

(1969) 07 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 163 of 1967

Burhanuddin Hussain

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 02-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1970 AP 137

Hon'ble Judges : N. Kumarayya, Acting C.J.;Kondaiah, J

Bench : Division Bench

Advocate : Upendralal Waghry, for the Appellant; P.A. Sarma Advocate for Govt. Pleader, K. Pratap Reddy, for G. Haridatta Reedy, for the Respondent

Judgement

Kumarayya, A.C.J.

1. This appeal is from the order of Seshachalapathi, J. refusing to quash the order of the Government passed in revision in exercise of its powers u/s 57-A of the A. P. Revenue Recovery Act.

2. Briefly stated the facts are these: The appellant herein is an agriculturist residing in Pasalawadi village, Sangareddy Taluk, Medak District. He has obtained a loan from the Government in a sum of Rs. 16, 000 for purchasing a tractor for cultivating his lands. The amounts due from him swelled to Rs. 19, 456-67. As the petitioner appellant did not repay the loan in spite of demand, after some correspondence between him and the revenue authorities of accounts, proceedings u/s 36 of the A. P. Revenue Recover Act were started. His lands were notified for sale.

The date of sale originally fixed was January 15, 1964. It was not held that day, but actually held on 4th March 1964. Of the 4 survey numbers, 3 survey numbers 110, 28 and 109 were knocked down in favour of the 2nd respondent for a total sum of Rupees 12,000. Another survey no. 158 was knocked down in favour of the 3rd respondent for a sum of Rs. 6, 100. There was yet another

survey number which was also put another survey number which was also put to sale. It was knocked down in favour one Veeraiah whose case does not come up for our consideration in these proceedings.

Section 36 of the Revenue Recovery Act, 1864 embodies the procedure to be followed in sale of Immovable property. It makes in clause (3) a provision for deposit to be made by a purchaser. It says: " a sum of money equal to fifteen per cent f the price of the land shall be deposited by the purchaser in the hands of the Collector, or to her officer empowered by the Collector in that behalf, at the time of the purchase and where the remainder of the purchase-money be not paid within thirty days, the money so deposited shall be liable to forfeiture." In cl. (4), it further provides that if the purchaser does not make the initial deposit or does not pay the remaining purchase money the property shall be resold at the expense and hazard of such purchaser, and the amount of all loss or expense which may attend such refusal or omission shall be recoverable form such purchaser in the same manner as arrears of public revenue.

In this case, the initial deposit was not made on the date of sale either by the second respondent or by the third respondent. They made these deposits on 5th and 11th March, 1964. The balance of the purchase money was not paid within 30 days as enjoined by Section 36. Thereupon the Revenue Divisional Officer in exercise of his power directed forfeitures of the deposits made by respondents 2 and 3 and ordered resale in august, 1964. By that time on 31-3-1964 the appellant herein had already filed an application objecting to set aside sale on grounds of material irregularities and fraud in publication and conduct of sale. That was filed will within time as enjoined by Section 38 and no sale therefore could be confirmed unless that application was rejected. it is stated that petition has not yet been disposed of. Aggrieved by the order passed by the Revenue Divisional Officer directing forfeiture of the deposits and resale respondents 2 and 3 went in appeal to the Collector, Medak under Sec. 158 of the A. P. (Telangana Area) Land Revenue Act. These appeals, were however, dismissed. They did not move the Board of Revenue which had powers of revision u/s 57-A (3) instead went to the State Government invoking their powers under sub-clause (1) of Section 57-A. that clause reads thus :

"The State government may, either suo motu or on application made to them call for and examine the record relating to any decision or order passed or proceeding taken by any authority or officer subordinate to them under this Act for the purposes of satisfying themselves as to the legality or propriety of such decision or order or as to the regularity of such proceedings and pass such order in reference thereto as they think fit."

The Government after considering the petition on merits set aside the order relating to forfeiture of the deposit and ordered that respondents 2 and 3 herein be directed to pay the balance of the bid amount together with interest thereon according to the rules within 30 days from the date of communication of the orders to them. The Collector of Medak was directed to take necessary action

accordingly. This order which reversed the order of the original and the appellate authorities was made without any notice to the appellant herein, even though the order as made was adverse to the interests of the appellant. It may be recalled that the appellant had filed an application for setting aside the sale, which application was still pending disposal. Further by reason of the order of re-sale, he virtually got what he wanted as provisos sale was no longer in force. The order passed by the Government was definitely adverse to the appellant as it upset the orders of the Revenue Divisional officer and the Collector which were obviously favorable to the appellant herein. As this order was made without prior notice to him, he has invoked the jurisdiction of this Court praying that the said order be quashed as it was made without complying with the principles of natural justice and was against law.

Our learned brother Seshachalapati, J., refused to quash this order on the basis that no question of jurisdiction had arisen as the government had power to revise the order *sup molu* or on an application of the party u/s 57-A and while exercising revisionary jurisdiction had all the powers exercisable by the Revenue Divisional officer and the Collector. The Government therefore could direct that the deposit may not be forfeited or re-sale may not be held. The learned Judge referred in this behalf to the decision of the Madras High Court, which was followed by our High Court in *KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS*,). They are the cases decided u/s 36 of the Revenue Recovery Act. The learned Judge dismissed the writ petition. Aggrieved by this the appellant has come up in appeal.

2-A In our opinion, this appeal must be allowed on the short ground that there has been contravention of principles of natural justice inasmuch as the government has passed an adverse order against the appellant without giving any notice to him or giving a reasonable opportunity of being heard. The revisionary jurisdiction of the Government in relation to the order made by the Collector or subordinate authorities is not at all open to question. Further it is indisputable that the government while exercising reversionary jurisdiction was determining the question affecting the rights of the parties. It follows that while exercising this legal authority to determine the question affecting rights, it (the government) was bound to act judicially, as this was a quasi judicial act and not an administrative act. Such an order is subject to judicial review under Article 226 of the Constitution of India. The order will be open to interference and liable to be quashed not only if it was passed without jurisdiction or in excess of jurisdiction but also if there has been contravention of the principles of natural justice or there was an error of law apparent on the face of the record. These in fact are the various considerations which should weigh in any proceeding, for quashing the proceedings, for quashing the proceedings started under Article 226 of the Constitution.

The adherence to principles of natural justice as recognised by all civilised States is of supreme importance when a quasi-judicial body embarks on determining

disputes between the parties. These principles are well settled. The first and foremost principles are well settled. The first and foremost principle is what is commonly known as Audi Alteram Partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person in absentia becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair-play. Another principle of natural justice is popularly known as rule against bias. A third one which is of some consequence for our purpose is that the party when requested should be given a copy of the order passed against him, containing the reasons for the adverse order. In this case, not only notice was given to the party but also when the party came to know of the order and requested for a copy of the order, he was denied the same. In these circumstances we are of the view that an adverse order passed by the government without due notice to the party affected thereby cannot stand by reasons of the contravention of the principle of natural justice, which the Government was duty-bound to follow.

This rule of fair-play and justice could not have been lawfully contravened but should have been strictly adhered to. The absence of the party on account of want of notice besides has led to certain misstatement of facts as well in the order. It is unnecessary for us to refer to this aspect of the case in view of the fact that we have come to the conclusion that the order is bad as it is vitiated by reason of contravention of one of the most important principles of natural justice.

Of course, Sec. 57-A does not contain any provision which in term cast a duty on the Government to give notice to the party who may be adversely affected by its order. But that is fundamental being part and parcel of the principles of natural justice which no authority exercising quasi-judicial powers can lawfully ignore. On this very basis we are of the view that the order of the Government is liable to be quashed.

3. We therefore allow this appeal on this very basis and quash the order of the Government dated 26-5-1966. It will still be open to the Government to exercise its powers under reversionary jurisdiction u/s 57-A after giving due notice to the party and decide the matter in accordance with law. The appellant will be entitled to costs of both the Courts. Advocate's fee is fixed at Rs. 100 in the writ petition and also in the writ appeals.

4. Appeals allowed.