(1994) 11 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12591 of 1988

Macherla Narayanamma APPELLANT

Vs

Jt. Collector and Others RESPONDENT

Date of Decision : 21-11-1994

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 — Rule 10, 10(5)
Evidence Act, 1872 — Section 114

Citation : (1995) 3 ALT 458

Hon'ble Judges : Lingaraja Rath, J

Bench : Single Bench

Advocate : A. Bhaskarachary, for the Appellant; The Government Pleader for Revenue for Respondents 1 to 3 and C. Kodandaram, for Respondents 4 to 6, for the Respondent

Final Decision : Allowed

Judgement

Lingaraja Rath, J.—The land which had vested with the Government as surplus land under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973, hereinafter referred to as "the Act", and had been settled with the petitioner to the extent of Ac. 4-92 cents in S.No. 230/2 in Krishnapuram village having been cancelled by the 2nd respondent, the Revenue Divisional Officer, Anantapur in proceedings Re. No. 4049/85 dated 18/31-3-1986, and the order having been confirmed in appeal by the 1st respondent, the Joint Collector, Anantapur on 30-6-1988 the petitioner has approached this court for relief. The assignment in favour of the petitioner had been made on 18-10-1982 and it is her case that she had entered into possession and was cultivating the land. According to the assignment made under Rule 10 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974, hereinafter referred to as "the Rules", the price of the land is to be paid in fifteen equal instalments. The petitioner was paying the instalments but one Ameya Naik made a petition of the land havingbeen unlawfully allotted to the petitioner as not she but himself (Ameya Naik) who was in possession of the land. The notice of respondent No. 2 cited three grounds for cancellation, the first that the petitioner had not cultivated the land; the second she had alienated the land to one Mala Subbarayudu and that third she was not residing in the village. The petitioner showed cause denying all the three allegations. The Revenue Divisional Officer in passing the order held both the Petitioner and Ameya Naik, the predecessor- in-interest of respondents 4 to 6, as being ineligible to be allotted the land and cancelled the allotment,

2. Before the case as advanced by the petitioner is taken up certain mistakes occurring in the records of the case are necessary to be clarified. The petitioner came with the case that for cancellation of the allotment the competent authority to issue the notice to show-cause was the Revenue Divisional Officer but in fact the notice was issued by the Mandal Revenue Officer, respondent No. 3. She also filed a copy of the order passed by the 2nd respondent as having been passed on 18-8-1985. In the counter-affidavit filed by the 1st respondent it has been stated that notice to show-cause was not issued by the Mandal Revenue Officer but by the Revenue Divisional Officer on 16-11-1985 and that the petitioner also submitted explanation to it on 3-12-1985. The counter-affidavit filed by respondents 4 to 6 also shows the show-cause notice to have been issued by the Mandal Revenue Officer. The learned Government Pleader has produced the records relating to the case which reveal that the notice in fact was issued by the Revenue Divisional Officer and not by the Mandal Revenue Officer. However so far as the order passed by the Revenue Divisional Officer is concerned, it is surprising that the record does not contain the original order passed by him but only a xerox copy of it and shows it to have been typed on 18-8-1985 but the signature on it appears to be on 31-3-1986. The date 18-8-1985 seems to be mistake since the order makes reference to four documents of which the documents 1,2 and 4 are respectively dated 19-2-1986, 3-12-1985 and 16-11-1985 all of which are subsequent to 18-8-1985. In fact the appeal memo of the petitioner before the Joint Collector also shows the impugned order as dated 18-3-1986 and the appeal itself to have been presented on 28-4-1986. It is the submission of the learned Government pleader that the order was typed on 18-3-1986 but it was signed on 31-3-1986. But 18-3-1986 does not appear anywhere as the date on which the order was typed and such fact is also incapable of being ascertained because the original order is absent from the records. However the learned counsel for both sides agreed that the contents of the order filed as the order passed by the Revenue Divisional Officer is in fact the correct contents. Hence in view of the fact that of 18-3-1986 has been referred as the date of order passed in the affidavit which I am inclined to treat the date of order as 31-3-1986 on which date the order is shown to have been signed by the Revenue Divisional Officer.

3. Disposal of surplus land vested in the Government because of the ceiling proceeding under the Act is made in accordance with Rule 10 of the Rules. Under Rule 10 (3) the procedure followed for the allotment or assignment of

Government lands for use as house-sites or for purposes of agriculture applies mutatis mutandis to the allotment or transfer of lands under the rule. Rule 10 (5) provides as follows:

"Where any person fails to pay the instalment due or violates any of the conditions of allotment or transfer, the Revenue Divisional Officer, may after giving an opportunity to the person concerned of making a representation in this behalf within thirty days from the date of communication of a notice, pass an order forfeiting the amount already paid and resuming the land and also authorise any officers not below the rank of a Revenue Inspector to take possession of the land; Provided that no such land shall be taken possession of until the seasonal crop on the ground is harvested.

4. Since cancellation of the allotment made is specifically provided undersub-rule 5 it must be taken that the cancellation must be made only in accordance with the rule. Cancellations otherwise provided for elsewhere by Government orders would not apply because of the specific rule made in the sub-rule itself which to that extent will substitute the general rule in accordance with the principle generalia specialibus non derogant. Under the sub-rule cancellation can be made for violation of the conditions of allotment or failure to pay the instalments. It is the admitted case of both parties that in the present case the petitioner was directed to show cause against cancellation on the three grounds as stated earlier. Since the grounds did not relate to non-payment of the instalments, these grounds could only be taken to be conducts in violation of the conditions of allotment. It is however conceded by the learned Government Pleader that residence in the village is not a condition of allotment though when allotment is made, preference is to be shown for residents of the village. Any factor on which a preferential consideration is to be made for allotment is antecedent to the allotment itself and hence if allotment is once made, such a consideration cannot be invoked as a ground for modifying the allotment. Such a ground was hence not available to be pitted against the petitioner as a ground for cancellation.

5. The next two grounds viz., the petitioner has not cultivated the land or that she has alienated the lands would undoubtedly be in violation of the terms of allotment.

6. Reference to the order of respondent No. 2 shows him to have exclusively relied upon the report of the Mandal Revenue Officer made to him in reference No. 1 i.e., the report made on 19-2-1986. The learned Government Pleader submits that there was an earlier report of the Mandal Revenue Officer as is found in the record, submitted to the Revenue Divisional Officer on 3-10-1985. But the order does not show that report to have been taken into consideration. The petitioner had specifically denied the charges against her as regards non-cultivation and alienation, in the explanation submitted by her. But respondent No. 2 abruptly reached the conclusion against her exclusively based upon the report of the Mandal Revenue Officer. No enquiry was admittedly held to ascertain the correctness or otherwise of the allegations. The learned

Government Pleader concedes from the records that the Mandal Revenue Officer''s Report was not made available to the petitioner and in fact the impugned order of the Revenue Divisional Officer or the notice issued to the petitioner on 16-11-1985 does not show the copy of the Mandal Revenue Officer''s report to have been enclosed and her to have been called upon to submit her explanation with reference to the report. It is a basic concept of natural justice that if in passing an order adverse to a person a report of another person is taken into consideration, the copy of the report must be made available to him with opportunity to contest the contents of the order. That opportunity was not given to the petitioner. The land having been allotted to her in accordance with statutory rules, a presumption is attached, u/s 114 of the Evidence Act to the allotment of having been correctly made. If there are subsequent facts creating liability against the petitioner for cancellation of the allotment, the facts justifying the cancellation was to have been established by the cancelling authority before an order for cancellation could be passed. The Revenue Divisional Officer having never undertaken any enquiry and having never independently tried to establish the facts from any other material apart from the report of the Mandal Revenue Officer whose enquiry was itself done behind the back of the petitioner, the findings reached by the Revenue Divisional Officer are not sustainable in law.

7. The appeal preferred by the petitioner also has suffered similar lot. That order passed by the Joint Collector, respondent No. 1 shows that the officer, to ascertain the truth, conducted a personal enquiry on 18-4-1988 and he also inspected the land. The result of the inspection of his was the findings that the land had not been cultivated since last 4 to 5 years, that the petitioner is a nonresident, that she is an old lady staying with her daughter at Anantapur. It is the petitioner''s case, which is also corroborated from the record produced, that in conducting the personal enquiry or in inspecting the land the Joint Collector never noticed the petitioner. The enquiry was done behind her back. Any enquiry by a quasi-judicial authority, may it be the original authority or the appellate one, involves the concept of a decision on the basis of the enquiry. A decision which adversely affects the interest of a party cannot be taken without hearing that party and hence an enquiry cannot be made except in the presence of the party concerned. Since the order of the Joint Collector shows him to have relied upon the findings of his enquiry, that order also has become wholly vulnerable in law. In that view of the matter none of the orders can stand scrutiny and are set aside. The case is remanded to the Revenue Divisional Officer to decide the matter according to law as explained giving sufficient opportunity to the petitioner to establish her case.

8. The learned counsel for the respondents 4 to 6 also objects to the finding of the Revenue Divisional Officer holding Ameya Naik to be ineligible for allotment. However such plea of theirs is not available to be decided in the present case. If they are otherwise eligible, it is for them to approach the authorities and get their claims considered.

9. In the result, the petition succeeds and the impugned orders are set aside and the case is remanded as above. No costs.