
(1992) 02 GUJ CK 0027
In the Gujarat High Court

Gopimal Khanoomal and Others

APPELLANT

Vs

Suresh Kumar, Collector, and Settlement Commissioner and
Others

RESPONDENT

Date of Decision : 04-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24
Maharashtra Co-operative Societies Act, 1960 — Section 154

Citation : (1992) 1 GLR 770

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—By means of this petition under Article 226 of the Constitution of India the petitioners have questioned the legality and validity of the order passed by the Collector-cum-Settlement Commissioner at Bhavnagar on 6th March, 1976 ordering allotment of one piece of land bearing Survey No. 264/2 admeasuring 20 Acres situated in village Sanosara, Taluka Sihor, District Bhavnagar (the "disputed land" for convenience) to respondent No. 3 as affirmed on remand by the order passed by the Collector and Settlement Commissioner (the "Collector" for convenience) at Bhavnagar on 18th October, 1980 and as affirmed by the Chief Settlement Commissioner in appeal by the order passed by the Authorised Chief Settlement Commissioner at Gandhinagar.

2. This litigation has a chequered history. The disputed land originally belonged to one Jusab Gani. He appears to have migrated to Pakistan after its formation some time in 1947. It was thereupon declared to be an evacuee property. Formerly it was allotted to the predecessor-in-title of the petitioners by an order passed some time on 13th January, 1953 under the relevant provisions contained in the Displaced Persons (Compensation and Rehabilitation) Act, 1954 ("the Act" for brief). It appears that it was in possession of one Daya Kanbi at the relevant time. He was ordered to vacate it by the Assistant Custodian of Evacuee Property at Bhavnagar by his order of 5th February, 1953. Against that order the person

in possession of the disputed land preferred an unsuccessful appeal. The predecessor-in-title of the present petitioners thereupon made one application on 7th May, 1954 praying for handing over the possession of the disputed land to him. He renewed his request by a further application on 24th June, 1955. It appears that he withdrew his claim for the disputed land by means of his communication of 27th June, 1955. It transpires from the orders passed by the lower authorities that no order was passed with respect to his letter declaring withdrawal of his claim over the disputed land. It appears that respondent No. 3 made one application on 27th April, 1961 for allotment of the disputed land to him under the relevant provisions contained in the Act. By an order passed on 27th March, 1963 respondent No. 3 was allotted the disputed land. In the meantime, petitioner No. 1 made some enquiries whether any amount payable with respect to the disputed land allotted to his father remained outstanding. Thereupon he was told that his father had withdrawn his claim over the disputed land, and as such the question of any amount remaining out-standing did not arise. Petitioner No. 1 thereupon applied for handing over possession of the land to him. He was informed by the Collector of Bhavnagar by his order passed on 6th March, 1976 that the disputed land was allotted to respondent No. 3 against his verified claim under the Act. Its copy is Annexure "C" to this petition. Petitioner No. 1 thereupon preferred an appeal to the Authorised Chief Settlement Commissioner against the order of the Collector of Bhavnagar passed on 6th March, 1976. His appeal came to be disposed of on 26th April, 1978 and the matter was remanded to the Collector of Bhavnagar for a fresh decision after hearing the parties including the heirs of the original allottee, that is the present petitioners. The Collector of Bhavnagar by his order passed on 8th October, 1978, decided the case in favour of respondent No. 3 herein. It appears that petitioner No. 1 preferred an appeal on 7th November, 1978 before the Authorised Chief Settlement Commissioner against the order passed by the Collector of Bhavnagar on 8th October, 1978. The said appeal came to be decided on 30th July, 1979 and the matter was again remanded to the Collector of Bhavnagar for deciding the case afresh after giving notice to all the heirs of the original deceased allottee, that is, the present petitioners. It appears that the notices were issued by the Collector of Bhavnagar to all the petitioners. Its hearing was kept on 7th October, 1980. By his order passed on 18th October, 1980, the Collector of Bhavnagar decided the case in favour of respondent No. 3. A copy of the order passed by the Collector of Bhavnagar on 18th October, 1980 is at Annexure "E" to this petition. It transpires therefrom that on the date of hearing fixed on 7th October, 1980 petitioners No. 1 was present but his Advocate, named, Shri V.G. Gandhi, was not present. The hearing took place in absence of Shri Gandhi. It transpires from the order at Annexure "E" to his petition that Shri Gandhi appeared before the Collector around 12-45 p.m. on that very day. He made an application to the Collector on that very day for giving an opportunity of hearing to him as Advocate for present petitioner No. 1. A copy of that application is at Annexure "D" to this petition. It appears that he was given no opportunity of hearing on that day. He therefore made another

application on 14th October, 1980 putting on record the case on behalf of petitioner No. 1 herein. A copy of the application made by him on 14th October, 1980 is at Annexure "E-I" to this petition. No opportunity of hearing appears to have been given to the Advocate for petitioner No. 1 herein by the Collector before passing the order at Annexure "E" to this petition on 18th October, 1980. Petitioner No. 1 carried the matter in appeal before the Authorised Chief Settlement Commissioner at Gandhinagar challenging the legality and validity of the order passed by the Collector of Bhavnagar on 18th October, 1980 at Annexure "E" to this petition. A copy of the Memo of Appeal before the Authorised Chief Settlement Commissioner at Gandhinagar is at Annexure "E-2" to this petition. It transpires from the Memo of Appeal that the grievance was also voiced against denial of an opportunity of hearing to the learned Advocate for petitioner No. 1 herein. The Authorised Chief settlement Commissioner at Gandhinagar by his order passed on 12th March, 1981 dismissed petitioners No. 1's appeal. Its copy is at Annexure "F" to this petition. The petitioners have challenged the legality and validity of the orders by the lower authorities at Annexures "C", "E" and "F" to this petition.

3. Shri D.M. Shah, the learned Advocate for respondent No. 3, has raised a preliminary objection against maintainability of this petition on the ground that the petitioners have an alternative efficacious remedy by way of revision under the relevant provisions contained in Section 24 of the Act. Since they have not availed of this alternative remedy, runs the submission of Shri D.M. Shah for respondent No. 3, this petition deserves to be rejected on that ground alone.

4. It may be mentioned that the appellate powers of the Chief Settlement Commissioner are set out in Section 23 of the Act. Section 24 thereof confers on the Chief Settlement Commissioner revisional powers against the orders passed by the lower authorities including that passed by the Settlement Commissioner. The Collector of Bhavnagar in the instant case would be the Settlement Commissioner of Bhavnagar for the purposes of the Act. Section 27 of the Act attaches finality to the orders passed by an officer or authority under the Act. It transpires from the scheme of Chapter 4 of the Act that the Chief Settlement Commissioner is made an appellate authority with respect to certain orders made inter alia by the Settlement Commissioner under the Act. The order in appeal by the Chief Settlement Commissioner will be final in view of Section 27 of the Act. His order u/s 24 of the Act exercising suo motu revisional powers is made subject to revision under Sub-section (4) thereof. In the instant case the Authorised Chief Settlement Commissioner has exercised his appellate powers u/s 23 of the Act. That order is not subject to any revisional powers. The order passed by the Authorised Chief Settlement Commissioner at Annexure "F" to this petition is certainly not u/s 24 of the Act. In that view of the matter, the remedy of revision cannot be said to be available to the petitioners against the impugned order at Annexure "F" to this petition.

5. Even assuming for the sake of argument that the petitioners can avail of the

remedy of revision u/s 24 of the Act, it is not always as of right unlike the remedy of appeal. As pointed out hereinabove. Section 24 enables the Chief Settlement Commissioner to call for the record and to examine the legality or propriety of any order passed therein by some officer or authority named therein. He can exercise these revisional powers even at the instance of some applicant. He may not also choose to entertain any such application invoking his revisional jurisdiction. It is thus clear that the revisional powers conferred upon the Chief Settlement Commissioner are exercisable at his discretion. No person can as of right invoke the revisional powers of the Chief Settlement Commissioner u/s 24 of the Act. When the remedy available for challenging some orders under the Act is at the discretion of the revisional authority, it cannot be said to be an efficacious alternative remedy,

6. I am fortified in my aforesaid view by the ruling of the Supreme Court in the case of Deccan Merchants Co-operative Bank Ltd. Vs. Dalichand Jugraj Jain and Others, . In that case a bar to the writ petition under Article 226 of the Constitution of India was pressed into service on the basis of Section 154 of the Maharashtra Co-operative Societies Act, 1961 conferring revisional powers on the State Government to call for and examine the record of any enquiry or the proceedings for the purpose of satisfying itself as to the legality and/or propriety of any order passed by any officer thereunder. In that context in para 38 at page 1329 it has been held;

In our opinion, the High Court has jurisdiction to go into the disputed questions of fact and to quash an interlocutory order even though some sort of alternative remedy exists u/s 154 of the Act. Section 154 of the Act inter alia enables the State Government to call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them. This remedy can hardly be treated as an alternative remedy for the purposes of deciding the questions raised by the petitioners.

This ruling of the Supreme Court in the case of Deccan Merchants Cooperative Sank Ltd. (supra) provides a complete answer to the submission urged by Shri D.M. Shah for respondent No. 3 to the effect that the petitioners should be driven to avail of the alternative remedy of revision u/s 24 of the Act.

7. Again, the grievance of the petitioners in this petition is that the impugned order at Annexure "E" was passed by the Collector of Bhavnagar without giving them an opportunity of hearing. According to the petitioners, the order at Annexure "E" to this petition is violative of principles of natural justice and is as such null and void ab initio. It is settled principle of law that the petitioners need not be subjected to any alternative remedy if the impugned order is found to be null and void on any ground.

8. This position of law is no longer res Integra so far as this Court is concerned. In its ruling in the case of Bhavabhai Bhadabhai Maru v. Dhandliuka Nagar Panchayat reported in [1991 (2)] XXXIII (2) GLR 1339, this Court has in terms

held that, where the authority has acted in contravention of the principle of natural justice, the existence of an alternative remedy is no bar to the petition under Article 226 of the Constitution of India. The aforesaid ruling of this Court in the case of Bhavabhai Bhadabhai Maru (supra) also provides a complete answer to the submission urged before me by Shri D.M. Shah for respondent No. 3 to the effect that the petitioners should be driven to avail of the alternative remedy of revision as provided u/s 24 of the Act.

9. That brings me to the main issue in controversy between the parties. Shri S.M. Shah for the petitioners has submitted that the impugned order passed by the Collector of Bhavnagar impleaded as respondent No. 1 in this petition is clearly violative of the audi alteram partem rule and is as such null and void ab initio. It has also been urged that the hearing given in the appeal proceeding would not validate the otherwise null and void order. As against this, Shri D.M. Shah for respondent No. 3 has Submitted that the petitioners were given all opportunities of hearing and no fault can be found with the authority if they did not avail of such opportunity of hearing afforded to them. Shri D.M. Shah for respondent No. 3 has further submitted that petitioner No. 1 was fully heard in appeal by the appellate authority impleaded as respondent No. 2 in this petition, and as such their grievances against denial of an opportunity of hearing by respondent No. 1 would pale into insignificance.

10. It transpires from the impugned order at Annexure "E" to this petition that the hearing of the case was kept on 7th October, 1980. On that day respondent No. 3 was present in the Company of his Advocate. Petitioner No. 1 was also found present on that day. His Advocate Shri Gandhi was however not present. There was nothing wrong on the part of the authority to proceed ex-parfe with the hearing. The authority was justified in doing so. No grievance can be heard against rejection of request for adjournment made by petitioner No. 1 on that day. It however transpires from the impugned order at Annexure "E" to this petition that Advocate Shri Gandhi appeared before respondent No. 1 at about 12-45 p.m. on that day. It is an admitted position that no decision in the case was pronounced on that day by respondent No. 1 before Advocate Shri Gandhi for petitioners No. 1 herein appeared before him at 12-45 p.m. on that day. It is often possible that an Advocate may not be able to remain present exactly on time. But if he remains present before the decision is given, the rules of natural justice require giving of an opportunity of hearing to him to present his case even if the hearing is concluded. Different considerations might arise if a party seeks hearing after the decision is already given. In that case a party has to apply for review if that remedy is available to it. In the alternative, such party may be directed to approach the higher forum. However, when a decision is not given even after conducting an ex-parte hearing and the absent party comes afterwards and seeks an opportunity of hearing, I think the authority is bound to give him such opportunity of hearing though the arguments of the other side might have been concluded. If, after giving an opportunity of hearing to such person, the authority thinks it fit to seek clarifications from the party heard

earner, nothing prevents that authority to call for that party to answer the submissions raised before the authority by the absent party later on. Denial of an opportunity of hearing in such circumstances would amount to contravention of the audi alteram partem rule well-enshrined in the concept of natural justice.

11. It is not in dispute that Advocate Shri Gandhi for petitioner No. 1 herein gave one application on that very day at Annexure "D" to this petition requesting respondent No. 1 to grant an opportunity of hearing in the case. It transpires from the application at Annexure "D" to this petition that the Advocate for respondent No. 3 herein was present at the relevant time and that Advocate had no objection if an opportunity of hearing was given to Shri Gandhi. In this view of the matter, it was all the more necessary for respondent No. 1 to give an opportunity of hearing to Advocate Shri Gandhi for petitioner No. 1 herein at that time. Respondent No. 1 also appears to have ignored the case set up on behalf of petitioner No. 1 by his Advocate Shri Gandhi by means of his application submitted on 14th October, 1980 at Annexure "E-I" to this petition. The order at Annexure "E" to this petition does not deal with the submissions urged by Shri Gandhi for petitioners No. 1 herein in his application of 14th October, 1980 at Annexure "E-I" to this petition. The impugned order at Annexure "E" can thus be branded as an outcome of the non-application of mind on the part of respondent No. 1 with respect to the case pleaded by and on behalf of petitioner No. 1 herein. Application of mind to the case on hand is also an aspect associated with principles of natural justice.

12. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure "E" is passed in contravention of the principles of natural justice. It has to be declared null and void.

13. The defect of hearing in the order at Annexure "E" to this petition rendering it null and void on that account cannot be cured by grant of such opportunity of hearing by the appellate authority. This point is concluded by the Division Bench of this Court in its ruling in the case of T.S. Rabari Vs. Government of Gujarat and Another, . Relying on the ruling of the Supreme Court in the case of Slate of U.R. v. Molid. Nooh AIR 1958 SC 86) the Division Bench of this Court in its ruling in the case of T.S. Rabari (supra) has held that, if an order passed by a subordinate Court or an inferior tribunal of first instance was null and void as violative of principles of Natural Justice that vice cannot be obliterated or cured on appeal or revision. This dictum of law pronounced by the Division Bench of this Court in its aforesaid ruling in the case of T.S. Rubari (supra) is binding to me sitting as a single Judge. Even otherwise, I am in respectful agreement with the principle of law enunciated therein. In that view of the matter the passing of the order at Annexure "F" to this petition after fully hearing petitioners No. 1 would not validate the otherwise null and void order found having been made by respondent No. 1 by his order at Annexure "E" to this petition.

14. In the result, this petition is accepted. The impugned orders at Annexures "E" and "F" passed by respondent No. 1 and respondent No. 2 respectively are

quashed and set aside. The matter is remanded to respondent No. 1 for deciding afresh the case after giving an opportunity of hearing to the concerned parties. It will be open to respondent No. 3 to contend before respondent No. 1 at the time of hearing of the case that the claims made by and on behalf of the petitioners except petitioner No. 1 are not maintainable in view of the fact that the order at Annexure "E" passed by respondent No. 1 was not challenged in appeal by those petitioners before respondent No. 2. In view of the fact that it is an old case, respondent No. 1 is directed to dispose of the matter according to law as expeditiously as possible, preferably by 30th June, 1992. The Registry is directed to send the writ of this case as expeditiously as possible, preferably by 29th February, 1992. Rule is accordingly made absolute to the aforesaid extent however with no order as to costs on the facts and in the circumstances of the case.