
(1994) 10 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12075 of 1994

Suri Prakasham

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 3 ALT 702

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : S. Bharat Kumar and K.K. Mahender Reddy, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision : Allowed

Judgement

T.N.C. Rangarajan, J.—This writ petition challenges G.O.Ms. No. 468, dt.19-5-1993.

2. An extent of Ac.21.52 cents in Varini village was given on lease by the Government on 6-11-1991 in favour of Sri Venkateshwara Dandigunta Varini Salt Co-operative Society Limited, for a period of 25 years. The purpose of the same was to allow the members of that Society to have salt pans and manufacture salt on the land. Only an extent of Ac 10.00 cents was actually used for salt pans and the remaining extent was lying waste at present. The petitioner herein made a complaint that the Society was not functioning, that the land was not being put to proper use and, therefore, the land should be resumed and allotted to other landless poor, such as petitioners. This complaint was enquired into by the Mandal Revenue Officer, Vidavalur, as per the directions of the District Collector, Nellore, and found that the Society was not functioning at all and that the lands have been alienated by the Society to M. Srinivasulu and K. Rajaiah, both teachers, by collecting sub-lease amount of Rs. 30,000/-. The District Collector then directed the Mandal Revenue Officer to take action. Thereupon, the Mandal Revenue Officer issued a show cause notice, dated 21-5-1992, to the Society

proposing to reassign the lands to poor beneficiaries identified by him. There was no reply by the Society. Thereupon, he passed an order on 9-6-1992 cancelling the lease and resuming the lands to the Government. He also requested the General Manager, District Industries Centre, Nellore to form and register a new salt society for 33 identified members of Dandigunta, Varini and Ramatheertham villages and give possession of the lands to them. The petitioner is one of those members of the new Society, which was formed on 10-7-1992, and to whom, according to the petitioner, the lands were given and salt pans are now functioning. The 4th respondent, which had, thus, been deprived of the lease, filed a Revision Petition to the Government on 27-7-1992. On 31-7-1992 the Government sent a Telegram to maintain status quo ante, but it is stated in the impugned order that it was not implemented. Thereafter, on 12-4-1993 instructions were given to the Mandal Revenue Officer to inform all the concerned about the hearing of case on 17-4-1993, but there is no proof of service of notice. On that day the Advocate of the 4th respondent argued the case, and, thereafter, the impugned orders were passed on 19-5-1993 setting aside the order of the Mandal Revenue Officer, dated 9-6-1992 as illegal and irregular.

3. The case of the petitioner is that the impugned order was made without notice to the petitioner, who was a person interested in the matter having initiated the proceedings by a complaint. It is contended that an order passed without giving adequate opportunity to the person interested is void and, therefore, it should be cancelled.

4. The Government has filed a counter-affidavit accepting that the order of the Mandal Revenue Officer was irregular inasmuch as it did not conform to condition No. 21 in the lease deed requiring three months notice to be given by the Collector to the Society before cancellation of the lease. It also accepts that no notice was given to the petitioner before the impugned order was passed.

5. The 4th respondent has filed an application to vacate the interim suspension of the impugned notice and it is contended that the 4th respondent is entitled for possession of the land upto 2007 A.D. and cannot be deprived of the same by an illegal order passed by the Mandal Revenue Officer, who had no authority under the lease deed to cancel the lease.

6. The learned Counsel for the 4th respondent argued that when, admittedly, the order of the Mandal Revenue Officer was illegal, the impugned order cannot be cancelled as it would lead to the revival of an illegal order, which cannot be permitted as held by the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . It was further argued that a subsequent allottee has no right to be heard as in the case of temporary appointments dealt with in *K. Purna Chandra Rao v. The Collector, Guntur District and Ors.*, 1988 (2) LS 149., and *B.Venkatasubba Rao v. The D.R.O., West Godavari*, . It 1972(1) APLJ 71 was submitted that this was analogous to the case of *lis pendens* u/s 52 of Transfer of Property Act and a party who was dealt with a matter, pending litigation is neither a necessary party nor a proper party to the

litigation. It was pointed out that the Revision to the Government was only against the order of the Mandal Revenue Officer, cancelling the lease and on that point the petitioner was not a party to the order of the Mandal Revenue Officer and, therefore, could not have been impleaded nor was any notice required. It was submitted that, in the circumstances, the writ petition itself should be dismissed.

7. The learned Counsel for the petitioner submitted that the entire proceedings have been initiated only on his complaint and even if he was not impleaded by the 4th respondent in its Revision Petition, the Government being aware of his interest in the matter and the fact that he has been allotted the land subsequently, should have given notice before passing the impugned order. It was submitted that if the petitioner had been given notice, he could have submitted to the Government that the defect in the order of the Mandal Revenue Officer should be cured and the lease deed cancelled and the lands resumed in any case because the Society had become defunct and the original purpose of the lease had not been given effect to. It was submitted that, in the circumstances, the impugned order should be cancelled.

8. The learned Government Pleader, however, submitted that both the orders are illegal and they may be cancelled and the matter remitted back to the Mandal Revenue Officer for fresh enquiry.

9. By consent of parties, I am disposing of the Writ Petition itself as it has been fully argued.

10. The main attack on the impugned order is that the petitioner was not given a notice of hearing. The learned Counsel for the respondents argued that the petitioner was not an interested party and since he could not have been impleaded at the time of filing of the Revision Petition, he was not a proper party and notice was required. I am unable to accept with this proposition. In a matter of administrative proceedings, every person, who is interested in the outcome of the proceedings, is entitled to have a notice. In the present case, it was the petitioner who made the complaint and initiated the entire proceedings. No doubt, in the order cancelling the lease deed, his name was not mentioned and the 4th respondent could not have impleaded him in the Revision Petition as such. This is not a matter like a Civil Suit where in an appeal the parties are confined to the array of the parties in the suit. This is an administrative matter where the Government called for the records and made an interim order of status quo indicating that they were aware that a new Society was formed and the land, which had been resumed, had been given to the new Society: Knowing this subsequent development, notice was required to be given to those who have been clearly affected by an adverse decision in the Revision Petition.

11. The learned Counsel for the respondent submitted that this position of the petitioner would be only an indirect consequence and, therefore he need not be heard. I am unable to accept this proposition also, because the very purpose of

the exercise of the Mandal Revenue Officer was only to see that the Government lands are put to proper use, since the Society, to which the lands were originally given, had failed to make proper use of the lands. It follows that the persons who have been subsequently entrusted with the lands have an Interest in seeing that the lands are given to them, which is possible, only if they can successfully resist the efforts of the 4th respondent-Society to set aside the cancellation of the lease. I am convinced that the petitioner, being a complainant and having initiated the proceedings and also been a member of the new Society which has been put in possession consequent to the cancellation of the lease, was a person interested and was entitled to notice before any order was passed in the Revision Petition. The lack of proper notice to a person interested vitiates the impugned order.

12. The alternative submission of the learned Counsel for the 4th respondent was that even if the impugned order was illegal, since, admittedly, the order of the Mandal Revenue Officer, which was cancelled by the impugned order, was also illegal, the impugned order should not be interfered with as it will lead to the revival of the impugned order. Even though this principle has been upheld by the Supreme Court, it is of no application to the present case because by cancelling the impugned order for an intervening irregularity, the order of the Mandal Revenue Officer is not being revived. All that is revived in this case is the Revision Petition filed by the petitioner for fresh hearing by the Government after giving proper notice to the petitioner. I am unable to accept the contention of the learned Government Pleader that both the orders should be set aside and the matter remitted back to the Collector, because the Collector had already made due enquiries, after personal inspection of the Mandal Revenue Officer on 9-5-1992, and the report was placed before the Government. No further Investigation appears to be indicated even from a perusal of the impugned order. In the circumstances, all that is required is to set aside the impugned order and direct that the Revision Petition filed by the 4th respondent be disposed of after giving due opportunity to both the petitioner as well as the 4th respondent of being heard.

13. Hence, a direction shall be issued accordingly. In the meanwhile, since it is not disputed by the Government, as seen from last para of the impugned order itself that the status quo ante order passed on 31-7-1992 was not given effect (sic) and admittedly the petitioner is in possession, that possession of the petitioner shall be maintained until the Revision Petition is disposed of, afresh, by the Government.

14. With these directions, the writ petition is allowed. No costs.