

(1980) 10 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ Petition No. 746 of 1978

Mahavir Prasad Jain

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-10-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1980) WLN 417

Hon'ble Judges : S.N. Deedwania, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Deedwania, J.—This writ petition under Article 226 of the; Constitution has been filed by petitioner Mahaveer Prasad Jain against the State of Rajasthan The Director of Industries, Government of Rajasthan, Jaipur and Mahaveer Prasad Pareck in the following circumstances.

2. The petitioner was allotted a plot of land No. 2 & 5 at Village Talchhapur for manufacture of Salt under the Rajasthan Land Revenue (Saline Areas Allotment) Rules, 1976"(hereinafter referred to as "the Rules") framed by the Government of Rajasthan in exercise of his powers conferred under Sub-Section (2) of Section 261 of the Rajasthan land Revenue Act (hereinaf.er (sic)rofrdd to as "the Act") The petitioner was delivered possession of the land in dispute on 31-12-1975 vide order Ex. A I. The Slate Government also executed a lease deed (Ex 2) of the land in favour of (he petitioner for a period of 10 years. Toe petitioner started the work on the laud and spent about Rs. 8, 000/. The petitioner was restrained from working on the land by the Sub-Divisional Magistiate, Ratangarh on 11-5-76. and ultimately, the injunction order was vacated on 10-5-78. The petitioner immediately renewed work of developing the land and further spent about Rs. 46, 000/-. Suddenly, the petitioner received notice, Ex. 6 dated June 9, 1978 from the Director of Industries to show cause why his lease be not cancelled for the reason that he had not brought to notice of the State

Government that non petitioner No. 3 was prevented from starting work in the land by a temporary injunction. Another ground mentioned in the show cause notice was that the petitioner had not started the work of production of salt within 6 months of the date, on which he was handed over possession of the land. The petitioner was also directed to stop all work. The petitioner also replied to the notice on 11-7-78. The petitioner also received a notice on 4-8-78 requiring him to appear before the Minister of Industries on 11-8-78. But the hearing was adjourned to 22-8-78. The petitioner submitted a representation to the Minister. The order of the Director of Industries, Ex. 6 is wholly illegal and void as the petitioner was prevented from starting the production of salt because of an injunction order issued by the Sub-Divisional Magistrate, Ratangarh. The Director of Industries had no power under the Rules to restrain the petitioner from the work of development and manufacture of the salt on the land. The stay order was made without any show cause notice to the petitioner and was thus against the principles of Natural justice. It further appears that the petitioner was heard on 22-8-78 by the Minister of Industries, who passed the impugned order (Ex 10A) dated October 20, 1978 and it was communicated by the Director of Industries, Jaipur to the petitioner by letter Ex 10, dated October 28, 1978. By this order, the lease of the petitioner was cancelled and the lease of the non-petitioner No. 3 was restored. The order Ex. 10 and Ex. 10A are challenged *inter alia* on the following grounds:

3. The impugned order makes the reference to an appeal filed by non-petitioner No. 3 but no copy of the memo of appeal or any petition was served upon the petitioner & he was not given any opportunity to meet the case of the former. No doubt, non petitioner No. 3 was present before the Minister on 22-8-78 but the petitioner was not asked anything regarding the appeal or the representation made by the former. The order, Ex. 10A dated October 20, 1978 is, therefore, void in breach of principles of natural justice. The order, Ex. 1 indicates that the lease granted in favour of non-petitioner No. 3 was cancelled because he has failed to comply with the conditions of the lease. The order had become final and no appeal or review could be preferred by non-petitioner No. 3 against the same. The lease deed was duly executed in favour of the petitioner and he had acquired valuable rights of property in the land. He could not be deprived of his rights in this arbitrary manner. The lease granted to non-petitioner No. 3 was rightly cancelled because he did not pay the rent and did not comply with the conditions of lease. The stay order was not vacated by non-petitioner No. 3. Non-petitioner No. 3 never went under-ground during the period of emergency.

4. It was also submitted during the course of arguments that the Minister of (sic) Industries under the Rules had no power to review. Non-petitioner No 3 resisted the Writ petition and submitted that the land was allotted to him as early as on 4-11-71 (Ex A/1) and lease-deed was also executed in his favour. The lease could not be granted to the petitioner as the lease in favour of non-petitioner No. 3 was subsisting. The petitioner never spent Rs 46,000/- on the development of the land, After the lease had been granted to non-petitioner No-

3, he was prevented from starting the work because of an injunction issued against him. The petitioner was given a hearing by the Minister on the application of non-petitioner No. 3 regarding alleged grant of lease to (be) petitioner. The Writ petition is opposed by non-petitioner No. 3 more specifically on the following grounds:

1. That the petitioner has been guilty of concealing material facts regarding the proceedings before the Minister and the hearing granted to him. The petitioner failed to mention them in his original writ petition and thereby he is guilty of suppressing material facts.

2. That non-petitioner No. 3 is entitled to hold the land as the lease granted to him vide Ex A/1 and the lease deed, Ex. A/3 were not determined in accordance with law. During the period of emergency i.e. from June, 1975 to the end of 1977, he had gone underground being a political worker and taking advantage of this situation, the petitioner got lease in his favour. Against this illegal order non-petitioner No. 3 made representation vide Ex. A/4, dated October 31, 1977 and Ex. A/5, dated March 17, 1978 before the Government and the Minister, after hearing both the parties passed the impugned order Ex IOA u/s 85 A of the Act. The order Ex.1 dated December 15, 1975 (sic) cancelling; the lease of non-petitioner No. 3 was illegal and the Government of Rajasthan had no power to cancel the lease and it was passed without notice to him. Non-petitioners No. 1 and 2 also filed a reply and supported non-petitioner No. 3.

I have heard the learned Counsel for the parties and perused the record of the case carefully

5. From the pleadings and submissions made at the bar, the following points emerge for determination:

1. Whether the petitioner is guilty of suppressing material facts in his original writ petition

2. Whether the impugned order, Ex. 10A is illegal and void because (a) it was passed in breach of principles of natural justice, and (b) the Minister had no power of review to cancel the lease granted to the petitioner

3. Whether the Minister has no power to review the order passed against non-petitioner No. 3 cancelling the lease granted to him and in any case whether the order was bad being influenced by extraneous consideration

4. Whether the writ petition should be allowed because it will result in restoration of an illegal order of cancelling the lease of non-petitioner No. 3.

6. My decision on the aforesaid points is as follows : It is vehemently argued by the learned Counsel for non-petitioner No. 3 that the petitioner hid suppressed material facts in his writ petition filed on 26-10-73. The order of the Minister; Ex 10) was passed on 28 10 78 and was received by the petitioner on or about 1-11-78. The petitioner could have known about these orders. The petitioner

knew that the lease of non-petitioner No. 6 was wrongly terminated, as would be evident from notice, Ex.6 dated June 6, 1978, wherein it was stated that he had suppressed the fact that Mahaveer Prasad Pareek was prevented from developing the land because of an injunction order. The petitioner also suppressed the fact that he was given a due hearing by the Minister. I have considered the argument carefully, but it does not appear to be supported by facts. The petitioner in para 8 of the un-amended writ petition has referred to notice, Ex. 6 and has produced the same along with writ petition. The petitioner in para 10 of the writ petition also referred to the notice, dated August 4, 1978, by that State Government and in para 11 stated that he appeared before the Minister on 22-8-78. There is no reason to hold that on 26-10-78 when the writ petition was filed the (sic)petitioner somehow, was aware of the impugned order, dated October 28, 1978. In view of these facts, I am of the opinion, that it could not be said that the petitioner was guilty of suppression of any material facts.

7. It is urged by the learned Counsel for the petitioner that the impugned order, Ex. 10A is bad being in breach of principles of natural justice. The order of lease in favour of petitioner was not cancelled for the reasons mentioned in notice, Ex 6. It was rather cancelled because the Minister was of the opinion that the order of the lease in favour of non-petitioner No. 3 should not have been cancelled. The order Ex. 6 does not refer to any representation filed by non-petitioner No. 3. The petitioner was never served with copies of representations Ex A/4 dated October 31, 1977 and Ex. A/5 dated March 17, 1978. Non-petitioner No. 3 has mainly alleged in these representations that the order of the lease granted in his favour was cancelled without any notice and chance of hearing him. He was ready and willing to develop the land but could not start the work because of a temporary injunction, dated March 15, 1972 issued against him by the Sub-Divisional Magistrate, Ratangarh. The order in his favour was cancelled for political reasons, it could only be cancelled in accordance with Rule 12(1) of the Rules. He was not even informed of the cancellation order. The Minister, in his order Ex 10A had stated that the lease granted to the petitioner, could not be cancelled for any of his faults and he has spent considerable amount on the development of the land. It is then argued by the learned Counsel for the petitioner that the lease in favour of the petitioner was not cancelled for any of the reasons mentioned in Ex. 6. It is mentioned in the order that the lease deed was executed by non-petitioner No. 3 on February 9, 1972 but after sometime, the Sub-Divisional Magistrate, Ratangarh has issued an injunction order against him. The industrial department issued various notices to non-petitioner No. 3 Mahaveer Prasad Pareek to show cause why the lease in his favour be not cancelled and he had shown cause in response to three notices that it was not possible for him to work in view of the temporary injunction. It was improper on the part of the department to cancel the lease in favour of Mahaveer Prasad Pareek. It is, therefore further contended that the petitioner was not given any opportunity to meet this case of non-petitioner No. 3.

8. Learned counsel for the non-petitioner argued that the Minister gave a hearing

to both the parties and it is not disputed that both Mahaveer Prasad Jain and Mahaveer Prasad Pareek were present before him. Therefore, it could not be said that Mahaveer Prasad Jain had no opportunity to meet the case of Mahaveer Prasad Pareek and that the order is bad being in breach of principles of natural justice.

9. I have considered the rival contentions. It appears to be an admitted position that Mahaveer Prasad Jain was never issued copies of representations, Ex. A4 and Ex. A5 made by Mahaveer Prasad Pareek to meet this case that the cancellation order against him, was improper. It is not possible to say that the Minister heard Mahaveer Prasad Jain about the case, of Mahaveer Prasad Pareek. In any case, Mahaveer Prasad Jain could not have effectively met the case of Mahaveer Prasad Pareek unless he was served with the copies of the representation Ex. A4 and Ex. A5. I am, therefore, firmly of the opinion that the impugned order, Ex. 10A is bad being in breach of principles of natural justice; Mahaveer Prasad Jain was condemned unheard and he was deprived of valuable rights in the property without any effective bearing. The law is well settled in this respect and I may refer to the following authorities:-

(1) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others,

An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a judge called up to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version on defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and its importance transcends the significance of a decision in any particular case.

(2) The Board of High School and Intermediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others,

Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order purported to be passed.

(3) Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another,

Section 245-D(1) does not negate natural justice and in the absence of an express exclusion of the rule of *audi alteram partem*, it is fair indeed fundamental, that no man is prejudiced by action without opportunity to show to the contrary. In the present case, the Settlement Commissioner did not act without jurisdiction by affording a hearing and passing a fresh order in the presence of both parties. Law leans in favour of natural justice where statutory interdict does not forbid it.

10. I am, therefore, of the view that the petitioner was deprived of his valuable right of property in violation of principles of natural justice as he was not given any opportunity to meet the case of Mahaveer Prasad Pareek. The impugned order Ex. 10A is, therefore, null and void.

11. It is further urged by the learned Counsel for the petitioner that under the Rules, the Minister or the Government has no power of review. The learned Counsel for the non-petitioner urged that such a power of review is traceable u/s 85A of the Act. No authorities were produced before me in support of respective contentions. However, in my opinion, it is not necessary to decide the controversy because of the view, I have already taken about the validity of Ex 10 A the impugned order of the Minister. I have only to add that it does not appear that the Minister *suo molo* reviewed the order of cancellation parsed against Mahaveer Prasad Pareek. The order was made on his applications Ex. A4 and Ex A5. These applications were moved almost after 2 years, of the order of cancellation of the allotment in his favour and were obviously time barred, even if it be held that a review lay against this order. It may further be pointed out that the order of allotment in favour of Mahaveer Prasad Pareek was cancelled because of breach of conditions of the lease under rule 12 (1) of the Rules. I may also state that it is not the case of the State that allotment order in favour of the petitioner was cancelled for any breach of the conditions mentioned in his lease deed. It is therefore, extremely doubtful whether in such circumstances his lease could be cancelled unless it was shown that the allotment order of the lease was *per se* illegal. Learned counsel for the petitioner also drew my attention to *Partumal and Anr. v. Managing Officer, Jaipur and Ors.* ILR1961 Raj. 1121.

With due respects to the learned judges, we think the proposition of law as laid down by them cannot be accepted. The allotment of property, no doubt can be cancelled in revision under Section 24 of the Act, but after a sale takes place, it cannot be disturbed by setting aside the order of allotment. The sale cannot be held to be only a formal expression of the order of allotment. Title to property is created by the sale and the vendee thereby acquires interest in the property. It

would be too much to read in Section 24 of the Act to hold that it extended to cancellation of sale by expressly providing for cancellation of allotments. We are unable to regard execution of a sale deed as only a formal expression of an allotment dependent on its subsistence.

The ratio of this authority appears to be that under Section 24(1) of the Displaced Persons (Rehabilitation and Compensation) Act, 1974, the (sic)sh
ment Commissioner has no power to cancel the sale-deed. It is not held that
once a (sic)leasedeod was executed, it could not be cancelled. It is, however,
argued by the learned counsel for the petitioner that a duly executed lease-deed
can only be cancelled for the breach of any of the conditions mentioned therein
and for no other reason and I am inclined to agree with this view, subject to the
qualification that the order of the allotment culminating into a sale deed cannot
be cancelled in the absence of any specific power in respect thereof, if such an
allotment order is not null and void

12. It is vehemently contended by the learned Counsel for the non-petitioner
that the writ petition should not be allowed because the effect of this. would be
to restore illegal order, Ex. 1 dated December 15, 1975 passed against
Mahaveerprasad Pareek. He relied upon the following authorities in support of his
contention- (1) Godde Venkateswara Rao Vs. Government of Andhra Pradesh and
Others, , and Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and
Another,

13. It is argued by the learned Counsel for the petitioner that the petitioner had
no opportunity before the Minister to show that the order, Ex. 1 was not illegal
and it is not within the purview of this writ petition to determine the legality of
"his order Ex. 1 in absence of adequate material. Moreover, learned Counsel for
the petitioner drew my attention to Ex. 12 dated December 29, 1977, the report
of the Director of Industries, Rajasthan, Jaipur, which prima facie (sic)shows that
the order, Ex 1 dated December 15, 1975, is not illegal, as it sought to be made
out by Mahaveerprasad Pareek. I have also perused the record produced before
me by the Government, which may go to show that the order, Ex. 1 against
Mahaveer Pareek was not illegal. However, I am not inclined to rely upon this
material as relevant documents were not produced before me by any of the
parties. In all fairness, it was the duty of non-petitioner No. 1 and 2 to produce
the relevant documents leading to the cancellation of allotment made in favour of
Mahaveerprasad Pareek but they withheld their production and chose to defend
the action of the Minister. Suffice it to say that it could not be said that on the
face of it, order Ex. 1 cancelling the allotment in favour of Mahaveerprasad
Pareek was illegal and learned Counsel for the non-petitioner No 3 by producing
the relevant documents could not satisfy me that it was illegal. Therefore, it can
not be said that effect of accepting this writ petition would be to restore any
illegal order.

14. For the foregoing reasons, I accept the writ petition and quash the impugned
orders Ex. 6 dated June 9, 1978 along with order Ex- 10 dated October 28, 1978.

and Ex. 10A dated October 20. 1978 The parties are directed to bear their own costs in the circumstances of the case.