

(1958) 08 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 232 of 1958

Sirisetti Mallayya

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 14-08-1958

Acts Referred:

Constitution of India, 1950 — Article 226
Hyderabad Board of Revenue Regulation, 1358 — Section 6, 9
Hyderabad Land Revenue Act, 1317 — Section 166, 166B

Citation : AIR 1959 AP 7

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : V. Madhava Reddy, for K. Madhava Reddy, for the Appellant; P. Ramachandra Reddi, 3rd Govt. Pleader and M. Sitarama Rao, for the Respondent

Final Decision : Dismissed

Judgement

Umamaheswaram, J.—This is an application under Article 226 of the Constitution for quashing the order of the Government of Andhra Pradesh, Revenue (T) Department in Memorandum No. 103544-T-57-4 dated 7-1-1958. The case of the petitioner is that he was an abkari contractor and that his properties were brought to sale by the Tahsildar, Parkal on 13-3-1957 for the recovery of the excise arrears of a sum of Rs. 19009-13-0 without giving a proper notice of sale and without issuing "30 days proclamation and proper publication". Thereupon he filed an application before the Board of Revenue to set aside the sale. He did not implead the auction purchaser, the 2nd respondent herein, as a party to his application. The Board of Revenue passed an order on 25-7-1957 setting aside the sale.

The Board observed that the mandatory provisions of Sections 130 and 135 of the Hyderabad Land Revenue Act (VIII of 1317 F) hereinafter referred to as "the Act" had not been observed and that consequently, the sale was void. The auction-purchaser was directed to be dispossessed, if already put in possession.

The 2nd respondent in his turn, moved the Government of Andhra Pradesh to set aside the order of the Board of Revenue. It is interesting to note that the 2nd respondent did not implead the petitioner herein as a party to his application before the Government. The Government of Andhra Pradesh passed the following order:

"The Government have carefully examined the request of Sri K. Ananta Reddy. They consider that while there can be no doubt that there are many irregularities in the auction proceedings and the sale of Immovable properties, the revisional jurisdiction exercised by the Member, Board of Revenue, u/s 166(b) of the Hyderabad Land Revenue Act is defective inasmuch as no order under the above section can be passed without summoning the parties who may be affected by such orders and without giving a hearing. This is a mandatory provision which renders the orders u/s 166(b) invalid. The case is therefore remanded to the Board of Revenue (Excise) and the Board is requested to summon the parties and hear their objections and pass such orders as deem fit.

The Board is also requested to take into consideration the further points adduced in the petition of Sri Mallyya dated 30-12-1957 enclosed herewith, while disposing the case."

As against the said order of the Government of Andhra Pradesh the writ is filed before this Court.

2. Sri V. Madhava Reddi, the learned advocate for the petitioner, contended that the Govern merit had no jurisdiction to interfere with the final order passed by he Board of Revenue and that this Court should consequently set aside that order. u/ s 166-B of the Act, the Government or any Revenue Officer not lower in rank to a Taluqdar, the Commissioner of Survey Settlement or Commissioner of Land Records may call for the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may take suitable order in that behalf. Under the Hyderabad Board of Revenue Regulation (No. LX of 1358 F.), hereinafter referred to as "the Regulation", the Board of Revenue was constituted. All the power and duties conferred and imposed on Subedars devolved upon the Board of Revenue. Section 6 enacts that subject to such conditions and reservations as Government may from time to time prescribe, all appellate and revisional powers for the time being vested in Government in the Revenue Department shall be exercisable by the Board. Sri Madhava Reddi rightly contended that after the passing of the Regulation, the powers vested in the Government u/s 166-B had to be exercised by the Board of Revenue.

3. In exercise of the powers under Sections 6 and 8 of the Regulation, G.O. No. 31, dated 14-9-1949 was issued by the Government of Hyderabad, Revenue Department. Under Clause (1), it provided that any party aggrieved with a decision or order of the Board of Revenue may, within thirty days from the date

of such decision or order, submit a revision petition to the Hon'ble the Revenue Member. By a subsequent notification of the Government of Hyderabad, Revenue Department, No. 8 dated 28-2-1952 the earlier notification of 1949 was superseded the right of revision to the Hon'ble the Revenue Minister was taken away.

A question was raised whether the subsequent notification superseded the earlier notification completely or only partially. A reading of the notification dated 28-2-1952 makes it quite clear that the Government did not reserve any judicial power u/s 6 of the Regulation. Clause 4 of the notification refers to all cases of appeals, revisions and reviews pending before 28-2-1952 and not merely to appeals in respect of matters dealt with in Clauses 1 to 3. This view was taken by Kumarayya J. in W.P. No. 46 of 1954-55, D/- 3-12-1957 (Andh. Pra.) (A).

4. A further question was mooted whether u/s 9 of the Regulation, the Government is not entitled to exercise powers of superintendence over the orders passed by the Board of Revenue. On a reading of Section 9, I am inclined to agree with the argument of the learned advocate for the petitioner that the control of Government is only in regard to questions of administration and not in regard to judicial matters. This view was taken by a Bench of the Hyderabad High Court in *Mir Liaqat Hussain v. Revenue Minister, Govt. of Hyderabad*, ILR (1956) Hyd 243 .

Though the matter related to the notification issued in respect of Atiyat property, the learned Judges discussed the scope and effects of Sections 6 and 9. Ansari J, delivering the judgment of the Bench held that the control exercisable u/s 9 is only administrative control. I follow that decision and hold that the Government has no powers of superintendence over the judicial orders passed by the Board of Revenue.

5. A further question that arises is whether I should quash the order of the Government even though substantial justice has been done to the parties. The Government of Andhra Pradesh has not, by its order, finally disposed of the rights of parties. It merely directed the Board of Revenue to observe the mandatory provisions of Section 166-B of the Act and dispose of the revision petition after hearing the objections of the 2nd respondent herein.

There can be no doubt that under the proviso to Section 166-B of the Land Revenue Act, no order can be passed affecting the right of the auction purchaser without hearing him. The proviso to Section 168-B of the Act is in the following terms:

"Provided that no order or decision affecting the rights of the raiyat shall be modified or annulled unless the concerned parties are summoned and heard."

The respondent herein, who was the highest bidder at the auction and who deposited a sum of Rs. 6500/- and was put in possession is a concerned party within the meaning of the proviso. In my opinion, the Government rightly held on

the merits that under the proviso to Section 166-B of the Act, the 2nd respondent was entitled to be heard before an adverse order was passed against him.

Reference was made to Rule 4 of the Abkari Appeal and Revision Rules wherein no specific reference is made that the auction purchaser should be made a party and notice should be given to him. Having regard to the clear terms of the proviso to Section 166-B of the Act, I am inclined to hold that the auction purchaser is a necessary party and that the sale cannot be set aside without hearing him.

6. Even on the footing that there is no specific provision, I am inclined to hold that on principles of natural justice the auction purchaser is entitled to be heard before the sale is set aside. The observations of Bose, J. in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, apply to the facts of this case. The observations are at page 435 (of S.C.J.) : (at p. 429 of AIR) and are as follows:

"Next there must be ever present to the mind that our laws or procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and properly should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

I respectfully follow those observations and hold that both the Board of Revenue and the Government of Andhra Pradesh acted contrary to the principles of natural justice in deciding the revision petitions without hearing the aggrieved parties. Unfortunately, while pointing out that the Board of Revenue acted wrongly in not hearing the 2nd respondent, the Government of Andhra Pradesh committed the same mistake in not hearing the representations of the petitioner herein.

The order passed by the Government of Andhra Pradesh is however, to promote substantial justice between the parties. It merely directed the Board of Revenue to give an opportunity to the 2nd respondent and dispose of the revision application on its own merits. As pointed out by Bose J. in the case referred to *Supra*, the powers under Article 226 of the Constitution need not be exercised whenever there is a technical error of law or excess of jurisdiction. The relevant observations at page 434 (of SCJ): (at p. 429 of AIR) are as follows:

"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be recognised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on

themselves is that they will not exercise jurisdiction, in this class of case unless substantial injustice has ensued, or is likely to ensue."

This view was reiterated again by the Supreme Court in A.M. Allison Vs. B.L. Sen, Bhagwati J., delivering the judgment of the Supreme Court held that the High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice. Reference was made to a passage from Halsbury's Laws of England, Hailsham Edition Volume 9, paragraphs 1480 and 1481 at pages 877 and 878, wherein it is stated:

"Proceedings by way of Certiorari are not of course."

Following these decisions, I am not inclined to exercise my jurisdiction under Article 226 of the Constitution though the Government was not entitled to entertain the revision petition as against the order of the Board of Revenue, inasmuch as substantial justice has been done between the parties.

7. I have no doubt that the Board of Revenue will hear both the parties and dispose of the revision petition on the merits. If the mandatory provisions of the Act have not been complied with as contended by the petitioner, the sale will certainly be set aside. It is clear law that if no proclamation has been issued in respect of the sale, it is void, vide Venkateswara Ettu Naicker Vs. Ayyammal and Others, I do not wish to express any opinion on the merits as the Board of Revenue has to decide that question.

8. As I am clearly of opinion that no interference under Article 228 of the Constitution is necessary, I have not exercised my powers suo motu under Article 227 of the Constitution to quash the order of the Board of Revenue and direct it to decide the revision petition after hearing the 2nd respondent herein. As aforesaid, the Board of Revenue will proceed under the proviso to Section 166-B of the Act and dispose of the revision petition after hearing the objections of the 2nd respondent.

9. In the result, the writ fails and is dismissed.

There will be no order as to costs.