
(2014) 04 AP CK 0069
In the Andhra Pradesh High Court
Case No : Writ Petition No. 28738 of 2011

V. Ashok

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 — Section 166, 166(5), 166(b)
Constitution of India, 1950 — Article 226

Citation : (2014) 4 ALD 524 : (2014) 6 ALT 189 : (2015) ALT(Rev) 41

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : H. Venugopal, Advocate for the Appellant; Mahmood Ali, Advocate for the Respondent

Final Decision : Allowed

Judgement

Vilas V. Afzulpurkar, J.—This writ petition questions the impugned show cause notice dated 11.10.2011 wherein the first respondent purported to review his earlier order in File No. B2/12954/2008 dated 09.04.2009. The review proposed to be made by virtue of the show cause notice, referred to above, is by purported exercise of power u/s 166 of the Andhra Pradesh (Telangana Area) Land Revenue Act 1317 Fasli (for short "the Act").

2. Petitioners state that they are owners and possessors of an extent of Ac.10.00 guntas of land in Sy. No. 170 (Part) and an extent of Ac.8.00 guntas in Sy. No. 157/1 (Part) of Thokatta Village, Taluk Western Circle, Hyderabad District by virtue of two separate registered deeds of assignment, being Nos. 319/2004 and 320/2004, both dated 29.09.2004. Petitioners claim that the aforesaid land is a private land belonging to the Estate of Salar Jung and forms part of the suit C.S. No. 13 of 1958, which was filed for partition of matruka properties. While various allegations with respect to the compromise entered into in the said suit are made, however, suffice it to notice that by virtue of the deeds of assignment,

referred to above, from the legal heirs of second defendant therein, the petitioners claim that they own and possess the said properties.

3. Petitioners claim that they gave representations dated 08.06.2005 and 30.11.2005 for correction of entries in the revenue records in their favour and the Chief Commissioner of Land Administration, directed the first respondent - District Collector to examine, enquire and submit a report in the matter. Basing on the report submitted by the District Collector, the Government directed the District Collector to take necessary action for correction of entries in the revenue record. It is stated that ultimately the first respondent/District Collector under his proceedings No. B2/12954/2008 dated 09.04.2009 accepted the claim of the petitioners for mutation and issued directions to the Tahsildar, Trimulgherri Mandal to take up mutation of the records of the aforesaid land in the name of the persons, as directed by this Court in Application Nos. 1166, 1168, 1170 and 1172 in O.S. No. 13 of 1958 dated 05.11.2004 etc.

4. It is the aforesaid order, which is sought to be reviewed by the successor of the first respondent, as per the impugned show cause notice. The said notice itself states that a news item appeared in Eenadu Daily alleging several irregularities and infirmities in the said order dated 09.04.2009 granting mutation. Thereafter, a report was sent to the CCLA requesting to revise the order dated 09.04.2009 u/s 166(b) of the Act. However, the CCLA in turn permitted the first respondent to review the order. Hence, the impugned show cause notice was issued to the parties including the petitioners.

5. Petitioners contend that the proceedings for mutation were taken up under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 and consequently, no power is conferred on the first respondent to review those orders u/s 166 of the Act. Petitioners further submit that against the said order dated 09.04.2009 already an appeal is pending before the Commissioner (Appeals) O/o the Chief Commissioner of Land Administration, at the instance of the Defence Estate Officer, A.P. Circle. Thus, the present writ petition is filed questioning the said show cause notice on the ground that the proposed review by the first respondent is not maintainable in view of the pendency of the appeal against the order under review before the appellate authority as well as on the ground that the earlier mutation under the A.P. Rights in Land and Pattadar Pass Books Act, 1971 cannot be reviewed by a different authority viz. first respondent by invoking Section 166 of the Act.

6. By order dated 28.10.2011, this Court admitted the writ petition and passed the following order in WPMP No. 35531 of 2011:

Aggrieved by the show cause notice issued by the District Collector, Hyderabad dated: 11-10-2011, seeking to review the order passed by his predecessor on 9-4-2009 in respect of land admeasuring Acs. 8.00 in Survey No. 157/1 (part) and 10.00 acres in Survey No. 170 (part) of Thokatta Village, Tirumalgherri Mandal, Hyderabad District, the present writ petition is filed.

Sri B. Adinarayana Rao, learned counsel for the petitioners would submit that since the District Collector, Hyderabad has no jurisdiction to review the earlier order passed by his predecessor on 9-4-2009 in view of the statutory embargo u/s 166(5) of the A.P. Telangana Land Revenue Act, the impugned show cause notice is liable to be quashed.

Section 166(5) of A.P. Telangana Revenue Act 1377 Fasli stipulates that where a memorandum of appeal or application for revision has been filed against an order or decision, such order or decision shall not be reviewed.

Admittedly, an appeal has been preferred against the order of the District Collector dated: 9-4-2009 by the Defence Establishment, which is pending adjudication before the 2nd respondent. Since an appeal has already been filed against the earlier order dated: 9-4-2009, which is pending adjudication before the 2nd respondent, Section 166(5) bars exercise of power of review by the District Collector. Prima facie, the impugned show cause notice is without jurisdiction.

There shall be interim stay of all further proceedings pursuant to the show cause notice dated 11-10-2011 by the 1st respondent.

Pending further orders, the petitioners shall not alienate, create third party rights or change the nature of the land until further orders.

7. Learned Government Pleader for Revenue appearing on behalf of respondents 1 and 2 has filed a counter affidavit together with an application, being WVMP. No. 1102 of 2012, seeking vacation of the aforesaid order.

8. Learned senior counsel for the petitioners and the learned Government Pleader, accordingly, made submissions in the writ petition itself, which was heard in part on 12.03.2014 and hearing was concluded on 19.03.2014 and the matter was reserved for orders.

9. Counter affidavit filed on behalf of respondents 1 and 2 points out several irregularities and infirmities in the order dated 09.04.2009 and imminent necessity of considering the review against the said order and hence, justified the invocation of Section 166 of the Act. Learned Government Pleader submits that with the permission of the superior officer, the first respondent himself is empowered to review his earlier proceedings by virtue of power conferred under the aforesaid provision. On facts, the learned Government Pleader submits that there is no final decree passed in C.S. No. 13 of 1958 and the alleged compromise recorded in the said suit does not bind respondents 1 and 2, as Government is not a party thereto.

Learned Government Pleader similarly made various other factual assertions.

10. However, keeping in view the limited scope of this writ petition with regard to jurisdiction of the first respondent neither the learned senior counsel for the petitioners argued the matter on merits nor in the present proceedings it is

permissible to adjudicate on the factual issues arising in the matter under Article 226 of the Constitution of India.

11. The question, therefore, that primarily arises for consideration is whether the petitioners are entitled to approach this Court by the present writ petition against the impugned show cause notice.

12. The maintainability of the writ petition against the show cause notice was recently considered by a Division Bench of this court in *Shakti Metdor Ltd. v. Commissioner of Customs Central Excise and Service Tax* 2011 (2) ALD 424 (DB). Learned Government Pleader placed strong reliance upon the said judgment and the ratio of the said decision may, however, be culled out from para. 5 thereof, which is extracted hereunder:

5. Abstinance from interference at the stage of issuance of the show-cause notice, in order to relegate parties to the proceedings before the authorities concerned, is the normal rule. However the said rule is not without exception. Where a show-cause notice is issued either without jurisdiction, or is an abuse of process of law, the Writ Court would not hesitate to interfere even at the stage of issuance of the show-cause notice. (*Union of India (UOI) and Another Vs. Vicco Laboratories,)*. The High Court has the power to issue, in a fit case, an order prohibiting an authority from acting without jurisdiction. Where such an action of the authority, acting without jurisdiction, subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. The existence of an alternative remedy is not always a sufficient reason for refusing a party relief by a Writ or Order prohibiting an authority, acting without jurisdiction, from continuing such action. (*Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another,)*. Where the threat of prejudicial action is wholly without jurisdiction, a person cannot be asked to wait for injury to be caused to him before seeking the Court's protection. If, however, the authority has the power in law to issue the show-cause notice it would not be open to the person, asked to show-cause, to approach this Court under Article 226 of the Constitution at the stage of notice. (*Chief of Army Staff v. Major Dharam Pal Kukrety*, (1982) 2 SCC 412; *Saravani Impex Pvt. Ltd.'s case* (supra)).

13. Reliance is also placed by the learned Government Pleader on the decision of the Supreme Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ,* which is well settled and which holds the field. The opening para thereof lays down the legal position succinctly, as extracted hereunder:

1. "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decre - by the

first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

According to the learned Government Pleader, therefore, since the order dated 09.04.2009 suffers from several infirmities including the ground of fraud, review thereof is proposed to be made by the first respondent and as such, interdicting the said proceedings, at the stage of show cause notice, is not warranted.

14. Learned senior counsel for the petitioners, however, has made specific submission based upon Section 166(5) of the Act and submits that when, admittedly, an appeal is pending against the original order, where all the parties herein are parties to the said appeal, the first respondent cannot exercise any power of review.

15. For the sake of convenience, Section 166 of the Act is extracted hereunder:

166. Review:- (1) Every Revenue officer may, either himself or on the application of any party when the application is accompanied by the original order or decision or by an authentic copy of such order or decision against which the review is desired, review the order or decision passed by him or his predecessor and make such order as he may deem fit.

Provided that an application for review shall be made on the following grounds only.--

(a) when some new and important matter or evidence has been discovered which the applicant even after due diligence, could not know or adduce till the order or decision was passed; or

(b) when some mistake or omission, by reasons of which the applicant has suffered loss, is apparent on the face of order or decision; or

(c) When there is some other reasonable ground for review.

(2)(a) Where it appears to the reviewing authority that there is no reasonable ground for review he shall reject the application, but before rejecting the application, the person applying for review shall be given an opportunity to produce arguments in support of the application.

(b) Where such authority is of opinion that the application for review should be granted, he shall grant the application but before doing so the opposite party shall be given an opportunity of being heard.

(c) Where such application is on the ground of the discovery of new and important matter or evidence which the applicant alleges was not within his knowledge or could not be produced by him till the order or decision was passed, it shall not be granted unless such allegation is fully proved.

(3) Where in the opinion of a 1[.....] 2 [Settlement Commissioner] or the 3[collector] 1[.....] the review of an order or decision not passed by him is

necessary or when any other Revenue officer, below the rank of a 1[.....] 3[Collector] 1[.....] 2[Settlement Commissioner] desires to review an order or decision whether passed by him or his predecessor every such officer shall before granting the application for review obtain the sanction of such officer or higher department whose immediate subordinate he may be.

(4) No order or decision shall be modified or annulled on review unless all the parties to the case to be affected are summoned and heard against the order or decision under review.

(5) When a memorandum of appeal or application for revision has been filed against any order or decision, such order or decision shall not be reviewed.

(6) No order or decision shall be reviewed which affects the mutual rights of the riot unless an application is filed by some party to the case and such application for review shall not be admitted unless it is filed within 90 days from the date of the order or decision.

(7) When an order or decision has been disposed of in appeal or revision, no Revenue officer lower in rank to the authority hearing the appeal or revision shall be competent to review such order or decision.

(8) For purposes of this section, the 4[.....] 3[Collector] 4[.....] shall be deemed to, be the successor of every such Revenue officer in the district as may not be present within the limits of the district or who has ceased to have powers in the Revenue Department:

Provided that his successor has not been appointed.

(9) Orders passed in review shall on no account be reviewed.

It would be evident from the above, that sub-section (5) of Section 166 of the Act provides that if an appeal, application or review is pending against such order or decision, such decision shall not be reviewed.

16. Counter affidavit filed by respondents 1 and 2 specifically states in para. 20 as follows:

20. Further, it is submitted that this land is also being claimed by the Defence Estate Officer, A.P. Circle, Secunderabad preferring an appeal on 8-1-2010 before the Commissioner (Appeals), O/o C.C.L.A., against the mutation orders of the then Collector, Hyderabad Dist. vide Proceedings No. B2/12954/2008 Dt. 9-4-2009 and consequential Proceedings No. C/1331/2009 dt. 22-5-2009 of the Tahsildar, Thirumalagiri Mandal and the same is pending before Commissioner (Appeals). Against the Defence Estate Officer, A.P. Circle, Secunderabad has filed W.P. No. 1630/2010 in the Hon"ble High Court challenging the said mutation order, while the appeal case is still pending with the CCLA (Appeals) Hyderabad.

17. All the parties to the proceedings dated 09.04.2009 including the parties herein are parties to the said appeal. It appears that after filing of the said

appeal, no interim order was granted to the appellant therein by the appellate authority, hence, the said appellant moved this Court in W.P. No. 1630 of 2010 and by order dated 01.02.2010, this Court passed the following order:

Post on 9-02-210.

Learned Government Pleader for Revenue shall inform this Court the provisions of law under which the District Collector, Ranga Reddy passed order dated 9-04-2009, which is impugned in this writ petition.

The Tahsildar, Tirumalgherry shall not alter any existing entries in the revenue records on the basis of the impugned order.

18. The said writ petition also impugned the very proceedings dated 09.04.2009 of the Collector, which is sought to be reviewed under the impugned show cause notice. The said writ petition is also stated to be pending. Thus, there is no controversy that an appeal against the said order dated 09.04.2009 apart from the writ petition, referred to above, is pending against the said order.

19. The power u/s 166 of the Act to review a decision, therefore, specifically includes such order or decision, which is subject matter of appeal, application or review. It, therefore, clearly implies that an appeal, application or revision would lie to the superior officer/authority against the order passed by a subordinate officer/authority. Thus, when the superior authority is seized off such appeal, a review of the said original order is prohibited by the aforesaid Section 166(5) of the Act. In other words, therefore, if an appeal is pending against such an order or decision, a review would not lie against the same. Thus, the legislative mandate admits of no doubt that no such decision or order will be reviewable if the same is subject matter of appeal or revision. Thus, the power u/s 166 of the Act, which is a general power of review subject to fulfillment of ingredients thereunder is also made conditional upon compliance with sub-section (5) thereof.

20. Learned Government Pleader tried to distinguish the said provision by contending that respondents 1 and 2 are not the appellants in the said appeal and the appeal is filed by the Defence Estate Officer and thereby, sought to contend that "power under sub-section (5) would not apply to respondents 1 and 2.

21. I am unable to accept the said contention, as the prohibition u/s 166(5) of the Act does not depend upon the party, who preferred the appeal or revision and the intention of the Legislature appears to be that if the said order or decision is subjudice before appellate or revision authority, the jurisdiction to review shall not be available with respect to such order. So once the revision or appeal is pending against an order, at the instance of any of the parties to the said proceedings, the prohibition under sub-section (5) of Section 166 of the Act would operate and no such order or decision would be reviewable.

22. It is now well settled that the provision for review, like an appeal, is a creation of statute and the power of review has, therefore, to be exercised

subject to conditions prescribed under the said provision. Sub-section (5) of Section 166 excludes power to review under specified circumstance of an appeal or a revision pending against the same decision. Thus, when the statute prescribes a particular mode under which a review jurisdiction can be exercised, contrary to the said conditions and mode no such power can be exercised by the authority proposing to review its earlier decision.

23. The object and purpose of such conditional jurisdiction can also be appreciated from the fact that if an appeal is pending against the order under review and the said appeal is disposed of either by confirming or reversing the judgment under review, the decision sought to be reviewed merges with the decision of the appellate authority as per the "principle of merger", which is well established by the decision of the Supreme Court in *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, . Thus, if the appeal is pending against the decision, providing a power to review there against would naturally lead to a situation where the order under review gets merged in the appellate order and therefore, nothing remains for the reviewing authority to decide. If we examine the matter from this stand point, it clearly sounds in accord with the principle that no such review would lie if the said decision proposed to be reviewed is subject to an appeal or a revision before the superior authority. In my view, therefore, the show cause notice impugned is clearly against the mandate of Section 166(5) of the Act and it has to be held to be without jurisdiction and is liable to be quashed and is accordingly quashed.

The writ petition is accordingly allowed. Any alienation or creation of third party rights with respect to the aforesaid land by any of the parties shall, however, be subject to the said appeal and subject to further final orders in W.P. No. 1630 of 2010. As a sequel, miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.