
(2004) 03 AP CK 0084
In the Andhra Pradesh High Court
Case No : WA No. 114 of 2004

Chella Chenchiah

APPELLANT

Vs

Commissioner, Appeals and Others

RESPONDENT

Date of Decision : 17-03-2004

Acts Referred:

Andhra Pradesh Writ Proceedings Rules, 1977 — Rule 8
Constitution of India, 1950 — Article 226

Citation : (2004) 2 ALD 648 : (2004) 2 ALT 657

Hon'ble Judges : Ghulam Mohammed, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : K.V. Satyanarayana, for the Appellant; Government Pleader for Revenue for Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The unsuccessful petitioner is the appellant in this writ appeal preferred against the order of the learned Single Judge dated 13-4-2003 made in Writ Petition No. 6098 of 2003. The learned Judge dismissed the writ petition at the stage of admission.

2. The appellant filed the writ petition assailing the order of the 1st respondent dated 30-12-2002 in exercise of powers under Section. 7(d) of the Andhra Pradesh (Andhra Area) Abolition of Estates and Conversion into Ryotwari Act, 1948 (for short "the Act") rejecting the claim of the appellant for grant of ryotwari patta in respect of the land admeasuring Acs.9-90 cents in R.S. No. 408/5 and an extent of Ac.18.60 cents in R.S. No. 409 of Renigunta Village, which initially formed part of Srikalahasthi Zamin Estate. The case of the appellant is that he filed an application for grant of patta u/s 11 (a) of the Act before the Settlement Officer, Nellore, with a petition to condone the delay. The application for grant of patta was allowed, but the same was not implemented. Then he filed Writ Petition bearing No. 15084 of 1988 seeking mandamus directing the respondents to implement the patta. This Court by order dated

23-3-1989 directed the Mandal Revenue Officer to implement patta if there is no revision petition pending against the said order passed by the Settlement Officer. The writ petition was ultimately disposed of by this Court by order dated 13-9-1991 in terms of the interim order.

3. The Mandal Revenue Officer, having obtained a copy of the order passed by the Settlement Officer dated 10-2-1987, filed review petition in this Court alleging that the application of the appellant for grant of patta was rejected. The review petition was dismissed against which a Writ Appeal bearing No. 13 80 of 1994 was preferred and a Division Bench of this Court by order dated 22-6-1996 disposed of the writ appeal directing the appellant herein to file a petition before the 4th respondent and latter was directed to issue notice to the concerned parties and decide whether actually patta was granted to the appellant or not. That an enquiry was held pursuant to the directions of this Court and ultimately appellant was informed that no patta was granted in his favour and infact his application for grant of patta was rejected by the Settlement Officer by order dated 10-2-1987.

4. The appellant carried the matter in revision before the Director of Settlement and further revision before the Special Commissioner and both of them were dismissed. Challenging those orders, the appellant filed the writ petition.

5. The main contention of the appellant before the learned Single Judge was that the Settlement Officer by proceedings dated 8-1-1987 granted patta in respect of the land in question. But all the respondents have taken the consistent stand that the Settlement Officer never passed an order on 8-1-1987 and that by an order dated 10-2-1987 the application of the appellant u/s 11 (a) of the Act was rejected by the Settlement Officer.

6. Having regard to the nature of controversy, the learned Single Judge directed the learned Government Pleader to produce the File bearing No. S.R.No.22/11(a)/ 86 containing pages 1 to 164 and File bearing No. B/441/89/A/563/87 from the office of the Mandal Revenue Officer, Renigunta, and also other connected records. That pursuant to the directions of the learned Single Judge, the records were produced and the learned Single Judge thoroughly and meticulously examined all the files and found that "preponderance of probabilities show that the petitioner's contention that patta was granted by proceedings dated 8-1-1987 stands disproved by the record". The learned Judge, having perused the order of the Director of Settlements and Commissioner of Appeals, found that the proceedings were in order and no exception can be taken with regard to those orders. The learned Single Judge accordingly dismissed the writ petition.

7. In this writ appeal, Sri K.V. Satyanarayana, learned Counsel for the appellant, mainly contended that the learned Single Judge committed an error in perusing the record even before Rule Nisi was issued. The learned Counsel contended that the learned Single Judge ought to have appreciated that before the record of the

Government is perused, there should be a counter-affidavit putting forth the plea of the State. In the absence of the counter-affidavit, the appellant is at a loss to know the plea of the respondents. The procedure adopted by the learned Single Judge is violative of principles of natural justice.

8. Having regard to the importance of the question, the Court required the assistance of Sri Ramesh Ranganathan, learned Additional Advocate-General, who readily agreed to assist the Court as *amicus curiae*. The learned *Amicus Curiae* submitted that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can adopt such procedure as it considers necessary to dispose of the *lis* brought before it and the procedure adopted by the learned Single Judge in this case does not suffer from any legal infirmities. The learned Single Judge did not commit any error in looking into the records even before the Rule Nisi was issued. This Court's power under Article 226 of the Constitution of India, forms integral part of the basic structure of the Constitution of India. The procedure adopted by the learned Single Judge in no manner affects the jurisdiction of this Court to hear and dispose of the judicial review proceedings by adopting such procedure, as this Court may consider reasonable in the circumstances of the case.

9. The High Court in exercise of the power conferred under Article 225 of the Constitution of India, made the rules known as Writ Proceedings Rules, 1977 to regulate the proceedings under Article 226 of the Constitution. The said rules apply to the petitions, applications and appeals filed on or after 4th June, 1977. The learned Counsel for the appellant placed heavy reliance upon Rule 8(a) of the Rules in support of his submission that records cannot be looked into at the stage of admission. Rule 8(a) provides that every petition/application shall, soon after it is numbered, be posted for orders of the Court as to issue of Rule Nisi or notice to the respondents. The Court may, upon hearing the petitioner or applicant or his Advocate, either direct Rule Nisi or notice to issue and pass such interim order as it may deem necessary or reject the petition or application. Rule 8(c) provides that, where it is deemed necessary, the Court may instead of directing issue of Rule Nisi, cause a notice to be served on the respondents to show-cause why Rule Nisi should not be issued. Learned Counsel relying upon Rule 8(a) and (c) submitted that only three courses are open to the Court while dealing with the petitions or application at the stage of admission viz., either to issue Rule Nisi or direct notice instead of Rule Nisi or dismiss the petition. But the Court cannot require the Government Pleader to produce the records for disposal of the writ petition at the admission stage.

10. In *K. Venkateswarulu v. S. Satyanarayana*, AIR 1957 AP 49 (FB), this Court while construing Rules 1 and 2 of the Appellate Side Rules of the High Court, which inter alia provided the details of matters that may be heard and determined by one Judge and the matters heard and determined by a Bench of Two-Judges, observed:

"The power to frame rules regulating its practice and the procedure conferred on

the High Court under preliminary enactments and the Letters Patent is preserved by Article 225 of the Constitution, corresponding to Section 223 of the Government of India Act, 1935. The Appellate Side Rules having been made by the High Court under this statutory authority, if they have meaning and effect inconsistent with the Acts authorising them or if they are in excess of the powers conferred thereunder or if they contravene the provisions of other enactments, they are pro tanto ultra vires, otherwise they have the force of law and are binding all the Judges of the Court."

11. The learned Counsel relied upon the said judgment in support of his submission that the Writ Proceeding Rules, 1977, are binding on all the Judges and no procedure other than the one prescribed by the rules could be followed in deciding the applications or petitions under Article 226 of the Constitution of India. The judgment, in our considered opinion, in no manner supports the plea taken by the learned Counsel for the appellant. This Court merely highlighted the binding nature of the appellate side rules. The authority never dealt with the procedure to be adopted in public law remedies by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. In *Bharat Singh and Others Vs. State of Haryana and Others*, , the Supreme Court observed:

"When a point, which is ostensibly a point of law, is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

13. The learned Counsel relying upon the observations that facts must be pleaded and proved by evidence in the counter-affidavit submitted that the State, if at all, could have filed counter-affidavit pleading the facts and also the evidence in proof of such facts and in the absence of the same, the Court cannot look into evidence that may be available on record. The observations of the Supreme Court in no manner supports the contention urged by the learned Counsel for the appellant. The Supreme Court highlighted the importance of the pleadings even with regard to a point of law required to be projected properly by the petitioner, if he is the petitioner in the writ petition, or in the counter-affidavit if he is the respondent. That is a duty cast on the writ petitioner whoever invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The judgment does not lay down that the Court in order to ascertain the

true and correct facts cannot look into the records even before issuance of Rule Nisi.

14. In *Himansu Kumar Bose Vs. Jyoti Prokash Mitter*, , the Supreme Court observed that "if the contentions raised before the Court themselves indicate that the issues which fall to be considered on the respondent's petition are, in a sense, triable issues, and so, it would be inappropriate to dismiss the petition in limine and the respondents should be called upon to file returns so that the point of dispute between the parties would have been clearly defined and the matter could have been decided in accordance with law after allowing the parties to place before the Court such material as may be permissible under Article 226 of the Constitution of India."

15. In *Union of India and Another Vs. S.P. Anand and Others*, , the Supreme Court observed that the High Court at the stage of preliminary hearing of a writ petition is required to consider whether on the basis of the averments contained in the writ petition, the petitioner therein is entitled to seek the relief prayed for and such relief can be granted by the Court in exercise of its jurisdiction under Article 226 of the Constitution of India. "If the Court is of the opinion that a prima facie case is made out for granting the relief sought in the writ petition, rule nisi is issued calling upon the person or persons against whom the relief is sought to show-cause why such relief should not be granted. But if the Court finds that no such prima facie case is made out, the writ petition has to be dismissed without issuing notice to the person or persons against whom the relief is sought". The object of placing a writ petition before the Court for preliminary hearing is to ensure that a writ petition, which is frivolous in nature, is dismissed at the threshold. We fail to appreciate as to how the judgment lends any support to the point urged by the learned Counsel for the appellant.

16. Likewise, the observations made by the Supreme Court in *U.P. Public Service Commission v. Ram Krishna Pandey and Anr.* 2001 (1) SLT 267 and in *Akancha Gupta v. State of U.P. and Ors.*, CA No. 6367 of 2000 dated 13.11.2000, do not lend any assistance, whatsoever, in the matter. The observations made therein are required to be understood in the background facts and circumstances of those cases.

17. In *Dhronamraju Satyanarayana Vs. N.T. Rama Rao and Others*, , this Court, while advertng to the procedure concerning writ petitions and the rules framed by this Court in exercise of its power under Article 225 of the Constitution and having found that the writ petition filed therein was not strictly in conformity with the mode of verification prescribed by Rule 5 of the Writ Rules, held:

"A practice has grown in this Court to file a common affidavit containing several allegations, seeking different reliefs, without verifying the source of information and making verification by mere affirmation without disclosing the source of information. The prescribed procedure in the Writ Rules, in fact, has seldom been followed. So far, to our knowledge, this Court has not thrown out any writ

petition on the ground of non-compliance with the Writ Rules."

18. In *Anand Kumar v. Kattali Bhaskaran*, Chief Justice of High Court of Andhra Pradesh, Hyderabad and 5 others 1988 (1) ALT 631, this Court while advertng to the rules framed in virtue of Article 225 of the Constitution of India, to regulate the proceedings under Article 226 of the Constitution held:

"In the nature of the purpose, the rules cannot be exhaustive and cannot cover all contingencies. The rules are framed to facilitate proceedings on or after June 4, 1977, in all cases, whether the relief sought in a writ is of habeas corpus, mandamus, certiorari, quo warranto or prohibition. Normally before the writ petition/writ appeal are admitted this Court does not enable any Counsel for the respondents to argue in opposition to the admission of writ petition/ writ appeal. But, we have never understood the rules or the procedure adopted in this Court disable the Judges of this Court from hearing any Counsel for respondents against whom the proceedings are filed, whenever they desire to do so."

19. In that case, it was argued that at the stage of admission, the Standing Counsel for the Union of India or the Counsel for the intervener cannot be heard even before the writ petition is admitted. The Court repelled the contention and held that whenever the Court desires to hear the other side, even at the stage of admission, can always do so.

20. In *L. Chandra Kumar Vs. Union of India and others*, , the Supreme Court in clear and categorical terms declared that the power vested in the High Courts under Article 226 is an integral and essential feature of the Constitution, constituting part of its basic structure. The power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdiction is also part of the basic structure of the Constitution. It is unnecessary to burden this judgment with various rulings; that Article 226 have its roots and design to assure to the citizen justice denied to him by the subordinate Tribunals, that Article 226 ex facie confers very wide powers on the High Court to reach injustice where it is found, the powers of the High Court under Article 226 are much wider in its scope than the powers of English Courts to issue prerogative writs under English Law. Being the Court of Record, it is entitled to regulate its own procedure.

21. The Writ Proceeding Rules are the I rules that were made to regulate the proceedings under Article 226 of the Constitution of India. The Rules by themselves do not confer any power upon the Court and the manner in which the jurisdiction under Article 226 is required to be exercised. The Court is entitled to regulate, devise and adopt procedure that may best serve in a given case. The Rules, obviously, cannot impose any restriction on the power of the Court conferred upon it under Article 226 of the Constitution of India as that power of judicial review forms part of the basic structure of the Constitution. That it is entitled to devise such procedure, as it may serve the ends of justice and disposes of the writ petition accordingly, so long as such procedure adopted is

not specifically prohibited by any law. The Rules framed by the High Court may guide the procedure in dealing with the petitions and applications under Article 226 of the Constitution, but the rules in no manner restricts the discretionary power of the Court either to grant or refuse the relief under Article 226. The rules of procedure are intended to serve as a subordinate to substantial justice. The Court's jurisdiction to hear the writ petition in no manner gets affected by the rules, which are technical in their nature and relate to procedure. That the Court hearing writ petitions may devise such procedure as it may consider it appropriate for effective disposal of the writ petitions, even at the admission stage, unless such procedure is specifically prohibited by any mandatory provision of law, which may include the rules framed by the High Court.

22. We may, however, hasten to add that before jurisdiction over the matter is exercised, the case must be legally brought before the concerned Court for hearing and determination. The case can be legally brought before the concerned Court only on allocation by the Chief Justice.

23. That Rule 8(a) and (c), in our considered opinion, in no manner puts any fetter upon the Judge hearing writ petitions to peruse the records even before directing issue of rule nisi. Such procedure, in our considered opinion, in no manner violates or infringes the rules of natural justice. It is a different matter altogether that in a given case any of the parties to the proceedings may seek leave of the Court and make a request seeking permission to peruse the records, in case if the petition/application is to be disposed of on perusal of the records. That disposal of a writ petition after looking into the records, even at the stage of admission, is not prohibited by any law and such orders do not suffer from any jurisdictional errors.

24. We do not find any merit in any of the contentions urged by the learned Counsel for the appellant. No other point is urged. No submissions were made on merits.

25. For the aforesaid reasons, we do not find any merit in this appeal and the same shall accordingly stand dismissed. There shall be no order as to costs.

26. The Court acknowledges the valuable assistance rendered by Sri Ramesh Ranganathan, learned Additional Advocate-General, who readily agreed to assist the Court as *Amiens Curiae*.