

(2006) 10 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 12011 of 2006

Smt. Edna Kunder and Another

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 136 (3)

Citation : (2007) 1 KCCR 715

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.M. Natraj, for the Appellant; M. Keshava Reddy, AGA, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Learned Government Advocate is directed to take notice for Respondents 1 and 2.

2. This petition deserves to be allowed on account of violation of principles of natural justice in not affording an opportunity of hearing to the Petitioners, in a proceeding relating to substitution of the entries in the Record of Rights (RTC). The 2nd Petitioner purchased land from his vendor UBMC of South Kanara and Coorg under a Sale Deed dated 11-12-1992 and in the year 2004 executed a registered Settlement Deed in favour of the 1st Petitioner, his wife. The 2nd Respondent, Assistant Commissioner, on the basis of a report filed by the Tahsildar, instituted proceeding and by order dated 16-09-2004 Annexure-"B", directed the deletion of the name of the Petitioners from the RTC in respect of the said immovable property, which when questioned in a revision petition u/s 136(3) of the Karnataka Land Revenue Act, 1964, the 1st Respondent - Deputy Commissioner, by order dated 26-12-2005 Annexure-"A" rejected the revision. Hence, this Writ petition. The sole ground urged by the Petitioners is that as the 2nd Respondent, in the enquiry over the entries made in the RTC did not extend an opportunity of hearing to the Petitioners, the order of the 2nd Respondent as

well as in revision of the 1st Respondent are illegal and non est.

3. It is said that if there is a 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. Natural justice is alternative name for common sense justice. Natural justice are not codified canons but the principles ingrained into the conscience of a man. Fair hearing is a postulate of decision making. It cannot be fair if appraising the affected and appraising the representations is absent. The philosophy behind natural justice is in one sense participatory justice, in the process of democratic rule of law. The cardinal rule of law is that decisions should not be reached behind the back of parties and that proceedings that affect the lives and property should not be continued in the absence of the parties. A civil right being adversely affected is a sine-quo-non for invoking the audi alteram partem rule. In this regard the observations of the Supreme Court, in the case of Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya, and in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , apply on all its fours to the facts of this case.

4. Having regard to the observations of the Supreme Court, in the aforesaid two decisions and the well-settled position in law, the order Annexure- "B" dated 16-09-2004 of the 2nd Respondent, directing deletion of the names of the Petitioners from the RTC without notice and an opportunity of hearing is non est. The order Annexure-"A" of the 1st Respondent in revision rejecting the petition without considering the said contention as a consequence is unsustainable and deserves to be set-aside.

In the result, the Writ petition is allowed. The order dated 26-12-2005 Annexure-"A". and the order dated 16-09-2004 Annexure- "B" of 1st and 2nd Respondents respectively are quashed and the proceeding remitted to the 2nd Respondent for consideration afresh after extending reasonable opportunity of hearing to the Petitioners and to pass orders strictly in accordance with law.