or the possession of the land in the hands of alienee or transferee. Subsequent to deletion of Section 47, no sanction at all is necessary for finalisation even with regard to agreements of sale entered into prior to the deletion of Section 47, by way of registration of sale deeds or otherwise. A fortiori, the possession of the lands given in pursuance of agreements of sale is quite valid and lawful and therefore the parties concerned are entitled to avail the provisions of Section 53A of T.P.Act. Case law reviewed. K. Parvathamma Vs. The Commissioner of Excise (Board of Revenue), Govt. of Andhra Pradesh, Hyderabad and Others, , Relied on; Meram Pocham and Another Vs. The Agent to the State Government, (Collector), District Adilabad and Others, , Explained and distinguished."

The single Judge of this Court in the case "Syed Tajuddin v. Syed Ahmad" (supra) while dealing with Sections 47 and 98 of the Tenancy Act, 1950 and Section 53A of T.P.Act held that agreement of sale and transfer of possession without sanction u/s 47 prior to its deletion on 18-3-1969, the transferee is entitled to invoke the doctrine of part performance. "The Division Bench of this Court in ""Syed

Rafiuddin v. S. Asaduddin" (supra) while dealing with Section 47 of the Tenancy Act, 1950 and Section 53A of T.P.Act regarding suit for declaration of title and for possession, held that sanction of Tahsildar for finalisation of registration of sale deeds not necessary though transaction took place prior to the deletion of Section 47 of the Tenancy Act, 1950. In "G,V,K, Rama Rao v. Bakelite Hylam Employees Co-operative House Building Society, Hyderabad" (supra) while dealing with the scope of Section 102(a) of the Tenancy Act, 1950, the single Judge of this Court held that the government lands assigned in 1953 without a condition of non- alienationability - character of government land ceased and the land is only an agricultural land and Section 102(a) does not apply to such land. In" "N. Annapurnamma v. N. Narendra Kumar" 1997 (4) ALD 97 (DB) the Division Bench of this Court while dealing with the question of adverse possession, held that possession obtained through an invalid sale -Vendee ipso facto acquires adverse possession from the date of possession itself.

14. Thus, the facts involved in the decisions referred supra and relied on by Sri K. Narasimham, learned Counsel for the review petitioners when compared to the facts involved in the decision relied on by us in "M. Pocham v. Agent, State Government, Adilabad" (supra) are quite different. In all the above decisions no prior alienations were made. The question to be considered in those decisions was whether the sale that took place between the parties would be hit by Section 47 of the Tenancy Act, 1950. In none of the decisions it is held that the principles laid down in M- Pocham v. Agent, State Government, Adilabad case is incorrect. If we accept the contention of the learned Counsel for the review petitioner the effect of Section 50B of the Tenancy Act, 1950 would be rendered otiose. The contention of the learned Counsel for the review petitioner that by virtue of the Notifications, which he relied on as additional ground, the lands in question had lost the nature of agriculture and included in the municipal limits of Hyderabad and Hence Section 47 of the Tenancy Act, 1980 had no effect, again, in our view, is incorret in view of the decision of this Court rendered in "Islamia Arabic College v. (supra) which in fact was also relit Sri Durga Prasad, learned Counsel petitioner in the recalling application. learned Counsel Sir K. Narsimham contended that this Court while interpreting the scope of Section 102 of the Tenancy Act, 1950 in the above decision, held that mere inclusion of agricultural lands within the municipal limits does not have the effect of taking them away from the purview of the Act u/s 102(e). The relevant portion in the decision supra is extracted hereunder:

"Under Ex.BI dated March 20, 1958, Bahulool-hanguda village was declared to be within the municipal limits of Hyderabad. It is thereby contended by Sri Suryanarayaw Rao that once they are situated within the urban area, namely municipality, They must be non-agricultural lands and they are reserved for urban development. I am unable to accept the contention to be correct. Section 102(e) postulates of issuance of a notification reserving them for urban development. Thereby, the issue of a notification expressly reserving any land in an urban area for urban development is a condition precedent. Admittedly, no

such notification has been issued nor has been brought on record as evidence. Mere inclusion of agricultural lands within the municipal limits does not per se become urban land. It is common knowledge that even within municipal limits several lands are used for agricultural or horticultural purpose. Even the Urban Land Ceiling Act expressly excludes the agricultural lands from its purview. In fact, in *Syed Sharfuddin v. Andrews and others* (1964) 1 AWR 171, Gopal Rao Ekbote, J. (as he then was), has considered the effect of including the agricultural lands within the municipal limits by issue of a Gazette notification. It held that mere inclusion of lands within the municipal limits does not automatically become declaration u/s 102(e) of the Act I respectfully agree and follow the ratio Accordingly, I hold that the lands are not reserved for urban development and therefore, they do not cease to be agricultural lands u/s 102(e) taking away from the purview of

15. Thus, neither the decision nor the Notifications sought by Sri Krowidi Narsimha to be considered, have made out any mistake, or error apparent on the face of our order.

16. Coming to the stand taken by Sri Durga Prasad, learned Counsel for the petitioner in W.P.No.4026/90 seeking modification or recalling our order, it is proper to mention here some of the relevant averments or admissions made either before the Special Court or before this Court in the affidavit filed in support of the writ petition No.4026/90. Sri Srinivasarao, petitioner therein is claiming right over the property who was a power of attorney holder of the petitioners in W.P.No. 4991/90. He also spent some amount to manage the property. Thus, he acquired right on the schedule property. But the fact remains that his power of attorney was cancelled by causing a paper publication in Andhra Patrika dated 16-12-1980 warning the public not to deal with the lands in question in any manner, followed by a legal notice dated 9-4-1981 revoking all the documents alleged to have been executed by them in favour of Srinivasa Rao. The said legal notice was produced before the Special Court and marked as Ex.BII and the said notice was received by him on 10-4-1981. The postal acknowledgment acknowledging in the receipt of the said notice is marked Ex.B10 before the Special Court. After receipt of the legal notice and paper publication, Srinivasa Rao did not take steps to declare the power of attorney executed in his favour and agreements still subsisting, valid and enforceable. This Srinivasa Rao was the 11th respondent before the Special Court in LGC.32/89. He filed a detailed counter wherein he took a stand that necessary rights, title and interest over the said lands in S.No.65 to 74 in Yousif Guda village are with Respondents 1 to 10, who are petitioners in W.P.No.4991/90. He further stated that he got issued a reply to the paper notice which was issued by Sri Anemia Reddy, through his Counsel on behalf of the Respondents Ho 10 (petitioners in WP.4991/90. He also stated in the counter that the sales effected by him in., favour of Respondents 12 to 16 do not form part of the application schedule land. The land sold by him as G.P.A. holder on behalf of R1 to R10 in favour of R12 to R16 is entirely different land with distinct boundaries. The

petitioners have unnecessarily joined Respondents 12 to 16 with a view to harass them and to create misunderstanding between him and the Respondents 12 to 16. Srinivasa Rao was examined before the Special Court and in his cross-examination on 29-1-1990 he admitted that he never sold any portion of the schedule property as G.P.A. of Respondents 1 to 10. Though he admitted Ex.B10, he denied as to receiving of Ex.B11. From this it is clear that the rights if any available to him were extinguished by efflux of time. Coming to the averments in the affidavit filed in support of W.P.No.4026/90, he stated that late Uppari Ramaiah was a protected tenant of the schedule property. Subsequently he purchased the land from the original pattadar Kaneez Fatima Begum under a registered sale deed dated 1-5-1961 for a consideration of Rs.13,000/-. He stated in the affidavit that Uppari Ramaiah was in possession since then and after his death his heirs Petitioners 1 to 10 in WP 4991/90 have been in continuous possession and enjoyment of the schedule property without any hindrance. In ground "F" of the writ petition, Srinivasa Rao took a stand that the Tribunal ought to have seen that the petitioner herein is a power of attorney of the legal heirs of late Uppari Ramaiah and that the power of attorney was duly registered and subsisting and he has been in possession on behalf of the principles and doing the acts only in accordance with his lawful authorities and as such he cannot be treated as land grabber. The petitioners in W.P.No. 4991/90 filed their counter and they filed certain documents. According to them Ex.B17 dated 17-10-1978 is the General Power of Attorney executed by Smt. Uppari Muthamma in favour of Srinivasa Rao and Ex.B18 is the General Power of Attorney executed by Smt. Uppari Muthamma and others in favour of Srinivasa Rao. Exs.A32 to A34 are the alleged execution of General Power of Attorney either by the petitioners or some of them in favour of Srinivasa Rao. Ex.A35 is the alleged agreement of sale executed by Uppari Muthamma and others in favour of Srinivasa Rao. A perusal of these documents discloses that no credence can be attached to these documents. On the other hand, they create much doubt in the mind of the Court for the reason that the so- called General Power of Attorney alleged to have been executed by the petitioners in W.P.No.4991/90 does not contain the signature of those petitioners on all the pages or on the back of the document. There is nothing to show in the agreement of sale that delivery of possession was handed over. Ex.B17 is the General Power of Attorney, dated 7-10-1978. Ex.A33 is an unregistered G.P. A dated 31-10-1980 alleged to have been executed by Uppari Muthamma and Respondents 2, 3, 4 and 10. Ex.B18 is an unregistered G.P.A., dated 31-10-1980 executed by the Petitioners 1 to 10 in WP 4991/90. Ex.A35 is an agreement of sale dated 26-6-1980 and it does contain the signatures on some of the pages of the agreement. Ex.B19 is an agreement of sale dated 9-5-84 which bears the names of the petitioners in W.P.4991/90. One can see the signatures of only 5th respondent. Hence the documents which Srinivasa Rao sought to rely on are not genuine documents. The pleadings before the Special Court and before this Court and the evidence of Srinivasa Rao disprove his theory of being in possession. In the present application he has taken anew stand which was neither raised nor urged in the

earlier proceedings. On the other hand, the conclusion reached by us while disposing of both the writ petitions as to Srinivasa Rao's status and interest and as to his possession, is a conclusion reached after careful consideration of the evidence. We do not find that the petitioner in WP No.4026/90 has made out a case to modify or recall our earlier order as requested by him. Sri Ditruga Prasad, learned Counsel for the petitioner in WP 4026/90 contended that at least an observation may be made that the petitioner has right to urge his claim before the Civil Court. It is not open for this Court to give any advise. Whatever rights he has and the remedies he seeks, and the forums he chooses, he is always at liberty to work out his remedies if so advised.

17. The points urged by Sri Krovvidi Narasimham, learned Counsel for the review petitioner and Sri Durga Prasad, learned Counsel for the petitioner in the recalling application if compared in the light of the scope of review or recall as explained above, we are of the firm view that there is no mistake or error apparent on the face of our order.

18. Hence both the review petition and the recalling application are dismissed. However, there is no order as to costs.