
(2008) 11 AP CK 0066
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23311 of 2008

Veeramachaneni Ramchander Rao and Another	APPELLANT
Vs	
Tahsildar and Another	RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 4, 5, 5(3), 5(5), 8(2)
Andhra Pradesh Rights in Land and Pattadar Pass Books Rules, 1989 — Regulation 14, 15, 18, 19, 19(1)
Chartered Accountants Act, 1949 — Section 21, 21(4), 22A
Constitution of India, 1950 — Article 217(3)

Citation : (2009) 3 ALT 92

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : S.V. Bhat, for the Appellant; G.P. and B. Venkat Rama Rao, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The two petitioners purchased land admeasuring Acs.8.04 guntas in survey Nos. 276 and 278/A situated at Pedda Kaparathi village of Chityal Mandal in Nalgonda District under two registered sale deeds, dated 18.12.2003 and 20.12.2003. On an application made by petitioners, first respondent mutated their names in revenue records and also issued Pattadar Pass Books and Title Deeds (PPBs/TDs). Second respondent is daughter of petitioners' vendor, Smt. Danamma. Second respondent filed a suit being O.S. No. 50 of 2005 on the file of the Court of the Senior Civil Judge, Nalgonda, for partition and separate possession. Petitioners herein are defendants 2 and 3 therein. Learned Senior Civil Judge decreed the suit on 21.07.2008. After obtaining copy of the same, second respondent approached first respondent for implementing the Judgment under the provisions of Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity) and Andhra Pradesh Rights in Land and Pattadar

Pass Books Rules, 1989 (the Rules, for brevity). By impugned proceedings, dated 21.08.2008, first respondent purportedly sanctioned partition in favour of second respondent apportioning half of the land admeasuring Acs.4.02 guntas in her favour. He also gave a direction to petitioners to surrender their PPBs/TDs for rectification.

2. At the stage of admission itself, second respondent appeared and filed counter affidavit. Learned Assistant Government Pleader obtained instructions from first respondent and made submissions.

3. Two submissions are made by learned Counsel for petitioners. First, the impugned order without notice is non est and cannot be enforced. Secondly, as per Rule 19(1) read with Form VIII of the Rules, first respondent has to issue notice of forty five days before ordering alteration of record of rights, in the absence of which it is illegal exercise of power. He placed reliance on the decision of Full Bench of this Court in Chinnam Pandurangam Vs. The Mandal Revenue Officer, Serilingampally Mandal, M. Ravindra Babu, Mandal Revenue Officer, Serilingampally Mandal and Chinnam Narsimlu, . Per contra, learned Assistant Government Pleader for Revenue (TA) and learned Counsel for second respondent submits that when competent revenue official alters/modifies record of rights under Rule 27(4) of the Rules in pursuance of a Court decree, procedure contemplated u/s 5(3) of the Act read with Rules 19 and 22 of the Rules is not necessary. Reliance is placed on a decision of this Court in Musku Mallaiah Vs. The State of Andhra Pradesh, .

4. There is no dispute that the Court of Senior Civil Judge, Nalgonda, passed decree on 21.07.2008 and second respondent made application on 15.08.2008. Impugned order was issued on 21.08.2008 without waiting for forty five days. If this ground can be sustained on its own without anything else, the impugned order must go. However, this point would be incidental to the main point raised by learned Assistant Government Pleader and learned Counsel for second respondent.

5. Rule 27 of the Rules contains procedure for effecting alterations/modifications of record of rights. Rule 27(4) reads as under.

Whenever a Court decree about acquisition of title by purchase of land through deeds on plain paper or by oral purchase is received from Court or presented to the Mandal Revenue Officer for implementing and incorporating charges in the Record of Rights and Pattadar Pass Books, the Mandal Revenue Officer shall incorporate changes in the Record of Rights and Pattadar Pass Book, based on Court decree only after collection of stamp duty and registration fee on the sale price of the land or market value of the land whichever is higher. If the person seeking execution of Court decree claims that he had already paid proper and adequate stamp duty in the Court and produces certificate issued by the Court to this effect and other evidence to the satisfaction of Mandal Revenue Officer, the Mandal Revenue Officer shall demand and collect only registration fee and

incorporate changes in the Record of Rights and Pattadar Pass Books. If the decree is received or produced by or before a Registration Officer or other Officers, these officers shall immediately send these decrees to the concerned Mandal Revenue Officer for necessary action.

6. After receiving Court decree, Mandal Revenue Officer is required to incorporate changes based on the Court decree only after collection of stamp duty and registration fee of the sale price or market value of the land, whichever is higher. The rule is silent with regard to issue of notice to third party in a Court decree or to the persons whose names are already included in the record of rights and pattadar pass books. However, it is not possible to interpret the rule as excluding audi alteram partem. As noticed supra, Rule 27 is the final stage after necessary procedure contemplated under Rules 18 to 23 of the Rules is followed. These Rules at different stages require personal notice to persons interested as well as general notice is to be published in the office of Mandal Revenue Officer and Panchayat offices. Anxiety of Legislature as seen from various provisions of Act and Rules is to ensure fairness in recording or altering entries in Record of Rights. Such being the position, can natural justice be excluded when Rule 27(4) of the Rules is applied.

7. In *Rakesh Kumar Jain v. State Through CBI*, New Delhi 2000(2) ALT (Cri.) 171 (SC) : 2000 (2) SC 359, the Supreme Court reiterated that in construing a provision of the statute, the Court must give effect to the natural meaning of the words used therein if those words are clear enough. Only in a case of any ambiguity that a Court is entitled to ascertain the intention of the Legislature by considering the provisions of the statute as a whole and taking into consideration other matters and circumstances which led to the enactment of the statute. By and large, these principles of interpretation are applied only in relation to the statutory provisions. Ordinarily, while interpreting the delegated legislation or sub-delegated legislation, provisions are to be interpreted in the light of the parent statute in such a way that it does not result in unfairness.

8. While conferring power to make rules to give effect to the statute, the Legislature is presumed, never intends the delegatee to make rules in an unfair and unreasonable manner. The Legislature also is presumed to have never approved rules which are ultra vires the provisions of main statute. Though, legislation enacted by a competent legislature is presumed to be constitutional unless otherwise proved, the same is not the case with the subordinate legislation. The subordinate legislation should satisfy the test of reasonableness and fairness and it should be intra vires main statute. A reference may be made to *I.E. Newspapers (Bombay) Private Ltd. v. Union of India* (1), (1986) 159 ITR 856 (SC) , wherein, it was observed:

A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does

not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires".

9. If a subordinate legislation does not specifically or explicitly provide for affording opportunity of making a representation by a person who is adversely affected and does not specifically or explicitly exclude such affording of opportunity, it is presumed that the legislature expected the executive to be reasonable and provide such opportunity. Therefore, the Court would read natural justice into the provisions of the rules. Indeed, in given circumstances, the rule can be read down so as to provide for compliance with the principles of natural justice (See *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*,).

10. To what extent compliance with natural justice can be entranced? The two principal modes of hearing are oral or personal before the adjudicatory authority and the other is hearing by way of a written representation. It is no doubt true that oral personal hearing is more advantageous to the affected person because he can persuade the authorities to accept his point of argument. However, in all situations, oral personal hearing is not compulsory. An opportunity of making a representation is equally efficacious and it also amounts to hearing. However, it must be clarified that where a provision of law or a rule specifically provides that oral personal hearing should be afforded, strict compliance is required, and as the law exists, not affording oral personal hearing could itself prejudice the person and render the order invalid or ineffective. A reference may be made to *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , *Union of India (UOI) Vs. Jyoti Prakash Mitter*, , and *Indru Ramchand Bharvani and Others Vs. Union of India (UOI) and Others*, .

11. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , Supreme Court laid down thus:

As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, R. 55 of the Rules, quoted supra, recognize the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion

of the tribunal.

12. In *Union of India (UOI) Vs. Jyoti Prakash Mitter*, , the Supreme Court held that oral personal hearing is not an incident of rules of natural justice. In the said case, the question was whether the President of India is required to give an oral personal hearing to the Judge of a High Court while deciding the age of the Judge under Article 217(3) of the Constitution. Relevant placitum reads as under.

Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an, incident of the rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him, and to have an opportunity of making a representation. He however cannot claim that an order made without affording him an opportunity of a personal hearing is invalid.

(emphasis supplied)

13. In *Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, , respondent Ratna, a Chartered Accountant was charged for violating Section 21 of the Chartered Accountants Act, 1949 (CA Act, for brevity) read with Clauses 6 and 7 of Part I of the First Schedule to the Act. The allegations related to misconduct of Ratna in dealing with clients. After receiving written statement, the council of Institute referred the matter to the Standing Disciplinary Committee, who submitted a report opining that Ratna was guilty of professional misconduct under Clauses 6 and 7 of Part I of the First Schedule. The council considered the report of the Disciplinary Committee and found Ratna guilty of misconduct. It was proposed to remove his name from register of members for a period not exceeding five years in accordance with procedure laid down in Section 21(4) of the CA Act. He was informed that he will be called to appear before the council for oral hearing for consideration of the written representation and oral hearing is restricted to the penalty proposed. In the meanwhile, another enquiry was initiated in case of Behl and Bhoopatkar and the council followed the procedure and issued notice to them to appear in person or to make a written representation against proposed penalty of removal. Ratna and two others filed writ petitions before the High Court of Bombay, which were allowed on the ground that the council should have given an opportunity to the members who were present before him against the report of the disciplinary committee. The appeal filed by the Institute was summarily dismissed by a Division Bench of Bombay High Court. Before the Supreme Court, a question was raised inter alia whether a member of the Institute is entitled to hearing by the council of the Institute, after disciplinary committee has submitted report. The Supreme Court considered Sections 21 and 22A of the CA Act and came to a conclusion that there is nothing in the provisions which exclude personal hearing by the council

and accordingly held the member accused of misconduct is entitled to hearing while disciplinary committee's report is considered by council proceeds to find out whether the member is guilty or not. The reasoning from the said conclusion is as follows.

It is next pointed out on behalf of the appellant that while Regulation 15 requires the council, when it proceeds to act u/s 21(4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in Regulation 14 which prescribes what the council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the council against the report of the Disciplinary Committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the council when it proceeds to render its finding. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.

(emphasis supplied)

14. The Division Bench in Musku Mallaiah (2 supra), after considering Section 4 of the Act and Rule 27(4) of the Rules, made the following observations.

In our considered opinion, Rule 27(4) is required to be read along with Section 4 of the Act which provides for intimation of acquisition of rights in land by succession, survivorship, decree of a Court. Rule 27(4) deals with a situation where intimation is given by person of acquisition of title by purchase of land through deeds on plain paper or by oral purchase, based on which a decree has been granted by the Civil Court whenever such application is presented to the Mandal Revenue Officer for implementing and incorporating changes in the record of rights and pattadar pass books. Based on such decree, the Mandal Revenue Officer shall incorporate changes in the record of rights but only after collection of the stamp duty and registration fee on the sale price of the land or the market value of the land whichever is higher. The contention that the Mandal Revenue Officer cannot sit in appeal over the decree granted by the civil Court is misconceived. The Mandal Revenue Officer is bound to incorporate necessary changes based on the decree granted by the Civil Court but only after collecting the necessary stamp duty and registration fee on the sale price of the land or the market value of the land whichever is higher. Such collection of stamp duty and registration fee is confined only to such decrees where such acquisition is based upon purchase of land through deeds on plain paper or by oral purchase. As noticed above, Section 8(2) of the Act no manner deals with acquisition of title by purchase of land through deeds on plain paper or by oral purchase. Section 8(2) recognizes the rights of person in possession of entries made in their favour in record of rights and provides remedy whenever his title to such right is denied or infringed. In the circumstances, we find no merit in the submission.

15. When Division Bench laid down that Rule 27(4) of the Rules has to be read with Section 4 of the Act, it would necessarily mean that it has to be read with Sections 4 and 5 of the Act for the reason that Section 4 only contemplates intimation of acquisition of rights to Mandal Revenue Officer, whereas Section 5 contains broad procedure to be followed by Mandal Revenue Officer after receiving intimation of acquisition of rights. Section 5(3) of the Act contemplates issue of notice in writing to all persons whose names are entered in Record of Rights and are interested in or affected by the amendment and to any other person whom the officer has reason to believe to be interested or affected thereby to show cause within the period specified as to why amendment should not be carried out. The same procedure *proprio vigore* applies even to cases where the decrees are produced for necessary action under Rule 27(4) of the Rules. This view is also supported by the decision of the Full Bench in Chinnam Pandurangam (1 *supra*), wherein it is laid down as under.

If an application is made for amendment of the existing entries in the record of Rights, the person whose name already exists in such record is entitled to contest the proposed amendment. He can do so only if a notice regarding the proposed amendment is given to him by the recording authority. An order passed against a person whose name already exists in the Record of Rights without giving him notice of the proposed amendment and effective opportunity of hearing is liable to be declared nullity on the ground of violation of the rule of *audi alteram partem*, which, as mentioned above, represents the most important facet of the rules of natural justice...it is clear that the requirement of issuing notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment is independent of the requirement of publication of notice in accordance with the second part of Section 5(3) read with Rule 19 and 5(2) of the Rules. The language of Form-VIII in which the notice is required to be published cannot control the interpretation of the substantive provision contained in Section 5(3), which, as mentioned above, casts a duty on the recording authority to issue notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the proposed amendment.

16. The impugned order is no doubt appealable u/s 5(5) of the Act. Having regard to the fact that no notice was issued to petitioners, who were issued PPBs in 2004 and who are enjoying the land, the order is liable to be set aside. Accordingly, the same is set aside. The matter is remitted to first respondent with a direction to dispose of the same, after giving notice to petitioners, petitioners' vendor and second respondent, within a period of three months from the date of receipt of copy of this order.

17. The writ petition is accordingly allowed. However, there shall be no order as to costs.