

(1968) 12 GUJ CK 0012
In the Gujarat High Court

Bai Jadav

APPELLANT

Vs

Durlabh Ranchhod and Others

RESPONDENT

Date of Decision : 10-12-1968

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88D, 88D(1)(iv)

Citation : (1969) 10 GLR 727

Hon'ble Judges : P.N. Bhagwati, C.J.;A.R. Bakshi, J

Bench : Division Bench

Judgement

P.N. Bhagwati, C.J.—This petition is directed against an order dated 24th June 1966 passed by the State Government u/s 88D Sub-section (1) Clause (iv) of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Tenancy Act) cancelling with effect from the date of the said order a certificate of exemption granted to the petitioner u/s 88C in respect of four survey numbers, namely 505/4, 260/1, 260/2 and 708 situate in village Sajod, Taluka Ankleshwar District Broach. The said four survey numbers belong to the petitioner and respondents Nos. 1 and 2 are tenants of the petitioner in respect of the said four survey numbers. The petitioner claiming that the said four survey numbers did not exceed an economic holding and the total annual income of the petitioner including the rent of the said four survey numbers did not exceed Rs. 1500/-, applied to the Mamlatdar for a certificate of exemption u/s 88C and the Mamlatdar on being satisfied that the petitioner was eligible to the exemption provided in Section 88C, granted a certificate dated 20th September 1958 that the petitioner was entitled to exemption u/s 88C in respect of the said four survey numbers. The petitioner thereafter, on the strength of the certificate of exemption gave a notice and made an application for possession of survey Nos. 260/1, 260/2 and 708 from respondents Nos. 1 and 2 u/s 32T on the ground that he bona fide required the said three survey numbers for cultivating the same personally. The Mamlatdar, by an order dated 7th August 1962, held that the petitioner required the said three survey numbers bona fide for personal cultivation and directed respondents Nos. 1 and 2 to hand over possession of the

said three survey numbers to the petitioner. Respondents Nos. 1 and 2 being aggrieved by the order for possession preferred an appeal to the Prant Officer and the main contention taken up by them in the appeal was that the notice of the application was not served upon them and they had therefore no intimation of the date of hearing of the application before the Mamlatdar. This contention prevailed with the Prant Officer and the appeal was allowed and the case was remanded to the Mamlatdar for retrial. The Prant Officer however gave a direction that the Mamlatdar should take up the case for hearing only after the appeal preferred by respondents Nos. 1 and 2 against the order granting the certificate of exemption was disposed of and the order deciding the appeal was received by him. This direction of the Prant Officer was obviously misconceived since respondents Nos. 1 and 2 had not preferred any appeal against the order granting the certificate of exemption and there was accordingly no question of waiting for the disposal of the appeal. But the proceeding taken by respondents Nos. 1 and 2 was an application to the State Government for cancellation of the certificate of exemption u/s 88C. The Mamlatdar therefore decided not to proceed with the hearing of the inquiry until this application was disposed of by the State Government.

2. Now the application made by respondents Nos. 1 and 2 to the State Government u/s 88D was a written application dated 2nd July 1963 and the ground on which they moved the State Government to cancel the certificate of exemption was that the income of the petitioner had exceeded Rs. 1500/- per year. The State Government directed the Collector to hold an inquiry for the purpose of ascertaining whether the income of the petitioner had exceeded Rs. 1500/- per year and the Collector, after an inordinate delay of about two and a half years, issued a show cause notice dated 21st December 1965 calling upon the petitioner to show cause why the certificate of exemption should not be cancelled u/s 88D Sub-section (1) Clause (iv) on the ground that her annual income appeared to be in excess of Rs. 1500/- and intimated to the petitioner that she might remain present at 2-00 P. M. on 3rd January 1966 at the Collectorate with all available evidence. The petitioner accordingly appeared at the Collectorate and her statement was ultimately recorded by the Mamlatdar on or about 20th February 1966. Beyond recording the statement of the petitioner, no other witness was examined before the Mamlatdar nor was any other inquiry held by him in the presence of the petitioner. The petitioner also did not receive any notice from the State Government intimating what was the material on the basis of which it was alleged that her annual income had exceeded Rs. 1500/- and giving her an opportunity to offer her explanation in regard to such material. The State Government, without giving any further intimation to the petitioner, proceeded to pass an order dated 24th June 1966 u/s 88D Sub-section (1) Clause (iv) cancelling the certificate of exemption granted to the petitioner in respect of the said four survey numbers. No intimation of this order was also given to the petitioner but the petitioner came to learn about it from an order passed by the Collector on 18th August 1966 that her application for possession

u/s 32T would proceed according to law before the Mamlatdar since the exemption certificate had been cancelled by the State Government. The petitioner thereupon filed the present petition challenging the validity of the order of the State Government u/s 88D Sub-section (1) Clause (iv).

3. The only ground on which the impugned order was challenged was that it was passed by the State Government without complying with the principles of natural justice. Now Section 88D Sub-section (1) does not provide in express terms that the principles of natural justice shall be followed by the State Government before making an order under that section and the requirement of observance of the principles of natural justice can therefore be imported only if the function discharged by the State Government can be regarded as a quasi-judicial function. It is now well settled that compliance with the principles of natural justice is a necessary attribute or incident of quasi-judicial function: it follows as a necessary corollary from the duty to act judicially which is an essential characteristic of quasi-judicial function. The first question which therefore arises for consideration is whether the function discharged by the State Government in making an order u/s 88D is a quasi-judicial function. Now so far as this question is concerned, there is a decision of my learned brother Bakshi J. sitting as a Single Judge given on 19/20th March 1968 in Special Civil Applications Nos. 901 of 1963 and 835 of 1963 (Ganibhai v. State X G.L.R. 274) where on a full and elaborate consideration of the nature of the function discharged by the State Government u/s 88D and its effect on the right of property of the landlord, the view has been taken that the function performed by the State Government u/s 88D is a quasi-judicial function. Since the date of this decision, this view has been consistently followed in this Court and no reasons have been adduced before us which would persuade us to take a contrary view

4. We find ourselves wholly in agreement with the reasons which prevailed with my learned brother Bakshi J. and we do not consider it necessary to rehearse the same reasons over again. The State Government is clearly under a duty to act judicially in making an order u/s 88D and the function discharged by the State Government must be held to be a quasi-judicial function. If that be so, it is incontrovertible that the State Government must comply with the principles of natural justice in making an order u/s 88D.

5. That takes us to the question as to what is the content of the principles or natural justice applicable to an Inquiry u/s 88D. The question as to what are the rights accorded by the principles of natural justice in a particular case is always a question of some difficulty and the subject though well-worn is one replete with impediments to orderly generalization. The requirements of natural justice are not such as can be reduced to any formula exclusive or inclusive which can have universal application to every kind of inquiry, for a good deal would depend on the subject matter, the nature of the inquiry itself, the nature and constitution of the tribunal or authority which holds the inquiry and the rules under which the inquiry is held. There is no inviolable procedure required to be followed by the

rules of natural justice. The procedure dictated by the rules of natural justice is not one uniform procedure applicable to all inquiries but is bound to vary from tribunal to tribunal according to the nature of the tribunal, the scope of the inquiry before it and the statutory rules of procedure laid down by the law for carrying out the objectives of the statute. But, as pointed out by this Court in *Gandalal v. State of Gujarat* 5 G.L.R. 326, there are certain basic principles relating to the requirements of natural justice which must be followed in all cases by those who hold any judicial inquiry unless of course the statute in express terms or by necessary implication absolves them from the obligation to do so. Very broadly expressed, the first principle is that the party to the controversy must know with reasonable certainty the nature of the case against him. Secondly, he should be given a fair and proper opportunity to meet the case against him and to state his own case. According to this principle he should have a fair and proper opportunity to make any relevant statement which he may desire to bring forward and to correct or controvert any relevant statement prejudicial to his view. Lastly the tribunal must conduct the inquiry and reach its conclusion in good faith. *Vide Local Government Board v. Arlidge* 1915 A.C. 120; *De Verteuil v. Knaggs* (1918) A.C. 557; *Byrne v. Kinematograph Renters Society Ltd* (1958) 2 All. E.R. 579 and *State of Mysore Vs. S.S. Makapur*, . The question is whether the procedure followed by the State Government in making the impugned order complied with these basic principles of natural justice.

6. Now as we have already pointed out, the procedure to be followed by the State Government in the observance of the principles of natural justice need not conform to any recognised methods of judicial procedure and it is therefore not necessary that the State Government proposing to make an order u/s 88D should itself conduct the fact finding inquiry or take evidence itself. It may direct the Collector or the Mamlatdar or any other appropriate officer to conduct the fact finding inquiry and to record the evidence led by the parties who might be affected by the order proposed to be made. But it is imperative on pain of invalidity that the landlord who is going to be affected by the proposed order must be told with reasonable certainty what is the nature of the case against him. He must be informed clearly and precisely what is the ground on which the order is proposed to be made against him and what are the allegations in support of that ground. If the State Government has been moved by the tenant for cancelling the certificate of exemption, the State Government must supply to the landlord a copy of the application made by the tenant or, at any rate, intimate to the landlord the particulars of the allegations made in the application of the tenant so that the landlord may have a reasonable opportunity of meeting the case put forward by the tenant. The show cause notice may be issued by the State Government or it may even be issued by the Collector or the Mamlatdar or any other appropriate officer but what is essential is that the landlord who would be affected by the proposed order must know with reasonable certainty what is the case which he is called upon to meet and this would include the particulars of the allegations on the basis of which it is alleged by the tenant or the State

Government that the exemption certificate granted to the landlord is liable to be cancelled. Once this basic requirement is complied with, the actual fact finding inquiry may be conducted and evidence taken by the Collector or the Mamlatdar or any other appropriate officer and it need not be done by the authority exercising the power of the State Government. But whatever material is gathered at the fact finding inquiry by the Collector or the Mamlatdar or any other appropriate officer must be placed before the landlord so that the landlord may have an opportunity of correcting or controverting or explaining it. It must be remembered that the inquiry u/s 88D is an inquiry for the purpose of determining whether the exemption certificate granted to the landlord should be cancelled and the burden would therefore be upon the tenant or, in case of an inquiry started by the State Government suo motu, upon the State Government to establish that the annual income of the landlord has exceeded Rs. 1500/- or his total holding exceeds an economic holding. If therefore the State Government has any material,, whether produced by the tenant or collected by its officers, to support the view that the annual income of the landlord has exceeded Rs. 1500/- or his total holding exceeds an economic holding, the State Government must make that material available to the landlord so that he can effectively rebut it or render his explanation in regard to it. If the Collector or the Mamlatdar or any other officer holding the fact finding inquiry makes a report to the State Government, a copy of such report must also be supplied to the landlord, for it would be contrary to the principles of natural justice that the State Government which is the deciding authority should be permitted to look at a document In regard to which the landlord who is a party to the controversy has had no opportunity of rendering his explanation or making his submission. It is quite possible that the statements contained in the report or even the opinion expressed by the officer making the report may influence the mind of the State Government in deciding to make the proposed order and the landlord should therefore be afforded an opportunity of correcting or controverting or explaining the statements contained in the report. The authority exercising the power of the State Government which decides the inquiry u/s 88D must also give an opportunity to the landlord to make his submissions on the material gathered at the fact finding inquiry which may have been conducted by the Collector or the Mamlatdar or any other appropriate officer as also on the report, if any, submitted by such officer to the State Government. When we say this, we do not wish to suggest that a personal hearing must necessarily be given by the State Government to the landlord. What natural justice requires is not a personal hearing but a fair and proper opportunity to meet the case made out by the other side and this requirement would be satisfied if the landlord is given an opportunity to make a written submission in regard to the material gathered at the fact finding inquiry, whether such material may be in the shape of evidence led by the parties or may be evidence collected by the officers of the State Government. This much appears to us to be the bare minimum requirement of the principles of natural justice which must needs be observed by the State Government before it makes an order u/s 88D.

7. The question is whether in the present case this bare minimum requirement of natural justice has been complied with by the State Government. We do not think so. What happened at the inquiry in the present case is in line with what we find has been happening in many other inquiries which have come before us for our scrutiny in petitions under Articles 226 and 227 of the Constitution. The Collector issued the show cause notice to the petitioner calling upon her to show cause why the exemption certificate granted to her should not be cancelled on the ground that her annual income had exceeded Rs. 1500/-. This show cause notice was issued admittedly on an application made by respondents Nos. 1 and 2 and yet no copy of the application was furnished to the petitioner nor was the petitioner told as to what were the allegations on the basis of which it was said that her annual income had exceeded Rs. 1500/-. Though the burden was on respondents Nos. 1 and 2 and the State Government to establish that since the grant of the exemption certificate the annual income of the petitioner had exceeded Rs. 1500/-, no particulars were given to the petitioner to show what was the basis on which it was alleged by respondents Nos. 1 and 2 and the State Government that her annual income had exceeded Rs. 1500/- since the grant of the exemption certificate. The inquiry proceeded as if the burden was upon the petitioner to show that her annual income did not exceed Rs. 1500/-. The Mamlatdar recorded the statement of the petitioner and forwarded the statement to the State Government along with his report. No copy of the report was supplied to the petitioner nor was the petitioner told as to what was the material on the basis of which the State Government was of the view that the annual income of the petitioner had exceeded Rs. 1500/-. No opportunity to hear was also afforded to the petitioner by the authority exercising the power of the State Government. The State Government should have, in obedience to the rules of natural justice, made available to the petitioner the material on the basis of which it was inclined to hold that the annual income of the petitioner since the grant of the exemption certificate had exceeded Rs. 1500/- as also a copy of the report submitted by the Collector or the Mamlatdar to the State Government and given an opportunity to the petitioner either by personal hearing or by making a written submission to correct or controvert or explain the material produced before the State Government or any statement prejudicial to the petitioner's view which might be contained in the report but all this was admittedly not done. The inquiry conducted by the State Government and its officers was in clear disregard of the principles of natural justice and the impugned order must be held to be void on that account.

8. We therefore allow the petition and make the rule absolute by issuing a writ of certiorari quashing and setting aside the impugned order dated 24th June 1966 passed by the State Government cancelling the exemption certificate of the petitioner u/s 88D Sub-section (1) Clause (iv). The third respondent will pay the costs of the petition to the petitioner.