
(2009) 06 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 10084 of 2006, 22619 of 2007, 3421, 7747, 8761 and 12928 of 2008 and 3750 and 6425 of 2009

K.S. Bali and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 02-06-2009

Acts Referred:

Registration Act, 1908 — Section 22A

Citation : (2009) 4 ALD 728 : (2009) 5 ALT 49 : (2009) 3 APLJ 153

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : I.V.S. Rao, C.B. Ram Mohan Reddy, K.V. Satyanarayana, Mohd. Vasi Ahmed and S.M. Sujjat Hussain, for the Appellant; A.G. for Respondent Nos. 1 to 6, M. Dhananjaya Reddy and R.K.G. Bhatia, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—In this batch of eight writ petitions, the validity of memo, dated 21.05.2005, issued by the Government of A.P., in its Revenue Department, is challenged. In addition to that, G.O.Ms. No. 1084, dated 06.06.2005, issued by the Government in exercise of power u/s 22-A of the Registration Act, 1908, as it then existed, is challenged in two writ petitions, viz., W.P. Nos. 22619 of 2007 and 7747 of 2008.

2. The petitioner in W.P. No. 10084 of 2006 claims to be the representative of some of the legal descendants of late Nawab Nusrat Jung-I, and those in the other writ petitions, claim to be the descendants themselves.

3. The brief facts that gave rise to filing of these writ petitions, as stated by the petitioners, are as under:

Mohammed Nizamuddin Khan, titled as, Nawab Nusrat Jung Bahadur-I (hereinafter referred to as "the Nawab") purchased an extent of 1635 acres of land at Asad Nagar, which, since came to be known as "Kokapet Village" in the

surroundings of Hyderabad, through a registered sale deed, in the year 1852. Smt. Rahimunnisa Begum was his wife. The Nawab died issueless, in 1875. After his death, the then Sarf-e-Khas Mubarak of the Nizam Government, took temporary custody of the said land and other properties, and an enquiry, as to the succession to properties, was instituted, vide proceedings, dated 07.08.1905, in the erstwhile Court of Nazim Atiyat. Before the enquiry was concluded, Rahimunnisa Begum died in 1916.

4. After India became independent, the erstwhile State of Hyderabad became part of it in 1948. The A.P. (T.A.) Atiyat Enquiries Act, 1952 was enacted. The enquiry that was pending into the succession of the Nawab, was brought under the purview of that Act. The Court of Nazim Atiyat, which enquired into the matter, passed an order, dated 15.02.1954, recognizing a set of people as successors to the estate of the Nawab. After the Revenue Minister accorded his approval to the order of Nazim Atiyat with certain modifications, Muntakhab No. 57/55, dated 12.05.1955, was issued. Two branches, represented by Nawab Ghulam Hussain and Nawab Mohd. Bismillah, were recognized as successors. According to the provisions of law then in force, it was obligatory on the part of the revenue administration, to implement the Muntakhab.

5. W.P. No. 227 of 1960 was filed before this Court, by some of the successors, complaining that certain items of property viz., payment of certain amount, were not included in the Muntakhab. The writ petition was allowed on 01.04.1963, with a direction to amend the Muntakhab, to include certain items. Acting on the representations made by some of the legal heirs, the District Collector, Ranga Reddy District, addressed a letter, dated 14.02.1978, to the Tahsildar, Hyderabad West Taluq, instructing him to implement the Muntakhab. The Tahsildar, in turn, submitted a report, dated 28.08.1984, furnishing the necessary particulars. Implementation, as such, however, did not take place.

6. Some of the petitioners approached the Chief Commissioner Land Administration (for short, the "the Commissioner") for necessary action. After discussing the matter, at some length, the Chief Commissioner, addressed a letter, dated 21.06.2001, requesting the Government to issue necessary instructions to the District Collector, in this regard. When no action ensued, W.P. No. 20298 of 1993 was filed. It was disposed of on 09.07.2001, with a direction to the respondents therein to take further action in the matter in accordance with law, within six months. In response to this direction, the Government, in Revenue Department, through Principal Secretary, issued memo, dated 15.04.2002, taking the view that the Muntakhab cannot be implemented, inasmuch as the Nazim Atiyat has no jurisdiction to pass orders, that gave rise to the issuance of Muntakhab. It was also mentioned that proper verification of Jagir administration records was not undertaken, before the Muntakhab was issued.

7. Some of the writ petitioners filed representation, dated 16.01.2003, before the Government, feeling aggrieved by memo, dated 15.04.2002. The matter was

examined on the basis of the facts mentioned in the representation and the Government had issued another memo, dated 06.05.2004, withdrawing the earlier one, dated 15.04.2002. The Chief Commissioner was directed to instruct his subordinates to implement the Muntakhab and to take further steps in the matter. This was reiterated in another memo, dated 31.07.2004. At a time when steps were in progress for implementation of the memos, dated 06.05.2004 and 31.07.2004, the Government issued the impugned memo, dated 21.05.2005, rescinding its orders in its two memos, dated 06.05.2004 and 31.07.2004.

8. In the impugned memo, it was observed that the Kokapet, which was a Sarf-e-Khas Village of Atraf Balda District, when the Nizam's Rule ended, was inadvertently brought under the purview of the Hyderabad Abolition of Jagir Regulations. It was stated that the village is deemed to have been merged with the Diwani/Government along with other Sarf-e-Khas villages under the Sarf-e-Khas (Merger) Regulation, on 05.02.1959. Further observation was made to the effect that the Nazim Atiyat itself took the view that consequent upon abolition of Jagirs, the village Kokapet has been taken over by the Government, and thereby, the question of including the lands in the estate of late Nawab does not arise; and still the Muntakhab was issued, contrary to the factual situation. Several others grounds were also mentioned.

9. The A.P. State Legislature amended Section 22-A of the Registration Act, providing for publication of notification prohibiting registration of documents in respect of lands, particularly, Government lands, mentioned in the notification. G.O.Ms. No. 1084, dated 06.06.2005, was issued in exercise of this power, and the lands, which are the subject-matter of the writ petitions, were included.

10. Petitioners challenge the memo, dated 21.05.2005, and G.O.Ms. No. 1084, dated 06.06.2005, on several grounds. It is alleged that they have not been put on notice, before the rights that have accrued to them under the memos, dated 06.05.2004 and 31.07.2004, have been taken away. They seriously dispute the correctness of the view taken by the Government, either on facts, or in law. According to them, the land was neither a Jagir, nor Inam, but was acquired by the Nawab through outright purchase, and by operation of law of succession, which must accrue to the successors. They further contend that once the custody of the land was taken by the Nizam Government pending determination of the legal heirs, the successor Government is under obligation to redeliver the land to the recognized legal heirs. According to the petitioners, the Government itself is not clear as to the law that is applicable to the land and it went on changing the stands, inconsistent with each other. The petitioners contend that issuance of G.O.Ms. No. 1084, is totally untenable, in as much as the title in respect of the land had accrued to them under the Muntakhab.

11. On behalf of the Government, detailed counter-affidavits, with necessary supporting documents, are filed. The stand taken by them in the impugned memo is reiterated, with a bit of elaboration. It is stated that by operation of different laws, that were in force during the Nizam regime itself, the land vested

in the Government and the subsequent enquiry by the Nazim Atiyat and the consequential Muntakhab, are without any legal foundation. It is also stated that the claim made by the petitioners is barred by laches, if not by limitation, and that the petitioners do not have any legal or vested right, vis-a-vis the land. Reference is made to judgment and decree, dated 30.06.1970, in O.S. No. 512 of 1973 on the file of the IV Additional Judge, City Civil Court, Hyderabad, wherein it was held that the Muntakhab has no legal basis. The locus of the petitioners is seriously disputed. It is also stated that the rights of the petitioners are finally determined by this Court by order, dated 14.07.2006 in W.P. No. 14439 of 2006, as affirmed by a Division Bench of this Court through its order, dated 26.10.2007, in W.A. No. 887 of 2006, and that the present batch of writ petitions is covered by the findings recorded therein.

12. Arguments on behalf of the petitioners were addressed by Sri K.V. Satyanarayana, Sri I.V.S. Rao, Sri C.B. Ram Mohan Reddy, Sri Mohd. Vasi Ahmed, and Sri S.M. Sujjat Hussain, advocates.

13. Though locus standi of the petitioner in W.P. No. 10084 of 2006 is challenged by the petitioners in other writ petitions, submissions made by all of them on merits, are almost identical.

14. Learned Counsel for the petitioners submit that the impugned memo is violative of principles of natural justice and suffers from legal and factual infirmities. They submit that, the land in question was purchased under a registered sale deed by the Nawab and neither it was a Government grant, nor a Jagir. They contend that at no point of time, the land was resumed to Government under any enactment, except that possession thereof was taken consequent upon the death of Nawab, in the limited context of determining the legal heirs, who succeeded to it. It is urged that when the Government itself is of the view that the land could not have been the subject-matter of the Jagir Abolition Regulation, there is no way that the possession thereof can be denied to the petitioners, according to their respective shares.

15. It is also argued by the learned Counsel that the Government has virtually pronounced upon several factual and legal issues through the impugned memo and it is fundamental that the affected parties are heard, when such an exercise is undertaken. They plead that none of the petitioners were parties to O.S. No. 512 of 1973, nor the validity of Muntakhab, has been the subject matter of that suit. Several other contentions are also urged and a catena of decisions is cited by them.

16. Learned Advocate General submits that the writ petitions are not maintainable, either on facts, or in law. He contends that the memos, dated 06.05.2004 and 31.07.2004, which were rescinded through the impugned memo, themselves were not referable to any enactment, and in that view of the matter, there is no obligation on the part of the Government to issue notices of hearing, to the petitioners, before the impugned memo was issued. He submits that the

memos, dated 06.05.2004 and 31.07.2004, were issued on erroneous view of fact and law and they did not give rise to any rights to the petitioners. It is also urged that the possession of the land was taken several decades ago by the erstwhile Nizam Government, since it vested in it, by operation of law, and that the Muntakhab was issued without jurisdiction and any legal basis.

17. Learned Advocate General further contends that the legality of the Muntakhab was determined by a civil Court many decades ago and the petitioners cannot enforce the same at this length of time. By making reference to provisions of different enactments that were in vogue during the Nizams regime, he submits that by operation of those laws, the land became part of Diwani. He further contends that a full-pledged adjudication of these very issues has taken place in W.P. No. 14439 of 2006 and W.A. No. 887 of 2006 and that it is not open to the petitioners to raise those very issues, once again. He submits that G.O.Ms. No. 1084 was issued with an object of protecting and preserving the Government lands and that no exception can be taken to it. He has also relied on certain decided cases.

18. Before the matter is discussed on merits, the dispute raised, as to the locus standi and competence of petitioner in W.P. No. 10084 of 2006, namely K.S.B. Ali, to file that writ petition, needs to be dealt with. Not only the Government, but also several individuals of whom he is said to be a representative, or GPA, have questioned his locus standi. It is alleged that he is no longer holds the authority to represent any of the legal heirs of late Nawab.

19. Two aspects become relevant here. The first is that it was at the instance of Mr. K.S.B. Ali that several orders were issued and proceedings were initiated from time to time. Secondly, the parties for whom he is said to be a representative, themselves have filed separate writ petitions with the same averments and contents on merits. Therefore, the competence or locus standi of the said individual becomes almost secondary. Nonsuiting of Mr. K.S.B. Ali would not terminate the present litigation. At any rate, this Court is not going to determine the claims of individual petitioners, much less their shares. They have to resolve their inter se disputes elsewhere.

20. The foundation, on which the petitioners rested their claim vis-a-vis the land, is the purchase thereof by late Nawab, through registered sale deed, dated 17th Rabi awal 1269 Hijri (1852 A.D.). This is the uniform assertion not only in the present batch of writ petitions, but also at every stage of the litigation, be it, before the Nazim Atiyat, revenue authorities, or before this Court in earlier rounds of litigation.

21. The counter-affidavits filed by the Collector and District Magistrate, Ranga Reddy District, are silent as to the nature of acquisition of the land, by the Nawab. A spacious plea is taken that the records in relation to the Muntakhab No. 57/55 were destroyed. In none of the proceedings, up to the impugned memo, the manner of acquisition of land through purchase, was disputed and the

assertion made by the petitioners in this regard, Is not denied in the counter affidavits.

22. In the narration of facts, a brief history of the case was traced. It is not necessary to repeat the same. Suffice it to say that, W.P. No. 20298 of 1993 was filed with a prayer to direct the respondents therein, to implement the Muntakhab No. 57/55. During the pendency of that writ petition, the Chief Commissioner addressed a letter, dated 21.06.2001, stating that there is no option for the Government, except to implement the Muntakhab. In view of the same, this Court disposed of the writ petition on 09.07.2001, with a direction to take further action, in accordance with law and letter, dated 21.06.2001. The Government examined the matter in pursuance of the direction of this Court and issued the memo, dated 15.04.2002. It was observed that the Muntakhab cannot be implemented for more reasons than one. The matter did not rest at that. Representations were filed by the petitioners, feeling aggrieved by the memo, dated 15.04.2002. The contention of the petitioners was accepted and the memo, dated 15.04.2002, was withdrawn, vide another memo, dated 06.05.2004. This was followed by a further memo, dated 31.07.2004, on the same lines. Specific directions were issued, for implementation of the Muntakhab.

23. Once the memo, dated 15.04.2002, was withdrawn, the report submitted by the Chief Commissioner, dated 21.06.2001, wherein it was observed that the Government has no option, except to implement the Muntakhab; got revived. The enforcement thereof got the backing of order of this Court in W.P. No. 20298 of 1993. The result is that rights of considerable importance have accrued to the petitioners. Such rights could have been taken away, only after issuing notice to the petitioners.

24. It is true that there is a line of precedents to the effect that an Executive Authority is not under obligation to issue notice to the affected parties, in case he wants to withdraw the order passed by him, which is not referable to any statutory exercise of power. In the instant case, that principle cannot be applied. The impugned memo did not stop at mere withdrawal of earlier memos. It proceeded to determine the rights of the parties, on several aspects, and dealt with the nature of proceedings that have taken place, up to that time.

25. For instance, it was held that the Kokapet was a Surf-e-Khas Village and it was inadvertently brought under the purview of Hyderabad Abolition of Jagir Regulation 1358F. It was also observed that Kokapet had characteristics of ryotwari village, on par with Surf-e-Khas areas and that it is deemed to have been merged with the Government under a Regulation, dated 05.02.1949. The relevant portion reads as under:

Government have carefully examined the matter at length and consider the Kokapet which was a Sarf-e-Khas village in Garbi Taluq of Atraf Balda District of Sarf-e-Khas Mubarak at the time Nizam's rule ended was inadvertently brought under the purview of Hyderabad Abolition of Jagir Regulation 1358F. This village,

which was a regular ryotwari in all characteristics, similar to that of all other villages of Sarfe-e-Khas area, having maintained basic revenue, survey and settlement records prior to 1946 A.D. is deemed to have been merged with Diwani/Government along with other villages of Sarf-e-Khas area under Sarf-e-Khas (Merger) Regulation of 1358F on 05.02.1949.

26. The Government further took the view that the Muntakhab, dated 12.05.1955, was already implemented in its letter and spirit by October, 1959. It was held that the memos, dated 06.05.2004 and 31.07.2004, were without jurisdiction and competence. Reference was made to the orders of Chief Minister. On the one hand, it was held that the land cannot be part of Jagir and on the other hand, reliance was placed upon the order of the Nazim Atiyat, wherein it was observed that the land vested in the Government consequent upon abolition of Jagirs. When such pronouncement was made on several important aspects, it was essential that the petitioners were heard. Admittedly, no notice was issued to the petitioners, before the impugned memo was issued.

27. Observance of principles of natural justice has come to be so firmly established in the field of Administrative Law in India, that any discussion on it, is prone to be treated as a peep into basics. The distinction, which hitherto existed, whether it is between the exercise of quasi judicial and administrative powers, injury to fundamental or legal rights, virtually got obliterated. Except where an enactment specifically excludes the application of principles of natural justice, they are treated as mandatory, even if the enactment is silent, in this regard. Ever since the judgment in Ridge v. Baldwin (1964) AC 40 at 72, the application and evolution of the principle did not face any resistance, worth its name. Indian Courts have applied this principle, in a manner, which is in no way different from, or inferior to, the one, followed by the British and American Courts.

28. The argument, that notice of hearing need not be issued to an individual, because the recipient may not have a plausible answer to it; was repelled outright, in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, . The Supreme Court held that the fact that no prejudice is caused to a citizen on account of non-observance of principles of natural justice, cannot be treated as an excuse, and that non-issuance of notice, by itself, is a serious violation, irrespective of the nature of outcome of the entire exercise. The Supreme Court observed,

Para-46: [T]he contention of the Corporation that no notice need be given because, there can be no effective answer to it, betrays a misunderstanding of the rule of hearing, which is an important element of the principles of natural justice. The decision to dispense with notice cannot be founded upon a presumed impregnability of the proposed action....

It was also observed,

Para-45: ...There are situations which demand the exclusion of the rules of

natural justice by reason of diverse factors like time, place, the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.

Treatises on Administrative Law are incomplete, unless they contain a Chapter, if not more, on this subject. H.W.R. Wade, in his treatise on Administrative Law, has this to say:

The courts took their stand several centuries ago on the broad principle that bodies entrusted with legal power could not validly exercise it without first hearing the person who was going to suffer. This principle was applied very widely to administrative as well as to judicial acts, and to the acts of individual ministers and officials as well as to the acts of collective bodies such as justices and committees. Even where an order or determination is unchallengeable as regards its substance, the court can at least control the preliminary procedure so as to require fair consideration of both sides of the case. Thus the law makes its contribution to good administration.

Since the courts have been enforcing this rule for centuries, and since it is self-evidently desirable, it might be thought that no trained professional, whether judge or administrator, would be likely to overlook it. But the stream of cases that come before British and Commonwealth courts shows that overlooking it is one of the most common legal errors to which human nature is prone. When a Lord Chief Justice, an Archbishop of Canterbury, and a three-judge Court of Appeal have strayed from the path of rectitude, it is not surprising that it is one of the more frequent mistakes of ordinary mortals. The courts themselves must take some of the blame, for they have wavered in their decisions, particularly in the period of about fifteen years which preceded *Ridge v. Baldwin*.

(See HWR Wade's Administrative Law, Seventh Edition page 494-495).

Therefore, the impugned memo cannot be sustained in law.

29. Learned Counsel for the petitioners and learned Advocate General made extensive submissions, touching on the merits. While on behalf of the petitioners it was asserted that the Government is under obligation to redeliver possession of the land taken by its predecessors Government and to implement the Muntakhab, it is urged on behalf of the State that the Muntakhab itself was issued without jurisdiction and that the land became part of Diwani. Reliance was also placed upon the judgment and decree in O.S. No. 512 of 1973.

30. For one reason or the other, several important aspects, that have a direct

bearing on the matter, were not addressed in detail. A perusal of the voluminous record placed before this Court discloses that the stand of the Government is not consistent. In the impugned memo itself, on the one hand, it was observed that the Muntakhab was issued without jurisdiction and on the other hand, it was mentioned that it was already implemented. The basic questions, such as,-

(a) Whether the land was private acquisition of the Nawab and whether it can be treated as Inam or grant by the Government?

(b) Whether the possession thereof was taken by the Nizams Government on the death of the Nawab, and how it was dealt with, from time to time?

(c) Whether the enquiry by the Court of Nazim Atiyat and the resultant order, dated 15.02.1954 and the Muntakhab, dated 12.05.1955 suffer from legal or factual infirmity, who can pronounce upon it; and the nature of proceedings, in which, such an exercise can be undertaken?

(d) Whether the decree in O.S. No. 512 of 1973 would bind the petitioners, particularly when none of them were made parties to the suit and whether a suit can be filed straightaway against a GPA, without impleading the principal?

(e) Whether the claim made on behalf of the petitioners in W.P. No. 227 of 1960, insofar as it related to execution of the Muntakhab, stood rejected and if so, what is the effect of orders passed by this Court in W.P. No. 20298 of 1993? and

(f) Whether the land was covered by the provisions of A.P. (T.A.) Abolition of Inams Act, and A.P. (T.A.) (Abolition of Jagirs) Regulations etc., and if so, the proceedings that were initiated under those enactments, vis-a-vis the land?

31. This Court is, advisedly, desisting from dealing with these questions, at present. It is of the view that the Government can examine these aspects, even at this stage, instead of keeping the dispute alive.

32. It is no doubt true that W.P. No. 14439 of 2006, filed by some of the petitioners, complaining that their land is being alienated, was dismissed and the same was affirmed in W.A. No. 887 of 2006. The fact, however, remains that the petitioners therein withdrew the writ petition with the permission of the Hon'ble Supreme Court. Memo, dated 21.05.2005, was not at all the subject-matter of W.P. No. 14439 of 2006. Once the writ petition was permitted to be withdrawn, it becomes difficult for this Court to treat the findings recorded therein, as conclusive. The limited ground, on which this Court finds fault with the memo, dated 21.05.2005, is that it is violative of principles of natural justice and that several issues were determined therein, without hearing the,, affected parties.

33. So far as G.O.Ms. No. 1084, dated 06.06.2005, is concerned, the effect thereof is that the lands mentioned therein cannot, be alienated. Unless and until the rights of the petitioners are finally determined, they cannot alienate the lands. Depending on the out come of the proceedings that may ensue after the 1st respondent passes orders, after giving notice to the petitioners, the

consequential remedies can certainly be pursued.

34. For the foregoing reasons, the Writ Petitions are allowed, directing that,

(a) the impugned memo, dated 21.05.2005, is set aside, as violative of principles of natural justice;

(b) the Government, in its Revenue Department, shall pass fresh orders, after issuing notice to the petitioners. It shall be open to the petitioners to urge all the grounds before the Government;

(c) G.O.Ms. No. 1084, dated 06.06.2005, is upheld, however, with a rider that as and when the rights of the petitioners vis-a-vis the land are determined in their favour, it shall be open to them, to pursue their remedies, in this regard;

(d) this judgment shall not be treated as a pronouncement or adjudication of any dispute, or question, involved in the matter; and

(e) it shall be open to the legal representatives of late Nawab Nusrat Jung Bahadur-I, or their authorized agent, to pursue the proceedings before the Government, and the dispute, if any, among them, may be agitated before a competent forum.

There shall be no order as to costs.