

(1992) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : W.A. No's. 1080 and 1088 of 1988

Government of Andhra Pradesh and others

APPELLANT

Vs

C. Kondapi

RESPONDENT

Date of Decision : 16-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 32
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 27
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 20(1)

Citation : AIR 1992 AP 324 : (1992) 2 ALT 549

Hon'ble Judges : Sardar Ali Khan, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Government Pleader for Revenue, for the Appellant; M/s. K.G. Kannabiran and B. Nalin Kumar, for the Respondent

Judgement

Mohd. Sardar Ali Khan, J.—W.A.No. 1080/88 and W.A. No. 1088/88 go hand in hand together over a common area of facts and share common questions of law between themselves. Hence both the cases have been taken up together and are being disposed of by a common judgment.

2. W.A.No. 1080/88 has been filed by the Government of Andhra Pradesh represented by its Secretary, Revenue Department and two others against the judgment dated 23-2-1988 passed in W.P. No. 2878 of 1986 mainly on the ground that the learned single Judge committed an error in issuing a writ of mandamus directing the Government to sell the Government land to the petitioner, who is a private party, at a fixed price. It is also averred that the petitioner, in whose favour the judgment of the learned single Judge had been passed, had no legal right to claim the Government land and hence the plea of mandamus on his behalf is totally unwarranted.

3. W.A. No. 1088/88 is, on the other hand, filed by the writ petitioner Mr. C. Kondapi against the same judgment of the learned single Judge dated 23-2-1988 passed in W.P. No. 2876/86 stating, inter alia, that the learned single Judge erred

in directing the Government to allot the land in question at the rate of Rs. 250/- per square yard when admittedly apart and parcel of the same land had been sold to another person at the rate of Rs. 25/- per square yard. It is further averred by the petitioner, who is the appellant in W.A. No. 1088/88, that the learned single Judge should have taken into consideration that the Municipal Corporation, Hyderabad had granted permission to construct compound wall on payment of betterment charges for the entire extent including 300 square yards which have become the subject matter of the writ petition and consequently the writ appeals as well. It is further contended by the writ petitioner that an extent of 148 square yards, abutting the main road, belonging to the petitioner, was taken over by the Government for the purpose of laying a road by the Municipal Corporation of Hyderabad and a compensation at the rate of Rs. 130/-per square yard plus the solatium of 30% has been fixed for the acquisition of the land of the appellant (writ petitioner). These are the broad features of the case under which both the writ appeals have been filed by both sides.

4. Now a brief look at the salient facts of the case would be proper so that the area of controversy arising in this matter may be clear. The case of the petitioner in a nut-shell is that he entered into an agreement of sale for purchasing vacant site measuring 4000 Square Yards, situate at Road No. 12, Banjara Hills, with one Mirza Amjad Ali Khan on 3-5-1962. However, another person, by name Imtiaz Ali Khan, encroached upon 700 Square Yards on the western side thus reducing the total extent of the land in the possession of the writ petitioner to 3,300 square yards. The petitioner's vendor refused to execute a sale deed thereby compelling the petitioner to file a suit in the year 1964 which was decreed and an appeal preferred against the same was also dismissed. After retirement from his foreign assignment the petitioner came to Hyderabad and filed Execution Petition in which a direction was given to the vendor to execute a sale deed. The sale deed was eventually executed on 2-1-1980. After the execution of the sale deed through Court, the petitioner applied to the Municipal Corporation of Hyderabad for permission to build a compound wall and betterment charges were also paid for the entire extent including the 300 square yards, which is now the subject-matter of the present dispute, as it is being claimed as Government poramboke land. The compound wall was erected and there was again a dispute between the appellant in W. A. No. 1088/88 and another person Mr. Kurshid Hassan, who demolished the northern compound wall on the strength of an ex parte injunction order. Nevertheless, at the instance of slum dwellers behind the northern compound wall a recommendation for laying a road was managed in the Municipal Corporation on the northern side of the compound wall, which put an end to the dispute with Kurshid Hassan. It is also significant to note that as per G.O.Ms. No. 306 Revenue (UC.II) Department, dated 15-2-1979 the Government had issued orders granting exemption under S.20 of the Urban Land (Ceiling and Regulation) Act, 1976 in favour of the petitioner's vendor Mr. Mirza Amjad Ali Khan enabling him to alienate the land in favour of the petitioner under S. 20(1)(a) of the said Act. The exemption so

granted was for the entire area of the land measuring 3,300 square yards including the 300 square yards of land, which is now under dispute in these writ appeals. The said exemption was granted by the authorities on an application filed by the writ petitioner so that the sale deed in his favour may be executed by his vendor Mr. Mirza Amjad Ali Khan as per the orders of the Court. It remains a mystery as to why the State Government did not take its claim at that time when the exemption was granted in the manner stated above to the 300 square yards of land which is now claimed to be Government poramboke land. The litigation has been pending over a number of years and the Government never thought it fit to assert its rights over the land at any stage of the proceedings claiming that 300 square yards of land is a Government poramboke land situated more or less in the middle of the land owned by the writ petitioner, Mr. C. Kondapi. Now the situation is that the land claimed by the Government has no access except through the land of the petitioner and even if it is taken for granted that it is a Government poramboke, the said land cannot be put to any use without acquisition of further land belonging to the petitioner. The petitioner filed several applications before the authorities requesting that the 300 square yards of land, which is his own land, may still be sold at a fair price to him if the Government feels that it is a Government poramboke land. Indeed, he could have pleaded full-fledged title to the land by adverse possession but it seems that to avoid any litigation between him and the Government, he made the offer to pay the market value of the land as determined by the authorities to put an end to the tortuous litigation, which had spread over a long number of years. The petitioner also has stated time and again that in similar circumstances an extent of 425 square yards of land has been sold by the Government in favour of Mrs. B. N. Raman, wife of the former Chief Secretary to the Government of Andhra Pradesh, at the rate of Rs. 25/- per square yard.

5. We have seen the plans and the necessary record in the case and it is clear that the land alienated in favour of Mrs. B. N. Raman is almost a part and parcel of the land which is the subject of the dispute before us. It is not for this Court to go into the question under what circumstances the land was alienated in favour of Mrs. B. N. Raman because the issue to be decided in this case is whether the learned single Judge was right in granting a writ of mandamus directing the State Government to sell the land at the rate of Rs. 250/- per square yard in favour of the writ petitioner.

Mr. K. G. Kannabiran, learned counsel for the writ petitioner, has relied upon Art. 14 of the Constitution of India in this regard and submitted that the concept of "Equality before Law" has been flouted in this case by the refusal of the State Government to alienate the land in favour of the petitioner at a reasonable price. In this connection it is appropriate to extract hereunder Art. 14 of the Constitution which is in the following terms :

"14. Right to Equality :-- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

This Article has been the subject-matter of voluminous decisions which have brought to light the various facets of the concept of "equality before law" enshrined as a fundamental right in the Constitution of India. The concept of "equality before law" is based on the principles of common law and equity. The ultimate object of Art. 14 is to ensure that all persons are treated on an equal footing by the State and there should be no discrimination to the detriment of one as against the other. It is also significant to note that the concept of "equality before law" is not merely confined to the citizens of India but it is available to any person who is residing within the territorial boundaries of the Republic of India. It is, therefore, of a wide import which takes into its sweep every person who is living in India and who has a right to be treated on the basis of equality in all respects.

6. Another feature of the case, which is relevant for the purpose of the above discussion is that the Collector, Hyderabad District, in his letter dated 15-10-1985 addressed to the Commissioner of Land Revenue, Andhra Pradesh, Hyderabad, stated that the prevailing market rate of the land in question according to the basic register maintained by the Sub-Registrar, is Rs. 75/- per square yard and the prevailing market value in the vicinity is ranging from Rs. 200/- to Rs. 250/- per square yard. This letter of the Collector clearly shows that it was under the active contemplation of the authorities to alienate the said land in favour of the appellant (writ petitioner) and for that purpose the market value of the land was assessed as ranging between Rs. 200/- and Rs. 250/- per square yard. Furthermore, the learned single Judge also took note of the same letter and came to the conclusion that the authorities were considering the request of the appellant for alienation of the land in favour of the petitioner at a suitable price and therefore there is no reason why the proposal to sell the land to the petitioner should be shelved without assigning any reasons.

7. The learned Government Pleader for Revenue, Mr. C. V. N. Sastry, has put up resistance mainly on two grounds. His first submission is that a writ of mandamus can be issued only for the enforcement of a public duty by a public authority and not for any other purpose. The jurisdiction of the Court under Art. 226 of the Constitution is, therefore, well defined within the above said parameters and the Court cannot issue a writ to compel the State Government to perform an act which does not come within the scope of a public duty cast upon the authorities. His second submission is that it is for the State Government to decide whether it should sell the land to anyone or not. This argument is reinforced by the further submission that in any case the writ petitioner is not a landless poor and the land lying in such an area could be assigned or sold only to poor landless persons and the petitioner is certainly not such a person. Sri C. V. N. Sastry, learned Government Pleader relied upon a decision of the Supreme Court reported in *The State of Madhya Pradesh Vs. G.C. Mandawar*, in which it was held that the grant of Dearness Allowance is a matter of grace and not justiciable and that neither a writ of mandamus nor a direction could be issued in respect of it. It was further held by the Supreme Court that the scale of Dearness

Allowance recommended by the Central Pay Commission and sanctioned by the Central Government could furnish no ground for holding that the scale of Dearness Allowance recommended by the Pay Commission and adopted by the State Government is repugnant to Art. 14 of the Constitution. It was held that it may no doubt sound hard that Government servants doing work of a similar kind and working, it may be even in the same place, should receive different allowances; but the rights of the parties have to be decided on legal considerations and it was impossible to hold that the resolution in question was bad under Art. 14. In this view of the matter, the Supreme Court held that Art. 14 cannot be pressed into service to bring home the charge of discrimination in the matter of grant of Dearness Allowance. It may not be difficult to distinguish this case from the facts of the present case before us. It is not a question of an ex gratia that the appellant is claiming in this matter. Indeed, there is a long history of litigation from 1962 onwards and for about a period of 20 years the Government has never thought it fit to stake its claim to the land in question, so much so that the petitioner has been able to secure an order of exemption to enable his vendor to execute a sale deed in his favour and yet the authorities never raised the plea that the 300 square yards, out of 3,300 square yards, was Government poramboke. Furthermore, it would be difficult to close one's eyes to the fact that in similar circumstances an area of 425 square yards has been sold in favour of Mrs. B.N. Raman at the rate of Rs. 25/- per square yard to mitigate the hardship caused to her. Therefore, there is no earthly reason why the same principle should not be applied in this case as well and the land may be sold to the appellant at a fair and reasonable price. The learned Government Pleader relied upon a decision reported in *Rajalakshmi v. State of Mysore* AIR 1967 SC 993, in which it was held that a concession granted in favour of one person cannot be claimed by another on the basis of the principle enshrined in Art. 14 of the Constitution. In other words, the concept of "equality before law" cannot be claimed in matters where certain facilities or grants are made by way of concession or grace in favour of certain persons. We are inclined to take the view that this decision also does not apply to the facts of the case before us. It is not a concession which the petitioner is claiming in this case. In fact, he is claiming an accrued right to him that the proposal, which was initiated at one time to sell the land to him for which the market value was also determined, should be taken to its logical end.

8. The third decision relied upon by the learned Government Pleader is *T. V. Setty v. Bangalore Municipality* AIR 1968 Mys 251. The ratio of this case is that Art. 14 of the Constitution cannot be understood as requiring authorities to act illegally in one case because they have acted illegally in other cases. It is difficult to visualise how it can be said that the petitioner is asking the Government to do any illegal act in this matter. Indeed, it is not his case that the alienation of the land in favour of Mrs. B.N. Raman was an illegal act performed by the State Government. It may be true that there were sufficient reasons for the Government to alienate the land in that case as well. A perusal of the record in

this case reveals that there are many more grounds of similar nature existing in this case on the basis of which the Government could alienate the land in favour of the petitioner. Such alienations cannot be termed *per se* illegal but they are indeed a part of the law of the land and have to be granted in deserving cases. Refusal to alienate the land in certain circumstances in favour of a person who qualifies for such alienation may result in injustice to the person concerned. The crux of the problem is that when the Government has alienated the land in favour of one person in similar circumstances to alleviate the suffering of that person, there is no reason why the same act should not be performed in the case of another person who is also experiencing hardship in similar circumstances.

9. Sri K.G. Kannabiran, learned counsel for the writ petitioner, on the other hand, has submitted that the jurisdiction of the High Court to issue a writ of mandamus should not be construed in a narrow or technical manner. He has further submitted that the object of the issue of a prerogative writ like mandamus is to enforce a duty on the public authority which is warranted by law. The scope of a mandamus, as developed in India, covers a wider field of judicial activity as compared to England. Perhaps it would not be wrong to say that of all the prerogative writs which the High Courts are empowered to issue under Art. 226 of the Constitution, the writ of mandamus is the one which has thrived to the utmost in Indian conditions. May be this is because of the fact that the functioning of the executive (*sic*) in India is of a much more complex nature than what it is under a unitary Constitution like that of Great Britain. It would not be out of place to refer to a few decisions to highlight the point mentioned above. In this connection it would be in the fitness of things to take a look at *Gurbax Singh Vs. The Financial Commissioner and another*, . This is a case which arose out of the provisions of the Displaced Persons (Compensation and Rehabilitation) Act (Act 44 of 1954). u/s 27 thereof the jurisdiction of the Civil Court while entertaining a suit for declaration of continuous possession of plaintiff over suit land was a matter which came up for consideration. It was held by the Supreme Court in the above decision that the Court is to administer justice according to law whenever there is scope for doing so in accordance with the principles of justice and equity between the parties. A reference was made to the Institutes of Justinian, *De Justitia Et Jure* in "*Liber Primus*" which formed the basis of the Roman Jurisprudence and it was mentioned that justice is the constant and perpetual wish to render everyone his due. The principles enunciated in the maxim "*Jurisprudentia est divinarum atque humanarum rerum notitia, justae atque injustae scientia*" pointed out the principles which have to be applied for doing justice between the parties. Even though the Supreme Court was not exercising its jurisdiction in this case under Art. 32 of the Constitution, still the principles so laid down by the Supreme Court, which has a plenary value, is a relevant judicial pronouncement to be taken into consideration for a decision in this case. From a reading of the above, the principle to be deduced is that the ultimate object of the Court is to render justice between the parties while setting aside any technicalities which may come in the way in doing so.

10. The other decision, which throws light on the proposition mentioned above is the one reported in *Assam Sillimanite Ltd. and another Vs. Union of India and others*, . In this case the Supreme Court while discussing the ambit and scope of Art. 226 of the Constitution empowering the High Court to issue prerogative writs, observed that in a given case the proper course to be adopted is to devise some method for deciding the quantum of relief that could be granted to the petitioner by way of compensation and damages. Taking into consideration all factors in that particular case, the Supreme Court directed that having regard to the circumstances the compensation/damages should be restricted to a period of five years from the date of termination of the leases or up to the date of expiry of the original lease deeds referred to above whichever is less and not for the entire unexpired period of all the leases. It is, therefore, evident that the Supreme Court has clearly pointed out in this matter that the High Court, in exercise of its jurisdiction under Art. 226 of the Constitution can go into the relative merits of the case and even determine the quantum of compensation or damages, as the case may be, to be granted to a party in appropriate cases. This shows the wide amplitude which the Court was given to the operation of the writ jurisdiction of the High Courts in the country. It is a well-known preposition of law that the concept of jurisdiction of a Court is a flexible phenomenon which must keep pace with the changing needs of the society. We read the decision of the Supreme Court as a clear pointer to the fact that the jurisdiction of the Court must not be interpreted in a narrow or pedantic manner. In yet another case in *Smt. Kamala Gaind v. State of Punjab*, 1990 SCC 800, the Supreme Court was seised of the provisions of Arts. 14 and 16 of the Constitution. The matter was one which was to be dealt with on compassionate grounds. The Supreme Court held that since there was no justification for practising discrimination against a particular party, a direction was given to provide to the appellant's son a job within three months in view of the offer already made by the authorities purely on compassionate grounds. A reading of this case also shows that the concept of jurisdiction of the Court while deciding the dispute has assumed a new dimension in this particular regard. In other words, if the facts and circumstances of the case warrant a particular judicial action to be taken in the matter the remedy should not be clipped due to the constraints of technicalities involved in the matter. In *Harinder Singh Arora Vs. Union of India (UOI) and Others*, , the Supreme Court exercised its jurisdiction in relation to the contract by the Government wherein tenders were invited for supply of fresh buffalo and cow milk under the Government Milk Scheme. It is interesting to note that in this matter the Supreme Court held that the instrumentalities of the State who invited tenders for the supply of fresh buffalo and cow milk, must abide by the result of the tender and cannot arbitrarily and capriciously accept the bid of a particular, party although it was much higher and to the detriment of the State. In this view of the matter the Supreme Court held that the contract of supply of milk was to be given to the lowest bidder under the terms of the tender notice and the appellant being the lowest bidder he should have been granted the contract for supply of milk. A positive direction was given by the Supreme Court

in this regard to accept the tender given by the appellant and the highest tender submitted by another respondent was quashed in this matter. In *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, while explaining the jurisdiction vested in the High Court under Art. 226 of the Constitution, the Supreme Court observed that the power to issue a writ of mandamus or to pass orders and give necessary directions to a public authority is well within the jurisdiction of the High Court. Where the Government or a public authority failed to exercise or wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide, the High Court can always issue a writ of mandamus to compel the performance of a particular act by the authorities in a proper and lawful manner thereby exercising the discretion vested in the authorities in a fair and reasonable manner as such.

11. By way of summing up the principle to be deduced from the abovesaid decisions, can be clearly enunciated in the following manner : The writ of mandamus is a remedy available to any person who is trying to assert his legal right by invoking the jurisdiction of the High Court under Art. 226 of the Constitution compelling the public authorities to perform legal duty cast upon them. If the State Government or the public authority, as the case may be, fails to discharge their obligations or if they exercise the discretion vested in them in a manner which is not fair and reasonable then the High Court can apply the correct procedure by issuing a writ of mandamus directing the authorities to do a particular act which is in accordance with the principles of law, justice and equity. The power of judicial review in issuing prerogative writs vested in the High Court cannot be crumbled at the risk of certain technical difficulties which may arise in the way. The concept of the jurisdiction in issuing a writ, particularly in the nature of a mandamus, is a concept based not merely on the principles of common law but on the basis of equity and good conscience. We have examined minutely the record existing in this case and have come to the conclusion that the learned single Judge was well within his rights to direct the State authorities to sell the land, admeasuring 300 square yards at the rate of Rs. 250/- per square yard, to the appellant-writ petitioner. The learned single Judge has fixed the price at the rate of Rs. 250/- per square yard after going through the recommendations made by the revenue authorities themselves. He had indeed opted for the highest price which has been quoted by the authorities in that connection and fixed the price appropriately at Rs. 250/- per square yard. We do not see any reason as to why the same principle should not be applied in regard to the sale of land in favour of the petitioner as it was applied in the case of *Mrs. B. N. Raman* where an extent of 425 square yards was sold to her by the Government at the rate of Rs. 25/- per square yard. The argument based on Art. 14 of the Constitution that the principle of "equality before law" has been violated in this case by the refusal of the authorities to sell the land is well grounded in the facts and circumstances of the case as they emerge from the examination of the record of the matter. Hence, we are of the positive view that

Writ Appeal No. 1080/88 filed by the Government challenging the jurisdiction of the High Court to issue a writ of mandamus in a case of this nature deserves to be dismissed. Similarly, W.A. No. 1088/88 filed by Mr, C. Kondapi challenging the fixation of the price of land at Rs. 250/- per squar yard is also rendered devoid of any merit and is also liable to be dismissed.

12. In the result, the judgment of the learned single Judge is confirmed as it does not call for any interference and both the Writ Appeals, viz., W.A. No. 1080/88 and W.A. No. 1088/88 are dismissed but in the circumstances of the case there will be no order as to costs. The appellant in W.A. 1088/88, Mr. C. Kondapi shall deposit the sale proceeds at the rate of Rs. 250/- per square yard for the extent of the land in question within 2 (Two) months from the date of this judgment failing which he will not be entitled to purchase the said land. Advocate's fee Rs. 250/- in each.

13. Order accordingly.