
(1979) 02 OHC CK 0003
In the Orissa High Court
Case No : O.J. Case No. 602 of 1976

Satyabadi Pradhan

APPELLANT

Vs

Tahasildar and Others

RESPONDENT

Date of Decision : 06-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 226(1), 226(3)

Citation : AIR 1979 Ori 150 : (1979) 48 CLT 261

Hon'ble Judges : J.K. Mohanty, J;B.K. Ray, J

Bench : Division Bench

Advocate : P. Palit and R. Mohapatra, for the Appellant; Y.S.N. Murty and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Mohanty, J.—By this writ petition under Article 226 of the Constitution of India petitioner seeks to quash the order under Annexure 6 passed by opposite party No. 2, the Sub-Divisional Officer, Berhampur in O.E.A. No. 1 of 1976 and the consequential notice under Annexure 7 issued by opposite party No. 1, the Tahasildar-cum-O.E.A. Collector, Digapahandi in C. P. No. 1281 of 1966. Petitioner further prays for issue of a writ of mandamus and/or any other appropriate order prohibiting and/or restraining the opposite parties either from taking any action or in any manner interfering with the possession and enjoyment of the petitioner over the disputed property by virtue of the aforesaid order.

2. The case of the petitioner is that his ancestors purchased certain lands locally known as Gangasagar bila along with the disputed land measuring about A 4.77 decimals in Khasra No. 13 and Khewat No. 22 of mouza Gada Chaitanpur from one Bhagirathi Pattanaik and others by a registered sale deed dated 28th May, 1919. The lands were Dar-mila Inam lands belonging to Bada Khe-mandi Estate. The disputed land was initially recorded as a tank. But in course of time the same was changed into a cultivable land and was in exclusive possession of the

petitioner. On 1-6-1953 the Bada Kh'emandi Estate vested in the Slate. After vesting neither the ex-intermediary nor any other person filed any application under Sections 6, 7 and 8 (3) of the Orissa Estates Abolition Act (hereinafter called the "Act") for settlement of the disputed land within the prescribed period. According to the petitioner, the time for making application was extended by the Government from time to time and on 22-9-1966 the father of the petitioner filed an application under Sections 6 and 7 of the Act which was registered as C. P. No. 1281 of 1966 before the Tahasildar-cum-O.E.A. Collector, Digapahandi and on 21-2-70 notices were issued. Thereafter on 9-4-1970 the Tahasildar-cum-O.E.A. Collector directed the Revenue Supervisor to visit the spot personally and conduct a local enquiry. On enquiry, as it was found that names of some other persons had been entered in the preliminary R.O.R. as co-rayats (Khatadars), notices were issued to the said Khatadars, but they endorsed no objection. The Tahasildar-cum-O.E.A. Collector (opposite party No. 1), after considering the report of the Revenue Supervisor, allowed the application of the petitioner, settled the land with him, fixed Rs. 4.50 as fair and equitable rent with effect from 1-6-1953 and directed the petitioner to pay salami equal to three times of the rent, as the petitioner's application was not made in time. He, accordingly, directed preparation of the rent roll. On 21-9-70, i.e. after the appeal period was over, the rent roll was signed and the petitioner was directed to deposit Rs. 64.41. Petitioner duly deposited the sum. After the settlement of the disputed land with the petitioner, petitioner was regularly paying rent and cess to the Government and obtaining receipts therefor. Thereafter in the year 1971, he mortgaged the said land to the Land Mortgage Bank and got a loan of Rs. 4,000 for development of cultivation in the said land. In the years 1972-73 and 1974-75 opposite party No. 1 also sanctioned loan of Rs. 600 for purchasing bullock cart and Rs. 400 for development of the said land respectively to the petitioner. In the year 1975 petitioner also got a loan of Rupees 1,500 from Canara Bank on mortgage of the said land for purchasing fertilisers etc. The allegation of the petitioner is that opposite parties 4 to 11 in order to harass him falsely initiated M. C. Irrigation Case No. 9 of 1975 under Irrigation Act before opposite party No. 1, even though by that time the tank had lost its character and became cultivable land and the land was getting water for cultivation purposes from the nearby Ghodahada Canal. Accordingly notice for payment of water tax from 1975-76 was served on the petitioner with respect to the said land. During the pendency of the aforesaid M. C. Irrigation Case, on 18-2-1976 opposite parties 4 to 11 filed Orissa Estates Abolition Appeal No. 1 of 1976 against the order of opposite party No. 1, settling the land with the petitioner under Annexure 1 dated 17-8-70 passed in C. P. No. 1281 of 1966, before opposite party No. 2, the Sub-Divisional Officer, Berhampur as per the executive instructions of the Government for settlement of lands under Sections 6 and 7 of the Act along with an application u/s 5 of the Limitation Act to condone the delay (which was more than 5 years). The said O.E.A. Appeal No. 1 of 1976 was posted to 9-3-76 and on that day opposite party No. 2 without giving any notice to the parties or without calling for the records of the case, has condoned the delay of

about more than 5 years and remanded the case to opposite party No. 1 for fresh disposal in accordance with law -- vide his order under Annexure 6. In pursuance of the order of opposite party No. 2 under Annexure 6 dated 9-3-76, opposite party No. 1 has issued a notice under Annexure 7 to the petitioner in C. P. No. 1281 of 1976. These Annexures 6 and 7 are now under challenge in this writ petition.

3. Mr. Palit, learned counsel appearing for the petitioner, contends that the opposite party No. 2 has no power to condone the delay of about more than 5 years; that the Limitation Act has no application to this case; that the petitioner having acquired a vested right in the land, notice should have been issued to him before disposal of the case ex parte; and that the opposite party No. 2 having passed the order arbitrarily and capriciously behind the back of the petitioner without giving any notice to the parties, the same is in violation of the principles of natural justice and liable to be quashed.

4. On behalf of opposite parties Nos. 5 to 10 several objections on factual aspect of the case have been taken. But their main objection is to the maintainability of the writ petition. Mr. Y. S. N. Murty, learned counsel appearing for the opposite parties, contends that the petitioner having failed to exhaust the alternative remedy of a revision before the Collector against the order of opposite party No. 2, the Sub-Divisional Officer, Berhampur, as per the executive instructions of the Board in G. O. No. 14399-E. A-II-110/63-R dated 2nd March, 1964 under which the disputed land was settled with the petitioner on salami basis, there is a bar to entertain and decide this petition under Article 226(3) of the Constitution and this petition abates u/s 58 (2) of the Constitution (Forty-Second Amendment) Act, 1976. "Mr. Murty further contends that only in cases for enforcement of any of the rights conferred by the provisions of Part III of the Constitution or for redress of injury of substantial nature when there is contravention of any of the provisions referred to in Sub-Clauses (b) and (c), this Court shall have power to issue directions, orders or writs and that in any case the violation of principles of natural justice cannot be considered as an illegality in the context of Sub-clause (c). It is in view of this objection that the preliminary question as to the maintainability of this writ petition has to be considered.

Mr. Palit, learned counsel for the petitioners, vehemently contends that in this case not only the petitioner was not given any chance of contesting the case, but the question of limitation (the delay was more than 5 years) was decided without any notice to the parties. He further argues that unless a particular statute or provision of law specifically or by necessary implication excludes the application of the principles of natural justice, it would be illegality if in the proceedings any principle of natural justice has been violated and if it has resulted in substantial failure of justice and Clause (3) of Article 226 will be no bar in this case to grant relief.

5. In order to appreciate the arguments of both sides it is necessary to set out the provision of Article 226 as it stood before amendment and after the

amendments which are relevant:--Article 226 before Amendment

"226 (1). Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(1A) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(2) The power conferred on a High Court by Clause (1) or Clause (1A) shall not be in derogation of power conferred on the Supreme Court by Clause (2) of Article 32."

Amended Article 226.

"226 (1). Notwithstanding anything in Article 32 (but subject to the provisions of Article 131-A and Article 226-A). every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them--

(a) for the enforcement of any of the rights conferred by the provisions of Part III; or

(b) for the redress of any injury of a substantial nature by reason of the contravention of any other provision of this Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or

(c) for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) where such illegality has resulted in substantial failure of justice.

(2) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) No petition for the redress of any injury referred to in Sub-clause (b) or Sub-

clause (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force."

Note :-- (The bracketed portion has been amended by the Constitution (Forty-third Amendment) Act, 1977).

Section 58 (1) and (2) of the Constitution (Forty-Second Amendment) Act is quoted below for reference.

"58 (1) Notwithstanding anything contained in the Constitution, every petition made under Article 226 of the Constitution before the appointed day and pending before any High Court immediately before that day (such petition being referred to in this section as a pending petition) and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to, such petition before that day shall be dealt with in accordance with the provisions of Article 226 as substituted by Section 38.

(2) In particular, and without prejudice to the generality of the provisions of Sub-section (1) every pending petition before a High Court which would not have been admitted by the High Court under the provisions of Article 226 as substituted by Section 38 if such petition had been made after the appointed day, shall abate and any interim order (whether by way of injunction or stay or in any other manner) made on, or in any proceedings relating to such petition shall stand vacated.'"

Under Section 58 (2) every pending petition before the High Court which could not have been admitted under Article 226 as now substituted by the 42nd Amendment Act if made after the appointed day, that is, 1st February, 1977, must abate. The question which now arises is as to whether under the amended Article 226, the present petition could be entertained by this Court.

6. Under Article 226(1) as it stood before the amendment the writ jurisdiction could be exercised not only for enforcement of fundamental rights but for "other purposes". But after amendment of Article 226(1) by Constitution (Forty-Second Amendment) Act, 1976 not only the scope of the writ jurisdiction has been restricted to cases covered by Sub-clauses (b) and (c) of Article 226(1), but further restriction has been put by Article 226(3) by providing that no such petition for redress of any injury referred to in Sub-clauses (b) and (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. As is evident, the restriction is not attracted in case of enforcement of fundamental rights falling under Article 226(1)(a), but is restricted to Sub-clauses (b) and (c) only. Further the writ jurisdiction for specified purpose as provided in Clauses (b) and (c) of Article 226(1) can be exercised if there is no other remedy for such redress provided for by or under any other law for the time being in force. These are restrictions on the jurisdiction of the Court and thus will have to be strictly construed. Two questions thus arise for consideration, namely, (1) what is the true import of the words "any other remedy" used in Clause (3) of Article 226, and (2) whether the

words "any illegality" used in Sub-clause (c) of Article 226(1) would include violation of principles of natural justice. It is urged on behalf of the petitioner that by the words "any other remedy" used in clause (3) is meant remedy which is equally adequate or efficacious for the purpose of redressing the injury caused and that violation of principles, of natural justice in a proceeding contemplated in Sub-clause (c) of Article 226(1) resulting in substantial failure of justice is an illegality.

7. Mr. Palit, learned counsel appearing for the petitioner, cited two Full Bench decisions of Andhra Pradesh and Gujarat High Courts in support of his contentions. In *The Government of India and Others Vs. The National Tobacco Co. of India Ltd., Calcutta*, the entire gamut of Article 226 which is newly substituted by the 42nd Amendment, the scope and amplitude of Section 58 of the Amendment Act and its impact on pending writ petitions etc. came up for consideration. It was held (at pp. 260, 261) :--

"However, this is not to say that an action, when it contravenes any administrative instructions, cannot under any circumstance be challenged under Article 226 of the Constitution. When such acts are in violation of fundamental rights or in contravention of any other provision of the Constitution or any provision of any statute or Ordinance, they can certainly be questioned. But then, that challenge would come under Sub-clause (a) or the first limb of Sub-clause (b), because an action thereon would be for enforcement of a fundamental right or on a complaint of contravention of any other provision of the Constitution or a provision of any enactment or Ordinance.

Now coming to Sub-clause (c), broadly stated, it would apply to illegalities in proceedings. The words "under any provision referred to in Sub-clause (b) occurring therein refer to and govern "proceedings by or before any authority." That is to say, the illegality will have to occur in any proceeding by or before any authority provided under any provision of the Constitution, any enactment, Ordinance or under any order, rule, regulation, bye-law made under the Constitution or enactment or Ordinance. If a particular proceeding before a certain authority is provided by any provision referred to in Sub-clause (b) and if any illegality resulting in substantial failure of justice occurs therein, then the matter comes under Sub-clause (c). The illegality in order to attract Sub-clause (c) need not necessarily be in the course of the proceeding before the concerned authority, even if the order, decision or adjudication given by the authority in such proceeding is vitiated by any illegality, then also it comes within the ambit of Sub-clause (c). Thus, illegalities not only in the course of the proceedings but also in the final adjudication of the proceedings contemplated by any provision referred to in Sub-clause (b) would attract Sub-clause (c). However, before a writ petition is entertained under this sub-clause, it must be alleged and shown that the alleged illegality has resulted in substantial failure of justice causing injury to the aggrieved person.

Here we must consider the nature of the "illegality" postulated by Sub-clause (c).

A contention has been raised by the standing counsel for the Central Government and one of the Government Pleaders that "illegality" in Sub-clause (c) has a very limited connotation. Reliance was placed in this connection on *Hari Vishnu v. Ahmad Ishaque* AIR 195 SC 233 and *Union of India v. J. N. Sinha* AIR 1973 SC 40. It was argued that it could be said that there would be illegality only when there is any contravention of any of the provisions referred to in Sub-clause (b) and in no other circumstances it could be said that the proceedings are vitiated by illegality. It was further argued that in any case the violation of principles of natural justice cannot be considered as an illegality in the context of Sub-clause (c). We cannot accede to this very narrow construction of the term "illegality." In the first place, it should be noted that the Parliament has itself given liberal connotation to it by using the word "any" before "illegality". Further, it is a futile argument to say that only when there is contravention of any of the provisions referred to in Sub-clause (b) it can be said that there is any illegality. If that were the intention of the Parliament, we see no need or justification for having, Sub-clause (c) separately. If the learned Government Pleader's point of view were to be accepted, Sub-clause (c) would become redundant and otiose. The words "under any provision referred to in Sub-clause (b)," as we have already said, "refer to proceedings by or before any authority" and not to "illegality." Any illegality which vitiates such proceedings and which results in substantial failure of justice would attract Sub-clause (c). If there is illegality of any nature in the proceeding it comes under this sub-clause. Further, if in the proceedings the principles of natural justice have been violated, that could also be "illegality" provided the particular statute under which the proceedings have been taken by the authority concerned specifically excludes the application of the principles of natural justice. Unless there is such express exclusion or exclusion by necessary intendment, it must be taken that the principles of natural justice would apply to all proceedings before authority. Several times if these principles are violated it would result in grave miscarriage of justice causing substantial injury to persons. Therefore, it can be safely concluded that unless a particular statute or provision of law specifically or by necessary implication excludes the application of the principles of natural justice, it would be "illegality" if in the proceedings any principle of natural Justice has been violated and if it has resulted in substantial failure of justice. Needless to say that each case will have to be tested in the light of its own facts."

Considering the implication of Article 226(3), the Court held:--

" XX XX XX The bar contained in Clause (3) does not apply to petitions which are filed for enforcement of any of the rights conferred by the provisions of Part III of the Constitution. The bar placed by Clause (3) applies only to petitions which seek redressal of injuries referred to in Sub-Clauses (b) and (c) alone.

XX XX XX Clause (3) specifically states that for redressal of any injury referred to in Sub-Clauses (b) and (c) no writ petition shall be entertained if any other remedy for such redress is provided for by or under any other law for the time

being in force. The "other remedy" contemplated by Clause (b) could not necessarily be one which is provided under any statute, ordinance, order, rule, regulation, bye-law etc., the breach of which is complained of. It would be sufficient if that other remedy is provided for by or under any other law for the time being in force.

XX XX XX But it should be remembered that the "other remedy" must be capable of affording such redress as is postulated under Sub-clauses (b) and (c). If the other remedy is not capable of giving to the aggrieved person similar redress as is contemplated by Sub-clause (b) or Sub-clause (c), then it cannot be considered to be a bar.

XX XX XX The words "any other remedy for such redress" are significant and meaningful and they clearly bring out the intention of the Parliament that only that other remedy which is truly and really capable of giving such redress as is postulated in Sub-Clauses (b) and (c) would be a bar to the maintainability of the writ petition. Needless to say that in order to find out whether there is such a bar to the entertainment of a writ petition, the court will have to examine the facts and circumstances of each case and the redressal that is sought and the nature of the other remedy that may be available under any other law for the time being in force. It is impossible and undesirable to lay hard and fast rules in this behalf."

In AIR 1977 Guj 113 (FB) (A"bad Cotton Mfg. Co. Ltd. v. Union of India) their Lordships have held (at pp. 121, 123, 124) :--

"The jurisdiction under Article 226(1) before the amendment was very wide as this writ jurisdiction could be exercised not only for enforcement of fundamental rights but for other purposes" and even where there was existence of other remedies it was only as a matter of self-restraint that this extraordinary jurisdiction was not exercised when adequate alternative relief existed by recourse to ordinary remedies created by the law.

XX XX XX After the amendment, Article 226(1) has been restricted by the three Sub-clauses under Article 226(1) Not only the scope of the writ jurisdiction is restricted by the specified purpose which is substituted in the place of other purposes" in Clauses (b) and (c), but a further fetter is added under Article 226(3) that no such petition for redress or injury referred to in Sub-Clauses (b) and (c) of Clause (1) shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. A bare perusal shows that this fetter is not attracted to a petition for enforcement of fundamental rights falling under Article 226(1) as it is restricted to Sub-Clauses (b) and (c) only. The second feature which must be borne in mind is that this is a fetter to the entertainment of the petition itself because now the writ jurisdiction for the specified purpose in Clauses (b) and (c) of Article 226(1) has to be exercised if there is no other remedy for such redress provided for by or under any other law for the time being in force. Formerly, by a self-limitation the discretion was exercised not to entertain writ petitions when alternative remedy

existed but now when a constitutional fetter is created, the Court would have no jurisdiction if alternative remedy for such redress is provided for by or under any other law. This being a fetter on the jurisdiction of the Court will have to be strictly interpreted. Even though the words "any other remedy" had been used, it is obvious that "any other remedy" has to be for redress of the injury for which this writ jurisdiction is conferred and, therefore, it must be equally adequate or efficacious so that qualitatively and quantitatively the same relief would be given for redress of the injury to the petitioner. Therefore, the adequate efficacious remedy is always implicit if the remedy is to be for redressing the injury as effectively as could be done in the writ petition. The third important feature is that such a remedy must have been provided for by or under any other law for the time being in force which makes it implicit that this must be a direct remedy specifically provided by or under the specific law in force under which the impugned action is taken or order is made.

XX XX XX XX The amplitude of the fetter would depend on the amplitude of such alternative remedy which is provided for direct attack by or under the other law in question and not on any general remedy of a civil suit by way of a collateral attack.

XX XX XX XX Although the writ jurisdiction has been restricted by specifying the particular purpose in Clauses (b) and (c) for which now the writ jurisdiction could be exercised, the grounds for such supervisory writ jurisdiction are still contraventions of constitutional or other provisions of law including orders, rules, regulations, bye-laws or other instruments made thereunder or the illegalities committed by the authorities acting under those provisions. Even this new ground would show that the distinction between a real and purported order which is an ultra vires order substantively or procedurally by not remaining within the limited bounds or the mandated area or because of non-compliance of fundamental essential provisions of law or principles of natural justice which would make such orders nullities or ex facie without jurisdiction would be all the more material.

XX XX XX XX If in England where the Parliament was supreme and where it had "introduced non-certiorari clauses in the Act of the Parliament, this distinction had been adopted by the House of Lords in the decision in *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 1 All ER 208 so that statutory tribunals and authorities would be kept within their limited bounds or the mandated area and would not become absolute, the same material distinction between a real and a purported order must be adopted when our constitutional amendment under Article 226(3) has not introduced the non-certiorari clause but has only introduced a mere fetter as to the stage at which the writ jurisdiction should be exercised after exhausting the alternative efficacious normal remedy under the law.

XX XX XX XX When the petitioner is to be asked to exhaust his alternative remedies provided under the Act before entertaining the writ petition this

distinction would always be material where the order is a nullity as being ex facie without jurisdiction or in non-compliance with the provisions of the Act of the essential principles of justice or on any other ground as explained in Union of India (UOI) Vs. Tarachand Gupta and Bros, or Bhopal Sugar Industries case AIR 1967 SC 549 or Mohd. Noon's case, AIR 1958 SC 86 and is, therefore, a purported order or nullity. In such a context the alternative remedy would be a futile remedy because it did not affect the inherent nullity in the challenged decision, which would result in the material distinction that the party may appeal against such decision but he was not bound to do so. Therefore, in such cases where the challenge is on the ground that the order is an ultra vires order, the question of exhausting alternative remedy could hardly arise as the petitioner could straightway seek remedy of judicial review. These settled principles would be all the more applicable after this constitutional fetter where the emphasis is now on full redress of injuries for which specified purpose only this extraordinary remedy is created so that in such substantial injuries consisting of non-compliance with other constitutional or statutory provisions or illegalities which go to the root so as to result in failure of justice when committed by authorities and tribunals acting under those provisions, it would be a poor consolation to a citizen to be told in cases of such purported orders to avail of such remedy which he is not bound to exhaust and which would not be efficacious at all but a futile remedy in case the order is confirmed as it would still remain a nullity."

Mr. Palit cited another decision of the Supreme Court reported in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, wherein it has been held:--

"Existence of alternative remedy is no bar to writ petition, where it is alleged that the Tribunal acted under provision of law which was ultra vires or where it is alleged that it acted in violation of principles of natural justice."

But this is a decision when Article 226(3) was not in the statute book. In Halsbury's Laws of England, Third Edition, Vol. 30 page 718 it has been observed:--

"All persons exercising judicial or quasi-judicial functions must have due regard to the dictates of natural justice. These require that the parties to the proceedings shall be duly notified when and where they may be heard and shall then be given full opportunity of stating their views, the matters in dispute being decided honestly, impartially and without bias by a tribunal no member of which has any interest, either pecuniary or otherwise, in the matter."

8. Mr. Murty, learned counsel appearing for the opposite parties, cited a Division Bench decision of Karnataka High Court reported in Krishne Gowda Vs. M. Sheik Suleman Sab, wherein it has been held (at page 192):--

"However attractive the argument of the learned counsel for the appellant appears to be, this appeal is devoid of merit. Article 226(1) of the Constitution as amended by the 42nd Amendment has made substantial change with regard to

the scope of Writ petitions under Article 226. Under the said Article as it now stands, the High Court has power to issue any writ or directions only for the enforcement of any rights conferred by the provisions of Part III; or for the redress of any injury of a substantial nature by reason of the contravention of any other provisions of the Constitution or any provision of any enactment or Ordinance or any order, rule, regulation, bye-law or other instrument made thereunder; or for the redress of any injury by reason of any illegality in any proceedings by or before any authority under any provision referred to in Sub-clause (b) where such illegality has resulted in substantial failure of justice. It will thus be seen that for obtaining redress of any injury caused by reason of any illegality in any proceedings by or before any authority, such illegality should have resulted in substantial failure of justice.

It is undoubtedly true that any order made in violation of the Rules of Natural Justice is void. But the order does not automatically stand vacated. The aggrieved party has to move the Court and obtain a declaration or order of that nature declaring that the order is one made in contravention of the rules of natural justice and therefore void. In the instant case, the learned counsel for the appellant has not been able to show any illegality in the order made by Bhimiah, J. The learned Single Judge has stated that the Tribunal had no jurisdiction to review its order passed on 21-8-1975 as it has not been conferred with any power to review its earlier orders. On that short question the Writ Petition was allowed and the order dated 2-1-1976, impugned therein, was quashed."

But this decision does not support the contention of Mr. Murty. Rather, it says that though an order made in violation of the Rules of Natural Justice is void, the aggrieved party has to move the Court and obtain a declaration or order declaring that the order is one made in violation of the Rules of Natural Justice and therefore void.

The next decision of a Division Bench of the Kerala High Court cited by Mr. Murty is reported in 1978 Tax LR 1726 wherein it has been held (at p. 1730) :--

"We have so far dealt with the arguments on the merits. Counsel for the respondents raised a preliminary objection that in view of Clause (3) of, Article 226 after its amendment by the Constitution 42nd Amendment, alternative remedy of revision u/s 131 of the Customs Act is available to the appellants and therefore the writ petition is not entertainable, and should abate u/s 58 of the Constitution Amendment Act. On the terms of the provisions, the argument appears to be well founded, and we are inclined to accept the same. Counsel for the appellants drew our attention to the decision of the Gujarat High Court in *A"bad Cotton Mfg. Co v. Union of India* (AIR 1977 Guj 113) (FB) to the effect that the alternative remedy, in order to bar the entertainment of a writ petition under Article 226(3), must be adequate and effective, both qualitatively and quantitatively. We find it rather difficult to read this limitation into the terms of Article 226(3), having regard particularly, to the purpose and the object of the

42nd Amendment and the terms of the constitutional provision. We are inclined to accept the objection of counsel for the respondents and to dismiss the appeal and the writ petition on this ground as well. As the appellants have no case on the merits, we" do not wish to express our final and concluded view on the preliminary objection."

In the above case, the decision reported in AIR 1977 Guj 113(FB) has been dissented from, but absolutely no reasons have been given as to why they have differed, as would be seen from the above quotation.

9. Therefore, on a consideration of the aforesaid decisions, we agree with the view expressed by the Full Bench of the Andhra Pradesh and Gujarat High Courts referred to above and hold that (1) liberal construction must be given to the term "illegality" in the con-text of Sub-clause (c) and unless a particular statute or provision of law specifically or by necessary implication excludes the application of the principles of natural justice, it would be "illegality" if in the proceedings any principle of natural justice has been violated which has resulted in substantial failure of justice and each case will have to be considered in the light of its own facts; and (2) that the words "any other remedy for such redress" are significant and meaningful and they clearly bring out the intention of the Parliament that only that other remedy which is truly and really capable of giving such redress as is postulated in Sub-clause (b) and (c) would be a bar to the maintainability of the writ petition and in order to find out whether there is such a bar to the entertainment of a writ petition, the Court will have to examine the facts and circumstances of each case and the redressal that is sought and the nature of the other remedy that may be available under any other law for the time being in force. It is not possible to lay down hard and fast rules in this regard and each case would be judged on its own facts.

10. In this case, as already mentioned, opposite party No. 2, the Sub-Divisional Officer, Berhampur, has not only condoned the delay (which is more than 5 years) without hearing the petitioner, but also has set aside ex parte the order passed by opposite party No. 1 dated 17-8-70 settling the disputed land in favour of the petitioner. It is now well settled that time barred appeal should not be entertained without notice to the opposite party. In AIR 1917 PC 179 (Krishnasami Panikondar v. Ramasami Chettiar), it has been held:--

"The practice of admitting a time-barred appeal without notice to opposite party and allowing the question of sufficiency of cause shown for admitting it beyond limitation, to be raised at the hearing is open to grave objection. It may lead to a needless expenditure of money and an unprofitable waste of time, and thus create elements of considerable embarrassment when the Court comes to decide on the question of delay. It is urgently expedient to adopt a procedure which will secure at the stage of admission, the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal."

In AIR 1918 PC 134 (Sunderbai v. Collector of Belgaum) it has been held :--

"When a memorandum of appeal is presented beyond the prescribed period of limitation, the proper order which a Judge should endorse upon it would be to the following effect:

"Presented for admission on the (date when the memorandum of appeal was handed into the office of his Court). Let notice go to the respondents (date of the order)." It is very expedient to adopt a procedure which should secure at the stage of admission the final determination (after due notice to all parties) of any question of limitation affecting the competence of the appeal."

11. The S.D.O., opposite party No. 2, has committed grave illegality in condoning the delay without affording any opportunity of hearing to the parties. He has also set aside the order of opposite party No. 1 ex parte. Thus there is flagrant violation of principles of natural justice and the illegality committed by the opposite party No. 2 resulted in substantial failure of justice. Therefore, in the peculiar facts and circumstances of the case, the alternative remedy will not be a bar to entertain this writ application.

12. In the result, therefore, the order dated 9-3-76 under Annexure 6 and the notice issued by Opposite Party No. 1 under Annexure 7 are quashed with a direction to Opposite Party No. 2 the S.D.O., Berhampur, to hear O.E.A. No. 1/76 afresh first on the question of limitation and then on merit, in case delay in filing the appeal is condoned after affording opportunity to the parties of being heard and thereafter to dispose of the appeal in accordance with law.

13. In the circumstances of the case there will be no order for costs.

B.K. Ray, J.

14. I agree.