*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA

+ WRIT APPEAL Nos.1105 OF 2018 AND 23 OF 2022

% Date: 17-08-2022

Chief Commissioner, Land Administration, Government of Telangana (previously shown as Andhra Pradesh), Abids, Hyderabad, and others.

... Appellants

v.

$ P.Govind Reddy and others.

... Respondents

! Counsel for the appellants : Mr. J.Rama Chandra Rao
Additional Advocate General

^ Counsel for respondents : Mr. P.Sri Raghu Ram
Senior Counsel for the Respondents

< GIST:

➢ HEAD NOTE:

? CASES REFERRED:

1. 2010 (6) ALD 748
2. (2015) 3 SCC 695
3. (2007) 4 SCC 221
4. (1994) 1 SCC 1
5. (1994) 1 SCC 502
6. 1948 AIR (Madras) 320
7. (2012) 12 SCC 133

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT APPEAL Nos.1105 OF 2018 AND 23 OF 2022

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This common judgment and order will dispose of both writ appeal Nos.1105 of 2018 and 23 of 2022.

2. We have heard Mr. J.Ramachandra Rao, learned Senior Counsel and Additional Advocate General, Telangana, for the appellants and Mr. P.Sri Raghu Ram, learned Senior Counsel for the respondents.

3. Writ appeal No.1105 of 2018 arises out of writ petition No.9707 of 2009, whereas writ appeal No.23 of 2022 arises out of writ petition No.23913 of 2010. Both the writ petitions were disposed of by the common judgment and order dated 14.02.2017.

4. Be it stated that W.P.No.9707 of 2009 was filed to quash order dated 09.04.2008 passed by the Commissioner (Appeals) according permission to Joint Collector, Ranga Reddy District to initiate proceedings for cancellation of supplementary sethwar in respect of lands

admeasuring Acs.26.16 guntas in survey Nos.4, 5, 8, 9, 10 and 14/9-12 of Khanamet Village, Serilingampally Mandal, Ranga Reddy District (briefly 'the subject land' hereinafter) in terms of Section 166-B (3) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F.

5. Second writ petition i.e., W.P.No.23913 of 2010 was filed seeking a direction to interdict the action of the revenue authorities in creating a dispute of location and enjoyment and thus unlawfully dispossessing the writ petitioners from part of the subject land; further seeking a direction to the revenue authorities not to interfere with the peaceful possession and enjoyment of the subject land by the writ petitioners.

6. Order dated 09.04.2008 was passed by the Director (Appeals), also referred to as the Commissioner (Appeals), in the office of the Chief Commissioner of Land Administration in proceedings No.T2/1001/2005. The said proceedings were initiated as per request of the District Collector, Ranga Reddy District for according permission under Section 166-B (3) of the Andhra

Pradesh (Telangana Area) Land Revenue Act, 1317F (briefly, 'the Land Revenue Act' hereinafter) for cancellation of supplementary sethwar in respect of the subject land. By the aforesaid order, permission was accorded to the District Collector, Ranga Reddy District for initiation of proceedings for cancellation of supplementary sethwar dated 24.07.1993 in respect of the subject land, further directing him to verify the two points mentioned thereunder which we will advert to at a subsequent stage of this judgment.

7. By the common judgment and order dated 14.02.2017, learned Single Judge quashed the proceedings No.TS/1001/2005 dated 09.04.2008. Learned Single Judge also noted the statement of the Chief Commissioner of Land Administration that the revenue authorities would not be interfering with the possession of the writ petitioners over the subject land. Both the writ petitions were accordingly allowed.

8. Against the aforesaid judgment and order dated 14.02.2017 passed by the learned Single Judge in

W.P.No.23913 of 2010, Hyderabad Metropolitan Development Authority filed W.A.No.52 of 2018. By the judgment dated 21.09.2021 a Division Bench of this Court opined that Hyderabad Metropolitan Development Authority could not be construed to be a party aggrieved. Accordingly the writ appeal was dismissed. In the meanwhile, writ appeal No.1105 of 2018 was filed. Therefore, while dismissing writ appeal No.52 of 2018 Division Bench clarified that the said decision would have no bearing on writ appeal No.1105 of 2018 which shall be decided on its own merit.

9. Writ appeal No.1105 of 2018 was initially filed by the following appellants:

> (1) Chief Commissioner, Land Administration, Government of Telangana (previously Government of Andhra Pradesh);
>
> (2) Commissioner (Appeals), Office of Chief Commissioner, Land Administration, Government of Telangana (previously Government of Andhra Pradesh);
>
> (3) Joint Collector, Ranga Reddy District; and
>
> (4) Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District.

10. In the proceedings held on 21.09.2021, an objection was raised that Commissioner (Appeals) could not have been joined as an appellant he being the adjudicating authority. This Court held that Commissioner (Appeals) was not competent to file the appeal and accordingly he was struck off from the array of appellants. However, observing that since State of Telangana represented by the Principal Secretary, Revenue was a necessary party, this Court *suo motu* impleaded State of Telangana as the second appellant in the writ appeal in the place of Commissioner (Appeals). Order dated 21.09.2021 reads as under:

> When this Appeal is taken up, it is pointed out that the Commissioner (Appeals) could not have been joined as an appellant, since his order was challenged in W.P.No.9707 of 2009 and the said order had been set aside on 14.02.2017 in the said writ petition.
>
> *Prima facie*, we find force in this contention.
>
> Therefore, we hold that the 2nd appellant cannot file this Appeal and the Appeal insofar as he is concerned is not maintainable and he is struck off from the array of appellants.
>
> Since the State of Telangana, represented by its Principal Secretary, Revenue, is a necessary party, we *suo motu* implead the said party as the 2nd appellant in this Appeal.

> Liberty is given to the State Government and the Additional Advocate General to file fresh affidavit of the competent authority in this matter.
>
> Delete from the caption 'for dismissal' and list on 18.10.2021.
>
> It is open to the private respondents to take all defences available to them in law in the Writ Appeal as well as in the counter affidavits to be filed by them to the affidavit to be filed on behalf of the appellants seeking condonation of delay or suspension of the impugned order.

11. Respondents herein i.e., writ petitioners in W.P.No.9707 of 2009 filed S.L.P. (C) No.3223 of 2022 before the Supreme Court against the aforesaid order dated 21.09.2021. On admission the same was registered as civil appeal No.3632 of 2022 (P.Govind Reddy v. Chief Commissioner). Supreme Court vide order dated 04.05.2022 disposed of the civil appeal. It was noted that Commissioner (Appeals) was the authority that had passed the order dated 09.04.2008. It was challenged in the writ petitions. Supreme Court observed that it was not aware of such an anomalous situation where the authority which passes the order impugned subsequently files an appeal against the judgment of the High Court setting aside the order. Holding that the High Court had

rightly struck off Commissioner (Appeals) as an appellant, Supreme Court observed that deletion of said appellant does not necessarily mean that the writ appeal before the High Court could be dismissed as non-maintainable on that ground but *suo motu* impleadment of the State as an appellant by the High Court was not proper. Therefore, Supreme Court set aside the order dated 21.09.2021 to the extent that it had *suo motu* impleaded State of Telangana as the second appellant in the writ appeal. The High Court was requested to dispose of the appeal proceedings expeditiously.

12. We will refer to the parties to the proceedings as appellants (who were respondents in the writ petitions) and writ petitioners (who are respondents in the writ appeals).

13. Case projected by the writ petitioners as the petitioners in W.P.No.9707 of 2009 is that they are the owners and possessors of the subject land having purchased the same through various sale deeds during the period 23.05.1996 to 04.06.1996 from Smt

K.Kousalya and others. Smt K.Kousalya and others in turn had purchased the subject land from the original pattadars in the year 1995. Original pattadars were assigned the subject land on 08.04.1961 by the Tahsildar, Hyderabad West. It is stated that writ petitioners are *bona fide* purchasers having purchased the subject land for consideration and after investigating the title and revenue records of their vendors. On 25.08.1997, writ petitioners applied for mutation of their names to the Mandal Revenue Officer, Serilingampally Mandal, Ranga Reddy District (referred to hereinafter as 'Mandal Revenue Officer'). Mandal Revenue Officer after obtaining permission from the Joint Collector, Ranga Reddy District (referred to hereinafter as 'Joint Collector') issued pattadar pass books and title deeds to the writ petitioners. On 27.02.2002, District Collector, Ranga Reddy District (referred to hereinafter as 'District Collector') gave permission for mutation and accordingly mutation was effected in the name of the writ petitioners.

14. Writ petitioners wanted to develop the subject land. Therefore, they prepared layout and applied for approval of layout to Hyderabad Urban Development Authority (HUDA) who in turn advised them to obtain 'No Objection Certificate' (NOC) from the Joint Collector. It is in that context, writ petitioners approached Joint Collector for issuance of NOC. Joint Collector vide memo dated 29.04.2004 declined to grant NOC on the ground that there was *status quo* order granted by this Court in respect of the subject land in C.M.P.No.15294 of 2000 in A.S.No.2731 of 1996. According to the writ petitioners, they had filed A.S.M.P.No.312 of 2005 for impleadment in A.S.No.2731 of 1996 to seek clarification that subject land had nothing to do with the dispute in A.S.No.2731 of 1996.

15. At that stage, District Collector wrote letter dated 18.01.2005 to the Chief Commissioner of Land Administration seeking permission for cancellation of supplementary sethwar issued by him in the year 1993 in respect of the subject land.

16. On 02.02.2006, Chief Commissioner of Land Administration held that the request of the District Collector for according permission to initiate action for cancellation of supplementary sethwar under Section 166-B of the Land Revenue Act could not be considered but it was observed that if the matter warranted review it can be taken up *suo motu* by the revisional authority above the rank of District Collector, i.e., Commissioner (Appeals).

17. Notwithstanding the same, Joint Collector again made a similar request to the Commissioner of Land Administration under Section 166-B (3) of the Land Revenue Act. On that basis, proceedings No.T2/1001/ 2005 were initiated, whereafter Director (Appeals), also referred to as Commissioner (Appeals), passed order dated 09.04.2008 according permission as sought for. But the District Collector was directed to verify the following points:

(a) Whether the assignees are ex-servicemen as per the available record? and

> (b) District Collector to satisfy himself on the question as to whether it would be justified in cancelling the supplementary sethwar after lapse of fifteen years when third party interests have been created based on orders/clarifications issued by the revenue officials right from Tahsildar to District Collector?

18. The order dated 09.04.2008 came to be challenged in W.P.No.9707 of 2009.

19. This Court passed order dated 31.12.2010 granting interim stay. It was extended until further orders vide order dated 29.01.2011.

20. The writ petition was contested by the appellants who were arrayed as respondents in writ proceedings. Mandal Revenue Officer filed counter affidavit on behalf of all the appellants. It was stated that application submitted by the writ petitioners for grant of NOC was examined. In the course of examination, it was found that patta certificates were issued in favour of the original assignees Musthaq Hussain and Sri Narsimlu Naik and others from whom the writ petitioners had allegedly purchased the subject land. The patta certificates were found to be not genuine. Accordingly, it was decided to

cancel the supplementary sethwar. In this regard, Commissioner (Appeals) was requested on 16.04.2006 to accord permission for initiation of proceedings for cancellation of supplementary sethwar issued in respect of the subject land. It was contended that copies of certificates submitted by the writ petitioners claiming assignment in the category of ex-servicemen was referred to handwriting expert to verify authenticity. As per report of handwriting expert, the patta certificates were not genuine. Director (Appeals) in the course of the proceedings observed that District Collector had created suspicion that fraud was committed by the original assignees during 1992. Reference was made to G.O.Ms.No.743 dated 30.04.1963 framing guidelines for assigning agricultural lands to armed forces personnel and their dependants. Prior thereto there were no rules to assign Acs.5.00 of land to ex-servicemen. On due consideration, Director (Appeals) passed the order dated 09.04.2008.

21. Writ Petition No.23913 of 2010 was filed by the writ petitioners to declare the action of the appellants in trying to forcibly dispossess them from the subject land as unlawful, praying for further direction to the appellants not to interfere with their possession over the subject land.

22. As already pointed out above, learned Single Judge held that the assignments in favour of the predecessors-in-title of the vendors of the writ petitioners were granted in the year 1961. Supplementary sethwar was granted in the year 1993. After adverting to Section 166-B (3) of the Land Revenue Act and the interpretation given thereto by this Court in **Joint Collector v. D.Narasing Rao**[1], which was confirmed by the Supreme Court in **Joint Collector v. D.Narasing Rao**[2], learned Single Judge held that exercise of revisional power by the Joint Collector after long lapse of fifteen years for cancellation of supplementary sethwar was erroneous, that too, without seeking cancellation of original assignments made in favour of the predecessors-

[1] 2010 (6) ALD 748
[2] (2015) 3 SCC 695

in-title of the vendors of the writ petitioners in the year 1961. Further, learned Single Judge held that such *suo motu* revisional power has to be exercised within a reasonable period. Seeking to exercise revisional powers after lapse of fifteen years could not be permitted. Accordingly, impugned proceedings were quashed.

22.1. In so far the second writ petition is concerned, learned Single Judge noted that on 27.09.2010 interim directions were issued to the revenue authorities not to dispossess the writ petitioners until further orders. Alleging that revenue authorities were trying to dispossess the writ petitioners in violation of order dated 27.09.2010 a contempt case was filed being C.C.No.1498 of 2010. In the said contempt case, an affidavit was filed by Chief Commissioner of Land Administration stating that the revenue authorities were not interfering with the possession of the subject land by the writ petitioners. Contempt case was closed on 26.11.2010. Thus, taking note of the above both the writ petitions were allowed in the above terms.

23. Mr. J.Ramachandra Rao, learned Additional Advocate General has assailed the order of learned Single Judge on the ground that the subject land is Government land. The same was never assigned either to the writ petitioners or to their vendors. Files relating to assignments were fraudulently created in connivance with the lower revenue officials. He further submits that learned Single Judge overlooked the fact that the order dated 09.04.2008 was passed under Section 166-B(3) of the Land Revenue Act was a valid and legitimate order which did not suffer from any legal infirmity. Under Section 166-B of the Land Revenue Act, Joint Collector is competent to call for the record from a subordinate authority to satisfy himself that the order or decision passed in proceedings of assignments of lands in favour of the vendors of writ petitioners were proper, legal and valid. Having found that vendors of writ petitioners had manipulated the record and had created fraudulent documents to substantiate their claim of assignment, Joint Collector had sought for permission from the Chief

Commissioner to cancel the supplementary sethwar which was rightly granted. Therefore, order dated 09.04.2008 cannot be faulted. Learned Single Judge erred in interfering with such a valid order.

23.1. Reverting back to his initial submission of fraud, learned Additional Advocate General submits that in view of the serious dispute with regard to assignment and genuineness of the pattas issued in favour of the vendors, learned Single Judge ought not to have invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India.

23.2. Learned Additional Advocate General has also referred to and relied upon G.O.Ms.No.743 dated 30.04.1963 which provided for assigning lands to ex-servicemen coming into force with effect from 30.04.1963. Claim of the writ petitioners that their vendors were ex-servicemen who were assigned land to an extent of Acs.5.00 in survey No.41 of Khanamet Village in File No.E1/11993/1960 dated 08.04.1961 is on the face of the record falsifies the claim of assignment.

Therefore, Commissioner (Appeals) had rightly accorded permission to the Joint Collector. The assignments could not have been made in 1961 to any ex-servicemen prior to issuance of G.O.Ms.No.743 dated 30.04.1963.

23.3. In the course of the hearing, learned Additional Advocate General produced the original record and submitted therefrom that the subject land was recorded as 'Kharij Katha Sarkari; the entries were manipulated by creating assignment certificates and relying on the same *Bandobust Izafa* was sanctioned by the Assistant Director by issuing supplementary sethwar in File No.G8/2567/93 without verifying the record. He further submits that assignment files maintained and issued by the revenue authorities upto the year 1961 were in Telugu language whereas the patta certificates relied upon by the writ petitioners are in English language. This itself creates grave doubts about the genuineness of the claim. In view of such grave doubts, a full-fledged enquiry is required.

23.4. Writ petitioners have not produced the patta certificates granted in favour of their predecessors–in-interest. Alleged vendors are not ex-servicemen. The fact that patta certificates relied upon by the writ petitioners are forged documents has been buttressed by the expert opinion.

23.5. According to him, if the vendors of the writ petitioners are genuine, they ought not to have remained silent from 1961 to 1993 without inclusion of their names in the revenue records i.e., pahanies. During that period, names of the writ petitioners were not recorded in the revenue records.

23.6. Learned Additional Advocate General further submits that father of the writ petitioners was a Member of Parliament during the period 1999-2004. He had used his influence, whereafter writ petitioners had obtained supplementary sethwar and got their names mutated in revenue records and also obtained pattadar pass books.

23.7. Learned Senior Counsel for the appellants has referred to and relied upon the decision rendered by the Supreme Court in **A.V.Papayya Sastry v. Government of Andhra Pradesh**[3], wherein it was held that when fraud was alleged, State was justified in exercising *suo motu* revisional power under Section 34 of the Urban Land Ceiling Act, 1976 after lapse of ten years. Though no period of limitation is prescribed for exercising revisional jurisdiction under Section 34, in the facts of that case, Supreme Court upheld the exercise of *suo motu* power of revision after lapse of ten years.

23.8. He further asserts that this is a case which is vitiated by fraudulent acts and therefore, all benefits accruing out of such fraudulent acts are required to be set at naught. Question of limitation would not arise when it is a case of fraud. Delay cannot be a ground to defeat fraud. Fraud vitiates all proceedings, administrative as well as judicial. Reference has been

[3] (2007) 4 SCC 221

made to a decision of the Supreme Court in **S.P.Chengalvaraya Naidu v. Jagannath**[4].

24. *Per contra*, Mr. P.Sri Raghu Ram, learned Senior Counsel for the writ petitioners asserts that there is no fraud or illegality in the assignments, as alleged. Writ petitioners being *bona fide* purchasers for consideration and having exercised due diligence while verifying title documents are entitled to the protection under Section 41 of the Transfer of Property Act, 1882. Statutory power under Section 166-B of the Land Revenue Act cannot be exercised after a long lapse of nearly fifteen years. Third party rights which have accrued or created cannot be disturbed.

24.1. Learned Senior Counsel has specifically referred to the letter dated 02.02.2006 of Chief Commissioner of Land Administration and submits that it was clearly mentioned therein that patta certificates were issued to ex-servicemen in 1961; they had sold the lands after obtaining necessary permission from the competent

[4] (1994) 1 SCC 1

authorities; names of purchasers were entered in the revenue records as per mutation orders given by the District Collector after thorough verification of relevant records and accordingly pattadar pass books and title deeds were also issued. Seeking for cancellation of supplementary sethwar on the ground that there was difference in language and signatures of officers was untenable and not based on any valid grounds. Learned Senior Counsel further submits that Chief Commissioner of Land Administration had informed the Joint Collector that if the latter was of the opinion that a case for *suo motu* revision was made out, he should send a detailed report justifying the same by furnishing additional grounds other than the grounds already mentioned. If such a request was not received within a week, it could be presumed that there was no case for revision. Learned Senior Counsel submits that on the face of such clear cut order dated 02.02.2006, District Collector or Joint Collector could not have made a further request to the Commissioner of Land Administration under Section 166-B (3) of the Land Revenue Act for cancellation of

supplementary sethwar on the same grounds. In the above factual background, order dated 09.04.2008 is wholly unsustainable in law as well as on facts. The grounds presently being argued by the appellants alleging fraud on the ground of difference in language and in signatures was gone into by the Commissioner of Land Administration who had thereafter negated the same. Merely creating a suspicion that fraud was played is not enough to dislodge *bona fide* purchasers from their valuable land.

24.2. Learned Senior Counsel has placed heavy reliance on the decision of the Supreme Court in **Joint Collector v. D.Narasinga Rao** (supra 2) to contend that initiation of *suo motu* revisional proceedings after lapse of fifteen years is unreasonable. Learned Single Judge has recorded a finding of fact on perusal of the materials on record that no fraud was played by the predecessors-in-interest of the vendors of the writ petitioners. As a matter of fact, even before such findings were recorded by the learned Single Judge, Commissioner of Land Administration had

recorded categorical findings of fact based on appreciation of evidence. Such concurrent findings of fact may not be disturbed in writ appeal.

24.3. That apart, learned Senior Counsel has referred to and relied upon the order of this Court dated 21.09.2021 dismissing writ appeal No.52 of 2018 filed by the Hyderabad Metropolitan Development Authority assailing common judgment and order of learned Single Judge dated 14.02.2017. He submits that after the said appeal was dismissed, State of Telangana has filed writ appeal No.23 of 2022 with a leave application when more than five years had elapsed after the judgment and order was delivered by the learned Single Judge. Writ appeal No.23 of 2022 is nothing but an abuse of the process of the Court. He further submits that after the writ appeal of Hyderabad Metropolitan Development Authority was dismissed, it has filed an interlocutory application in I.A.No.1 of 2021 for getting impleaded in W.A.No.1105 of 2018. This is again nothing but a sheer abuse of the process of the Court. While writ appeal No.1105 of 2018

is required to be dismissed as there is no infirmity in the judgment and order of the learned Single Judge, I.A.No.1 of 2021 in W.A. No.1105 of 2018 and W.A.No.23 of 2022 are required to be dismissed as those are nothing but abuse of the Court process.

24.4. Winding up his submissions, learned Senior Counsel firstly submits that writ petitioners are *bona fide* purchasers for consideration and therefore, their title and possession are protected by law; secondly, statutory power – be it under Section 166-B(3) of the Land Revenue Act or otherwise where no limitation is prescribed, cannot be exercised after an unreasonable period.

24.5. Learned Senior Counsel has placed reliance on the following decisions:

(1) **Svenska Handelsbanken v. M/s.Indian Charge Chrome**[5]; and

(2) **The Catholic Mission Presentation Convent v. Subbanna Goundan**[6].

[5] (1994) 1 SCC 502
[6] 1948 AIR (Madras) 320

25. Submissions made by learned Senior Counsel for the parties have received the due consideration of this Court. We have also perused and considered the decisions cited at the bar.

26. At the outset, we may recapitulate the undisputed facts which can be culled out from the pleadings and the materials on record.

27. The subject lands were assigned to Musthaq Hussain and Narsimhulu Naik and others on 08.04.1961 by the then Tahsildar of Hyderabad West. From the assignees Smt K.Kousalya and others had purchased the subject land. Writ petitioners purchased the subject land from Smt K.Kousalya and others through registered sale deeds from 23.05.1996 to 04.06.1996 by paying due consideration. On application made by the writ petitioners on 25.08.1997, Mandal Revenue Officer after obtaining permission from the Joint Collector had issued pattadar pass books and title deeds to the writ petitioners. On 27.02.2002 District Collector gave

permission for mutation. Accordingly, names of the writ petitioners were mutated in the revenue records in respect of the subject lands.

28. Writ petitioners with an intention to develop the subject land had applied for approval of layout to HUDA, who in turn advised them to obtain NOC from Joint Collector. Joint Collector declined to grant NOC on the ground that litigation was pending with *status quo* order. Though this was clarified by the writ petitioners it did not have much effect. On the contrary, District Collector on 18.01.2005 wrote to the Chief Commissioner of Land Administration seeking permission for cancellation of supplementary sethwar in respect of the subject land. On 02.02.2006, Chief Commissioner of Land Administration declined to accord permission under Section 166-B of the Land Revenue Act with the observation that if the revisional authority wanted to exercise *suo motu* power of revision, fresh additional grounds be submitted within a week for according permission, failing which it would be construed that there was no case for revision and order

would be passed accordingly. In spite of the said order, without furnishing additional grounds District Collector once again requested Chief Commissioner of Land Administration to accord permission under Section 166-B (3) of the Land Revenue Act for cancellation of supplementary sethwar in respect of the subject land which led to registration of proceedings No.T2/1001/ 2005. This culminated in the order dated 09.04.2008, whereby permission was accorded though District Collector was directed to verify the two points which we have already mentioned in the earlier part of this judgment.

29. Before we advert to Section 166-B (3) of the Land Revenue Act, it would be apposite to deal with the two orders dated 02.02.2006 and 09.04.2008.

30. A perusal of the order dated 02.02.2006 which is in the form of a letter and placed on record by the writ petitioners by way of memo dated 29.08.2019 would go to show that the District Collector had written letter dated 18.01.2005 addressed to the Chief Commissioner of Land

Administration seeking permission for cancellation of supplementary sethwar in respect of the subject land under Section 166-B(3) of the Land Revenue Act. This was followed by several internal communications between the authorities. Ultimately, by the letter/order dated 02.02.2006 Joint Secretary to Chief Commissioner of Land Administration informed the District Collector that the proposal was examined with reference to the grounds raised and connected record furnished. It was stated that from the connected record and office files there was no substantial or conclusive evidence to show that the subject lands were not assigned to ex-servicemen. Patta certificates were issued to ex-servicemen in the year 1961, whereafter they sold the lands on obtaining necessary permissions from the competent authorities. Names of purchasers were entered in the revenue records as per mutation orders passed by District Collector following which pattadar pass books and title deeds were also issued. In the circumstances, Chief Commissioner took the view that seeking permission for cancellation of supplementary sethwar on the ground that there is

difference of language and signatures of the officers was untenable and therefore, the grounds were not valid. In the circumstances, it was declared that District Collector could not exercise power under Section 166-B of the Land Revenue Act. Thus the request to accord permission to initiate action for cancellation of supplementary sethwar was not considered. However, it was observed that if the matter wanted review, it could be taken up *suo motu* by the revisional authority above the level of District Collector i.e., Commissioner (Appeals) exercising delegated powers of Chief Commissioner of Land Administration under the statute. Therefore, Collector was informed that if he was of the opinion that the case warrants *suo motu* revision at appeal level, he should send a detailed report justifying such a revision duly explaining such additional grounds other than the grounds already mentioned with supporting materials within a week. It was clarified that if no reply was received within the stipulated period (one week), it would be presumed that there was no case for revision and

order(s) would be passed accordingly. Order/letter dated 02.02.2006 being relevant is extracted in its entirety:

> I invite attention to the reference 1st cited. I have been directed to inform you that the proposal for according permission to the Joint collector under Section 166-B(3) of the A.P. (T.A.) Land Revenue Act, 1317 Fasli for cancellation of supplementary sethwar in respect of lands covered by Sy. Nos.4, 5, 8, 9, 10, 41/9 to 41/14 has been examined with reference to the grounds raised and the connected record furnished. It is evident from the connected record and the office files of the Collector that there is no substantial or conclusive evidence to show that these lands were not assigned to ex-servicemen. The patta certificates were issued to ex-servicemen in the year 1961 and they sold the lands after obtaining necessary permissions from competent authorities. The names of purchasers are entered in revenue records as per the mutation orders given by the District Collector after thorough examination of the relevant record and accordingly Pattadar Pass Books and title deeds were also issued. Now seeking permission for cancellation of supplementary sethwar on the ground that there is difference of language and signatures of the officers is untenable and not based on any valid grounds.
>
> In the above circumstances of the case, statutorily the Collector cannot exercise powers under Section 166-B of A.P. (T.A.) Land Revenue Act, 1317 Fasli of his own or on permission and thereby interfering with the interests of the third parties. As such, your request for according permission to initiate action for cancellation of supplementary sethwar under Section 166-B of the A.P. (T.A.) Land Revenue Act, 1317 Fasli cannot be considered. However, if the matter warrants review, it

> must be taken up suo motu by the Revisional Authority, above the District Collector level i.e., the Commissioner (Appeals), under delegated powers of Chief Commissioner of Land Administration, A.P., Hyderabad under the said statute.
>
> In view of the above position, if you are of the opinion that this case warrants suomotu revision at appellate level, you are requested to send a detailed report justifying such a revision, duly explaining such additional grounds, other than the grounds already mentioned, with such additional supporting material on record, within a week positively. If no reply is received within the stipulated period, it is presumed that there is no case for revision and orders will be passed accordingly.

31. This order/letter is 02.02.2016. It appears that without complying with the requirements of the said order/letter dated 02.02.2006, District Collector once again approached the office of the Chief Commissioner of Land Administration to accord permission for cancellation of supplementary sethwar. Joint Collector in his letter dated 17.04.2006 which was beyond one week stated that the assignments appeared to be highly dubious and submitted the following five grounds as additional grounds to justify according sanction to cancel supplementary sethwar. These grounds were as follows:

> (1) Original assignment file could not be traced out;
>
> (2) Mandal Revenue Officer had recommended issuance of supplementary sethwar to the writ petitioners on the basis of photocopies of assignment certificates.
>
> (3) Photocopies of certificates of the writ petitioners dated 08.04.1961 were not implemented in the Faisal Patti along with Nukala Mallaiah to whom assignment was made in the same file and on the same date.
>
> (4) The assignments did not come under the category of ex-servicemen as they belonged to Hyderabad State Force.
>
> (5) Certificates issued during the year 1961 were handwritten whereas certificates of the writ petitioners were typed out indicating use of sophisticated typewriter which might not have existed in 1961.

32. It is on that basis that proceedings No.T2/1001/2005 were initiated. Certificates were examined by forensic expert who opined that original signature of the Tahsildar did not tally with the signature of the Tahsildar appearing in the certificates of the writ petitioners. Matter was heard and the records were perused. Director (Appeals)/Commissioner (Appeals) in the order dated 09.04.2008 held as follows:

> 24. Heard the arguments. Perused the grounds and additional grounds for suo-motu enquiry and the reply filed by the respondents and the records placed before me. This case arose on the proposals of the District Collector, Ranga Reddy District, seeking permission

under Section 166-B(3) of the A.P. T.A. (LR) Act, 1317 Fasli to initiate action for cancellation of supplementary sethwar on the following two grounds that:-

i. During 1961, files have been maintained for each assignee and all these files contain patta certificate in Telugu language, while patta certificates stated to be issued and found in AD (S&LRs) Office are in English language with dt. 08.04.1961.

ii. The signature affixed on the certificates do not tally with those certificates issued in the year 1961.

32.1. Thereafter the materials contained in various files were perused following which it was held as follows:

The Joint Collector requested to accord permission to cancel the Supplementary Sethwar 1) suspecting the Typewriter used in preparing the patta certificates is a sophisticated one which may not be available during 1960's, 2) the assignees will not come under the category of Ex-Servicemen and 3) signatures were not tallied. After perusing the record and submissions made by the respondents and Special Government Pleader the following aspects were critically analyzed as follows:

Regarding the Typewriter:- The District collector expressed suspicion over the typewriter which might not be existing at that time (1961). It was mere suspicion without tangible support. The District Collector should have referred the matter to an authentic authority, private/government to verity whether the type writer was used in the patta certificate, is existing as on 1961 or not.

32.2. Director (Appeals) further examined the contention of the revenue authorities that the assignees were not ex-

servicemen who belonged to Hyderabad State Force. This was also nullified as under:

> The District Collector has taken a stand that as seen from the discharge certificates, the assignees do not come under the category of Ex-Servicemen as they belongs to 'Hyderabad State Force'. Perusal of the Memo No.8136/89-F2, dated 04.11.1989 of the Directorate of Sainik Welfare, Hyderabad reveals that the ISF units of Hyderabad State Forces personnel are to be considered as Ex-Servicemen.

32.3. Regarding the contention of the revenue authorities as to limitation *vis-a-vis* fraud, Director (Appeals) concluded as follows:

> The fact that by the time, the respondents were purchasing the property the revenue records were mutated showing the ostensible owner as vendors of the respondents, the consent of the real owner (Government) appears to have been given by virtue of the letter dated 05.04.1995 which till date has not been withdrawn or commented upon, there is no dispute about the consideration paid by the respondents and that they acted in good faith. Since they have specifically made enquiry in the revenue office and seen the registered documents which are basic requirements for a prospective purchaser, who enquired into, hence the character of the respondent that they are the bonafide purchaser for value cannot be denied. However, since the Joint Collector is able to create reasons for enquiry, the matter has been considered.

> 33. The Counsel for the respondent argued that the collector has no power to refer the documents to the Forensic authority for a report and referred to Sections 45, 47, 67 and 73 of the Evidence Act. But the Evidence Act is only applicable to all judicial proceedings in or before any court as per Section 1 of the said Act. The Act has no application to quasi judicial authorities and inferior tribunals (vide AIR 1957 SC 882 – Union of India v. T.R.Varma). Further the Apex Court held that a quasi judicial authority can gather evidence from anyone but it should be made known to the person against whom the said evidence was gathered. (vide AIR 1957 SC 232). In this case, all the material was collected by the respondents under Right to Information Act. For these reasons, the Evidence Act is not applicable to the Collector, R.R. District who is a quasi judicial.
>
> 34. After considering the averments made by the learned Counsel for the respondent and the learned Special Government Pleader it is concluded that there is no concrete evidence that was filed by the District Collector, Ranga Reddy District in support of the claim.

32.4. Thus Director (Appeals) had concluded that there was no concrete evidence filed by the District Collector to support the contention that transactions relied upon by the writ petitioners were fraudulent. In fact, it has been held that the character of the writ petitioners that they are *bona fide* purchasers for value cannot be denied. Director (Appeals) in paragraph 35 of his order dated 09.04.2008 took the view that all the grounds urged by

the District Collector for according permission to cancel supplementary sethwar were not proved logically by the District Collector. The only aspect which remained was applicability of G.O.Ms.No.743 dated 30.04.1963 whereby Government had issued guidelines for assigning agricultural lands to ex-servicemen and their dependents. Since the assignments over the subject land were made to ex-servicemen prior to 19.04.1963, Director (Appeals) held as follows:

> 35. The District Collector's grounds for cancellation of supplementary sethwar is based on the points of 1) not tallying of signatures of the Tahsildar, 2) patta files not available, 3) type-writer used is of sophisticated one, 4) patta certificates were in English and 5) assignment of land to Ex-serviceman G.O., was issued during 1963. The points 1 to 4 are not proved logically by the District Collector, as was also discussed at para 27 but he created suspicion that fraud was played in this case by the original assignees during 1992. The only point left is the 5th point. The G.O.Ms.No.743 was issued on 30.04.1963 wherein the Government issued guidelines for assigning agricultural lands to the Armed Forces and their dependents. Prior to this, there are no rules to assign Ac.5.00 to the Ex-serviceman. But perusal of the Xerox copy of the patta shows the assignees name along with his I.D. number and a copy of the patta was also marked to the 'Major Officer Commanding'. The Xerox copies of the pattas establishes that the Assignment was made to the Ex-serviceman only, which establishes fraud

> on ground that the G.O., to allot land to the Ex-serviceman is not subsisting as on the date of assignment. It is however, argued by the respondents counsel that assignment for any category need not be spell out by G.O., as it is sovereign power of the State. He has also referred to the Board Standing Orders showing that the assignment were being made even earlier to 1961 to the ex-servicemen. Hence, contended that it cannot be assumed and presumed that the assignment rules were not followed. This item has to be verified with relevant rules.

32.5. Finally Director (Appeals) accorded permission to the District Collector for initiation of proceedings to cancel supplementary sethwar dated 24.07.1993 in respect of the subject land under Section 166-B of the Land Revenue Act. At the same time, District Collector was also directed to verify the following:

> (a) Whether the assignees are ex-servicemen as per the available record? and
>
> (b) District Collector to satisfy himself on the question as to whether it would be justified in cancelling the supplementary sethwar after lapse of fifteen years when third party interests have been created based on orders/clarifications issued by the revenue officials right from Tahsildar to District Collector?

33. From the above, it is evident that the order dated 09.04.2008 is contradictory. Director (Appeals) clearly held that all the points urged by the District Collector to

support cancellation of supplementary sethwar could not be logically proved as there was no concrete evidence. Character of the writ petitioners that they are *bona fide* purchasers of the subject land could not be denied. All that the Joint Collector was trying to do was to create a sense of suspicion to justify exercise of power under Section 166-B of the Land Revenue Act. If the above two points were still required to be verified by the District Collector and without verifying the same, Director (Appeals) could not have accorded permission to the District Collector under Section 166-B of the Land Revenue Act. This further buttresses our view that the order dated 09.04.2008 is contradictory.

34. Having discussed the above, we may now turn to Section 166-B of the Land Revenue Act which is extracted as under:

> **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 parties concerned 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 for a subordinate department and satisfy himself that the order or decision passed or the proceedings taken is 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 and 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.

35. From a perusal of the above, it is seen that Section 166-B of the Land Revenue Act deals with the power of revision. Sub-section (1) says that the Government or any revenue officer not below the rank of Collector or 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 the order passed or decision taken by the subordinate

authority or the proceedings leading to such order or decision is regular, legal and proper and thereafter make suitable order in that behalf. The proviso however says that no such order or decision affecting the rights of ryots shall be modified or annulled unless they are notified and heard. However, as can be seen, no limitation period is provided for exercise of such *suo motu* revisional power.

36. This provision came up for consideration before a Division Bench of this Court in **Joint Collector v. D.Narsinga Rao** (supra 1). Exercise of *suo motu* power of revision under Section 166-B of the Land Revenue Act was called in question. This Court opined that even if no period of limitation is prescribed, the power of revision must be exercised within a reasonable time which must be determined by the facts of each case and the nature of the order being revised. Contention of the State that Section 166-B of the Land Revenue Act did not prescribe any limitation and therefore such a power can be exercised at any point of time was rejected.

37. This matter was carried in appeal to the Supreme Court and in **Joint Collector v. D.Narsinga Rao** (supra 2). Supreme Court upheld the views expressed by the Division Bench of this Court. In the facts of that case, Supreme Court was of the opinion that though no time limit is prescribed in Section 166-B of the Land Revenue Act for exercise of *suo motu* power of revision, the same cannot be exercised after five decades; if it is allowed then it would lead to an anomalous position creating uncertainties and complications thereby seriously affecting the rights of the parties over immovable properties. Thus Supreme Court concurred with this Court that *suo motu* revision undertaken after a long lapse of time even in the absence of any period of limitation was arbitrary and opposed to the rule of law. Justice Thakur (as he then was) in his concurring opinion held that even when there is no period of limitation prescribed in the exercise of power, revisional or otherwise, such power must be exercised within a reasonable period. This is so even in cases where

allegations of fraud have necessitated the exercise of such corrective power. It was summed up as under:

> 31. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third-party rights, that cannot be trampled by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.
>
> 32. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to government employees in the year

> 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. Inasmuch as, the notice was issued as late as on 31-12-2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed.

38. In so far allegation of manipulation of record and fraud is concerned, we may note that there is no allegation by the respondents that it is the writ petitioners who had resorted to manipulation of record and had created fraudulent documents. The materials on record do not disclose any such allegation. Though the allegation is that the original assignments in 1961 were wrong and could not have been done because the concerned G.O. dealing with assignment of lands to ex-servicemen came in the year 1963 and that the assignees were not ex-servicemen, no steps were taken to cancel the assignments. It has come on record that the assignees were members of the State Police Force and by subsequent G.O., such members of the State Police Force

were treated as ex-servicemen. As Director (Appeals) himself has stated in the order dated 09.04.2008 that this aspect is required to be verified, without verification and without interfering with the assignment, question of cancellation of supplementary sethwar would not arise. Appellants had also not taken any steps for cancellation of sale deeds of the subject land by the assignees to Smt K.Kousalya and others. Without taking such steps and without coming to any definitive conclusion that the writ petitioners had committed any fraud, permission ought not to have been accorded for cancellation of supplementary sethwar under Section 166-B of the Land Revenue Act that too after fifteen years of issuance of supplementary sethwar and after almost five decades of assignment of the subject land.

39. There is no dispute to the proposition that fraud vitiates all proceedings, judicial as well as administrative, and when it is a case of fraud, limitation cannot be put up as defence. Nonetheless, Supreme Court has time and again sounded a note of caution that mere allegation of

fraud or suspicion of fraud is not enough. Fraud must not only be pleaded but must also be demonstrated and established. Mere raising of suspicion would not be adequate to draw any conclusion of fraud. As Director (Appeals) has pointed out in his letter dated 09.04.2008 that District Collector and Joint Collector have only created suspicion to justify their request for initiating proceedings for cancellation of supplementary sethwar. This is not adequate, more so when several decades have gone by since the initial assignments which have not been cancelled; subsequent sale transactions of the vendors have also not been cancelled; it is the supplementary sethwar of the writ petitioners which has been targeted.

40. In the previous order dated 02.02.2006, the Chief Commissioner while declining permission to cancel supplementary sethwar had categorically held that on the ground of difference in language and signature no such permission could be accorded, being untenable grounds, that too without cancelling the assignments and

subsequent alienations and when third party rights have crystallized.

41. This brings us to Section 41 of the Transfer of Property Act, 1882, which reads as under:

> **41. Transfer by ostensible owner.-** Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:
>
> Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

42. Section 41 says that where with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it. Of course, as per the proviso the benefit of Section 41 of the Transfer of Property Act, 1882 would only be available if the transferee after taking reasonable care to ascertain that

the transferor had power to make the transfer had acted in good faith.

43. Section 41 came up for consideration before the Madras High Court in **The Catholic Mission Presentation Convent** (supra). The question considered by the Court was whether the appellants were entitled as *bona fide* transferees for value from an ostensible owner to seek the protection under Section 41? Madras High Court analysed Section 41 and held as follows:

> 5. It is manifest that, in order to invoke successfully the protection of the section, the transferee must establish that (1) the transferor was the ostensible owner of the properties (2) with the consent express or implied of the real owner and (3) that the transferee paid consideration, (4) acted in good faith and (5) after taking reasonable care to ascertain that the transferor had power to transfer. The Courts below have held that the appellants are not entitled to the protection of the section as they failed to satisfy conditions (2) and (5) though they have established the other conditions. The lower appellate Court appears, however, to have proceeded on the assumption that the "consent express or implied" of the real owner was necessary not only to the transferor holding the property as ostensible owner but also to the transfer sought to be protected under the section. Though, as a matter of grammatical construction, the collocation of the words makes such interpretation possible, it is now generally accepted as the better view

> that those words have reference only to the transferor holding the property as ostensible owner. This is because, as pointed Out in *Fazl Hussain* v. *Mohamed Khazim (56 ALL. 582),* the consent of the true owner to the transfer would by itself estop him under S. 115 of the Evidence Act, and the other requirement of S. 41 as to the transferee taking reasonable care to ascertain that the transferor had power to make the transfer will be rendered nugatory. See also *Satyanarayanamurti* v. *Pydayya (AIR 1943 Madras 459)* and *Fakruddin Sahib* v. *Ramayya Setti (AIR 1944 Madras 299).* The learned Judge's error is, however of no consequence, as he has found that it was not satisfactorily proved that Palaniappa took any part in the 1931 settlement the only conduct relied on as showing his consent, apart from inaction and silence. The questions that arise for consideration are, accordingly, first, whether Palani Goundan or his sons, the plaintiffs, consented expressly or impliedly to the first defendant holding the property as the ostensible owner and, secondly, whether the appellants took reasonable care to ascertain that the first defendant had the power of transfer.

43.1. Thus, to invoke protection of Section 41, the transferee must establish the following:

(1) Transferor was the ostensible owner of the properties;

(2) The consent, express or implied, of the real owner;

(3) Transferee paid consideration;

(4) Acted in good faith; and

(5) After taking reasonable care to ascertain that the transferor had power to transfer.

43.2. In so far reasonable care to ascertain as to whether the transferor had the power to transfer is concerned, Madras High Court opined that the same had to be determined with reference to the circumstances of the particular case, the test being whether he acted like a reasonable man of business and with ordinary prudence. It was further held as follows:

> 9. The position then is this. There is no hard and fast rule that the transferee, after satisfying himself as to the apparent ownership of the transferor, should, in every case, make some further inquiry as regards his power to make the transfer. Nor is it correct to say broadly that once the transferee proves that he has taken the transfer from an ostensible owner in good faith and for consideration, he need go no further and prove that he made inquiries in regard to that title of his transferor such as a reasonable man of ordinary prudence would make, unless the real owner is able to point to something in the circumstances of the case which should lead an ordinarily prudent person to make further inquiry about the transferor's title. Whether any and what inquiry should be made to ascertain that the ostensible owner was the true owner in any particular case depends on the circumstances of that case.

44. This position has been reiterated by the Supreme Court in **V.Chandrasekaran v. Administrative Officer**[7] in the following manner:

> 32. The general rule of law is undoubted, that no one can transfer a better title than he himself possesses; *nemo dat quod non habet*. However, this rule has certain exceptions and one of them is, that the transfer must be in good faith for value, and there must be no misrepresentation or fraud, which would render the transactions as void and also that the property is purchased after taking reasonable care to ascertain that the transferee has the requisite power to transfer the said land, and finally that, the parties have acted in good faith, as is required under Section 41 of the Transfer of Property Act, 1882.

45. Thus, considering all aspects of the matter and in view of the factual narrative which has emerged from the record including in the orders dated 02.02.2006 and 09.04.2008 though conclusions reached in the latter contradicts the findings of fact, we are of the view that learned Single Judge was justified in interdicting the order dated 09.04.2008. We do not find any good ground to reverse such a finding rendered by the learned Single Judge.

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[7] (2012) 12 SCC 133

46. Writ appeals are devoid of any merit and are accordingly dismissed.

Miscellaneous applications, pending if any, shall stand closed.

UJJAL BHUYAN, CJ

SUREPALLI NANDA, J

17.08.2022
pln

Note: LR copy be marked.
(By order)
pln