

(1997) 04 AP CK 0014

Andhra Pradesh High Court

Case No: Writ Petition No. 2963 of 1992

Yamunanagar Co-operative
House Building Society and
Another

APPELLANT

Vs

Government of A.P. and Another

RESPONDENT

Date of Decision: April 30, 1997

Acts Referred:

- Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 - Section 166, 166B
- Constitution of India, 1950 - Article 226

Citation: (1997) 4 ALT 317

Hon'ble Judges: N.Y. Hanumanthappa, J; G. Bikshapathi, J

Bench: Division Bench

Advocate: E. Ayyapu Reddy, for the Appellant; G.P. for Respondent No. 1 and P.V. Narayana, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.Y. Hanumanthappa, J.

The petitioner had filed this writ petition originally seeking for the relief that writ of Certiorari may be issued to quash the Memo No. 101204/ Asn.III(2)/90-2. dated 14-2-1992 issued by the first respondent. By way of amendment dated 28-3-1997 petitioner sought for further relief viz. to issue writ of Certiorari to quash the notice in Memo No. 101204/ Asn.III(2)/90, dated 22-8-1991 issued by the first respondent declaring it as illegal.

2. A few facts which are necessary to dispose of this writ petition, are as follows:

The petitioner is a Co-operative House Building Society registered under the provisions of the A.P.Co-operative Societies Act,1964. The petitioner and several

others during the year 1979 purchased a portion of the land in survey No. 102 in Hakimpet village for valuable consideration from one Syed Ahmed Nooruddin after obtaining necessary permission from Urban Land Ceiling Authority. From the date of purchase, the petitioner is in occupation and possession of the area purchased by them. Earlier to the purchase the said Nooruddin was granted Ac.28-28 guntas of land in Survey No. 102 in Hakimpet village on payment of 16 times the land revenue under "Laoni Rules" 1950 published in G.O.Ms. No. 62, dated 7-12-1957 issued u/s 172 of the A.P. (Telangana Area) Land Revenue Act 1317 Fasli (hereinafter referred to as "the Act"). The said land was subdivided in the year 1957 into Survey Nos. 102/2 and 102/3 and patta was mutated in the name of said Syed Ahmed Nooruddin. The first respondent Government of A.P. delivered the said land to said Nooruddin in the year 1956 under a panchanama. After assignment the said Nooruddin was in possession of the land and cultivating the same. On 3-6-1965 the Government cancelled the said patta granted in favour of Nooruddin without any notice to him. The said Syed Ahmed Nooruddin filed Writ Petition No. 1520 of 1970 before this Court. By an order dated 24-11-1971 this Court allowed the said writ petition quashing the Government order dated 3-6-1965 issued in G.O.Ms. No. 804 Revenue (Y) Department. Subsequent to the said order, the first respondent gave a notice to the said Nooruddin to show cause why the patta should not be cancelled on the ground that assignment was not in accordance with circular No. 14 of 1954. The said Syed Ahmed Nooruddin submitted his explanation. But the first respondent in proceedings dated 23-10-1976 in G.O.Rt.No. 2166 Revenue Department again cancelled the patta granted to the said Nooruddin. The same was challenged by the said Nooruddin before this Court in W.P. No. 3626 of 1976. This Court by an order dated 21-11-1977 quashed the said G.O. upholding the contention of Syed Ahmed Nooruddin that he is a purchaser of the land under Laoni Rules and that circular No. 14 of 1954 was not applicable in respect of the land in question. The Government by its Memo. No. 37900 V(i)/76-17, dated 7-6-1979 directed the Subordinate Revenue Authority to implement the orders of this Court passed on 21-11-1977. Accordingly, Tahsildar, Khairatabad ordered mutation in favour of the said Syed Ahmed Nooruddin. Then the petitioner and others purchased and took possession of the said land.

3. The second respondent-Society is also a Society registered under the provisions of A.P.Co-operative Societies Acr,1964, whose members consist of only M.L.As. thus it called as M.L.As" Society. It appears that the second respondent also purchased some land situated around the land purchased by the petitioners. Some of the then Ministers are also members pf the second respondent-Society. As the members of the second respondent-Society had position and influence trying to encroach the land of the petitioners on the premise that the survey authorities have located the land in the survey number assigned to them. To prevent the said encroachment, the petitioner filed Writ Petition No. 120 of 1982 and obtained interim order against the second respondent not to disturb from possession. In spite of pendency of writ

petition, the members of the second respondent wielding their influence with the Joint Collector, Hyderabad got the assignment made in favour of the said Nooruddin cancelled. Then the petitioners-Society filed another Writ Petition No. 14 of 1983 challenging the acts and orders of the Joint Collector. Both the writ petitions Viz. W.P. 120/82 and W.P. 14/83 were clubbed and on 22-1-1988 this Court disposed of the same by a common order. To obey the orders of this Court passed in the above writ petitions, the first respondent in its Memo. No. 4024/Assgn.III(2)/82-34, dated 11-9-1990 passed an order directing the District Collector, Hyderabad to mutate the pattas in favour of the members of petitioner-Society in view of their sale deeds executed in the year 1979. He also directed that boundaries of Survey Nos.102/3 and 102/4/1 of Hakimpet village should be fixed by the Director of Survey and Land Records if any request is made by the petitioner-Society to that effect. One Mr .Bhupal Goud questioning the acts of the authorities holding the survey and in fixing the boundaries, filed Writ Petition No. 16712 of 1990. The same was opposed by the petitioner-Society. The said writ petition was disposed of directing that survey of Survey Nos. 102/3 and 102/4/1 of Hakimpet village be held. Following the same, the survey was conducted. In the said survey, it was revealed that the second respondent was wrongly shown some portion of the land belonging to the petitioner-Society as belonging to them. The second respondent-Society brought pressure on the Government not to give effect to the Memo, dated 11-9-1990. It was resulted in 1st respondent issuing a Memo. No. 101204/Asn.III(2)/90, dated 22-8-1991 which is one of the impugned memos in this writ petition purporting to be passed by exercising of powers conferred u/s 166(1)(c) of the Act. The petitioner-Society filed a counter on 31-8-1991 objecting for such a memo as to its jurisdiction and no action should be taken on the one sided report of the District Collector, Hyderabad and also contended that when once the proceedings were concluded Government have no power to review u/s 166(1)(c) that too after a long period. After receipt of the said objections, the first respondent was kept quite and to the surprise on 13-2-1991 the second respondent gave an application to the first respondent to keep the memo.dated 11-9-1990 in abeyance. The machinery of the first respondent moved so fast that within 24 hours i.e., on 14-2-1992 the first respondent passed an order to the following effect:

"On reconsideration, the Government hereby direct that the orders issued in the Government Memo. 1st cited be kept in abeyance until further orders."

Aggrieved by the same this writ petition is filed.

4. The petitioners have attacked the said order dated 14-2-1992 as illegal, without jurisdiction and against the principles of natural justice; that u/s 166-B of the Act, the Government have no power to revise its own orders that too after a long time; on the other hand it has got power to call for the records of the subordinate Department and can satisfy itself whether the proceedings taken are correct or proper and appropriate orders be passed only after notifying the persons

interested. Section 166 of the Act does not give powers to the Government to review the orders. Such power is only available to the Revenue Officer to be exercised within a specified period of limitation. The memo dated 11-9-1990 was issued after a thorough enquiry. Hence, order dated 14-2-1992 is a clear case of misuse of powers. The memo was issued to circumvent the earlier orders passed by this Court in W.P.No. 1520/70, 3626/76, 120/82 and 14/83. The order dated 14-2-1992 should not have been passed as the Minister himself was a member of the second respondent-Society had an interest. Lastly contended that the act of the Government to review its own order not permissible u/s 166 of the Act. Thus contending sought that the petition be allowed.

5. Sri E. Ayyapu Reddy, senior counsel appearing for the petitioner-Society contended that having assigned lands in favour of the said Syed Ahmed Nooruddin and mutation patta granted in his favour by the Government and to reopen the same after several decades is impermissible and it is opposed to the principles of equitable estoppel. The order of the first respondent is contrary to Section 166(1)(c) of the Act as the review is permissible only when an order is passed "under any mistake whether of fact or law or any ignorance of any material fact." But the impugned memo does not disclose any such mistake or error apparent on the earlier proceedings. On the other hand, the memo dated 11-9-1990 was well considered one and the same was passed to give effect to the earlier orders of this Court. The authorities are not right in trying to reopen the case after several years without noticing that even though the authorities have powers to review and the said power has to be exercised within a reasonable time, otherwise it amounts to unsettling the things which were settled long ago. When the land was assigned to Nooruddin as per Laoni Rules after collecting payment equal to 16 times land revenue and possession was delivered under panchanama and subsequently sold some portion of the land to the petitioner-Society and others which was recognised by the Government, the Government is not justified in annuling the said order at the instance of members of the second respondent-Society after a long lapse of time. To support his contention, he placed reliance on some of the decisions of this Court and Supreme Court which will be referred to a little later.

6. The first respondent filed its counter sworn to by one M. Ramanadha Rao, Joint Secretary to Government, Revenue Department. In the counter, it is admitted that writ petitions filed by Nooruddin before this Court challenging cancellation of assignment which were allowed holding that cancellation was without notice and without hearing the petitioner. According to the State, the land situated in Survey No. 102/2 measuring Ac. 14-26 guntas and in Survey No. 102/3 measuring Ac. 14-11 guntas totalling to Ac.28-27 guntas in Hakimpet village was given to Nooruddin not by way of making patta by sale, but the same were assigned to him. But the said Nooruddin did not deposit Rs. 87/- after the issue of supplementary sethwar. While assigning lands Laoni rules were not followed, and the assignee Nooruddin had not cultivated the said land within three years from the date of assignment as seen from

Sesala Pahani and Pahanies. The said Nooruddin was never in possession of the land. The land in question was fully covered by rocks and it was not fit for cultivation. The said Nooruddin was always represented by his G.P.A., that the said G.P.A. sold the lands to the petitioner-Society and others. The application dated 4-7-1975 filed by the G.P.A. was a forged application. It was impersonated and filed with mala fide intention to grab the Government land. The said G.P.A Munneruddin did not appear before the authorities when directed to appear on 19-4-1982 and also he failed to produce any documents to prove the claim of the said Nooruddin over the lands in question. Members of the petitioner-Society started purchasing the land on 7-12-1979. Mutation was not implemented. As such the land remained as Government land. Orders of the Government and Joint Collector were cancelled by this Court purely on the ground of procedural irregularities committed by the authorities in passing the orders. The lands still stand in the Government records as Government lands and mutation not effected in favour of Nooruddin. This Court in W.P.M.P. 18177/85 filed in W.P. 120/82 ordered that status quo obtaining on that date in respect of the possession of the land belonging to the members of the petitioner-Society situated in Survey No. 102/3 and 102/4/1 in Hakimpet village be maintained. In another W.P.M.P.2903/ 86 ordered that no restraint for demarcation of boundaries. The demarcation in respect of lands in question was done and panchanama was done on 6-6-1986 in respect of Survey No. 102/2 and 102/3. Later it was found that the survey conducted by the then Sri Simhadri, Inspector of Survey was wrong. Hence, the Deputy Director of Survey, Settlement and Land Records took up survey of fixing boundaries of demarcation of two villages i.e., Hakimpet and Shaikpet and found that there is no overlapping of area between these two villages. The same was published on 29-11-1988. The W.P. No. 7890/88 filed by the petitioner-Society to publish the report of survey conducted by the said Simhadri, Inspector of Survey was dismissed with an observation:

"Be that as it may it now transpires that there is a serious dispute in respect of the identity of lands purchased by the Society which can only be resolved by competent Civil Court in a properly framed suit after recording evidence."

From the survey, it is clear that only Ac.9-03 guntas in Survey No. 102/3 and 102/4/1 are available. The boundaries of the lands have been refixed on 5-6-1991 as per this Court direction. The Government wanted to review its earlier orders contained in memo dated 11-9-1990 by exercising its powers conferred u/s 166(1)(c) of the Act. The Housing Society was requested on 31-8-1991. The memo dated 22-8-1991 and 14-2-1992 be treated in consequence of the High Court orders dated 28-12-1990 in W.P.M.P. No. 21498 of 1990 wherein this Court had stayed the orders of the Government contained in memo No. 4024/Asn.III(2)/82-34, dated 11-9-1990. The order dated 14-2-1992 passed by the Government is in the nature of temporary stay and not final order, as such violation of principles of natural justice does not arise. The High Court except finding procedural irregularities, never found fault with the merits of the case. Though several attempts were made to serve notices on

Nooruddin and his persons claiming to appear before the enquiry, they failed to appear with an intention to escape from the enquiry.

7. In its additional affidavit, the State took a stand that in "Deccan Chronicle" dated 21-3-1982 the Government had issued notification calling upon all those persons who were in occupation of the lands situated in Hakimpet village to appear before the authority with documents fixing the date of hearing on 19-4-1982. On that date, one Mr. Kader Ali Khan, Advocate appeared for Nooruddin and represented that some persons have purchased the land. This Court by its order dated 19-7-1989 in W.P. No. 7890/88 filed against the District Collector and second respondent and others while dismissing the writ petition observed that there is a dispute in respect of the land purchased by the petitioner-Society that can be resolved by the competent Civil Court. In fact already proceedings are pending before the Civil Court and other authorities, for example, one Smt. Hussain Bee and others have filed suit in O.S. No. 609 of 1986 on the file of 1st Additional Judge, City Civil Court, Hyderabad claiming that Ac.323-29 guntas of land situated in Hakimpet village including the land alleged to have been purchased by the said Nooruddin, belong to her. Some of the Members of the Writ Petitioners Society have initiated proceedings before the Special Court by filing L.G.C. No. 28 of 1996 invoking provisions of A.P. Land Grabbing (P) Act, 1982 against the members of the second respondent-Society. The State filed I.A. No. 249 of 1997 in the above L.G.C. to implead itself as one of the respondents. The land claimed by the petitioner-Society is a Government land as such the petitioners have no claim or right over the said land. If at all they have any claim, the same has to be resolved before the appropriate forum but not under Article 226 of the Constitution of India.

8. The respondent No. 2 filed its counter sworn to by one P. Ramabrahmam, Secretary of the said Society. The stand taken in the counter is that Nooruddin had not acquired any right on the land in question (that a portion of which is sold to the petitioner-Society) for the reason that there was non-compliance of mandatory requirement under Rule 9 of Laoni Rules, 1950 which envisages that a person to whom the land is allotted shall deposit 25% of the value of the land and the balance of 75% within 15 days thereafter. Such requirement was not complied with by the said Nooruddin. On the other hand, the said Nooruddin paid only Rs. 25/- . Because of such default the said Syed Ahmed Nooruddin had forfeited all claims to occupancy right in the said land. Firstly when Nooruddin himself had no claim to occupy the land, the petitioner-Society did not derive right or claim over the property. Secondly the alleged assignment in favour of Nooruddin was contrary to circular No. 14 of 1954 as he did not fall in one or other two types of cases referred to in para 3-A or 3-B of the said circular. As the said Nooruddin was not in occupation of the land; not belonging to S.C. or other backward classes; was not a landless poor person and also not an agriculturist, that he came in possession of the land is not correct. The land in question was a Kancha land. It was not included in the classes of Government land specified in para 1 of circular No. 14 of 1954 and

assignment of Kancha land was prohibited under Government circular No. 51 dated 11-12-1950. The assignment of the said land to the said Nooruddin was cancelled by the Government . As such the Government was entitled to consider for cancellation of assignment on two grounds. Firstly the petitioner was not a bona fide purchaser, secondly the Society did not obtain permission from the competent authority under Urban Land Ceiling Act,1976. The petitioner-Society claiming Ac.15-00 of land out of 100 acres of land allotted to the second respondent-Society under G.O.Ms. No. 176, Revenue Department, dated 9-2-1982. Subsequently,another 4 acres of land in Sy. No. 102/1 of Hakimpet village was allotted to the second respondent-Society. Thus a total of 104 acres of land was allotted to the second respondent-Society from and out of the large extent of the land allotted to the Jubilee Hills Co-operative Society and the land belonging to the Government. After allotment the second respondent-Society made plots on the lands allotted as per the lay out sanctioned by the Hyderabad Municipal Corporation, and the plots were sold to various members by executing registered sale deeds. The order dated 11-9-1990 which the petitioner-Society relying upon obtained by suppressing the facts. The Government is justified in directing to review the said order. The order dated 14-2-1992 is one in the nature of interlocutory order and the Government have not passed any final orders on merits by exercising powers conferred u/s 166(1)(c) of the Act. The writ petition is not maintainable as here the petitioner sought to challenge an interim order.

9. In support of the averments made in the counter affidavit, the counsel appearing for the second respondent while reiterating the contentions raised in the counter-affidavit further urged that there is no illegality in the order dated 14-2-1992 as the said order is an interim order passed by the authority which has got power. The writ petition is not maintainable as the petitioners have requested the Court to decide the issues which are pure questions of facts and to be decided by a Civil Court. They also contended that the proceedings initiated by the Government are well within the powers conferred u/s 166(1)(c) of the Act. Thus contending urged that the petition be dismissed.

10. The main controversy is as to the jurisdiction of the Government in issuing two memos proceeded by its earlier order dated 11-9-1990. Its correctness or otherwise depends upon correct understanding of some of the following sections viz. Section 166 and Section 166-B of the Act.

"166. Review:- (1) Every Revenue Officer may, either himself or the applicant 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 reason 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 Settlement Commissioner or the Collector the review of an order or decision not passed by him is necessary or when any other Revenue Officer, below the rank of a Collector 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 ryot 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 Collector 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." "166-B Revision:- (1) Subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358 F., the Government or any Revenue Officer not lower in rank to a Collector the Settlement Commissioner of Land Records may call for the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may make suitable order in that behalf: Provided that no order or decision affecting the rights of the ryot shall be modified or annulled unless the concerned parties are summoned and heard.

(2) Every Revenue Officer lower in rank to a Collector or Settlement Commissioner may call for the records of a case or proceedings from a subordinate department and satisfy himself that the order or decision passed or the proceedings taken regular, legal and proper and if, in his opinion, any order or decision or, proceedings should be modified or annulled, he shall put up the file of the case with his opinion to the Collector or Settlement Commissioner as the case may be. Thereupon the Collector or Settlement Commissioner may pass suitable order under the provisions of Sub-section (1).

(3) The original order or decision or an authentic copy of the original order or decision sought to be revised shall be filed along with every application for revision."

11. The dispute between the parties in respect of the land in question as to its correctness or otherwise of the assignment claim of Nooruddin subsequently by Yamunanagar Co-operative House Building Society and action of some of the authorities and what steps had to be taken by the authorities were concluded by orders passed by this Court in several writ petitions viz. W.P. No. 1520/70, W.P.No.3626/76, W.P.No. 120/82 and W.P.No. 14/83.

12. In W.P.No.1520/70 this Court while allowing the writ petition the validity or otherwise of the assignment made in favour of Nooruddin was not considered. In W.P. No. 3626/76 while disposing of the writ this Court made the following observation:

"According to Mr. Waghray, the question of the petitioner being in possession for not less than six years prior to 1952 as contemplated by B(2) does not arise in the case of the petitioner because the petitioner's case is, that of an outright purchase of the land in question and that he applied for the grant of unoccupied lands. Therefore, the circular has no impact on the facts of the case. There seems to be considerable force in that contention. But in view of the fact that I hold that the impugned order is vitiated on account of the non-observance of the principles of natural justice, I do not propose to rest my judgment on this ground alone. I am satisfied that the impugned order is bad for the reason that it is violative of the

principles of natural justice and it is liable to be quashed. It is, however, open to the authorities concerned to proceed against the petitioner after giving notice and after giving an opportunity of being heard."

While disposing W.P. No. 14/83 and 120/82 dated 21-1-1988 while making reference to earlier orders and scope of Section 166-B(1) of the Act held as follows:

"Pending disposal of Writ Petition No. 120 of 1982 Anjaneyulu, J. by his order dated 6th March, 1986 directed the 5th respondent to take appropriate action pursuant to the application dated 3-12-1985 filed by the petitioner-society. It is brought to my notice by the petitioner-society that demarcation was done in compliance with the order assured by Anjaneyulu J. If so, the 5th respondent shall publish the same within three months from the date of receipt of this order. I shall not be understood to have adjudicated either the title of the petitioner-society or the title of the correspondent-society? or that of the Government. Writ Petition No. 120 of 1982 is accordingly ordered."

13. When things stood thus, the District Collector, Hyderabad requested the Government to review the order of assignment on the ground that assignment was not valid as the said Nooruddin was not entitled for such assignment. No fraud or misrepresentation on the part of the said Nooruddin or Yamunanagar Co-operative House Building Society and its members referred to. Meanwhile, the Government considering all the material that was made available by its Memo. No. 4024/Assgn.III(2)/82-34, dated 11-9-1990 again making reference to the orders passed by this Court in the above four writ petitions held as follows:

"It is clear from the above chronological narration of facts that in the year 1977, the validity of the assignment in favour of Sri Syed Ahmed Nooruddin was accepted. Therefore, no action was taken to cancel the assignment. In fact, there were no grounds for cancelling the assignment. The grounds on which the assignment was cancelled were negatived by the High Court. This resulted in the Tahsildar issuing the letter for mutation of patta in favour of Sri Syed Ahmed Nooruddin. The Joint Collector also in her orders stated that the sanction of mutation by the Tahsildar was irregular and was liable for cancellation. However, no action was taken by the District Collector or by the Joint Collector to rectify the order of the Tahsildar in time. In fact, it is not mentioned how the mutation by the Tahsildar was irregular, especially when the Government directed the District Collector, Hyderabad to implement the judgment of the High Court. It is therefore, held that the petitioners, who are bona fide purchasers for value and who obtained necessary permission from the Urban Land Ceiling Authority before getting their sale deeds registered, are entitled to have the patta mutated in their names. The District Collector, Hyderabad is directed to mutate the patta in favour of the members of Yamunanagar Co-operative Housing Society according to the registered sale deed executed in their favour in the year 1979.

8. It is represented by the petitioners that in the judgment of the High Court; there was a direction to publish a survey, if there was any, within three months from the date of that order. But, no regular survey appears to have been carried out in accordance with the provisions of the relevant Act and Rules. The petitioners may apply for fixing of the boundaries of S.No. 102/3 and 102/4/1 of Hakimpet village and the Director of Survey and Land Records on receipt of such application may expeditiously carry out the survey and fix the boundaries for the petitioners" lands, after giving notice to all the affected parties in accordance with the provisions of Survey, Settlement Law."

14. A little earlier to the above order one Smt. G. Suchitha Reddy and others had filed Writ Petition No. 7890 of 1988 before this Court against the respondent-Society and others requesting to publish the survey report on the conditions in W.P.No. 120/82 and 14/83 and declare the said report as illegal. This Court by its order dated 19-7-1988 while dismissing writ petition observed thus:

"Be that as it may, it now transpires that there is a serious dispute in respect of the identity of the lands purchased by the Society which can only be resolved by a competent Civil Court in a properly framed suit after recording evidence."

15. When things stood thus, one Ch. Bhupal Goud filed W.P. No. 16712 of 1990 against the Government and the petitioner-Society including the authorities of the Survey Department questioning the memo dated 11-9-1990. In those proceedings in W.P.21498 of 1990 and W.V.M.P. No. 2151 /90 extracting order passed therein observed as follows:

"The respondents are directed to proceed with the fixation of boundaries after giving notice to the concerned persons and complete the same within one month from today and submit a report to this Court and after submission of report, the writ petition shall be posted for final hearing on 1-2-91."

It is now submitted by both the counsels that the Survey has already been effected and boundaries have been fixed after giving notice to the concerned parties and the report 5-6-1991 has been submitted by the Deputy Director (SMLR), Hyderabad Urban District,. However, Mr. E. EUa Reddy counsel for the respondent No. 2 submits that the stay of mutation of pattas in the name of the members of the Society granted by the order, dt. 28-12-1990 may be vacated, for which the counsel for the petitioner has no objection, as such the stay granted by this Court on 28-12-1990 is vacated. The counsel for the petitioner now submits that no further orders are necessary in this W.P. and the Writ Petition may be closed. Accordingly, the W.P.is closed with the above observation."

16. From the above information, it is clear that there is a serious dispute as to the claim between the two societies and competency of the authorities on either revising or reviewing their orders at the instance of several persons.

17. Scope of review and revision under the Act have been referred to above by quoting relevant provisions. The Supreme Court in the case of [Northern India Caterers \(India\) Ltd. Vs. Lt. Governor of Delhi](#), observed as follows:

"A review proceedings cannot be equated with the original hearing of the case, and the finality of the judgment delivered 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". An error apparent on the face of the record exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. If the view adopted by the Court in the original judgment is a possible view, having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record."

18. An authority or Court will always have powers to review its own orders and superior Courts will have the power to revise the orders of the subordinate Courts. However, power of review shall not be confused to one of appellate power. Whenever, a time limit is fixed for review, the review shall be sought within the period prescribed. It can be exercised power beyond the period of limitation provided tenable reasons are given. In other words, the power of review shall be exercised within the reasonable time. This view of ours is supported by the following decisions:

The Supreme Court in the case of [The State of Gujarat Vs. Patil Raghav Natha and Others](#), observed as follows:

"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."

19. This Court in the case of G. Narasimha Murthy v. Director of Settlements 1989 (1) ALT 124 interpreting Section 4(4) and 5 of A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation Act, 1969, held as follows:

"Even though no period of limitation is prescribed under the relevant enactment for exercise of power suo motu, the power should be exercised within a reasonable time. It is not open to the authorities to take action after a lapse of several years, merely on the ground that there is no period of limitation. What is a reasonable time depends upon the facts and circumstances of each case."

In this case, it was only on 29-8-1987 that the impugned notice was issued seeking to exercise the revisional power u/s 4(4) of the Regulation 12 years after the order and nine years after the Director of Settlements had knowledge about the grant of pattas. The exercise of power at this stage is wholly arbitrary and unreasonable. The period of limitation for filing the appeal is only two months. Therefore, the action of

the 1st respondent in seeking to revise the order of the Settlement Officer dated 2-2-1975 in 1987 is unreasonable."

20. In the case of P. Managamma v. Workmen's Co-op., Housing Society Ltd. 1994 (3) ALT 330 (D.B.) this Court held as follows:

"Andhra Pradesh (T.A.) Land Recovery Act, 1917 Fasli, Section 163-B -Assignment of Government land - Revisional power of Collector u/s 166-B of the Act be exercised within a reasonable period having regard to the facts and circumstances of each case - Exercise of that power by cancelling assignments of lands made several years prior thereto and when third parties" interests are involved having acquired rights and interests in the lands and when pucca buildings were constructed therein investing huge sums of money in the mean time - Illegal, unreasonable and oppressive."

21. A division bench of this Court in the case of Ibrahimpatnam Taluk Vyavasaya Coolie Sangam v. K. Suresh Reddy 1996(2) An.W.R. 511 : 1996 (2) ALD 945 (D.B.). while interpreting the scope of Section 50-B of A.P.(Telangana Area) Tenancy and Agricultural Lands Act, 1950, took a similar view. Relevant portion available in para 5 of the judgment is extracted hereunder:

"The law is far too well settled that where power is conferred on an authority to exercise suo moto 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. Absence of arbitrariness in exercise of vested power is only reiteration of the principles of prevalence of Rule of Law. Exercise of such power after 14 to 15 years is *ipso facto* unreasonable."

22. Further the review is available only when it is shown that an order has been obtained by playing fraud or misrepresentation as explained by the Supreme Court in the case of Government of A.P. and Others Vs. Kalleti Chengaiah, which reads as follows :

"Tenancy and Land Laws - Andhra Pradesh (Andhra Area) Estates (Abolition land Conversion into Ryotwari) Act, 18 (26 of 1948) - Sections 5(2) & 11 (a) - Suo motu revision - Reasonability of the time for exercising the power of, held, depends upon the facts of each case - The fact that the Settlement Officer's order granting ryotwari patta u/s 11 (a) had been passed in contravention of the Act coming to the notice of the Director only after enquiry, and records when called for, found to have been destroyed - In such circumstances, suo motu exercise of the power of revision

by the Director even after long lapse of time (over seven years) from the date of the Settlement Officer's Order, upheld - Revision."

23. Again this Court in the case of Linga Reddi v. Director of Settlements, 1997 (1) APLJ 41 held as follows :

"Andhra Pradesh (Andhra Area) Estates Land Act 1908, Sections 10 & 64 - A.P. (A.A) Estates (Abolition and Conversion into Ryotwari) Act, 1948 - Zamindari Estate abolished and taken over by Government by virtue of abolition Act XXVI of 1948 - Persons holding lands enjoying transferable and heritable rights under Estates Land Act (Act I of 1908) - Continue to enjoy the rights of ownership - After abolition of estates - Rough pattas granted and names entered in 10(1) revenue accounts -Collector requested Director of Settlements to initiate suo motu proceedings in respect of such lands - The Director of Settlements initiated proceedings on the ground that preabolition records are not available to hold that the rough pattas granted are valid - without enquiry -Unsustainable - Mere fact that land is not cultivated though capable for cultivation - Rough pattas granted by the revenue authorities cannot be reopened after lapse of long time except when there is proof of fraud or mis-representation while obtaining pattas - Proceedings initiated out of pressure without application of mind - Invalid."

24. While dealing with the power of Government under the Act, the learned single Judge in the case of Muthyalrao Co-operative Housing Society Ltd. Vs. The Government of A.P. and Others, held as follows :

"A.P.(T.A.) Land Revenue Act, 1317, Fasli, Sections 166(1) and 166-A -Limitation Act, 1963, Article 124 - Suo motu review - Period of limitation - Even suo motu power of review cannot be exercised at any time - It shall be done only within 30 days from date of order u/s 166-A of Land Revenue Act read with Article 124 of the Limitation Act.

25. The learned single Judge further held that:

"It is established principle of law that after the judgment is pronounced, the Court or authority pronouncing such judgment or order becomes functus officio and for any reason, if such judgment or order is to be reviewed by such authority, it shall be done within the prescribed time. Finality is also one of the principles of law accepted. Therefore, after the prescribed period of limitation, that judgment becomes final and, if at all, there should be any occasion for setting aside that order or modifying that order, it should be done by the Courts or the authorities higher than that original authority, either under appeal or revision."

26. From the above it is clear that review can be exercised when by playing fraud or mis-representing an order has been obtained, either by production of some important material or evidence which was subsequently discovered which could not be discovered in spite of due diligence before passing an order for review or order

under review has resulted in manifest illegality or resulted in miscarriage of justice. From the facts narrated, it cannot be said that there was any fraud or mis-representation or some material which was not discovered earlier which ended in passing an incorrect order.

27. There is also dispute as to identify of the property. The authorities while exercising powers should have noticed that the issue to be decided is of serious in nature involving rights of the parties on the properties. The authorities who have got powers shall exercise the same with utmost care and caution without giving room for arbitrariness. Their approach shall be honest and aim shall be to do substantial justice. Opinion to be formed as to the correctness or otherwise of the earlier proceedings and claims of the parties shall be just, reasonable, free from malice failing which they result in discrimination and thus violative of Article 14 of the Constitution of India. The powers though existing shall be exercised dispassionately and stand to reason. The same shall not be exercised with a mala fide intention to please some busy bodies as held by the Supreme Court in the cases of [The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others](#), ; [State of Orissa Vs. Dr. \(Miss\) Binapani Dei and Others](#), ; [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others](#), and [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another](#).

28. In the case of Maneka Gandhi (supra 12) the Supreme Court held that:

"We must reiterate here what was pointed out by the majority in [E.P. Royappa Vs. State of Tamil Nadu and Another](#), namely, that "from a positivistic point of view, equality is and the thesis to arbitrariness. In fact equality and arbitrariness, are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. "Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all the requirement of Article 21 would not be satisfied."

29. The above discussion discloses that the power of review sought to be exercised by the Government neither just nor reasonable but influenced by other considerations. The allegation that the Minister incharge of the Department was also one of the members of the second respondent - Society and he should not have proposed for review of the earlier proceedings not denied by the respondents. The powers sought to be exercised, if examined in the light of the decisions of the Supreme Court referred to above, we have to hold that every thing was not fair with

the authorities as such deserves to be discouraged.

30. Now the question will be when it is the duty of the Court is to see that justice is done and multiplicity of proceedings are avoided whether we can mould the relief under Article 226 of the Constitution of India. The scope under Article 226 of the Constitution of India generally not to decide the disputed questions of facts. On the other hand Article 226 will be attracted when deprival of fundamental rights is complained of or breach of statutory right or an order of the authorities is transgression of principles of natural justice. This is general rule. However, in appropriate cases, where both questions of fact and law are involved, to avoid multiplicity of proceedings and to see substantial justice is done to the parties, the Court can exercise its powers under Article 226 of the Constitution of India and grant relief as laid down in [Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, .](#)

"The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioners right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of jurisdiction, though discretionary the discretion must be exercised on sound judicial principles. When the petitioner raises complex questions of fact which may require oral evidence to be taken and the High Court may decline to try a petition."

31. The same principle was reiterated by the Apex Court in the case of [Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, .](#)

32. Thus the Court under Article 226 of the Constitution of India shall not interfere in a disputed question of fact is only a rule of discretion and not exclusion of jurisdiction as held by the Supreme Court in [S.N. Sharma Vs. Bipin Kumar Tiwari and Others, .](#) Whenever there is miscarriage of justice, under such circumstances, the Court can interfere as held by the Supreme Court in the Century Spinning Mills case (14 supra) to the effect that the Court is not incompetent to decide an issue of fact which can be determined from the materials on record.

33. It has been held by the Supreme Court in the case of the [Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, as under :](#)

"The High Courts exercising their jurisdiction under Article 226 have the power to issue a writ of Mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion

or the policy for implementing which such discretion has been conferred. In all such cases and in any fit and proper case a High Court can in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

34. In appropriate and specific cases, though prayer is not made, Court can definitely mould and grant the relief, including the consequential relief as held by this Court in [Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others,](#).

"It is settled law that this Court in applications filed under Article 226 of the Constitution has power to mould the relief taking into account the totality of the circumstances and the exigencies of the situation."

35. It has been observed by the Supreme Court in [Ramesh Kumar Vs. Kesho Ram,](#) as follows :

"The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "continuous cognizance" of the subsequent changes of fact and law to mould the relief."

36. While exercising the powers, the authorities, for any reason, have come to a conclusion that there is dispute as to identity of properties or the petitioner-Society unauthorisedly encroached or grabbed the Government land, several courses are open for the authorities to set right the same instead of attempting to exercise powers which neither appreciable nor permissible under the circumstances. The authorities should not have been harped upon deciding on the civil rights of the parties. The nature of the proceedings initiated convince us that Government wanted to unsettle the things which were settled long ago to decide the civil rights of two private parties. When we found that the action initiated is unjust, illegal and without jurisdiction, it is not proper once again to direct the petitioner to appear and agitate the correctness of the earlier orders and other proceedings of the Government which in fact on the material produced by the Government is bent upon to please others. The order of the Government though is in the nature of interim order, since powers sought to be exercised by the Government are illegal and without jurisdiction, allowing such an order to continue and compel the parties to participate in such proceedings will not only cause great hardship, but it amounts to circumvent the earlier orders passed by this Court in various writ petitions and

directions issued to do a particular act. Such arbitrary and incorrect orders will result in multiplicity of proceedings. Hence, we do not propose to direct the parties once again to agitate their rights before the Government. It is open for them to establish their claim before an appropriate proceedings.

37. In view of the above discussion, the opinion formed, we feel just and proper to quash the proceedings. Accordingly, this writ petition is allowed, orders of the Government Memo. No. I01204/Asn. III(2)/90, dated 22-8-1991 and Memo. No. 101204/Asn.III(2)/90-2, dated 14-2-1992 are quashed. There is no order as to costs