
(1969) 09 MAD CK 0035
In the Madras High Court

M.G. Chakravarthi Naicker and Another APPELLANT
Vs
K.M. Thillaimoorthy and Others RESPONDENT

Date of Decision : 17-09-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 82 LW 688 : (1970) 1 MLJ 476

Hon'ble Judges : K.N. Mudaliyar, J

Bench : Single Bench

Judgement

K.N. Mudaliyar, J.—One M.G. Chakravarthi Naicker and the State of Madras are the appellants in these two writ appeals respectively. They seek to appeal against the order of Venkatadri, J., in Writ Petition No. 1156 of 1969 quashing the order issued by the Government of Madras, Revenue Department, in G.O. Ms. No. 2817, dated 19th September, 1963.

2. The two writ appeals may be dealt with by us in a common order.

3. Succinctly stated, the facts are that one Manicka Naicker, the father of the first respondent, K. M. Thillaimoorthy, applied in the year 1952 to the Government for the assignment of the poramboke land in S. No. 531/1 of the extent of 2 acres 90 cents. Manicka Naicker alleged in his petition that Chakravarthi Naicker, a political thyagi, was already given lands in Vaiyyavoor village comprised in S. No. 531/4, S. No. 531/5, and S. No. 5,31/6. It is seen from the records that Chakravarthi Naicker got lands assigned in his favour the total extent being 7 acres. Manicka Naicker also complained against the attempted trespass on the land in S. No. 531/1 of the extent of 2 acres 90 cents, which was said to be in his possession.

4. In G.O.Ms. No. 109, Revenue, dated 10th January, 1953 the Government accepted the recommendations of the Board of Revenue and directed that the land in S. No. 531/1 of Vaiyyavoor Village, Kancheepuram taluk, measuring 2 acres 90 cents might be assigned in favour of Manicka Naicker. Further, the

Collector of Chingleput was requested to take steps to evict the political sufferer, Chakravarthi Naicker, from the above land and to put Manicka Naicker in occupation with immediate effect. No doubt the assignment was subject to the usual condition and any other conditions, which the Collector of Chingleput might deem necessary to impose. It emerges from the records that even as late as 15th June, 1957 Manicka Naicker made a grievance of the trespass committed by Chakravarthi Naicker and he prayed for an order to issue the patta in his name. On 16th July, 1967, Manicka Naicker again prayed for patta to be granted in his favour in pursuance of G.O.Ms. No. 109, Revenue, dated 10th January, 1953. He further made a complaint about the non-receipt of orders from the Collector of Chingleput. The Collector of Chingleput in his proceedings dated 9th May, 1958 addressed to the Secretary to the Government, Revenue Department, reported about the Tahsildar taking steps to evict the encroacher. He further reported about his sanctioning the transfer proposals in respect of the land in question. He reported also about his asking the Sub-Collector, Chingleput, to investigate the cause of inordinate delay in submitting the transfer proposals and to take disciplinary action against the persons responsible. Thillaimoorthi, the first respondent herein, states in his affidavit in the writ petition that the learned District Magistrate (Judicial), Chingleput, declared in M.C. No. 138/61 on 30th December, 1961 that the first respondent's party are in possession of the disputed property and that they are entitled to the possession thereof until evicted therefrom in course of law. Chakravarthi Naicker filed CrI.R.C. No. 143 of 1962 on the file of this Court against the order in M.C. No. 138/61, and Kailasam, J., by his order dated 6th September, 1963 dismissed his petition.

5. Chakravarthi Naicker filed a petition before the Government on 11th January, 1961 on the ground that he was in possession of the land. He further relied on a passage from the judgment of the Sub-Magistrate, Kancheepuram, in C.C. No. 2525 of 1951 to show that he was in possession of the land during the relevant period, viz., 14th August, 1951. He further alleged in that petition about some material irregularity in the procedure. He further claimed that he was cultivating the land with paddy from 1949. On 14th September, 1961 Manicka Naicker died. On 24th March, 1962, K. M. Thillaimoorthi, son of Manicka Naicker, filed an application before the Deputy Secretary to Government, Revenue Department, for the assignment of the land in question. In this application he complained about the non-co-operation of the local officials.

6. The District Revenue Officer, Saidapet, in his proceedings dated 20th November, 1962, addressed to the Secretary to Government, Revenue Department, states as follows:

With reference to Government Memorandum No. 4550-F-1/61-2, dated 31st March, 1962, I submit that it cannot be said that the late Sri Manicka Naicker took no interest in getting possession of the land. It would not be proper to deny the legal heirs of Sri Manicka Naicker from being given the land ordered to be assigned in G.O.Ms. No. 109, Revenue, dated 10th January, 1953.

It cannot be out of place to state here that the encroacher who is in possession of the land assigned to the late Sri Manicka Naicker appears to have been successfully preventing the steps taken to evict him.

7. Ultimately, the Government passed G.O.Ms. No. 2817, dated 19th September, 1963 directing that the land in question should be assigned to M. G. Chakravarthi Naicker. The Government further cancelled the order in G.O. Ms. No. 109, Revenue, dated 10th January, 1953. In this order it is significant to note that after noticing the Government order directing the assignment of the land in question to Manicka Naicker after evicting the encroacher, the Government observed:

Sri Chakravarthi Naicker filed several petitions against the orders of the Government and requested assignment of the land in his favour. The requests were however rejected.

8. This we find in the body of the said Government Order. The above facts culled out from the records placed before the Court are necessary to meet the argument of the learned Government Pleader, which will be noticed presently. Aggrieved by this order of the Government K. M. Thillaimoorthi along with his mother and brother filed Writ Petition No. 1156 of 1963, which was allowed by Venkatadri, J. It is against the order of Venkatadri, J., that the two writ appeals, Writ Appeal No. 289 of 1966 by M.G. Chakravarthi Naicker, and Writ Appeal No. 236 of 1967 by the State of Madras, have been filed.

9. The learned Government Pleader, Mr. S. Mohan, invites our attention to paragraphs 3 (5), 12 and 18. of Board's Standing Orders No. 15 and also to Form D and contends before us that Board's Standing Orders 15 (18) is not applicable at all, and that inasmuch as the final order, which has got to be embodied in Form D, has not been issued to Manicka Naicker or his son, the first respondent, the Government have the power and right to assign the land in favour of Chakravarthi Naicker. We are not in a position to accept this argument. When we bear in mind the contents of the earlier G.O. Ms. No. 109, Revenue, dated 10th January, 1953 directing assignment of the land in favour of Manicka Naicker, the assignment remains to be completed formally subject to usual conditions and any other conditions. It was open to the Collector or the other revenue authorities subordinate to him to have made use of Form D and completed the formalities of assignment. It would emerge very clearly from the statement of facts noticed earlier that the first respondent and his father made every effort to get the formal assignment completed, but both of them were thwarted from time to time by certain forces at work. In fact Manicka Naicker and his son, the first respondent, made a grievance of their failure to the revenue authorities. As a matter of fact even the Collector of Chingleput makes mention about his contemplated disciplinary action against the persons responsible. It is obvious that there were no laches on the part of either Manicka Naicker or his son, the first respondent, in pursuing the matter to get the completion of the assignment subject to certain usual conditions or special

conditions. We conclude from the facts seen from the records produced by the learned Government Pleader before the Court and the averments in the affidavits filed by the parties that there has been laches only on the part of the Revenue Department in pursuing the matter and completing the assignment in favour of Manicka Naicker.

10. Board's Standing Orders 15 (18) envisages a hierarchy of original, appellate and revisional authorities, prescribing even periods of limitation for appeals and revision petitions. It is important to notice that the Collector interferes with the decisions of the subordinate officers only in cases (1) where there has been a material irregularity in the procedure, or (2) where the decision was grossly inequitable, or (3) where the decision exceeded the powers of the officer who passed it, or (4) where the decision was passed under a mistake of fact or (5) owing to fraud or misrepresentation. The relevant extract of Board's Standing Orders 15 (18) is set down below:

The Board of Revenue or the Government may set aside, cancel or in any way modify the decision of any authority subordinate to them, within three years, if they are satisfied that the decision was grossly inequitable; they may exercise similar powers without any limit of time, where there has been a material irregularity in the procedure or where the decision exceeded the powers of the officer, who passed it or it was passed under a mistake of fact or owing to fraud or misrepresentation.

11. It is patently clear that even the powers of the Government are not unlimited. On the contrary they are constricted to the vitiating factors found in the extract to justify the interference on the part of the Government. The powers of the Government are severely delimited. The Government cannot traverse beyond this field. The learned Government Pleader relied on paragraph 3 (5) of Board's Standing Orders 15 and argued logically that in matters of disposing of land the Government are not barred from using their discretion and the discretion of the Government is unbounded and untrammelled and even arbitrary. We are inclined to think that Rule 18 may not be applicable in cases of original orders passed by Government. Assuming the content of power is located in Rule 3 (5) of the Board's Standing Orders 15, that power is only co-extensive with the power contained in Rule 18. It is exhaustive but not illustrative. To justify or warrant the interference of Government under Rule 3 (5) the power of the Government in exercising " discretion " cannot outreach or extend beyond the limitations found in Rule 18 of the Board's Standing Orders 15.

12. We cannot countenance the construction put by the learned Government Pleader on paragraph 3 (5) of Board's Standing Orders 15 to show that the discretion of the Government is absolute and unfettered. We are in respectful agreement with the observations of Srinivasan, J., in *Lakshmi Ammal v. Board of Revenue, Madras* (1965) 2 M.L.J. 95 : ILR (196.5) 1 Mad. 526 : (1964) 77 L.W. 293 , which is as follows:

13. It is well recognised that orders regarding the assignment of lands are disposed of in a quasi-judicial manner and even the rules contained in the Board's Standing Orders directed the disposal of applications for assignment in such manner. The rules also provide for a hierarchy of appeal and revisional tribunals indicating very clearly that the right agitated is in fact dealt with on at least quasi-judicial basis. In this particular case, it is beyond dispute that the petitioners have been in permissive occupation of the land for nearly 20 years. As landless poor persons, they are entitled to certain privileges and an application for assignment is covered by the Government Orders and the Board's proceedings themselves. By virtue of the earlier G.O.Ms. No. 109. Revenue, dated 10th January, 1953 Manicka Naicker did derive some rights in the land assigned in his favour, and before his rights or the rights of his son, the first respondent are invaded the first respondent was entitled to place certain matters before the Government before an adverse order in the later G.O.Ms. No. 2817, Revenue, dated 19th September, 1963 is passed against him. We find no reasons given in the impugned Government Order. The mere petition filed by the first respondent on 24th March, 1962, is not to be equated with an opportunity given to the first respondent to represent his case. We also do not find in the impugned Government Order any reference to any of the vitiating factors found in paragraph 18 of Board's Standing Orders No. 15 to justify the cancellation of the earlier G.O.Ms. No. 109, dated 10th January, 1953. We do not consider that the discretion vested in the Government under paragraph 5 of the Board's Standing Orders 15 is absolute and untrammelled. S.A. de Smith in his Judicial Review of Administrative Action observed at page 277:

As was observed in a leading modern Canadian case, "there is always a perspective within which a State is intended to operate.":

(iii) Where the competent authority is empowered to take such action or to impose such conditions as it thinks fit in relation to a subject-matter.

The Courts have generally declined to construe such words as investing the authority with an absolute discretion to do as it pleases.

The Minister of Transport, when empowered to make such order as he thought fit on a licensing appeal, was obliged to confine himself to matters raised in the course of the appeal and to disregard irrelevant considerations in exercising his discretion.

14. At page 324 the learned author also observes:

Certiorari will issue to quash an order made by an administrative body only if the functions of that body are characterised as being at least partly judicial. It will issue not only for error in the exercise of judicial functions, but also for error in the non-judicial element of a composite function, provided that the error causes the body exercising those functions to exceed its powers.

15. Garner in his book on Administrative Law at page 115 observes as follows:

We now come to the major ground on which the Court in this country will review the decision of an administrative agency, namely, because the agency has exceeded its statutory powers. Every administrative agency, whether it is a Government department, a local authority, an independent statutory corporation or an administrative tribunal, owes its powers exclusively to Parliament (with the sole exception of an agency operating under and by virtue of the royal prerogative) and it will be acting ultra vires in so far as it may purport to step outside or exceed those powers; any such purported exercise of power will therefore be void. As we have said, any ground on which judicial review may be justified can logically be classified as a branch of the ultra vires doctrine; here we shall deal with straightforward cases where ultra vires was expressly urged as the solitary or principal justification for judicial review. Thus in *The King v. Minister of Transport Ex parte Upminster Services, Ltd.* (1934) 1 K.B. 277, it was held that the Minister had no power to revoke contingently a road service licence granted by the Traffic Commissioners under the Road Traffic Act, 1930, although a person who had been refused a licence by the Commissioners was given a statutory right to appeal to the Minister.

16. In our considered opinion sub-paragraph 5 of Board's Standing Order 15 is not helpful to the Government. The Government cannot step outside or exceed the powers vested in them as enumerated in the relevant extract of paragraph 18, of Board's Standing Order 15. In our view the discretion vested in the Government under paragraph 5 is severely delimited by the strict limitations enumerated in paragraph 18, which fetter, trammel and control the discretion of the Government in the matter of disposing of lands.

17. We are only concerned here to examine whether the impugned order was made after observing the required procedure in paragraph 18 of Board's Standing Order 15 and whether the Government have taken into consideration all the relevant material that they should. There has been a failure to furnish an adequate opportunity to the first respondent to meet the contentions of Chakravarthi Naicker against the assignment of the land in favour of Manicka Naicker according to the earlier Government Order.

18. Sri V. Vedantachari appearing for Chakravarthi Naicker supported the contentions of the learned Government Pleader.

19. We affirm the order of Venkatadri, J. passed in Writ Petition No. 1156 of 1963 quashing G.O. No. 2817 Revenue, dated 19th September, 1963 and dismiss both the writ appeals and in the circumstances there will be no order as to costs.

20. It is open to the Government to interfere with the earlier Government Order in case they find sufficient material and grounds as described in paragraph 18 of the Board's Standing Order 15.

R. Sadasivam, J.

21. I have had the advantage of perusing the judgment of my learned brother

and I agree with him that the order of Venkatadri, J., passed in W. P. No. No. 1156 of 1963 against which the writ appeal has been preferred could be affirmed. However, I like to express my opinion on the contention of Sri S. Mohan appearing for the Government that the rules in Board's Standing Order 15 are merely administrative in character and that under sub-paragraph (5) of paragraph 3 of Board's Standing Order 15, "nothing contained in any of these rules shall be held to debar Government from disposing of land otherwise than under these rules at their discretion as heretofore", and that this Court has no jurisdiction to interfere with the order of assignment made by the Government. He relied on the decision of Veeraswami, J., as he then was, in Writ Petition No. 747 of 1959, on the file of this Court, that the rules in the Board Standing Orders relating to the assignment are no more than administrative instructions and that they have not been framed in the exercise of any statutory power to make rules. But the Writ Appeal No. 203 of 1962 filed against the order on W.P. No. 74,7 of 1959 was disposed of on the ground that the disappointed applicant for the assignment of the land cannot be said to have any legal grievance to justify his invoking the discretionary powers of this Court under Article 226 of the Constitution. Mr. S. Mohan also relied on the decision in W.P. No. 867 of 1963, on the file of this Court. The petitioner in that case applied for assignment of 2 cents of Government poramboke land in S. No. 310/1 Konnur village adjacent to his land in S. No. 309 on the ground that by reason of the State Government acquiring two cents of his land out of the extent of six cents in S. No. 309 of Konnur Village, he was not able to construct his building as planned. The Government assigned two cents of land in S. No. 310/1, Konnur Village, to him at the market value. But the second respondent in that petition, who had already encroached on the land, applied to the Tahsildar for permission to retain possession of the land by passing an order of assignment in his favour. In view of the fact that the second respondent had constructed a building, the Government passed the revised impugned order under which they allotted one cent to each party, namely, the petitioner and the second respondent. It was urged by the learned Government Pleader in that writ petition that as an assignment becomes complete only after the signing of the prescribed Form D in Appendix V of Board's Standing Order Volume I, the Government had jurisdiction to vary the order and in dealing with this contention Venkatadri, J., observed that there was much force in it. But he has pointed out in the earlier part of that order that by virtue of the powers under Board's Standing Order 15, paragraph 18, the Government have jurisdiction to vary the prior order within three years if they are satisfied that the earlier decision was grossly inequitable and that they may exercise similar powers without any limit of time where there has been a material irregularity in the procedure or where the decision exceeded the powers of the Officer who passed it, or where it was passed under a mistake of fact or owing to fraud or misrepresentation. Thus the second order passed by the Government in that case could be justified under the provisions of Board's Standing Order 15, paragraph 18.

22. Thus the question whether orders regarding assignment of land could be challenged by invoking the writ jurisdiction of this Court will depend on the rights of the petitioner and the violation of the principles of natural justice by the appropriate authority in dealing with such rights. Though the Rules in Board's Standing Orders may be only administrative instructions, the actual orders passed by the concerned revenue officials, Board of Revenue and Government will give rise to legal rights and the disregard or violation of the rules will be relevant in dealing with those rights in writ jurisdiction.

23. Though Board's Standing Order 15, paragraph 3 (3) enumerates the class of persons who are eligible for assignment of lands by the issue of D. Form patta, no person can have a legal grievance if a person belonging to one class is preferred to a person belonging to another class. But once the Tahsildar communicates his order in Form D in Appendix V of Board's Standing Order, Volume 1, as required in Board's Standing Order 15, paragraph 18, certain legal rights accrue in favour of the grantee. As pointed out by Srinivasan, J., in *Lakshmi Ammal v. Board of Revenue, Madras* (1965) 2 M.L.J. 95 : ILR (1965) 1 Mad 526 : (1964) 77 L.W. 293, referred to by my learned brother, the order of the Tahsildar is a quasi-judicial one subject to cancellation or modification in appeal or revision as provided in the Board's Standing Order. Unlike in the case of Board's Standing Order 15, paragraph 12, which requires a communication by the Tahsildar to the parties concerned in Form D in Appendix V of Board's Standing Order apart from sending an order to the village authorities, there is no such requirement when the Government directly passes orders as contemplated in Board's Standing Order 15, paragraph 3 (5). The Government has made an order of assignment in favour of Manicka Naicker, the father of the first respondent Thillaimoorthy and directed the Collector of Chingleput to give effect to the order by evicting Chakravarthi Naicker from the land. By virtue of the said order, Manicka Naicker has acquired some rights in the land and the principles of natural justice require that his rights should not be affected adversely without his being heard and except on legal grounds such as those contemplated in Board's Standing Order 15, paragraph 18. In the subsequent order of the Government in favour of Chakravarthi Naicker, there is absolutely no discussion as to the merits of his claim to get the assignment of the land in his favour in spite of the prior order in favour of Manicka Naicker. It is no doubt open to the Government to interfere with their earlier order in favour of Manicka Naicker, if Chakravarthi Naicker is able to bring his case within the provisions of Board's Standing Order 15 paragraph 18, which embody only principles of natural justice usually applied in quasi-judicial proceedings.

24. I agree with my learned brother that in the above circumstances, the writ appeals should be dismissed but without costs.