IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT APPEAL NO.3855 OF 2019 (SC-ST)

Dated:06-11-2019

SRI. NARAYANASWAMY vs. THE DISTRICT COMMISSIONER

and Others

JUDGMENT

S.R.KRISHNA KUMAR

This appeal takes exception to the impugned judgment and order dated 14th August 2019 passed by the learned Single Judge in W.P.No.31117/2019, whereby the writ petition filed by the appellant and the sixth respondent has been dismissed.

2. The appellant and the sixth respondent claiming to be the legal representatives of the original grantee initiated the proceedings under Section 4 and 5 of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 (for short 'the PTCL Act') for restoration of the land bearing Sy.No.151 measuring4 acres 9 guntas situated at Hosahalli village, Jala Hobli, Bangalore North taluk, hereinafter referred to as a 'schedule property'. It was their specific contention that the schedule property was granted to

one Thimmappa @ Thimmaiah, who belonged to the SC/ST community on 24th September 1941 subject to the condition that the grantee shall not alienate the land forever. It is also contended that the said granteesold the schedule property vide sale deeds dated 29th March 1966 and 12th January 1972. Subsequently, the schedule property was sold in favour of the third to fifth respondents inthe year 2005.

3. The appellant has further contended that in the year 2007, the appellant and the sixth respondent initiated proceedings before the Assistant Commissioner under Sections 4 and 5 of the PTCL Act. The said petition having been rejected by the Assistant Commissioner, the appellant and the sixth respondent filed an appeal before the Deputy Commissioner, which was withdrawn by filing a memo dated 16th June 2014. Subsequently, the appellant and the sixth respondent once again initiated the proceedings in the year 2015 before the Assistant Commissioner for restoration of the schedule property by seeking nullification of the sale deeds as being violative of the provisions of the PTCL Act. The Assistant Commissioner having allowed the said petition vide order dated 28th September 2015, the third to fifth respondents herein preferred an appeal before the Deputy Commissioner, who allowed the same vide order dated 14th November 2018. The said order passed by the Deputy

Commissioner was challenged by the appellant and the sixth respondent herein before the learned Single Judge.

4. The learned Single Judge by the impugned judgment and order dated 14th August 2019 dismissed the writ petition placing reliance upon the judgments of the Apex Court in the cases of ***Nikkanti Rama Laxmi vs. State of Karnataka*** and ***Vivek M.Hinduja & Others v. M. Ashwatha & Others.***

5. Aggrieved by the impugned judgment and order passed by the learned Single Judge, the appellant has preferred the present appeal.

6. The learned counsel appearing for the appellant submitted that the impugned order passed by the learned Single Judge is erroneous, in as much as the learned Single Judge failed to appreciate that the PTCL Act being socio-beneficial legislation enacted with the object of improving the social and economic conditions of the persons belonging to the weaker sections of the society, in particular, the scheduled castes/scheduled tribes, mere delay in initiating the proceedings would not be fatal to the proceedings and the claim of the appellant could not have been rejected on this ground alone. It was also contended that no period of limitation has been prescribed for initiating the proceedings under the PTCL Act and as such, the learned Single Judge

committed an error in coming to the conclusion that the proceedings initiated in the year 2015 were liable to be dismissed only on account of delay and latches and that the same were not initiated within a reasonable time.

7. Per contra, the learned counsel appearing on behalf of the third to fifth respondents supported the impugned order.

8. We have given our anxious consideration to the contentions urged on behalf of the appellant and perused the material on record.

9. It is not in dispute that the schedule property was granted in favour of the original grantee as long back as on 24th September 1941 and that the grantee had alienated the same under the two sale deeds dated 29th March 1966 and 12th January 1972. It is also not in dispute that the appellant and the sixth respondent had initially initiated the proceedings under Sections 4 and 5 of the PTCL Act in the year 2007, which were withdrawn by them in the year 2014 and thereafter, the proceedings were once again initiated by them in the year 2015, which are the subject matter of the present appeal.

10. In this context, it is relevant to advert to one aspect of the matter, which may not have been dealt with by the authorities as well as by the learned Single Judge but

the same may be relevant for the purpose of deciding the maintainability of the present proceedings. As stated supra, the proceedings under Sections 4 and 5 of the PTCL Act having been originally initiated by the appellant and the sixth respondent in the year 2007, the same was dismissed by the Assistant Commissioner. The appeal filed before the Deputy Commissioner was dismissed as withdrawn pursuant to a memo dated 16th June 2014 (Annexure-E to the writ petition) under which, the appellant and the sixth respondent have unconditionally withdrew the appeal. Under these circumstances, having unconditionally withdrawn the appeal as well as the earlier proceedings initiated by them, the appellant and the sixth respondent could not have initiated the fresh proceedings once again for a second time under Sections 4 and 5 of the PTCL Act on the same set of facts and on the same cause of action in respect of the same subject matter, i.e., the schedule property.

11. In view of the aforesaid undisputed facts and circumstances, we are of the view that once the proceedings under Sections 4 and 5 of the PTCL Act are filed/initiated and the same are either withdrawn or dismissed on merits, a fresh petition/second petition on the same cause of action and the same subject matter under Sections 4 and 5 of the PTCL Act is not maintainable and the same is liable to be dismissed on this ground alone. The second petition is

clearly barred by the principles of estoppel, acquiescence, abandonment and waiver. Accordingly, though a finding in this regard has not been recorded by either the learned Single Judge or the authorities, having regard to the undisputed material on record, a second petition under Sections 4 and 5 of the PTCL Act would not be maintainable and the same is liable to be rejected on this ground alone.

12. Insofar as the contention urged on behalf of the appellant that the proceedings initiated by him along with the sixth respondent in the year 2015 is maintainable and not barred by delay and latches, this question is no longer *res integra* in the light of the pronouncements of the Apex Court as well as the subsequent judgments of this Court following the judgments of the Apex Court.

13. It is now well settled that even if no period of limitation is prescribed for initiating the proceedings for violation of any statutory provisions, the said proceedings have to be initiated within a reasonable time and that the proceedings if any, initiated after a long lapse of time and beyond a reasonable permit are clearly barred by latches and inordinate delay and the same are liable to be dismissed.

14. The Apex Court in the case of ***Ibrahimpatnam Taluk Vyavasaya Coolie Sangham v. K. Suresh Reddy***,

has held as under:

> " 9. Even before the Division Bench of the High Court in the writ appeals, the appellants did not contend that the suo motu power could be exercised even after a long delay of 13-15 years because of the fraudulent acts of the non-official respondents. The focus of attention before the Division Bench was only on the language of sub-section (4) of Section 50-B of the Act as to whether the suo motu power could be exercised at any time strictly sticking to the language of that sub-section or it could be exercised within reasonable time. In the absence of necessary and sufficient particulars pleaded as regards fraud and the date or period of discovery of fraud and more so when the contention that the suo motu power could be exercised within a reasonable period from the date of discovery of fraud was not urged, the learned Single Judge as well as the Division Bench of the High Court were right in not examining the question of fraud alleged to have been committed by the non-official respondents. Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which the suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While exercising such power, several factors need to be kept in mind such as effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other

Acts (such as the Land Ceiling Act). Hence, it appears that without stating from what date the period of limitation starts and within what period the suo motu power is to be exercised, in sub-section (4) of Section 50-B of the Act, the words 'at any time' are used so that the suo motu power could be exercised within reasonable period from the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of the parties. Use of the words 'at any time' in sub-section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of the dictionary meaning of the words 'at any time', the suo motu power under sub-section (4) of Section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power 'at any time' only means that no specific period such as days, months or years are not (sic) prescribed reckoning from a particular date. But that does not mean that 'at any time' should be unguided and arbitrary. In this view, 'at any time' must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation."

(Underline supplied)

15. This has been followed in several judgments of the Apex Court including the cases of ***Situ Sahu & Others vs.***

State of Jharkahnd & Others and ***Joint Collector Ranga Reddy District & another vs. D.Narsing Rao & Others,*** wherein the Apex Court after reviewing the case law on the subject, has held 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.
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> **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".

16. In a recent decision rendered by the Apex Court in the case of ***Chhedi Lal Yadav & Others vs. Hari Kishore Yadav (dead) through L.Rs. & Others[6],*** it is held as under:-

> **12.** It is argued on behalf of the appellants that power of the Additional Collector for restoration of lands could have been exercised suo motu and since no limitation was prescribed for exercise of such power, the delay in this case may be overlooked. This submission presupposes that where the power can be exercised suo motu, such exercise may be undertaken at any time. The submission is directly contrary to a decision of this Court in *Collector* v. *D. Narsing Rao*[*Collector* v. *D. Narsing Rao*, (2015) 3 SCC 695 : (2015) 2 SCC (Civ) 396] where this Court affirmed the view [*Collector* v. *D. Narasing Rao*, 2010 SCC OnLine AP 406 : (2010) 6 ALD 748] of the Andhra Pradesh High Court. Para '17' of the judgment reads as follows: (*D. Narsing Rao case* [*Collector* v. *D. Narsing Rao*, (2015) 3 SCC 695 : (2015) 2 SCC (Civ) 396] , SCC p. 706, para 17)
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> "*17*. … that the 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 concept of rule of law."

Thus, we have no hesitation in rejecting this

contention.

> **13.** In our view, where no period of limitation is prescribed, the action must be taken, whether suo motu or on the application of the parties, within a reasonable time. Undoubtedly, what is reasonable time would depend on the circumstances of each case and the purpose of the statute. In the case before us, we are clear that the action is grossly delayed and taken beyond reasonable time, particularly, in view of the fact that the land was transferred several times during this period, obviously, in the faith that it is not encumbered by any rights.
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> **14.** We are of the view that merely because the legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay as observed by this Court in *Situ Sahu* v. *State of Jharkhand*[*Situ Sahu* v. *State of Jharkhand*, (2004) 8 SCC 340] .
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> (Underline supplied)

17. It is relevant to state that the aforesaid judgments were not rendered with reference to the provisions and proceedings of the PTCL Act. However, in the case of ***Nikkanti Rama Laxmi vs. State of Karnataka & Another 2017 SCC Online SC 1862,*** the Apex Court applied the well settled principles governing the initiation of proceedings after an unreasonably long period to the proceedings under the PTCL Act and consequently held as under:-

> **9.** However, the question that arises is with regard to terms of Section 5 of the Act which enables any interested person to make an application for

having the transfer annulled as void under Section 4 of the Act. This Section does not prescribe any period within which such an application can be made. Neither does it prescribe the period within which *suo motu* action may be taken. This Court in the case of *Chhedi Lal Yadav* v. *Hari Kishore Yadav (D) Thr. Lrs.*, 2017 (6) SCALE 459 and also in the case of *Ningappa* v. *Dy. Commissioner* (C.A. No. 3131 of 2007, decided on 14.07.2011) reiterated a settled position in law that whether Statute provided for a period of limitation, provisions of the Statute must be invoked within a reasonable time. It is held that action whether on an application of the parties, or suo motu, must be taken within a reasonable time. That action arose under the provisions of a similar Act which provided for restoration of certain lands to farmers which were sold for arrears of rent or from which they were ejected for arrears of land from 1st January, 1939 to 31st December, 1950. This relief was granted to the farmers due to flood in the Kosi River which make agricultural operations impossible. An application for restoration was made after 24 years and was allowed. It is in that background that this Court upheld that it was unreasonable to do so. We have no hesitation in upholding that the present application for restoration of land made by respondent-Rajappa was made after an unreasonably long period and was liable to be dismissed on that ground. Accordingly, the judgments of the Karnataka High Court, namely, *R. Rudrappa* v.*Deputy Commissioner*, 2000 (1) Karnataka Law Journal, 523, *Maddurappa* v. *State of Karnataka*, 2006 (4) Karnataka Law Journal, 303 and *G. Maregouda* v. *The Deputy Commissioner, Chitradurga District, Chitradurga*, 2000 (2) Kr. L.J.Sh. N.4B holding that there is no limitation provided by Section 5 of the Act and, therefore, an application can

be made at any time, are overruled.

18. Subsequently, the aforesaid Judgment in the case of ***Chhedi Lal Yadav's*** *case and* ***Nekkanti Rama Lakshmi's*** case were followed and reaffirmed by the Hon'ble Supreme Court in the case of ***Vivek M. Hinduja & Others vs. M.Ashwatha & Others,*** which is held as under:-

> **4.** Arguments have been addressed before us at length on whether the present appellants had perfected their titles on the date of the coming into force of the Karnataka Act. We are not inclined to go into this question because the instant matters can be decided on an aspect settled by this Court in the case of *Chhedi Lal Yadav* v. *Hari Kishore Yadav (D) Thr. Lrs.*, and *Nekkanti Rama Lakshmi* v. *State of Karnataka*. In these two decisions, one of which arose under the Karnataka Act, this Court has held that the authorities entrusted with the power to annul proceedings purported to have been made by the original grantees, must exercise their powers to do so, whether on an application, or *suo motu*, within a reasonable time since no time is prescribed by law for taking such action. In the decided cases, action had been initiated after about 20 to 25 years of the coming into force of the Karnataka Act.
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> **5.** In the present cases, it is undisputed that the action had been initiated after almost 20 years from the coming into force of the Karnataka Act. In principle, we do not see any reason why the delay in the present cases should be considered to be reasonable. There is no material difference between the period of delay in the present cases and he decided cases.

6. Relying on some observations in the case of *Manchegowda* v. *State of Karnataka (1984) 3 SCC 301* and *Sunkara Rajayalakshmi* v. *State of Karnataka (2009) 12 SCC 193*, Shri Sunil Fernandes, learned counsel on the respondents' side submitted that the outer limit for initiating action should be 30 years.

7. We, however, find that the observations in those cases are not apposite and are made with reference to the period of prescription in respect of Government properties under the Limitation Act, 1963.

8. It was also submitted on behalf of the respondents that Section 4 of the Karnataka Act *proprio vigore* annuls a transfer made in contravention of itself. Therefore, it makes no difference if the proceedings are initiated even after 20 to 25 years.

9. We do not find it possible to accede to this submission. This Court in the case of *Board of Trustees of Port of Kandla* v. *Hargovind Jasra (2013) 3 SCC 182* reiterated the necessity of an order of a competent Court or Tribunal before which the impugned order can be declared as null and void. The Court relied on the oft-quoted passage in *Smith* v. *East Elloe Rural District Council 1956 AC 736: (1956) 2 WLR 888,* which reads as under:

"…An order, even if not made in good faith, is still an act capable of legal consequences. *It bears no brand of invalidity on its forehead*. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.' (Smith Case, AC pp.769-70)

(emphasis supplied)

This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out(sic) repeatedly in the House of Lords and Privy council without distinction between patent and latent defects (Ed. Wade and Forsyth in Administrative Law, 7th Edn.1994."

10. In the case of *Pune Municipal Corporation* v. *State of Maharashtra (2007) 5 SCC 211*, this court reproduced the following observations with regard to the declaration of orders beyond the period of limitation as invalid:

"39. Setting aside the decree passed by all the courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the court for declaration that the order against him was inoperative, he must come before the court within the period prescribed by limitation. '*If the statutory time of limitation expires, the Court cannot give the declaration sought for*'."

(emphasis supplied)

11. We are in respectful agreement with the aforesaid observations. It is, however, necessary to add that where limitation is not prescribed, the party ought to approach the competent Court or authority within reasonable time, beyond which no relief can be granted. As decided earlier, this principle would apply even to *suo motu* actions.

(Underline supplied)

19. Applying the law laid down by the Hon'ble Supreme Court to the facts of the present case, the alienations by the original grantee in the year 1966 and 1972 were sought to be set aside in the year 2015 after more than 50 years and after a period of 35 years when the PTCL Act came into force on 01st January 1979.

20. Applying the aforesaid legal position to the facts of the instant case, we are of the considered view that the proceedings initiated by the appellant along with sixth respondent in the year 2015 were not maintainable on account of long, unreasonable and inordinate delay and lapse of time and that the same were initiated after an unreasonably long period of thirty years after the PTCL Act came into force and about fifty years from the date of alienation.

21. Under these circumstances, the learned Single Judge was fully justified in applying the aforesaid law laid down by the Apex Court and dismissing the writ petition. We are of the opinion that there is no merit in the appeal and the same is hereby dismissed.