
(2002) 02 AP CK 0103
In the Andhra Pradesh High Court
Case No : WA No. 1341 of 1997

G. Varalakshmi

APPELLANT

Vs

K. Pullamma (died) and Others

RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Andhra Pradesh Scheduled Areas Land Transfer Regulations, 1959 — Regulation 6

Citation : (2002) 3 ALD 211

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : E. Manohar, for M. Prabhakar Rao, for the Appellant; Social Welfare and B. Adinarayana Rao, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This writ appeal is directed against the order of the learned single judge in Review W.P.M.P.No. 8044 of 1995 in W.P.No. 12196 of 1993 dated 31.7.1996.

2. The background facts leading to the filing of the writ appeal be noted briefly as follows: The appellant is a non-tribal and she purchased the lands in RS.Nos.82/1, 79, 83, 84/3, and 82/2 admeasuring Ac.9.50, 5.70, 2.74, 2.18 and 0.34 cents situated in Itikalakota village of erstwhile Polavaram Taluk, West Godavari District under registered sale deed dated 6.12.1967. The above lands originally belonged to one Sanyasi Nagulu, a Scheduled Tribe and he sold the same by a registered sale deed dated 31.10.1938 in favour of one Kowasu Parvathamma, another tribal. While so, K. Parvathamma and her son Pottaiah, on their turn, sold away the land in favour of Punem Singaiah, another Scheduled Tribe under a registered sale deed dated 8.8.1963. The said Singaiah obtained permission from the Government in G.O.Ms.No. 2285, dated 15.11.1967 to alienate the said lands in favour of non-tribals. Pursuant to the said permission, the said P. Singaiah sold away the said lands in favour of the writ petitioner who is a non-tribal under a registered sale deed dated 6.12.1967, as noticed above.

3. When the matters stood thus, on 16.1.1981, a show-cause notice was issued by the Special Deputy Collector (Tribal Welfare), Eluru, who was succeeded by Special Deputy Tribal Welfare Officer, Kotaramachandrapuram) in Bottayigudem Mandal, u/s 3(2) of the A.P. Scheduled Area Land Transfer Regulation, 1959 (for short "the Regulation") to the petitioner to show cause as to why she should not be ejected from the land. The writ petitioner filed objections contending that the Special Deputy Collector, Tribal Welfare has no jurisdiction to issue the said notice. However, on 31.1.1981, the Special Deputy Collector passed the order directing eviction of the petitioner opining that the sale transaction dated 8.8.1963 is only a benami transaction and the purchaser Punam Singaiah was a farm servant of the petitioner and therefore, the petitioner is the real purchaser. The appeal and the revision preferred by the writ petitioner against that order before the appellate authority and the Government were also dismissed. The petitioner being aggrieved by the Government order in Memo No. 299/ 1=183-3 dated 2.4.1993 preferred Writ Petition No. 8044 of 1995. The learned single judge initially allowed the writ petition. However, on a Review WPMP filed by the contesting respondent, dismissed the writ petition. Hence this writ appeal by the unsuccessful petitioner.

4. We have heard Shri E. Manohar, learned senior counsel for the appellant, Shri B. Adinarayana Rao, learned Counsel for the contesting respondents and the learned Government Pleader for Social Welfare. All of them addressed arguments not only on procedural aspects but also merits of the matter.

5. The contention of the learned senior counsel for the appellant among other contentions is that the impugned order of the Government does not reflect application of mind to several contentious issues raised in the revision. The learned senior Counsel would also attack the order of the Government on the ground that despite a specific request made by the petitioner to afford a personal hearing, the Government has chosen to pass the impugned order without affording personal hearing. The learned counsel would also contend that the Special Deputy Collector, the Original authority, had lacked power to initiate proceedings under Sub-section (2) of Section 3 of the Regulation because such a power was not available to him on 16.1.1981 when he issued the show-cause notice, by force of the provisions of Section 7 of the Regulation. As already pointed out, all the learned Counsel also submitted their respective contentions touching merits of the matter.

6. As quite often held and reiterated by the Constitutional Courts, judicial review under Article 226 is not against the decision as such but undoubtedly it is directed against decision-making process. If the Court finds that the procedure adopted by the adjudicatory or quasi-judicial authority in decision-making did not conform to the expected standards of fairness guaranteed under Article 14, or such a procedure is in breach of statutory regulations governing the procedure, it would quash such order and command the decision-making authority to decide afresh in conformity with the principles of natural justice and after going through

the prescribed procedure, if any. The impugned order of the Government dated 2.4.1993 reads follows :

Sri K. Omkaram, Counsel for the Revision Petitioner is informed that the Revision Petitions filed by Smt. G. Varalakshmi, against the orders of Agent to Govt. in West Godavari District in SRA.No. 37/81 dated 15.2.1982, have been examined by the Government and they consider that there is no case for interference with the orders issued by the Courts below. They accordingly reject the revision petitions filed by Smt. G. Varalakshmi.

The Counsel for the petitioner is requested to inform the Revision Petitioner accordingly.

7. On a perusal of this order, placed before us, we thought that there must be a separate speaking order passed by the Government where the revision petition filed by the writ petitioner is dealt with by the Government. Therefore, we pointedly asked the learned Government Pleader for Social Welfare whether there is any separate order passed by the Government. The learned Government Pleader, after perusal of the records, submits that the above extracted order is the only order available in the original record and there is no separate order. If this is the position, we are constrained to state that this is not the way the Government, while exercising statutory/quasi-judicial power, should dispose of the revision petition filed by an aggrieved party in the manner it has done. The order does not consider any of the contentions raised in the revision, does not refer either to the facts of the case or the contentions raised by the petitioner in the memorandum of revision petition or the opinions of the original authority and the first appellate authority muchless consideration of the same. It is well settled by catena of decisions of the Court that the quasi-judicial authority should record its findings and take decisions on a due and critical consideration of the factual and legal issues raised before them. It is true that an appellate or a revisional or reviewing authority, if it concurs with the finding recorded and the opinion formed by the lower authority, it need not give separate detailed reasons for its decision. Nevertheless, even in such a situation, the order that may be made by the appellate or reviewing or revisional authority should reflect convincingly due application of mind on the part of such authority. The order of the Government impugned in the Writ petition does not reflect application of mind on the part of the Government. Added to this, we find another fatal procedural flaw. The Writ petitioner, in the memorandum of revision filed before the Government dated 26.9.1988, specifically requested for personal hearing. Of course, the Rules governing the procedure to be followed by the Government in deciding revision petition do not specifically provide for personal hearing. In such a situation, whether a party should be permitted to have personal hearing or not depends upon the facts and circumstances of the case and the factual and legal issues that arise for resolution. It is a fact that the petitioner sought for personal hearing and there is nothing to show that that particular request of the petitioner was considered by the Government and for some good and sound reasons, it

refused to grant personal hearing. Be that as it may, having regard to the long history of the case, and facts involved and the legal issues to be thrashed out in the proceeding, the request for personal hearing could not be termed as an unreasonable request on the part of the writ petitioner. In fact, since the Government did not give the petitioner personal hearing as requested by her, a specific ground was taken in the memorandum of writ petition also to which the learned single judge has made reference in his order. Even the contention raised in the writ appeal by the learned senior counsel relating to limitation prescribed u/s 7 of the Regulation 1959 is also required to be considered because it goes to the root of the matter. It is true that from the records, it does not seem that that contention was put forth either before the authorities under the Regulations or before the learned single Judge. Be that as it may, since we are of the considered opinion that it is a fit case where the proceeding should be remanded to the Government to decide the revision of the petitioner afresh after giving her personal hearing, the above contention may also be addressed to the Government for its consideration and decision.

8. In the result and for the foregoing reasons, we allow the writ appeal and set aside the order of the learned single Judge, dismiss the Review W.P.M.P.No. 8044 of 1995, dated 31st July, 1996 and allow the Writ Petition No. 12196 of 1993 and set aside the order of the Government dated 2.4.1993. The proceedings shall stand remitted to the Government with a direction to hear and dispose of the revision petition filed by the Writ Petitioner afresh after giving her and all other concerned parties a fair and reasonable opportunity of being heard. The Government is directed to dispose of the revision within a period of four months from the date of receipt of a copy of this order. We permit the appellant-petitioner to raise the contention relating to the limitation before the Government in the revision. There shall be no order as to costs.