

A

COLLECTOR AND ORS.

v.

P. MANGAMMA AND ORS.

FEBRUARY 28, 2003

B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Land Laws:*

C

*Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977—Andhra Pradesh (Telangana Area) Land Revenue Act, 1950—Sections 47, 48 and 166 B—Cancellation of assignments of lands to original allottees after 30 years—In writ petition direction by Single Judge of High Court for reconsideration by original authority—Division Bench set aside cancellation order in view of lapse of 30 years—On appeal—Held, reasonableness of period has to be decided in view of surrounding circumstances and relevant factors—Since all the relevant aspects were not considered by the High Court, matter remitted back to Division Bench of High Court.*

D

E

F

G

*Suo motu* proceedings were initiated by District Collector under Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 r/w Section 166B of Andhra Pradesh (Telangana Area) Land Revenue Act, 1950, on the ground that assignments in favour of original assignees were irregular and there were violations of several stipulations and conditions provided under the Special Loani Rules. This was because the transfers made by the original assignees were illegal and in view of the contraventions of the conditions stipulated under Sections 47 and 48 of Land Revenue Act, the assignments were to be cancelled. Accordingly, order of cancellation was passed and the same was challenged before High Court. Single Judge disposing of the writ petition held that simply because 30 years had elapsed, it does not mean that the proceedings have to be automatically closed despite divergent claims; and the petitioners were directed to submit their claims before the competent authority.

H

In appeal, Division Bench held that though there was no time limit fixed for initiation of action it has to be within a reasonable period and therefore, action after about 30 years cannot be maintained. Thus, the order of cancellation was set aside upsetting the directions of Single Judge.

In appeal to this Court, respondents contended that Prohibition Act has no application to the facts of the case and it is applicable only to assignments made by the government; that though there is ban on transfer of the land assigned under the Prohibition Act, but there was no such stipulation under the Rules; and that though there cannot be a rigid formula for determining the reasonable period, but a period of 30 years cannot be termed to be a reasonable period.

Appellants contended that Section 3 of the Prohibition Act contained a deemed provision and assignments before and after the commencement of the Prohibition Act were covered; that certificate showed that there was prohibition on transfer of the land assigned; and that on the facts of the present case, the action cannot be said to have been taken after a long period.

**Disposing of the appeals, the Court**

**HELD:** 1. A reasonable period would depend upon the factual circumstances of the concerned case. There cannot be any empirical formula to determine that question. The Court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case. [434-D; 435-C]

*State of Gujarat v. Patel Raghav Natha and Ors.*, AIR (1969) SC 1997; *Municipal Corporation of Delhi v. M/s Jagan Nath*, AIR (1987) SC 2316 and *Ashok Kumar and Anr. v. Unique Erectors (Gujarat)(P) Ltd. and Anr.*, AIR (1989) SC 973, referred to.

*Labouchere v. Gowson*, (1872) L.R. 13 Ed. Ca. 325, referred to.

2. All the relevant aspects have not been considered by the Division Bench which confined its consideration only to the question of delay. The explanation offered by the appellants and the stand regarding non-applicability of Andhra Pradesh Assigned Land (Prohibition of Transfers) Act, 1977 as raised by the respondents have not been considered by the Single Judge or the Division Bench. It would, therefore, be appropriate to remit the matter back to the High Court for a fresh consideration by the Division Bench. Normally, the question relating to valid initiation of

A action or otherwise is to be decided by the original authority which was the direction given by Single Judge. But at this length of time it is not proper to send the matter back to the original authority. With a view to shorten litigation, the matter is remitted back to the Division Bench.

[435-E-F]

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 13010-13019 of 1996.

From the Judgment and Order dated 25.9.1995 of the Andhra Pradesh High Court in W.A. Nos. 860, 1015, 948/89, 560/90, 13874, 13875, 13876, 13877 and 16220 of 1992.

C WITH

C.A. Nos. 2692-2693 of 1997.

D Altaf Ahmed, Additional Solicitor General, P.S. Mishra and L. Nageshwara Rao, Sr. Advs. G. Prabhakar, K. Ram Kumar, (NP), P. Vittal Rao, Mrs. Sudha Gupta, Mrs. D.V. Padma Priya, for B. Kanta Rao, S.S. Ray, for Mrs. Rakhi Ray, A.D.N. Rao, V.G. Pragasam, Mrs. Anasuya and R. Santhana Krishnan for the appearing parties.

The Judgment of the Court was delivered by

E **ARIJIT PASAYAT, J.** These appeals involve common points and are directed against a Division Bench judgment of the Andhra Pradesh High Court. Factual matrix giving rise to these appeals is as follows:

F Proceedings were initiated by the District Collector, Hyderabad under the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (in short 'the Prohibition Act') read with Section 166(B) of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1950 (in short 'the Tenancy Act'). The *suo motu* action was taken on the ground that there were irregular assignments in favour of the original assignees and there were clear violations of several stipulations and conditions provided under the Special Loani Rules (in short 'the Rules'). Transfers made by the original assignees were illegal. The land situated in Banjara hills area of Shaiktpet village, a prime locality and in view of the contraventions of the conditions stipulated under Sections 47 and 48 of the Tenancy Act, the assignments were to be cancelled. As there was no response in spite of valid notice, order of cancellation was passed on

G 18.12.1984. It was indicated that even though newspaper advertisement was

H

issued requiring the notices to show cause, it did not bring any result. There was no response on the date fixed. The said order was challenged before a learned Single Judge of the Andhra Pradesh High Court, who taking note of the respective stands of the parties disposed of the writ applications, *inter alia*, with the following directions:

“Simply because 30 years had elapsed by the date of filing of the writ petition, it does not mean that the proceedings have to be automatically closed in spite of the divergent claims by the private individuals and the State which required the consideration by the authority concerned. The impugned order is quashed to the extent of the petitioners concerned and the petitioners are directed to submit their objections before the authority within two months from today. The same shall be entertained by the competent authority who issued notice in the paper calling for objections under Section 166-B of the Act and be disposed of on merits according to law.”

Said order was challenged before a Division Bench which by the impugned judgment held that though there was no time limit fixed for initiation of action, it has to be within a reasonable period and, therefore, action after about 30 years cannot be maintained. It was noted that no purpose would be served by permitting the District Collector to decide the case afresh after hearing the parties at this distance of time. Accordingly, the impugned order of cancellation was set aside by upsetting the directions of learned Single Judge.

Mr. Altaf Ahmed, learned Additional Solicitor General appearing for the State of Andhra Pradesh and its functionaries submitted that approach of the Division Bench was clearly on untenable premises. Reference was made to Section 3 of the Prohibition Act, 1977 to contend that it contains a deemed provision, and assignments before and after the commencement of the Prohibition Act were covered. The said Act was enacted in the year 1977. When specific instances of illegal assignments came to the notice of the authorities, a special task force was constituted in the year 1981 and on the basis of decision taken by the concerned authorities action for cancellation was initiated. Proper opportunity was given to the parties which they failed to avail. On equitable consideration, learned Single Judge had permitted a fresh adjudication. There was no reason for the Division Bench to set aside the directions given by learned Single Judge as there cannot be any rigid formula to determine as to what would be a reasonable period of time. On the facts of the present case, the action cannot be said to have been taken

A after a long period.

Per contra, Mr. P.S. Mishra, learned senior counsel appearing for the respondents submitted that the Prohibition Act has no application to the facts of the case. Assignments were made under the Rules by the Nizam. The Prohibition Act is applicable only to assignments made by the Government.

B “Assignments” and “Government” are defined in Section 2(1) and 2(2) of the Prohibition Act respectively. Though, there cannot be any rigid formula for determining the reasonable period, by no stretch of imagination a period of 30 years can be termed to be a reasonable period.

C It was pointed out that under the Prohibition Act there is a ban on transfer of the land assigned but there was no such stipulation under the Rules. This stand is controverted by Mr. Altaf Ahmad with reference to a Certificate dated 4.1.1953 (to which reference has been made in the judgment by the Division Bench) to contend that there was prohibition on such transfer.

D A reasonable period would depend upon the factual circumstances of the concerned case. There cannot be any empirical formula to determine that question. The Court/authority considering the question whether the period is reasonable or not has to take into account the surrounding circumstances and relevant factors to decide that question.

E In *State of Gujarat v. Patel Raghav Natha and Ors.*, AIR (1969) SC 1297) it was observed that when even no period of limitation was prescribed, the power is to be exercised within a reasonable time and the limit of the reasonable time must be determined by the facts of the case and the nature of the order which was sought to be varied. This aspect does not appear to have been specifically kept in view by the Division Bench. Additionally, the

F points relating to applicability of the Prohibition Act, and even if it is held that the Act was applicable, the reasonableness of the time during which action should have been initiated were also not considered. It would be hard to give an exact definition of the word “reasonable”. Reason varies in its conclusions according to the idiosyncrasy of the individual and the times and

G circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child’s toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the judge usually determines what is “reasonable” in each particular case; but frequently reasonableness “belong

H to the knowledge of the law, and therefore to be decided by the Courts”. It was illuminatingly stated by a learned author that an attempt to give a specific

meaning to the word "reasonable" is trying to count what is not number and measure what is not space. It means *prima facie* in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or ought to know. [See *Municipal Corporation of Delhi v. M/s Jagan Nath Ashok Kumar and Anr.*, AIR (1987) SC 2316 and *Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. and Anr.*, AIR (1989) SC 973]. As observed by Lord Romilly M.R. in *Labouchere v. Dawson*, (1872) L.R. 13 Ed.Ca. 325) it is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is reasonable under the circumstances. Reasonable, being a relative term is essentially what is rational according to the dictates of reason and not excessive or immoderate on the facts and circumstances of the particular case.

It is to be noted that the respondents questioned correctness of the orders passed by the Collector by filing writ petitions. As noted above, learned Single Judge had directed the issues to be considered by the original authority. It is a settled proposition in law that even jurisdictional questions can be considered by an authority deciding the question whether proceeding was validly initiated or not.

We find that all the relevant aspects have not been considered by the Division Bench which confined its consideration only to the question of delay. The explanation now offered by the appellants and the stand regarding non-applicability of the Prohibition Act as raised by the respondents have not been considered by the learned Single Judge or the Division Bench. It would, therefore, be appropriate to remit the matter back to the High Court for a fresh consideration by the Division Bench. Normally, the question relating to valid initiation of action or otherwise is to be decided by the original authority which was the direction given by the learned Single Judge. But at this length of time we do not think it proper to send the matter back to the original authority. With a view to shorten litigation, we remit the matter back to the Division Bench as noted above. The parties shall be permitted to place all relevant facts in respect of their respective stands before the High Court which shall consider them in their proper prospective and render its decision. We make it clear that we are not expressing any opinion on the merits of the case. The appeals are disposed of accordingly. Parties shall bear their respective costs.

K.K.T.

Appeals disposed of.