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**(2001) 04 AP CK 0018**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 5061 of 1997**

Vangapalli Sudhakar Rao

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 27-04-2001

**Acts Referred:**

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10, 10(3), 10(5), 20, 20(3)  
Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 16(5), 16(7)  
Civil Procedure Code, 1908 (CPC) — Section 115, 152, 65  
Constitution of India, 1950 — Article 136  
Specific Relief Act, 1963 — Section 31

**Citation :** (2001) 4 ALD 90 : (2001) 4 ALT 436

**Hon'ble Judges :** V.V.S. Rao, J

**Bench :** Single Bench

**Advocate :** Mr. P.V. Narayana Rao, for the Appellant; Government Pleader for Land Ceiling, for the Respondent

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## Judgement

1. The petitioner filed a declaration u/s 8 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, (hereinafter called "the Act"). By order dated 3-6-1977 the Land Reforms Tribunal (hereinafter called "the Tribunal") determined that the petitioner has 0.1232 standard holdings in excess of the ceiling area. The proceedings u/s 10 of the Act for surrendering the excess land were initiated. The petitioner surrendered 0.1232 standard holdings on 21-6-1990 and the same was accepted by the Tribunal u/s 10(3) of the Act on 31-7-1990. The petitioner preferred an appeal u/s 20 of the Act before the Land Reforms Appellate Tribunal (hereinafter called "the Appellate Tribunal") in LRA No. 1807 of 1977 and the same was dismissed. The petitioner filed CRP No.3953 of 1978. This Court by order dated 18-1-1979 allowed the CRP and remanded the matter to the appellate Tribunal. Again the appellate Tribunal by order dated 20-9-1979 confirmed the order of the Tribunal. Yet again the petitioner filed CRP No.6852 of 1979. It was contended before this Court that the appellate Tribunal

passed an ex parte order as the advocate engaged by the petitioner could not attend the Court as he shifted his practice to Hyderabad. Therefore, the petitioner could not file rectified affidavit as directed by this Court in CRP No.3953 of 1978. Having regard to the facts and circumstances of the case, this Court allowed the CRP and remanded the matter to the appellate Tribunal directing to decide in the light of the directions in CRP No.3953 of 1978. The matter went back to the appellate Tribunal which finally determined the excess land which was surrendered by the petitioner on 21-6-1990. The same was accepted by the Tribunal u/s 10(3) of the Act on 31-7-1990 and the land was taken possession from the petitioner/declarant on 18-11-1991.

2. The respondent herein filed an application under Rule 16(5) (b) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (hereinafter called "the Rules"). In the said application the respondent inter alia stated that (i) in the verification report the lands held by the declarant were shown as 1.9383 standard holdings whereas the actual totalling comes to 2.0663 standard holdings and there is difference of 0.1280 standard holdings and therefore, apparent mistake has crept in; (ii) an extent of Acs.2.80 of Potharam Village was admitted as the same was acquired in 1964 for laying Zilla Parishad Road that the said land was again deleted as per orders dated 28-9-1983 in LRA No. 1807 of 1977 and as the declarant raised the issue it was found that there was no specific direction from the appellate Tribunal to delete the said land again from the holding of the declarant the same was deleted by the Tribunal and therefore, the declarant got double benefit of an extent of Acs.2.80 being deleted twice and this was a mistake which is liable to be corrected; (in) the Tribunal deleted an extent of Acs.1.86 in S.Nos.148 and 154 of Potharam Village. But, the declarant surrendered the same land along with other lands towards surplus and the Tribunal without verification passed orders accepting and approving surrender of the lands on 31-7-1990 which were in fact deleted at the stage of computation, that the acceptance of surrender is error and is liable to be cancelled and (iv) the clerical, incorrect or arithmetical mistakes in the judgments or errors arising by accidental slip or omission are liable for correction under Rule 16(5) of the Rules.

3. The Tribunal by order dated 8-12-1995 noticed the above omissions are correct and directed that an extent of 0.3444 standard holdings towards difference in totalling and other extents be added to the holding of the declarant and accordingly directed the declarant to file surrender statement to the extent of 0.2212 standard holdings as the declarant had already surrendered 0.1232 standard holdings. Aggrieved by the orders of the Tribunal, the petitioner preferred LRA No.2 of 1996 u/s 20(3) of the Act.

4. Before the appellate Tribunal the petitioner contended that the application preferred by the respondent is barred by limitation, that the Tribunal has no power to reopen the matter on the ground that there are calculation errors especially when the matter was closed long back resulting in the final surrender proceedings and that when once the surrender of excess land is accepted the

respondent and the Government are estopped from raising any question thereto. The Appellate Tribunal held that the Tribunal has inherent power to correct calculation errors and has power to correct the mistake crept in at any time u/s 16(5) (b) of the Rules. It was also held that the Tribunal has wide powers to reopen the case already disposed when fraud is played. Accordingly, the appeal was dismissed.

5. In this civil revision petition, the learned Counsel for the petitioner Sri P. V. Narayana Rao submits that when the Tribunal accepts the surrender of land u/s 10(5) of the Act, application Rule 16(5) of the Act is not maintainable. He submits that the proceedings u/s 9 of the Act are in the nature of execution proceedings and at the stage of execution there is no question of entertaining application under Rule 16(5) of the Rules as the same amounts to correcting decree and the executing Court has no power to go beyond the decree. He also submits that the order of the Tribunal was confirmed by the appellate Tribunal as well as this Court and therefore in view of operation of doctrine of merger the order of the Tribunal merged in the revisional order and therefore in such a case application under Rule 16(5) is not maintainable. Lastly he submits that after long lapse of 18 years the Tribunal has no jurisdiction to entertain application under Rule 16(5) of the Rules.

6. The learned Government Pleader Sri P. Gopal Das submits that application under Rule 16(5) of the Rules is maintainable even after the matter is decided by the appellate Court or revisional Court. Further, when the Tribunal and appellate Tribunal have concurrently recorded a finding that there were clerical errors and omissions while admitting and accepting the surrender of the land of the declarant in exercise of powers u/s 21 of the Act this Court cannot interfere in such findings. Lastly he submits that no limitation is prescribed under Rule 16(5) of the Rules and therefore in the light of the rival contentions the following points arise for consideration :

1. What is the extent of power and scope of the Land Reforms Tribunal under Rule 16(5) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 in applications for correction for clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission?

2. Whether the application by the respondent is barred by limitation?

3. To what relief?

In Re Point No. 1:

Rule 16(5) of the Rules reads as under.

Rule 16(5): The Revenue Divisional Officer, the District Collector, Tribunal and the Appellate Tribunal shall have the power:--

(a) to make orders incidental or ancillary to the decisions of such officer or authority;

(b) to correct any clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission, either of its own motion or on the application of the parties.

7. As per the above Rule, the Revenue Divisional Officer, District Collector, the Tribunal and Appellate Tribunal shall have power inter alia to correct any clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission. Such power can be exercised either suo motu or on application of parties. The authorities, who are empowered to correct clerical mistakes are Revenue Divisional Officer, District Collector, the Land Reforms Tribunal and the Appellate Tribunal. All these authorities are empowered to deal with a declarant at one point of time or other. The Rule making authority therefore thought it fit to empower the authorities to rectify clerical and arithmetical mistakes etc. These authorities act independently. Interesting question that comes for consideration is when the order of the Land Reforms Tribunal is confirmed or modified by the Land Reforms Appellate Tribunal, the primary authority has got every power to correct clerical mistakes. So to say by operation of doctrine of merger whether the primary authority is denuded of the power under Rule 16(5)(b) of the Rules.

8. The petitioner's holding was determined in June 1977 and the petitioner filed LRA No.1807 of 1977. The same was confirmed determining the holding of the petitioner as 1.1232 standard holdings. The petitioner filed CRP No.3953 of 1978 u/s 21 of the Act before this Court. By order dated 18-1-1979 this Court remanded the matter to the appellate Tribunal to re-determine the holding of the petitioner after giving opportunity to the declarant to rectify the defects in the affidavits and produce revenue records in respect of certain lands. After remand, the appellate Tribunal by order dated 20-9-1979 again confirmed the order of the original authority. Against this order, the petitioner filed CRP No.6852 of 1979. Having regard to the fact that the petitioner's lawyer could not attend the Court and the petitioner's case went unrepresented this Court so as to give an opportunity to the petitioner again remanded the matter to the appellate Tribunal to decide the matter in accordance with the directions issued in CRP No.3953 of 1978. Accordingly, the matter again went before the appellate Tribunal which confirmed the order of the original authority.

9. I fail to understand as to how there is operation of doctrine of merger. Both the times the declarant came up before this Court u/s 21 of the Act. This Court merely remanded the matter having regard to the fact that the petitioner had no opportunity with regard to deletion of certain lands. However, the learned Counsel for the petitioner submits that the doctrine of merger applies even when the matter is remanded to the lower authority. I am afraid I cannot agree with the submission. If the appellate authority or revisional authority decides the matter partly or fully only on a question of law and remands the matter, the doctrine of merger has no application. Further, doctrine of merger is not of universal application and cannot be applied with straightjacket formula. In

Kunhayammed and Others Vs. State of Kerala and Another, , the Supreme Court considered doctrine of merger with reference to petitions under Article 136 of the Constitution of India and observed as under:

The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When decree or order passed by interior Court, Tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way -whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, Tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, Tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.

10. Therefore, the mere fact that the order of the original authority dated 3-6-1977 was confirmed by the appellate Tribunal does not bar the original authority from exercising jurisdiction under Rule 16(5)(b) of the Rules.

11. The learned Counsel further submits that the proceedings u/s 10 of the Act are in the nature of execution proceedings and executing Court has no power or authority to modify the order of original authority. This submission is devoid of any merit. While exercising power under Rule 16(5)(b) of the Rules, the Tribunal or appellate Tribunal does not interfere with the proceedings u/s 10 of the Act which are in the nature of execution proceedings. The provision is intended for rectification of clerical or arithmetical mistakes due to accidental slip or omission. It is made in the interest of the declarants and it should be interpreted very widely and even at the stage of surrender u/s 10 of the Act or at the stage of computation the Tribunal is competent to rectify the mistakes. The decisions cited by the learned Counsel in A. Palanivel Chettiar Vs. R. Elumalai, , State of A.P. Vs. V. Vishwanath Rao, , have no application to the facts of this case.

12. In Ankam Reddy Yerrayamma v. Authorised Officer 1976 (2) APLJ 405, this Court held as under:

Where clerical or arithmetical mistakes occur in copying the plaint schedules from the documents anterior to the suit the proceedings in the suit can always be corrected u/s 152 Civil Procedure Code. In such cases even the documents on the basis of which the suit was filed may be amended either in a suit u/s 31 of the Specific Relief Act or in a proper case even by an application u/s 152 CPC provided it is a case of misdescription and not one of disputed identity. In such cases if Section 152 is invoked it would obviate a suit which may ultimately bring about the same result. In all cases where clerical or arithmetical errors crept in

the plaint and as a consequence in the decree as well, they can be rectified at any time even after a final decree. A case of such an amendment petition u/s 152 CPC filed in a pending suit even after a preliminary decree is passed therein, is an a fortiori case.

13. In *Manyam Devikarani and another Vs. State of A.P.*, , dealing with the scope of Rule 16(5) and Rule 16(7) of the Rules this Court held that when once determined is final u/s 9 of the Act the same cannot be reopened by resorting to Rule 16(5) of the Rules and accordingly the plea for reclassification of two survey numbers involved in the said case was rejected.

14. The learned Government Pleader submits that in getting the land deleted twice the declarant has played fraud and misrepresentation and therefore in such an event it is always competent to any authority to exercise inherent power to rectify the mistake. He relied on the judgment of the Supreme Court in *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, and *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, , wherein it was held:

..... the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or Tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

15. Therefore, I must hold that doctrine of merger has no application when the Land Reforms Tribunal exercises jurisdiction under Rule 16(5)(b) of the Rules and that the power to rectify the mistakes inheres in the Tribunal to rectify the mistakes. Point No.1 is answered accordingly.

In Re Point No. 2:

Rule 16(5)(b) of the Rules does not prescribe any time for seeking rectification of mistakes or for correction of clerical mistakes. It is, however, submitted by the learned Counsel for the petitioner that having regard to the power vested in the RDO, District Collector, Tribunal or the Appellate Tribunal, it should be construed that the power under Rule 16(5)(b) should be exercised within a reasonable time. The learned Counsel relied on the judgments in *The State of Gujarat Vs. Patil Raghav Natha and Others*, and *I.T. Vyavasaya Coolie Sangam v. K.S. Reddy*, 1996 (2) ALD 945 (DB).

16. In *Pali Raghav Natha* 's case (supra) the Supreme Court held;

.....Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission.

17. In *K.S. Reddy*'s case (supra) a Division Bench of this Court held:

..... 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 the 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 long lapse of time is prima facie arbitrary.

18. The judgments cited by the learned Counsel for the petitioner in support of his contention that power should be exercised within a reasonable time while dealing with exercise of revisional power suo motu or otherwise by the competent authority. The cases arose out of Land Assignment Laws. Having regard to elapse of time, the Courts have to hold that unless fraud and misrepresentation are writ large any exercise of suo motu powers should be within reasonable time and long delay in exercise of such power would be illegal. As already mentioned only exception is that when fraud or misrepresentation are alleged it does not lie with the person to get the benefit of such fraud to contend that the competent authority is incompetent to exercise such power. In *M/s. Hindustan Times Limited Vs. Union of India and Others*, , the Supreme Court while referring to Patil Raghav Nath's case (supra), again reconsidered the question in the context of Constitutional validity of Section 14-B of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 observed as under:

It is true that a principle has been laid down in *State of Gujarat v. Patil Raghav Natha* which dealing with suo motu revisional jurisdiction that though there is no period of limitation prescribed for exercise of that power still such a power must be exercised within reasonable time. The said judgment has been applied in matters relation to Section 6 of the Land Acquisition Act in a large number of cases, which were all referred to recently in *Ram Chand v. Union of India* (1994) 1 SCC 4. In our view, this line of cases cannot ordinarily apply to withheld by a defaulter, who holds them in trust.

19. Therefore, the submission of the learned Counsel that the Land Reforms Tribunal ought not have exercised power u/s 16(5)(b) of the Rules after along lapse of 18 years cannot be considered.

20. Further, as rightly contended by the learned Counsel for the petitioner surrender proceedings u/s 10 of the Act reached the stage of finality only on 18-11-1991 when the Tribunal took possession of the land surrendered by the petitioner herein. The application under Rule 16(5)(b) of the Rules was admittedly filed on 18-9-1995 and therefore factually the submission that there is delay of 18 years is incorrect. I, therefore, hold on point No.2 that for exercise of power under Rule 16(5)(b) of the Rules there is no period of limitation prescribed and by process of legal interpretation it is not proper for this Court to

read any limitation into such provision. Point No.2 is answered accordingly.

In Re Point No.3

The learned Counsel for the petitioner has not made any serious attempt that in respect of two items of land the petitioner claimed deletion twice. It was done intentionally. By very definition showing the existence of the facts when they are actually nonexistent is fraud. Both the Tribunals categorically found that the land in S.No.163 was deleted from the holding twice and that the land in S.Nos.148 and 154 though deleted from the holding of the petitioner was accepted for the purpose of surrender as though it is included in the declaration of the petitioner. It is purely a question of fact. It is well-settled that Section 21 of the Act is in pari materia with Section 115 of the Code of Civil Procedure, 1908 and therefore the High Court should not ordinarily interfere with the finding of facts recorded by the Tribunals under the Act.

21. In the result, for the aforementioned reasons, the civil revision petition is dismissed. No costs.