
(2015) 07 AP CK 0083

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29306 of 2014

Allala Ravinder Reddy

APPELLANT

Vs

The State of Telangana and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) 6 ALD 760 : (2016) 1 ALT 513

Hon'ble Judges : A. Rajasekhar Reddy, J.

Bench : Single Bench

Advocate : T. Surya Satish, Learned Senior Counsel, for the Appellant

Final Decision : Dismissed

Judgement

A. Rajasekhar Reddy, J.—The present writ petition is filed for a mandamus declaring the action of the 2nd respondent in deleting the name of the petitioner from the mutation records of the property bearing H. No. 7-6-222/1 of Jagital Town, Jagital, Karimnagar District with the name of the 4th respondent without following due process of law and following the opinion issued by the 3rd respondent as illegal and arbitrary and for a consequential direction to set aside the proceedings No. A1/1600/2012-13, dated 26-03-2013 in respect of the said property issued by the 2nd respondent.

2. The case of the petitioner is that he inherited the property to an extent of 668 square yards bearing No. 7-6-222/1 (corresponding Old H. No. 6-5-6/2/2 & 6-5-6/2/3) of Jagital Municipality in Survey No. 465 from his father, who originally acquired the same vide document No. 61/1951, dated 02-05-1951 under partition from joint family members towards his share and ever since then his father was holding valid title and possession of the schedule property. It is stated that the above said property was also claimed by the 4th respondent by forging and fabricating various documents and the 4th respondent also filed O.S. No. 201 of 2005 on the file of Principal Civil Judge seeking perpetual injunction against the petitioner with respect to above said property and after the orders

passed on 28-03-2011 in the said suit dismissing the same, the matter was carried by way of appeal before the II Additional District Judge, Karimnagar vide A.S. No. 20 of 2011 and the same was also dismissed on 25-09-2012. While the matter stood thus, on an application made by the petitioner to the 2nd respondent for mutation of his name into the suit schedule property, a clarification was sought by the 2nd respondent to the 3rd respondent and after obtaining clarification, the name of the petitioner was mutated in the revenue records and accordingly cess was also collected from the petitioner and the name of the 4th respondent was deleted from the revenue records and the name of the petitioner was incorporated vide proceedings No. A1/1600/2012, dated 26-02-2013 and subsequently, collected municipal taxes and further provided ownership document vide proceedings No. A1/412/13, dated 05-03-2013 for the property bearing H. No. 7-6-222/1 situated at Jagitial, Karimnagar District and further received Rs. 1,00,800/- towards miscellaneous receipt. After due process the 2nd respondent issued mutation proceedings in favour of the petitioner and subsequently, to the utter surprise of the petitioner, the name of the petitioner was replaced in the municipal records by inserting the name of the 4th respondent vide proceedings No. A1/1600/2012-13, dated 26-03-2013 on the basis of second note put up by the 3rd respondent to the 2nd respondent, which is illegal and arbitrary. Aggrieved by the said proceedings, the present writ petition is filed.

3. The 2nd respondent filed its counter stating that the property in question bears municipal Nos. 7-6-222/1, corresponds to old premises No. 6-5-6/2/2 and 6-5-6/2/3 with more area and in the municipal records/assessment registers, the new members were introduced during financial year 2002-2003 and in the municipal records/assessment registers, the property in question was recorded in the name of father of the 4th respondent (D. Raja Gopal Rao) ever since the year 1975-76 and the same was assessed for vacant land tax and the same was being paid by the father of the 4th respondent. The 4th respondent filed an application dated 02-08-1988 seeking mutation of the said property in her favour and considering the same, transfer was effected in the assessment registered through proceedings No. 840/D1/1989, dated 18-10-1989 and ever since the assessment registers contained the name of the 4th respondent and she was paying the vacant land tax. While the things stood thus, the petitioner filed an application on 04-12-2012 with a request to determine the vacant land tax payable to the said property relying on the judgment in O.S. No. 201 of 2005 on the file of Principal Junior Civil Judge, Jagitial and also the judgment in A.S. No. 20 of 2011 on the file of II Additional District Judge, Karimnagar at Jagitial. The petitioner also claimed title to the property on the basis of a permanent lease deed vide document No. 61/1951. As the document was in favour of 8 persons including the father of the petitioner and grandfather of the 4th respondent, it is not possible to ascertain the title or possession of the property in question in a small extent of 5 guntas. On receipt of the said application, the matter was referred for legal opinion of the standing counsel and basing on the said opinion,

the proceedings dated 26-02-2013 were issued mutating the property in favour of the petitioner and recording the name of the petitioner in the assessment in the place of 4th respondent, but no notice was issued nor opportunity was afforded before passing the orders dated 26-02-2013. The 4th respondent having learnt about the same submitted an objection/complaint to the then Special Officer/Revenue Divisional Officer on 15-03-2013 and also to the then Commissioner on 19-03-2013 by enclosing a copy of the interim order passed in SAMP. No. 593 of 2013 in S.A. No. 238 of 2013 dated 01-03-2013. On receipt of the said objection/complaint the matter was once again referred to standing counsel of the Municipality for his opinion and on receipt of the said opinion, it was noticed that the previous proceedings in favour of the writ petitioner were issued without affording an opportunity to the 4th respondent and also the fact that the judgments placed by the writ petitioner have not attained finality, and hence, the proceedings dated 26-03-2013 were issued canceling the mutation effected in favour of the writ petitioner and to maintain the record as obtaining earlier.

4. The 2nd respondent also stated that the claim of the petitioner is based on the registered permanent lease deed Document NO.61/1951 dated 02-05-1951 does not specifically indicate that the property in question bearing No. 7-6-222/1 (corresponding to old No. 6-5-6/2/2 and 6-5-6/2/3) belongs to father of the petitioner. The said permanent lease relate to a large extent of Ac.3.05 guntas and the same is in favour of 8 persons including the father of the petitioner and grandfather of the 4th respondent, and thus, it cannot be said with definiteness that the property in question exclusively belongs to writ petitioner. The municipal records/assessment registers at no point of time recorded the name of the father of the petitioner as owner or taxpayer of the said property and in fact the municipal records contain the name of the father of the 4th respondent from the year 1975-76. The mistake, which was realized after receipt of a complaint from the 4th respondent and on receipt of further opinion from the standing counsel on 25-03-2013 was rectified by issuing proceedings dated 26-03-2013 and sought for dismissal of the writ petition.

5. The 4th respondent filed counter stating that the father of the petitioner himself sold the property to her father Sri D. Raja Gopal Rao in the year 1975 by a registered sale deed and his name was recorded in the municipal records since then the property was assessed for vacant land tax (VLT) which was paid by the father of the 4th respondent. The father of the 4th respondent has gifted the schedule property in the year 1988 to her by way of registered gift deed, consequent upon which, mutation was effected in the municipal records and assessment register and since then, the 4th respondent was in peaceful possession and enjoyment of the schedule property as an absolute owner by paying vacant land tax. Subsequent to the death of the petitioner's father, his mother gave an affidavit that they have no claim in the schedule property to which document the brother and brother-in-law of the petitioner are witnesses and there is no question of the petitioner inheriting the property from his father.

When the petitioner tried to interfere with their peaceful possession and enjoyment of the property, the 4th respondent, to safeguard the property from trespassing by the petitioner and his men, filed O.S. No. 201 of 2005 for injunction simpliciter wherein interim injunction was granted and thereafter vacated the same, which was not in the knowledge of the 4th respondent and the father of the 4th respondent, who died in a road accident during pendency of the suit, has thorough knowledge of the facts regarding the suit property and on account of his sudden demise, the crucial documents pertaining to the suit schedule property and evidence could not be placed before the trial court and on a wrong presumption that old and new numbers are not tallying erroneously dismissed the suit. The petitioner clandestinely got the name of the 4th respondent changed in the municipal records overnight basing on erroneous opinion given by the standing counsel of municipality and the 4th respondent having learnt about the mutation has submitted an objection/complaint to the then Special Officer/Revenue Divisional Officer on 15-03-2013 and also to the Commissioner on 19-03-2013 enclosing a copy of the interim orders in S.A. No. 238 of 2013 dated 01-03-2013 and basing on the said complaint, the matter was once again referred to the standing counsel seeking opinion and basing on the said opinion, the entries were rectified by the impugned proceedings dated 26-03-2013. It is also stated that basing on the manipulated wrong entry in the municipal records, the petitioner clandestinely executed a sale deed in favour of four persons viz., Chitta Reddy, Jangapally Raja Reddy, Konda Kishan and Gone Rajashekar and on coming to know of these manipulations in the municipal records and execution of sale deeds by the petitioner, the 4th respondent filed objections before registering authority and municipal authority and simultaneously lodged a complaint with the police, Jagtial. The Municipal Commissioner considering their objection petition addressed a letter to the Sub-Registrar asking him not to register the sale deed executed by the petitioner as the same was done by playing mischief, as such, the document was kept pending by the Registrar with pending registration No. P-11 of 2013. It is also stated that the schedule property was purchased by three neighbours, who are residing abutting to the schedule plot and they have offered to purchase and the 4th respondent also agreed to sell and executed three sale deeds in favour of three neighbours to this plot vide document No. 7776, 7777 and 7778 of 2014 on 11-09-2014 in the office of Sub-Registrar, Jagtial and the subsequent purchasers have filed applications before the Municipality seeking mutation in their favour and the Municipality by its proceedings dated 15-09-2014 effected mutation. The mutation proceedings in favour of the petitioner was issued without following due process as such the 2nd respondent, on objections raised by the 4th respondent, having realized the mistake, has restored the earlier position in the records in favour of the 4th respondent and the impugned order dated 26-03-2013 is sustainable and sought for dismissal of the writ petition.

6. The implead respondents 5 to 7 filed their counter, while reiterating the contents of the counter of the 4th respondent, stated that the petitioner has

deliberately suppressed the fact that the 4th respondent has alienated the property in question in favour of implead petitioners under registered sale deeds dated 11-09-2014 vide document Nos. 7776, 7777 and 7778 of 2014 and thereafter, they filed applications before the Municipality seeking mutation of the property in their favour and the Municipality by its proceedings dated 15-09-2014 ordered mutation and immediately after purchasing the said property they filed three caveat petitions in all the competent civil courts at Jagtial and the writ petitioner received notices in three caveat petitions and in spite of being aware of the fact that these respondents purchased the property and their names were mutated, the petitioner suppressed the same and has chosen to question the order dated 26-03-2013. It is stated that as on the date of filing of the writ petition, the petitioner has no subsisting interest in the property in question and the petitioner has received total consideration and executed a registered sale deed dated 12-03-2013 alienating the property in favour of four persons viz., 1) Chitta Reddy, 2) Jangapally Raja Reddy; 3) Konda Kishna and 4) Gone Rajashekar. The property in question bears Municipal Nos. 7-6-222/1, which corresponds to old Nos. 6-5-6/2/2 and 6-5-6/2/3 with more area and sought for dismissal of the writ petition.

7. Heard Sri T. Surya Satish, learned counsel appearing for the petitioner, learned Government Pleader for Municipal Administration (Telangana), Sri V. Satyam Reddy, learned standing counsel for the 2nd respondent-Corporation and Sri V. Ravinder Rao, learned counsel for the respondents 5 to 7.

8. The fact that the name of the father of the 4th respondent is being continued in municipal records pertaining to H. No. 7-6-222/1 corresponding to old H. No. 6-5-6/2/2 and 6-5-6/2/3 from the year 1975-1976 is not in dispute and basing on the application of the 4th respondent on 02-08-1988 seeking mutation of the said property in her favour, her name was mutated vide proceedings No. 840/D1/1989, dated 18-10-1989 basing on the gift deed executed by her father. On the application of the petitioner on 04-12-2012 requesting to determine vacant land tax payable to the subject property, the matter was referred to the 3rd respondent-standing counsel of the Municipality for legal opinion and basing on such legal opinion dated 16-02-2013, the name of the petitioner in respect of the subject property was mutated in the place of 4th respondent vide proceedings No. A1/1600/2012, dated 26-02-2013. Admittedly, no notice was issued to the 4th respondent before issuing such proceedings. Again, when the 4th respondent made objection/complaint on 15-03-2013, the proceedings No. A1/1600/2012-13, dated 26-03-2013 were issued canceling earlier proceedings dated 26-02-2013 and mutating the name of the 4th respondent in respect of the subject property in the place of the petitioner based on another legal opinion dated 25-03-2013. Admittedly, the present proceedings dated 26-03-2013 were also issued without issuing any notice to the affected parties. Though the proceedings dated 26-03-2013, which are being challenged in the writ petition, are liable to be set aside only on the ground of violation of principles of natural justice, but, as stated by the respondents 1 and 2, only to correct the mistake

committed earlier, the impugned proceedings dated 26-03-2013 were issued to rectify such mistake by restoring the earlier position, even though the same were issued also without any notice either to the petitioner or the 4th respondent. The so-called permanent lease bearing document No. 61 of 1951, dated 02-05-1951 does not specifically indicate that the property in question belongs to the father of the petitioner and it is only a lease deed executed in favour of eight persons including the father of the petitioner and grandfather of the 4th respondent and it is not possible to ascertain any title or possession of the property in question in favour of the petitioner nor in favour of his father. If the proceedings dated 26-03-2013 were to be set aside on the ground of violation of principles of natural justice, the proceedings dated 26-02-2013 will revive which are also issued in violation of principles of natural justice. While exercising the jurisdiction under Article 226 of the Constitution of India, this court will not interfere or set aside an order if it amounts to restoration of another illegal order.

9. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Apex Court held as follows:

".....It is true that, whenever there is a clear violation of principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this court because the orders of the department were consequential to orders of this court. Question, however, is whether the court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no de facto prejudice is established. On the facts of this case, can this court not take into consideration the fact that any such declaration regarding the 10.3.1999 order will restore an earlier order, dated 30.7.1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order, dated 10.3.1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the later order of this court, dated 7.4.98?

Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the court's discretion to refuse even though rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

We shall initially refer to two cases where discretion was exercised not to grant relief and the first one was a case where relief was refused even though there was breach of natural justice. The first one is *Gadde Venkateswara Rao v. Government of Andhra Pradesh and others* 1966 (2) SCR.

There the Panchayat Samithi, in exercise of its statutory powers passed a resolution on 25.8.1960 to locate a primary health centre at Dharmajigudem. Later, it passed another resolution on 29.5.1961 to locate it at Lingapalem. On a representation by villagers of Dharmajigudem, Government passed orders on 7.3.1962 setting aside the second resolution, dated 29.5.1961 and thereby

restoring the earlier resolution, dated 25.8.1960. The result was that the health centre would continue at Dharmajigudem. Before passing the orders, dated 7.3.62, no notice was given to the Panchayat Samithi. This court traced the said order of the Government, dated 7.3.1962 to section 62 of the Act and if that were so, notice to the Samithi under section 62(1) was mandatory. Later, upon a review petition being filed, Government passed another order on 18.4.1963 cancelling its order, dated 7.3.1962 and accepting the shifting of the primary centre to Lingapalem. This was passed without notice to the villagers of Dharmajigudem in the High Court. On appeal by the said villagers to this court, it was held that the later order of the Government, dated 18.4.1963 suffered from two defects: it was issued by Government without prior show cause notice to the villagers or Dharmajigudem and Government had no power of review in respect of Government orders passed under section 62(1). But that there were other facts which disentitled the quashing of the order, dated 18.4.63 even though it was passed in breach of principles of natural justice. This court noticed that the setting aside of the later order, dated 18.4.1963 would restore the earlier order of Government, dated 7.3.62 which was also passed without notice to the affected party, namely, the Panchayat Samithi. It would also result in the setting aside of a valid resolution, dated 29.5.1961 passed by the Panchayat Samithi. This court refused relief and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba Rao, j., as he then was, observed (page 189) as follows :

"Both the orders of the Government, namely, the order, dated 7 March, 1962, and that of, dated 18 April, 1963, were not legally passed the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under section 72 of the Act to review an order made under section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village."

His Lordship concluded as follows :

"In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government, dated 18 April, 1963? If the High Court had quashed the said order, it would have restored an illegal order -it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

The above case is clear authority for the proposition that it is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order, if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law...."

In *C. Sreedhar Naidu v. S.R. Niranjan and others* 2009 (5) ALD 520 (DB), this court held as follows:

".....In such a situation, though the order of the Commissioner dated 31-3-2009 cancelling the first auction, as rightly pointed out by the learned judge, is unsustainable being an unreasoned order, it does not warrant interference by this court as the effect of setting aside the same would be to validate the first auction which, on the face of it, was opposed to the principles of fair play and competitive bidding inherent in an auction process. It is settled law that no writ would be issued quashing an illegal order when the same results in reviving another illegality (*Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, and *Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others*, . Further, as rightly pointed out by the learned senior counsel, the order of the Commissioner dated 31-3-2009 is not even under challenge in these proceedings and it is only the consequential second auction notification that is under attack. We are therefore in consensus with the learned Judge in holding that the order of the Commissioner dated 31-3-2009, though unsustainable in law, requires no interference....."

10. The rules governing the issue regarding transfer of ownership of properties are contained in G.O. Ms. No. 1033, Municipal Administration, dated 13-08-1965 viz., The Hyderabad Municipal Corporation (Registry of the Transfer of Ownership of properties in the Assessment Book) Rules, 1965 and the relevant Rule 3 reads as follows:

"Rule-3: In effecting changes in the ownership of properties in the Assessment Books on the application of any party, whether as a general revision or between one general revision and another, the Commissioner or any officer duly authorized by him, shall observed the following provisions, namely:--

(1) Transfer by voluntary action of owners: In all cases of absolute transfer of title, the registry of properties may be altered to correspond with the transfer of ownership of such properties on a notice given to the Commissioner or any Officer duly authorized by him in Form-I prescribed in Schedule "F" to the Act by both the parties to the transfer to either of them.:

Provided that the notice for registry of the transfer it, and given of ownership shall be in writing and signed by the party or parties giving within three months from date of execution of the instrument of transfer or where the instrument is registered, within three months from the date of such registration.

Such notice may be sent by post or presented in person or by a duly authorized agent. Where such notice is given by both the parties and one of them in the registered owner, the registry of the transfer of ownership may be ordered at once. But, where only one of the parties to transfer gives notice, a notice stating that one of the parties to the transfer has given notice for the registry of the transfer of ownership shall be served on the other party. Where the registered owner is not a party to the transaction, notice shall be served on the registered

owner also where the transfer or registry is presented by both the parties or either of them. If the registered owner objects to the proposed registry of the transfer of ownership, no change shall be made unless the person who claims to be the owner produces evidence to the satisfaction of the Commissioner or any other officer duly authorized by him. Where only party to the transaction gives notice and the other either objects to the registry of the transfer of ownership or does not take any steps, the transaction shall be evidenced by documents regarding the genuineness of which the Commissioner shall satisfy himself before ordering the registry of the transfer of ownership. In the absence of such documents, statements of neighbours of the property, the transfer of ownership of which is sought to be registered and the tax receipts, if any, may be taken into considerations. Objection, if any, shall be filed by the parties within one month from the date of issuance of the notice and shall be considered by the commissioner or any officer duly authorized by him in this behalf"

11. When the registered owner objects for change of entries, the persons, who claims transfer of ownership, shall produce the evidence of document showing the transaction regarding the genuineness of which the Commissioner shall satisfy himself before ordering the registry of the transfer of ownership. In this case, though the name of the 4th respondent is continued from the year 1989 but basing on the application of the petitioner in the year 2012 that too for assessing vacant land tax, the name of the petitioner was mutated in the place of the 4th respondent in the municipal records. Even according to the petitioner, he requested for assessment of vacant land tax, but the property was straight away mutated in favour of the petitioner purely based on the legal opinion of the standing counsel without issuing any notice to the 4th respondent. Except the permanent lease deed bearing document No. 61 of 1951, which does not confer any right exclusively in favour of father of the petitioner, no other document has been filed to show the exclusive right of the petitioner over the subject property. More so, as per Rule 3 of the Rules, 1965, it is for the parties, who seek transfer of ownership, to produce documents in proof of ownership in their favour. Though O.S. No. 201 of 2005 is filed for injunction simpliciter, the same has not attained finality as second appeal is pending against the same and in the counter of the respondent-Municipality, it is clearly stated that the mistake was subsequently rectified by issuance of proceedings dated 26-03-2013.

In view of above facts and circumstances, this court is not inclined to exercise the jurisdiction under Article 226 of the Constitution of India for setting aside the impugned proceedings dated 26-03-2013 though the same is issued without notice, since the earlier illegal proceedings dated 26-02-2013, which were also without any notice, will revive, if the present impugned proceedings dated 26-03-2013 are set aside. Hence, the writ petition is devoid of merit and the same is liable to be dismissed.

This Court today dismissed W.P. Nos. 34271, 34287 and 34295 of 2014 filed by the petitioner against the respondents 5 to 7 herein challenging the proceedings

No. A/341/2014, dated 15-09-2014.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.