

(1995) 09 AP CK 0019

Andhra Pradesh High Court

Case No: Writ Appeal No's. 860, 948 and 1015 of 1989 and W.P. No. 13874 of 1992

Smt. P. Mangamma and Others

APPELLANT

Vs

The Women's Co-operative
Housing Society Ltd. and Others

 The Women's Co-operative
Housing Society Ltd. Vs Collector

 Vishnukumar Moorjani and
Others Vs The District Collector
and Others

RESPONDENT

Date of Decision: Sept. 25, 1995

Acts Referred:

- Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 - Section 163B, 166B
- Laoni Rules, 1950 - Rule 16, 17, 18, 19, 20

Citation: (1995) 3 ALT 330

Hon'ble Judges: S.R. Nayak, J; Lingaraja Rath, J

Bench: Division Bench

Advocate: V. Lakshmi Devi, J. Suresh Babu, B.V. Subbaiah and A. Anasuya, in W.A. Nos. 860/89, 1015/89 and 560 of 1990, S. Venkata Reddy, C.V. Mohan Reddy and S. Srinivas Reddy, in W.A. 948/89 and C.B. Rammohan Reddy and D.L. Kiran Prakash, for the Appellant; Govt. Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

Common questions of law and that of facts do arise for consideration and resolution in this batch of Writ Appeals and Writ Petitions and all these Writ Appeals and Writ Petitions have a common factual background. Therefore all these Writ Appeals and Writ Petitions were clubbed and heard together and they are being disposed of by this common judgment.

2. Although there are certain factual controversies between the parties, the undisputed facts be summarised as under:

In the year 1953 the Tahsildar assigned the following parcels of land comprised in the Government poromboke land bearing Survey No. 403 of Shaikpet village of former Hyderabad west taluk, presently part of Golconda taluk of Hyderabad district, in favour of the following 11 persons under the Laoni Rules, 1950, hereinafter shortly referred to as "the Rules".

S.No.	Name of the assignee	Extent of land
		Acs. Gts.
1.	Sri Yelliah	10-00
2.	Sri Makkala Sayanna	9-00
3.	Sri Gowlikari Eraiah	6-35
4.	Sri Gowlikari Erraiah	3-00
5.	Sri S.H. Ramiah	6-20
6.	Sri S.H. Ramiah	3-20
7.	Sri Mukkala Sayanna	0-37
8.	Sri Sevalli Sayanna	9-39
9.	Sri Secalla Balaiah	8-35
10.	Sri Sevala Mallaiah	8-36
11.	SriSivalaMalliah	1-05

3. It is stated that these assignees sold the lands through the registered sale deeds to different persons during the period 1963 to 1967 and there has been subsequent sales by the purchasers also. Writ Appeal No. 860 /1989 arises out of the common judgment dated 4-4-1989 passed by the learned single Judge of this Court in W.P.6120/1986 and W.P. No. 13097/1987. Writ Petition No.6120/1986 was filed by the Women's Co-operative Housing Society Limited, Hyderabad. Writ Appeal No. 948/1989 is filed by the said Society whereas Writ Appeal No. 860/1989 is filed by 26 individuals who claim to have built houses on the plots allotted to them by the Society and living therein. W.A.M.P. No. 441 /1995 was filed by one Smt. G. Nutanbala in W.A. No. 860/1989 seeking permission of the Court to implead herself as a party to the Writ Appeal claiming herself to be a purchaser of a plot from the appellant-Society by way of sale deed dated 13-2-1985. Writ Appeal No. 560/1990 arises out of the judgment dated 25-4-1990 passed in W.P. No. 5653 of 1990 which was filed by the legal representatives of one Sevalli Sayanna one of the assignees. The said Writ Petition was dismissed by the learned single Judge of this Court at the stage of admission itself. Writ Appeal Nos. 13874/1992, 13875/1992, 13876/1992, 13877/1992, 13878/1992 and W.P. No. 16220/1992 are filed by some of the purchasers of the sites from the allottees of the sites from the Society. Appellants in W.A. No. 560/1990 have got themselves impleaded in W.P. Nos. 13874/1992,13875/1992,13876/1992, 13877/1992 & 13878/1992 as respondents by the orders passed by this Court in W.P.M.P. Nos. 21439/1994, 18831/1994, 18940/94,

18941/94 and 18939/94 respectively. Writ Appeal No. 1015/1989 arises out of the judgment and order dated 4-4-1989 passed in W.P. No. 13097/1987 and this appeal is filed by two purchasers, namely, M/s. G. Govinda Rao and G.V.K. Rama Rao who claim to have purchased the land from the original assignees.

4. In all these cases except in W.P. Nos. 13874/1992, 13875/1992, 13876/1992, 13877/1992, 13878 /1992 and 16220/1992 uniform relief claimed is for quashing of the order dated 18-12-1974 passed by the Collector, Hyderabad district u/s 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, hereinafter shortly referred to as "the Act". The relief claimed in W.P. Nos. 13874/1992, 13875/1992, 13876/1992, 13877/1992, 13878/1992 and 16220/1992 is for issuance of a writ of mandamus to declare the action of the respondents-authorities in interfering with the possession and enjoyment of the petitioners' land as illegal and arbitrary and for a consequential direction to the respondents-authorities not to interfere with the peaceful possession and enjoyment of their respective lands.

5. The District Collector, Hyderabad by his proceedings No.F4/5949/83, dt. 18-12-1984 cancelled the assignment of the lands made by the Tahsildar, West referred to above in favour of the following seven persons:

SI. No.	Sy. No. as per Survey records	Sy. No. as per Revenue records	Extent Ac. Gts.	Name of the assignee under Special Land Revenue Rules.
1.	403/120/3	403/4P	10.00	Sri Yelliah S/o Malliah
2.	403/120/7	403/8P	9.03	Sri Makkala Sayanna son of Siddaiah.
3.	403/120/6	403/7P	6.35	Sri Gowlikari Eraiah son of Rajaiah
4.	403/120/8	403/9P	6.20	Sri S.H. Ramaiah S/o Baliah
5.	403/151/2	403/13P	3.20	Sri S.H. Ramaiah son of Balaiah
6.	403/120/11	403/12P	0.37	Sri Mukkala Sayanna S/o Siddaiah
7.	403/120/9	403/10P	9.39	Sri Sevali Sayanna S/o Ramanna

6. This order is made by the District Collector by virtue of the power granted to him u/s 166-B of the Act. Section 166-B of the Act deals with the power of revision vested in the Government and its officers to call for records of a case or proceeding from a subordinate department, inspect it in order to satisfy itself or himself that the order or decision or the proceedings taken is regular, legal and proper and to pass suitable order in that behalf. The proviso to sub-section (1) of Section 166-B of the Act provides that no order or decision affecting the rights of the not shall be

modified or annulled unless the concerned parties are summoned and heard.

7. As pointed out supra, the order made by the District Collector dated 18-12-1984 cancelling the assignments made in favour of seven persons was called in question in WritPetitionsexceptinW.P.Nos.13874/1992,13875/1992, 13876/1992,13877/1992,13878/1992 and 16220/1992 on several grounds. It is the case of the appellants-petitioners that after the assignments in favour of the aforementioned 11 persons, those persons in turn sold lands to the Society for valuable consideration and the Society in turn made the lay-out and allotted the sites to its members, betterment charges in respect of the lands were paid to the Municipal Corporation, the purchases were made on payment of market value, the lay outs submitted by the petitioners were approved by the authorities of the Municipal Corporation in or around 1969. It is the case of the Society that after the lay-out was approved by the Municipal Corporation the plots were made and were allotted to its members and many of them have already constructed the houses and they are residing therein.

8. Before the learned single Judge the impugned order made by the District Collector dated 18-12-1984 u/s 166-B of the Act was assailed on the grounds that -

(i) The District Collector has no jurisdiction to revise the order of the Tahsildar after a lapse of nearly 30 years and even assuming that there was some irregularity in assigning the lands in favour of the 11 persons, the Collector ought to have initiated proceedings u/s 166-B of the Act within a reasonable time;

(ii) The Collector ought to have seen that the Society and others purchased the lands from the assignees and purchasers from the assignees in good faith and for valid consideration and after taking due care;

(iii) The District Collector ought not to have cancelled the assignment having regard to the fact that most of the allottees and the purchasers from allottees have constructed pucca buildings in the lands investing huge sum of money and they are residing therein;

(iv) The District Collector ought to have seen that Section 47 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 was repealed in the year 1969 and therefore it was not open for him to consider the effect of non-obtaining permission to sell from the Tahsildar u/s 47 of the said Act;

(v) The District Collector ought to have seen that under Rule 18 of the Rules the assignment order made by the Tahsildar need not be confirmed by the Collector or any authority; and certain other grounds.

The learned single Judge after noticing the rival contentions put forth by the petitioners-appellants and the respondent-authorities is of the opinion that the contentions raised by the petitioners-appellants are matters to be considered by the District Collector afresh after affording an opportunity to them. In that view of the

matter the learned single Judge by his order dated 4-4-1989 made in W.P. No. 6120/1986 and W.P. No. 13097/1987 quashed the impugned order made by the District Collector insofar as the petitioner therein are concerned and the petitioners were directed to submit their objections before the District Collector within a period of two months from 4-4-1989. The District Collector is directed to receive such objections and to dispose of the same on merits according to law

9. As already pointed out supra Writ Petition No. 5653/1990 was filed by the Legal representatives of one Sevali Savanna who was one of the original assignees of the land in the year 1953. In the said writ petition the legal representatives of Sevali Sayanna had questioned the validity of the order made by the District Collector dated 18-12-1984. The learned single Judge summarily rejected the said writ petition on the ground that the parties have already approached the Civil Court and the writ petition could not be entertained. This order was made by the learned single Judge on 25-4-1990.

10 Before us the same grounds and contentions which were urged in the writ petitions were reiterated. The first ground urged before us is that even assuming that there were certain irregularities in the procedure adopted by the Tahsildar while assigning the lands in the year 1953, it is totally impermissible for the District Collector to pass the order u/s 166-B of the Act after a lapse of 31 years from the date of the assignment. In support of this submission the learned counsel appearing for the parties have placed reliance on the decision of the Supreme Court in [The State of Gujarat Vs. Patil Raghav Natha and Others](#), ; and the decision of the Division Bench of this Court in A. Kodanda Rao v. Government of Andhra Pradesh 1981 (2) ALT 280 : 1981 (2) APLJ 158. and judgment in Writ Appeal No. 1521 of 1988 - S.B. Dharma Reddy v. The Director of Settlements, A.P. Hyderabad and Anr. 1989 (1) ALT 51 The learned Counsel for the appellants and the petitioners have also placed reliance on the decision of the Division Bench of this Court in Sanjay Rural Electrical Co-operative Society Limited, Jogipet v. G. Mallaiah and Ors. to which one of us (Lingaraja Rath, J.) was a party to contend alternatively that even assuming the assignment made by the Tahsildar in the year 1953 is illegal and defective nevertheless it is not open to the District Collector to resume the land by cancelling the assignment and the actual resumption of the land is a matter for the Common Law Courts and resumption of the land cannot be straightaway resorted to by the authorities. Therefore it becomes necessary to consider and decide the first contention raised by the learned Counsel for the appellants and the petitioners relating to inordinate delay in initiating the proceedings by the District Collector under Sec166-B of the Act. It is so because if the contention of the appellants and the petitioners in that regard is upheld there will not be any necessity to decide the other questions urged before the Court.

11. The Supreme Court in [The State of Gujarat Vs. Patil Raghav Natha and Others](#), held that although there is no period of limitation prescribed u/s 211 of the Bombay

Land Revenue Code the power of the Commissioner to revise u/s 65 of the said Act must be exercised within a reasonable time and the question whether the Commissioner has sought to revise the order u/s 65 within a reasonable time or not must be determined by the facts of individual case and nature of the order which is being revised. The Apex Court in para 11 of the Judgment held as under:

"The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

12. In a *Kodanda Rao v. Government of Andhra Pradesh* (2 supra) the Division Bench of this Court dealt with the power vested in the Director of Settlement u/s 52 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Division Bench held that the suo motu power of the revision vested in the Director of Settlement should be exercised within a reasonable time and in that case that power was exercised by the Director of Settlement suo motu after a lapse of 12 years and the Division Bench condemned the action as illegal and bad. In that connection the Division Bench observed thus in para 10 of the Judgment as under:

"A Division Bench of this Court in *K. Venkata Reddy and Ors. v. The Director of Settlements, Survey and Land Records: Hyderabad and Ors.* 1975 (1) A.P. LJ 111, has considered the contention that the revisional powers conferred on the Director of Settlements can be exercised only within a reasonable time and that the said power exercised after a lapse of seven years from the date of the grant of pattas to the applicants cannot be said to have been exercised within a reasonable period and observed that "nowhere does the Act fix the period within which the Director of Settlements has to exercise his suo motu revisional jurisdiction". After referring some of the decisions of the Supreme Court, the Division bench observed:

"The only limitations to which the power is subject are that the revisional authority should not trench upon the powers which are expressly reserved by the Act, or rules to other authorities and should not ignore the limitations inherent in the exercise of those powers...." There can be no doubt that where no period of limitation is prescribed by the Act or the Rules made there under for the exercise of the suo motu power of revision, the exercise of that power cannot be impugned on the ground that it is barred by limitation. No period of limitation can be imposed otherwise than by statute or the rules made there under. But nonetheless, merely because power is vested in an authority to revise the orders of the subordinate authorities suo motu, (as observed by our learned brother Jeevan Reddy, J. in the order under appeal) "the power has to be exercised within a reasonable time". In our view in cases where no period of limitation is prescribed under the statute or the rules made there under, for exercise of Revisional powers suo motu, the question for consideration is not whether the exercise of the power is barred by

limitation for in the absence of a period of limitation prescribed under the Act, the question of bar of limitation cannot arise it is a question of the reasonable period of limitation within which that power should be exercised where the question is one exercising that power within a reasonable time and what is reasonable period would undoubtedly be dependant upon the facts and circumstances of each case."

The Division Bench of this Court in W.A. No. 1521 /1988 (S.B. Dharma Reddy v. The Director of Settlements, Andhra Pradesh, Hyderabad and Anr. (2-A supra)) held that exercise of revisional power by the Director u/s 52 of the Estates Abolition Act after a lapse of 27 years from the date of the grant of patta is totally unreasonable and oppressive. Therefore in the light of the decisions of the Apex Court and that of our Court what is required to be seen is whether it could be said that the District Collector exercised his revisional power u/s 166-B of the Act within a reasonable period having regard to the facts and circumstances of the present case.

13. To decide this question it becomes necessary to take into account all the attending facts and circumstances of the case and the subsequent developments intervening the third party interests. In the year 1953 different parcels of the land were assigned in favour of 11 persons under the Special Laoni Rules. The relevant rules are the Rules 15,16,17,18,19,20 and 21. They read as under:

"15. No lands in the special areas notified u/s 58~A of A.P. Telangana Area Land Revenue Act, shall be assigned except in accordance with the following rules:-

(a) The object of the Special laoni is to make land available in certain areas to such landless persons of agricultural and backward classes as may be notified from time to time, and who have not sufficient means to purchase land either at the ordinary laoni auctions or otherwise. The selection of the most deserving applicant should be made by the Tahsildar after due publicity in the village or at the place fixed for the allotment proceedings.

(b) Special laoni, proceedings may ordinarily take place twice a year in the months of April and Spetember, and may also take place at other times when the Tahsildar is visiting the locality.

16. In making selection for special laoni, preference shall be given to persons who reside in the village, but do not possess any patta or shikmi rights in any land in the village elsewhere or who have insufficient land but possess bullocks and agricultural implements. Persons who are already cultivating lands are "asamis" or "bataidars" shall be given preference over other labourers.

17. The persons selected by the Tahsildar shall be given possession of the land after auctioning the timber standing thereon. The auction purchaser shall be required to remove the timber within the time fixed by the Tahsildar having regard to the area and the volume of timber standing thereon;

Provided that where the auction purchaser is the person selected he shall be entitled to take possession of the land with the standing timber after payment of the auction amount:

Provided further that where the Tahsildar has sufficient reasons to believe that the means of such person make it difficult for him to pay the auction amount in one lumpsum, he may report accordingly to the Collector while submitting his proposal for the selection of such a person for confirmation of the Collector. The Collector may, if he thinks fit, order that the auction amount shall be recovered in three annual instalments, commencing from such date as may be fixed by the Collector according to his discretion and circumstances of the case.

18. The selection by the Tahsildar of any person for special laoni shall be confirmed by the Collector within a month from the date of the proposal for such selection, after satisfying himself that there has been no material irregularity in the proceedings.

19. The allottee of the land shall prepare the land for cultivation within three years of being placed in possession and commence cultivation of the land thereafter. The pattadar may be rejected by the order of the Collector for breach of any of the above conditions:

Provided that he has been served with a notice calling upon him to comply with the conditions which he has violated and he fails to comply with it within three months of the date of service thereof. If land has been transferred in contravention of the conditions, the Collector may reject the transferee.

20. After sanction has been accorded by the Deputy or Assistant Collector in the case of ordinary laoni and by the Collector in the case of special laoni, the Tahsildar shall obtain an agreement from the person to whom land is to be allotted and after recovering any amounts due shall give him permission in writing to occupy the land.

21. The Tahsildar shall be careful not to give such permission until the auction amount of the timber, has been paid, unless the payment thereof by instalments has been allowed under proviso to Rule 17, All amounts realised from the auction of timber, shall be credited to the Forest Department."

14. The combined reading of the provisions of Rules 15 to 21 makes it clear that after the Tahsildar makes selection of persons for the purpose of assigning the lands he is required to submit his proposal to the Collector for confirmation. Rule 18 of the Rules requires that the selection by the Tahsildar of any person for special laoni shall be confirmed by the Collector within a month from the date of the proposal for such selection, after satisfying himself that there has been no material irregularity in the proceedings. Rule 19 requires the allottee to prepare the land for cultivation within three years of being placed in possession and commence cultivation of the land thereafter. Rule 20 provides for granting permission to the

allottee to occupy the land after necessary sanction is obtained from the Collector in the case of special laoni. It is significant to note at this juncture itself that what is provided under the first part of Rule 17 providing that the person selected by the Tahsildar shall be given possession of the land after auctioning the timber standing thereon. The combined reading of the provisions of Rule 17 and Rule 20 makes it very clear that giving possession of the land to an allottee arises only after Collector accords sanction contemplated under Rule 18. In the present case the certificate issued in Form Appendix "C dt.4-1-53 in favour of Sevali Sayanna who is the predecessor in title of the appellants in W. A. No. 560/1990 was produced before the Court. This certificate is a possession certificate issued by the Tahsildar. Clause (v) of the certificate makes it very clear that the said certificate was issued under orders of the Collector, Hyderabad district and the grantee was allowed to take possession of the land from 4-1-1953. At the time of hearing the Court asked the learned Government Pleader for Revenue to produce the similar certificates issued in favour of other assignees and for that purpose the case was adjourned. The learned Government Pleader was not in a position to place any records in that regard. Under these circumstances we are inclined to believe that similar certificates were also issued in favour of the other assignees. If by the possession certificates issued in the month of January, 1953 the assignees were permitted to take possession of the land in that month itself after obtaining necessary orders from the Collector of Hyderabad district, it is totally untenable and impermissible for the respondent-authorities now to contend that the lands were assigned to the assignees by the Tahsildar without seeking approval of the District Collector. The certificate dated 4-1-1953 clearly belies the claim of the respondent-authorities.

15. sufficient materials are placed before the Court by the petitioners and the appellants to show that after the assignment of the land in question in the year 1953 much water has flown under the bridge and large number of third parties have acquired rights and interests in the lands during this long passage of 30 20 years. The claims of the petitioners and the appellants that the lands were purchased by the Society from the original allottees and the purchasers from them; the lay out plan submitted by the Society was approved by the Municipal Corporation; betterment charges were paid to the Corporation and all these developments took place as far back as in the year 1969 and earlier and subsequently the plots were allotted to the members-allottees and some of them in turn sold those plots in favour of third parties and both the allottees and the purchasers of the plots from the allottees have constructed pucca buildings in the respective plots investing huge sum of money and they are staying therein are not seriously disputed and cannot be disputed by the respondent-authorities. Therefore, it seems to us that the action initiated by the District Collector at this distance of time, nearly after a lapse of 31 years from the date of assignment of the lands and particularly in the premise of the attending facts and circumstances of the case, is totally irrational and unreasonable and violative of fair play in administrative action. If that is so the law laid down by

the Apex Court in *State of Gujarat v. Patel Raghav Natha and Ors.* (1 supra) and this Court in *A. Kodanda Rao v. Government of Andhra Pradesh* (2 supra) and in Writ Appeal No. 1521 of 1988 - *S.B. Dharma Reddy v. The Director of Settlements, A.P., Hyderabad and Anr.* (2-A supra) squarely applies to the facts of this case also. No purpose would be served by permitting the District Collector to decide the case afresh after hearing the petitioners and the appellants at this distance of time. We are not persuaded to hold that the respondent-public authorities were totally ignorant or unaware of the original assignments made in the year 1953 and the subsequent developments.

16. In view of our opinion expressed on the first contention advanced on behalf of the petitioners and the appellants we do not find any necessity to consider the other contentions put forth by the petitioners and the appellants.

17. In the result and for the foregoing reasons we all W.A. No. 860/1989, W.A. No. 948/1989, W.A. No. 1015/1989 and W.A. No. 560/1990 and set aside the order of the learned single Judge dated 4-4-1989 and quash the impugned orders of the District Collector, Hyderabad district dated 18-12-1984 and 17-7-1985. 5

18. In W.P. Nos. 13874/1992, 13875/1992, 13876/1992, 13877/1992, 13878/1992 and 16220/1992 the petitioners have sought for a direction to the respondent-authorities not to interfere with their peaceful possession and enjoyment of their respective parcels of land. It seems that the respondent-authorities were interfering with the lands of the petitioners in these petitions on the basis of the order made by the District Collector dated 18-12-1984. Since we have quashed the said order of the District Collector it is hoped and trusted that the respondents 1 and 2, namely the District Collector, Hyderabad district and the Mandal Revenue Officer, Golconda Mandal will not interfere with the possession of the petitioners on the alleged ground that the original assignment was bad in law. With these observations we dispose of the Writ Petition Nos. 13874/1992, 13875/1992, 13876/1992, 13877/1992, 13878/1992 and 16220/1992. However, it is made clear that if the respondents 1 and 2 interfere with the possession of the petitioners the liberty is reserved for the petitioners to approach competent Civil Courts for restraining them from interfering with their possession.

19. In the facts and circumstances of the case parties are directed to bear their own costs.