
(2007) 07 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 285 of 2007

Ganaparathi Thirupathaiah

APPELLANT

Vs

District Panchayat Officer and Others

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 246
Andhra Pradesh Panchayat Raj Rules — Rule 2, 4

Citation : (2007) 5 ALD 646 : (2007) 5 ALT 366

Hon'ble Judges : G.S. Singhvi, C.J;C.V. Nagarjuna Reddy, J

Bench : Division Bench

Advocate : Sita Ram Chaparla, for the Appellant; G.P., for Panchayat Raj and Rural Dev. for Respondent Nos. 1 to 3, P. Venugopal and Kosa Jaganmohan Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This writ appeal is filed against order dated 22-3-2007 of the learned Single Judge in Writ Petition No. 19419 of 2006 whereby he dismissed the writ petition filed by the appellant.

2. There are three water tanks situated in West Veerayapalem village. They are (1) Papanayudu Cheruvu, (2) Venkaiah Cheruru, and (3) Omkara Cheruvu. This case is concerned with the auction of fishing rights in Papanayudu Cheruvu. The controversy arose when the fishing rights in the said Papanayudu cheruvu were purportedly auctioned on 7-7-2006 for a period of three years commencing from 2006-2007 to 2008-2009 in favour of the appellant by the 3rd respondent Gram Panchayat headed by the then Sarpanch. After the leasehold rights were conferred on the appellant by the previous dispensation, elections were held on 2-8-2006 to the West Veerayapalem Gram Panchayat and a newly elected body had taken over with respondent No. 4 heading the Gram Panchayat as its Sarpanch. On 1-9-2006 the Gram Panchayat headed by respondent No. 4 passed a resolution wherein it was decided to request the District Panchayat Officer,

Prakasham District, Ongole to fix the upset price to auction the fishing rights in respect of Papanayudu cheruvu. A similar resolution was passed in respect of the other two tanks. Feeling aggrieved by this resolution, the appellant filed W.P. No. 19419 of 2006. Originally respondent No. 4 was not a party to the writ petition. She filed W.P.M.P.No.24498 of 2006 for her impleadment and she was impleaded by an order of the learned Single Judge passed on 12-10-2006. When a similar application was filed by respondent No. 5 (intervener) herein in the writ petition, the learned Single Judge dismissed his application on the ground that the writ petition is sufficiently contested by the official respondents and also the present Sarpanch (respondent No. 4) and, therefore, he is neither a proper nor a necessary party. Respondents 1 to 3 filed separate counter affidavits before the learned Single Judge. After an elaborate hearing, the learned Single Judge dismissed the writ petition by his order dated 22-3-2007. The present writ appeal is filed questioning the said order.

3. Heard Sri Sitaram Chaparla, learned Counsel for the appellant, learned Government Pleader for Panchayat Raj for respondents 1 to 3, Sri P. Venugopal, learned Counsel for respondent No. 4 and Sri K. Jaganmohan Reddy, learned Counsel for respondent No. 5 whose implead petition was allowed by this Court by an order dated 8-6-2007 in W.A.M.P. No. 663 of 2007 whereby respondent No. 5 was permitted to act as intervener.

4. Learned Counsel for the appellant argued that resolution dated 1-9-2006 passed by respondent No. 3 Gram Panchayat headed by respondent No. 4 is contrary to law and in violation of the principles of natural justice. He submitted that respondent No. 3 Gram Panchayat earlier in pursuance of its resolution dated 24-3-2006 held auction 7-7-2006 in which the appellant had emerged as the highest bidder and he was conferred with the leasehold rights of fishing in the Papanayudu cheruvu and that without canceling the said resolution, respondent No. 3 Gram Panchayat could not have passed resolution dated 1-9-2006. The learned Counsel relied upon Section 246 of the Andhra Pradesh Panchayat Raj Act 1994 which empowers the Government to cancel any resolution of Gram Panchayat after following the procedure prescribed therein. The learned Counsel submitted that till such time as the earlier resolution dated 24-3-2006 was not cancelled in accordance with the said provision, his rights flowing from the said resolution could not be defeated by respondent No. 3 by passing another resolution on 1-9-2006. The learned Counsel further submitted that the action of respondent No. 3 in passing resolution dated 1-9-2006 without notice to the appellant is in utter violation of the principles of natural justice. The learned Counsel also submitted that the learned Single Judge committed a grievous error in rejecting both these contentions raised before him on the ground that since fraud was committed by the then Sarpanch, principles of natural justice have no application and the appellant was not entitled to any notice.

5. During the hearing of the case, we have summoned the record. On 8-6-2007

when the learned Government Pleader produced the purported register pertaining to the resolutions concerning the auction of fishing rights of three tanks situated in the Veerayapalem Gram panchayat, we directed him to file translated copies of the resolutions contained in the register as they were written in vernacular (Telugu) language. Accordingly, the learned Government Pleader filed English translated copies with the permission of the Court.

6. In the light of the contention advanced by the learned Counsel for the appellant that the finding of the learned Single Judge that the resolution was passed and auction was held on the same day, i.e., on 07-07-2006 is incorrect and that the auction was held in pursuance of resolution dated 24-3-2006, it is necessary for us to examine the pleadings and the record in the case. In the affidavit filed in support of the writ petition, the appellant has not made any specific reference to the date of the resolution of the Gram Panchayat in pursuance of which public auction is said to have been conducted on 7-7-2006 (He filed a copy of the resolution dated 07-07-2006 along with the writ petition). In this context, it is relevant to extract the averments in para-2 of his affidavit:

I respectfully submit that, as many as 3 water tanks namely, (1) Papirayudu Cheruvu, (2) Venkaiah Cheruvu, and (3) Omkara Cheruvu, situated in the 3rd respondent village of Kurichedu (M). The 3rd respondent herein has been using the same for raising the fishes and the same are being put to public auction, and the proceeds which are emanated from the auction are being utilized for the development of the Gram Panchayat. In the above said background, the concerned Gram Panchayat, decided to put the public auction on 7-7-2006 for a period of 3 years, commencing from 2006-2007, 2007-2008 and 2008-2009. To that effect, notification/resolution was also passed by the Gram Panahayat, and they also stipulated the terms and conditions therein to conduct the public auction.

(Emphasis added)

7. To the counter affidavits filed by respondents 1 and 2, the appellant in his reply affidavit also did not mention the date on which the purported resolution was passed by the Gram Panchayat, though a reference to the resolution was made in para-2. In the affidavit filed by respondent No. 4 in support of her implead petition, she has averred that with the code of conduct for panchayat elections having come into effect with the issuance of election notification dated 10-6-2006, the question of the Gram Panchayat passing any resolution on 7-7-2006 did not arise. Interestingly, though the appellant filed a separate reply affidavit to the affidavit filed by respondent No. 4 in support of her implead petition, the appellant has not pleaded that the 3rd respondent Gram Panchayat passed a resolution on 24-3-2006. Indeed, such a plea was very much necessary for the appellant in the wake of the specific contention raised by respondent No. 4 that since the election code had already come into effect from 10-6-2006 respondent No. 3 could not have passed a resolution on 7-7-2006. Even in his reply affidavit the appellant was wholly non-committal on the date of the

resolution in pursuance of which the alleged auction was held on 7-7-2006.

8. In the backdrop of these pleadings, we shall now examine the various resolutions placed before us. At this stage, it is relevant to mention that we asked the learned Government Pleader as to when the record was handed over to him. He replied that for a longtime the outgoing Sarpanch did not hand over the record to the newly elected body and that the Panchayat Secretary was infact placed under suspension on 27-12-2006 for his dereliction of duties and gross negligence in conducting auction of the fishing rights. He further submitted that the record containing the purported resolutions was handed over to him at the time of hearing of the writ petition. The first resolution which is filed bears 24-3-2006 as the date on which it is said to have been passed. A reading of the said proceedings shows that the General Body Meeting was held on 24-3-2006 at Gram Panchayat office presided over by Sri R. Srinivasulu, Sarpanch. It is also mentioned that there were three items of resolutions, all of which relate to the conduct of auction to authorize the Panchayat Secretary to conduct auction and to utilize the income derived from the auction for the developmental works of the Panchayat. The proceedings at page-6 of the register relate to the notice and its contents reveal that in pursuance of the resolution dated 24-03-2006 auction will be conducted at 11.00 a.m., on 5-4-2006 at the office of the Gram Panchayat and the persons who are interested in participating in the said auction may contact the Panchayat Office for further details. The next proceedings relate to notice dated 5-4-2006 postponing the auction. It is mentioned therein that on 5-4-2006 auction was held at 11.00 a.m. in the office of the Gram Panchayat and in view of poor water storage in the tanks due to continuous drought in the preceding three years the majority of villagers expressed apprehension about the tank getting satisfactory inflows in the ensuing year and, therefore, the auction was postponed and an advance notice of one week would be given before the next auction is held. Page-8 of the register contains notice dated 30-6-2006 issued by the Panchayat Secretary wherein it was informed that since there was sufficient water accumulated in the tank, the Gram Panchayat resolved to conduct auction on 7-7-2006 at 11.00 a.m. at the office of the Gram Panchayat. Page-10 contains resolution dated 7-7-2006 to auction the leasehold rights of the three tanks for the years 2006-2007 to 2008-2009 and to utilize the lease amount for developmental activities. A sum of Rs. 40,000/- was fixed for Papanaidu tank. Page-12 of the register shows that in all, three persons participated in the auction including the appellant and the amounts which the bidders have offered and page-14 contains the proceedings of the Panchayat Secretary with the heading "Agreement with the successful bidder in the auction of Papanaidu tank". It is mentioned therein that the appellant emerged as highest bidder in the auction held on 7-7-2006 and that he is given leasehold rights in accordance with the terms and conditions fixed by the Gram Panchayat and that the appellant shall start operation by paying instalment of Rs. 15,000/- in advance every year. Page-15 contains proceedings of the Panchayat Secretary wherein he granted leasehold rights for seeding and fishing in favour of the

appellant for the years 2006-2007 to 2008-2009.

9. At this stage it is relevant to mention the averments in the affidavit filed by respondent No. 5 (the intervener). It is useful to extract paras-3 to 6 of the said affidavit:

3. I respectfully submit that the case of the writ petitioner before the learned Single Judge was that on 7-7-2006 the 3rd respondent Grama Panchayat decided to put the fishing rights for auction and use the proceeds for the public purpose, issued a notification and conducted auction on 7-7-2006 and he being the highest bidder was awarded the lease in the auction and that the 3rd respondent is estopped from conducting the fresh auction.

4. It is respectfully submitted that the writ petitioner filed a copy of the resolution dated 7-7-2006 wherein the 3rd respondent resolved to lease out the fishing rights in the 3 tanks. Minutes of the auction were recorded on 7-7-2006 and as per the affidavit of the writ petitioner he was awarded the lease on 7-7-2006. Thus it is evident that the decision, auction and award are of the same date. According to the procedure contemplated for the purpose the Gram Panchayath concerned shall address the District Panchayath Officer, take upset price, issue notification and then conduct auction. The resolution and the award of lease filed by the petitioner clearly indicate that no procedure was followed, if any lease was granted to the writ petitioner.

5. The case of the 4th respondent is that the former Sarpanch did not hand over the records to the newly elected body and that the Panchayat Secretary was suspended for not handing taking over the records from the former body. The records were not available in the office of the 3rd respondent at the filing of the writ petition and they were handed over at the time of hearing. The case of the appellant in the writ appeal is that a resolution was passed on 24-3-2006 scheduling the auction to 5-4-2006 which was cancelled and a fresh notification dated 20-6-2006 was issued rescheduling the auction to 7-7-2006.

6. I respectfully submit that my plea namely the writ petitioner was set up by the former Sarpanch and the allegation of the other 4th respondent that the records were not handed over by the former Sarpanch to the newly elected body is examined with reference to the pleadings of the appellant it can be inferred that the former Sarpanch improved the records before handing them over to fill up the lacunae and that there is no need to the said person unless the writ petitioner is set up by him or is interested in him. The lease obtained contrary to the procedure to knock away the public money can not be sustained and is liable to be set aside as null and void.

(emphasis added)

10. Though in the above reproduced portion of the affidavit the intervener had made serious allegations against the former Sarpanch of improving the records before handing over to the newly elected body to fill up the lacunae and that the

appellant was set up by the former Sarpanch, the appellant did not file any affidavit controverting any of the allegations contained in the said affidavit.

11. In view of the specific assertion of the intervener that the former Sarpanch improved the record to fill up the lacunae, we have closely examined the register produced before us. Our comparison of the said register with the copy of the register containing resolution dated 07-07-2006 filed by the appellant revealed that the register produced before us is different from the one from which the appellant obtained copy and filed in the writ petition. In the copy filed by the appellant, resolution dated 07-07-2006 was written on page No. 4 of the register whereas in the register produced before us, the said resolution was written on page Nos.10 and 11. While the register copy containing the said resolution produced by the appellant is a horizontal and narrow ruled book (single space between the lines), the register produced in the Court is vertical with larger space between the rules (printed lines). Apart from the patent discrepancy in form, we also noticed perceptible difference in their contents as well. In the resolution filed by the appellant the headings "S. No.", "Name of the tank", "Duration", "Upset price" and "Deposit" are mentioned. These columns are not found from the register produced in the Court. While the names of six members are mentioned in the copy of the register filed by the appellant, only five members' names are written in the register produced before the Court. The name of Maguturi Rambabu is found missing against S. No. 6.

12. On a careful consideration of the pleadings and the record, we are of the considered view that a fabricated register was handed over to the learned Government Pleader, who produced the same before the Court. In addition to the abovementioned reasons there are other reasons for our coming to this conclusion and they are enumerated below:

1. Petitioner's pleading in the writ petition was conspicuously silent on the date on which the resolution was passed by the Gram Panchayat to conduct public auction.

2. It is not in dispute that the record was for the first time produced before the learned Single Judge during the hearing of the case by which time all the parties have filed their pleadings. That was obviously the reason for the appellant for not pressing into service the resolution dated 24-03-2006, the proceedings fixing 5-4-2006 as the date of auction and the postponement of the auction to 7-7-2006. Thus there was no whisper of all these events in the entire pleadings of the appellant before the learned Single Judge.

3. It is only in the appeal that for the first time the appellant has come out with the alleged resolution dated 24-3-2006 by which time fabricated record was made available.

4. If a resolution was really passed on 24-3-2006, there was no need for the Gram Panchayat to pass another resolution on 7-7-2006. It is also evident from resolution dated 7-7-2006 that there is no reference to the earlier resolution

dated 24-3-2006. Even if the Gram Panchayat felt the necessity of passing another resolution on 7-7-2006, a reference to the earlier resolution dated 24-3-2006 would not have been omitted had there been such a resolution in existence.

5. The Resolution dated 24-3-2006 was never communicated to the District Panchayat Officer who admittedly is the competent authority being Chairman of the committee to fix the upset price vide G.O.Ms. No. 343 Panchayat Raj Department dated 10-4-1978, as subsequently amended and notified in G.O.Ms. No. 499 dated 25-11-1998.

6. Having filed a copy of the resolution dated 07-07-2006, the appellant would not have failed to file a copy of the resolution dated 24-03-2006 had it been passed and in existence.

13. From the aforementioned analysis, the conclusion is irresistible, namely; that there was only one resolution passed by the 3rd respondent Gram Panchayath before the appellant was given the leasehold rights of Papanayudu tank. The said resolution was passed on 7-7-2006 and on the same day the so called auction was held and the appellant's bid was accepted. This procedure is in blatant contravention of the Rules framed by the Government of Andhra Pradesh and notified in G.O.Ms. No. 343 dated 10-4-1978 as amended from time to time. Under Rule 2, the Executive Authority of the Gram Panchayat shall make an application to the Divisional Panchayat Officer concerned to fix the upset price before auctioning the fishing rights and the Divisional Panchayat Officer within five days from the date of receipt of such application fix the upset price duly considering the revenue of the previous years. Under Rule 4(b) on receipt of the intimation of upset price, the Executive Authority shall fix suitable time, date and place of public auction and shall give wide publicity to it by beat of drum and other means of publicity in and around the village so as to attract maximum number of bidders. He shall also intimate the same to the Extension Officer (Panchayats) concerned either by certificate of posting or by registered post so as to reach him within seven days prior to the date of auction, marking a copy thereof to the Divisional Panchayat Officer. If the Extension Officer (Panchayats) is present at the time of auction he shall authenticate the same in the presence of the bidders if he is satisfied with the highest bid amount and if he is not present, the details of auction shall be sent to the Extension Officer and he shall then communicate his approval within seven days failing which the Executive Authority is free to lease out the fishing rights to the highest bidder. The Government vide G.O.Ms. No. 499 dated 25-11-1998 instructed the District Collectors (PW) to constitute a committee for the purpose of fixing upset price for minor irrigation tanks and other sources vested in the gram panchayats and the committee shall comprise of the Divisional Panchayat Officer concerned, Mandal Development Officer concerned, Sarpanch of the Gram Panchayat and Fisheries Development Officer.

14. It is not in dispute that the aforementioned procedure was not followed in

conferring the leasehold rights on the appellant. It is neither the pleaded case of the appellant nor any material is placed by him to show that before auction was conducted on 7-7-2006 the Gram Panchayat had got the upset price fixed by the committee. Even the alleged resolution dated 24-3-2006 or the other subsequent proceedings of the Gram Panchayat said to have been recorded in the register produced before us do not show that such a procedure was followed. Therefore, the alleged auction held on 7-7-2006 is per se illegal and void. Consequently no rights flow to the appellant on account of such a void act. It is legally well settled that fraud vitiates the whole transaction and no rights accrue to the beneficiary of such a fraud.

15. The contention of the learned Counsel for the appellant that even if the holding of the auction by the Gram Panchayat was contrary to the procedure prescribed under law, still the appellant is entitled to a notice, though looks attractive at the first blush, is liable to be rejected on a deeper scrutiny. Though there is no direct evidence and indeed it is not possible to expect such a direct evidence to be adduced, from the conspectus of the whole events which are narrated above, it is reasonable to presume that the appellant is hand in glove with the former Sarpanch. As already noted hereinbefore, the appellant had not even controverted the specific contention raised by the 5th respondent intervener that he was infact set up by the former Sarpanch. The very fact that the former Sarpanch has bypassed the mandatory procedure prescribed for auctioning the water tanks and his fabricating the register containing resolutions to save the lease granted in favour of the appellant, is itself suggestive of the appellant's complicity in the whole affair. The appellant cannot, therefore, feign innocence in order to seek invalidation of the subsequent resolution passed by respondent No. 3 on the ground of violation of the principles of natural justice. From his conduct of not only seeking to derive the benefit out of a fraudulent transaction but. also in relying upon the fabricated record produced before this Court by changing his stand in the appeal, we have no hesitation whatsoever to come to the conclusion that the appellant is a party to the fraud and he cannot invoke discretionary jurisdiction of this Court to claim relief on any ground muchless the ground of violation of the principles of natural justice.

16. Even assuming that the appellant is not a party to the fraud, no useful purpose would have been served by issuing a formal notice to him, in the face of the uncontravertible facts which prove that the former Sarpanch held auction in flagrant violation of mandatory procedure.

17. In recent past, the Constitutional Courts in India deviated from the traditional view that non-observance of the principles of natural justice itself causes prejudice as reflected in cases such as Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, and S.L. Kapoor Vs. Jagmohan and Others, and have recognized the "Prejudice" and "Useless formality" theories. It is held by a catena of decisions that if on the undisputed facts the order passed or action taken was ex facie illegal, the person who is a beneficiary of such an

action or order is not entitled to any notice as no useful purpose is served by issuing a notice. M.C. Mehta Vs. Union of India (UOI) and Others, , Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, , Punjab National Bank and Others Vs. Manjeet Singh and Another, and P.D. Agarwal v. State Bank of India 2006 (4) SCJ 736 : 2006 (5) ALT 22.6 (DN SC) : (2006) 8 SCC 776.

18. In P.D. Agrawal 2006 (4) SCJ 736 : 2006 (5) ALT 22.6 (DN SC) : (2006) 8 SCC 776 (supra) the Supreme Court held as under:

Decision of this Court in S.L. Kapoor Vs. Jagmohan and Others, whereupon Mr. Rao placed strong reliance to contend that non-observance of the principles of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court of State Bank of Patiala and others Vs. S.K. Sharma, and Rajendra Singh Vs. State of Madhya Pradesh and others, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity.

19. In a recent judgment in Ashok Kumar Sonkar Vs. Union of India (UOI) and Others, the Supreme Court after reviewing the case law on this aspect reiterated this principle.

20. Having regard to the facts of this case as set out in detail hereinabove, we are of the considered view that the appellant was not entitled to any notice before the impugned resolution was passed by respondent No. 3 - Gram Panchayat.

21. As regards the contention of the learned Counsel for the appellant that u/s 246 of the Act it is only the Government which is vested with the power to cancel the resolution of a Gram Panchayat, we are of the view that the said provision has no relevance on the facts of this case. In view of our finding that resolution dated 7-7-2006 was the result of fraud played by the former Sarpanch, the 3rd respondent Gram Panchayat, in our view, rightly ignored the same and passed a fresh resolution on 1-9-2006 to conduct fresh auction. A reading of the said resolution does not show that the earlier resolution dated 7-7-2006 was cancelled. Since the earlier resolution was void, there was no need for the Gram Panchayat to cancel the same before passing a fresh resolution. It is worthwhile to mention that in the counter affidavit filed by Mandal Development Officer (respondent No. 2) Kurichedu Mandal it is mentioned that in response to resolution dated 1-9-2006 passed by the 3rd respondent - Gram Panchayat the competent authority fixed Rs. 80,000/- as the upset price for Papanaidu tank as against Rs. 45,000/- at which the appellant was given leasehold rights. Respondent No. 5 intervener in his affidavit has mentioned that he is prepared to

offer Rs. 1,50,000/-. These facts clearly suggest that the action of the 3rd respondent Gram Panchayat in deciding to hold fresh auction serves public interest and if the appellant's plea is accepted, it would cause enormous loss to the Gram Panchayat and the interest of public. In our considered view, the learned Single Judge has not committed any error in declining relief to the appellant.

22. For the aforementioned reasons, the writ appeal is liable to be dismissed and it is accordingly dismissed.