

CASE NO.:
Appeal (civil) 13010-13019 of 1996

PETITIONER:
Collector and Ors. etc.

RESPONDENT:
P. Mangamma and Ors. etc.

DATE OF JUDGMENT: 28/02/2003

BENCH:

JUDGMENT:

J U D G M E N T

WITH

CIVIL APPEAL NOS. 2692-2693 OF 1997

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:

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 18.12.1984. It was indicated that even though newspaper advertisement was issued requiring the noticees 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 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. "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.

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.

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.

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 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 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 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 & 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 Eq.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 perspective 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.

JUDIS