

(1977) 12 AP CK 0005

In the Andhra Pradesh High Court

Case No : Review V.A.M.P. No. 850 of 1977

Yedlapati Venkateswarlu

APPELLANT

Vs

The State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 27-12-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1978 AP 333

Hon'ble Judges : Sambasiva Rao, J;Narsinga Rao, J

Bench : Division Bench

Advocate : A.V. Loteswara Rao, for the Appellant; Govt. Pleader for C.T. and Advocate General, for the Respondent

Judgement

Sambasiva Rao, J.—A river of part our judgement dated 9th Dec. 1977 rendered in W. A. No. 465/76 is sought in this petition. That Writ Appeal arose out of W. P. 384/75 wherein the petitioner was unsuccessful and who consequently preferred and writ appeal. In the Writ Petition he sought a declaration that G. O. Ms. No. 255 M. A. Dated 15th of June, 1973 and assessments of properties in pursuance of the G. O. made by the Vujayawada Municipality from 1-10-1973 were illegal, void and unconstitutional. A direction to the State of Andhra Pradesh and the Vijayawada Municipality was also prayed for restraining them from enforcing the provisions of the Andhra Pradesh (Andhra Are) District Municipalities Act, 1920 for the purpose of levying tax on property. Our learned brother Kuppuswami, J. heard this and another writ petition together and dismissed both of them. Along with the Writ Appeal we heard and disposed another writ appeal and writ petition.

2. It is unnecessary here to go into the circumstances in which the writ petition had been filed,. In out judgement of 9th Dec. 1977 we have given the background. One of the contentions raised by Sri Koteswara Rao during the arguments in the writ appeal was about the tenability of the actual enhancement of the tax and the manner of enhancement. His objection was to the basis of enhancement mentioned in the impugned special notice as being estimated or

reported rental value. According to the learned Counsel, standard rent alone should be the basis and rental value could not be estimated at more than the standard rent. It was argued that even if higher rent was collected by the owner of the properties illegally, only the standard rent should be the basis for assessment of tax. Learned Counsel who appeared in the writ appeal, which was heard along with this writ appeal, challenged the reasons given in the special notice by the taxing authority for the enhancement of the tax. It was pointed out that no prior opportunity had been given to the ratepayer as required under Rule 6 of Schedule II of the 1965 Municipalities Act before the enhancement of tax by way of special notice. Dealing with these objection, we pointed out that the learned Single Judge, who had dismissed the writ petitions, rejected the latter contention holding that the entire procedure should be examined from the perspective of the 1920 Act and not the 1965 Act. Disposing of these contentions we observed in our judgement of 9th Dec. 1977:

"We are afraid we cannot go into these objections to the actual enhancement in these writ proceedings. A remedy by way of revision is available to the parties and they are also not precluded from filing suits. These are matter which can be considered in depth with the aid of details and evidence about the standard and the estimated rent and the actual procedure which was followed by the Municipal Council before it enhanced the taxes. We, therefore, do not express any opinion on these points. Suffice it to say that the petitioners (Appellants) would be at liberty to pursue further remedies before the Municipal Council and the Civil Court which are available to them under the law."

These are the observations which are challenged in this review petition.

3. In a very elaborate and emphatic argument Sri Koteswara Rao stressed his review petition thus: At the time of the arguments in the writ appeal learned counsel had failed to place before the Court that Art. 226 of the constitution provides a remedy in public law and where issues of public law are involved, in particular where principles of natural justice are violated, the High Court has no discretion left with it to dismiss the writ petition and relegate the parties to a statutory appeal or to a suit. He further stated that he had failed to bring to our notice the latest decision of the Supreme Court dated 28th of Sept., 1977 reported in Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, . A Division Bench of this Court held in Satyanarayana Khubchand Carva and Others Vs. Ramchander Laxmi Narayan Karva, that enhancement of tax without following requisite procedure and without giving adequate reasons for it was bad. It was followed by another Division Bench in W. P. No. 4121 of 1976. We sitting as a Division Bench were merely exercising co-ordinate jurisdiction and we are therefore bound to follow the earlier Bench decisions. all this, be it a commission or omission on our part, is tantamount to an error apparent on the face of the record which warrants a review, so ran the contention of the petitioner's learned counsel

4. On the other hand, Sri Venkatappayya. Sastry, learned Government Pleader appearing for the respondents, to who we had given notice, pointed out that it was never alleged in the writ petition that principles of natural justice had been violated. Neither in the grounds stated in the writ petition impugning the enhancement, nor in the relief portion this objection was raised. Even in the grounds of the writ appeal, breach of the principles of natural justice was not adverted to. Therefore, it is not open to the petitioner's learned counsel to raise this question now. Learned Government Pleader's next contention was that estimated and reported rental value referred to in the impugned special notice could have been in accordance with the standard rent and therefore in is a matter which requires factual investigation as to the actual basis and manner of estimate followed by the authorities while issuing the special notices. Therefore, in the learned respondent's counsel's submission, there is nothing to be reviewed in our judgement.

5. The first part of the contention pressed before us is that Art. 226 of the Constitution provides a remedy in public law. We do not deny that writ jurisdiction provides public law remedy. It is too well-settled to warrant any reiteration. Suffice it is to refer to Mohammed Hanif Vs. The State of Assam, .

6. The next part of the argument is that where issues of public law are involved, particularly when it is complained that the principles of natural justice were violated, the High Court is bound to decide the question and has no discretion left with it to dismiss the writ petition and relegate the parties to follow statutory remedies or to file a suit. Some decisions of the Supreme Court and this Court have been referred to in support of this contention.

7. U. P. State v. Mohd. Noor AIR 1958 SC 86 is the first of them. Chief Justice S. R. Das speaking for the Court, observed that there is no rule with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. The Rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law. The superior Court will readily issue a certiorari in a case where there has been a denial of natural justice before a Court of summary jurisdiction. If a inferior Court Tribunal of first instance acts wholly without jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or Tribunal of first instance, even if an appeal to another inferior Court or Tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned.

8. The next decision cited is Shri M.L. Sethi Vs. Shri R.P. Kapur, . This is not a case which arose under Art. 226 of the Constitution but was one which considered the revisional powers of the High Court under S. 115, C. P. C.

Mathew, J. rendering the decision observed that the difference between jurisdictional error and error of law within jurisdiction has been reduced almost to vanishing point.

9. In *City Corner Vs. Personal Assistant to Collector and Addl. District Magistrate, Nellore*, the Supreme Court held that an order passed under S. 12 of the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1888 is a quasi-judicial order and the principles of natural justice ought to be followed before it is passed. The principles of natural justice do not necessarily conform to a fixed pattern. The principles of natural justice will always depend upon the facts of each case. The scope of Art. 226 of the Constitution is a limited one, limited to cases where there is any error of law apparent on the face of the record. But the observance of the principles of natural justice is fundamental to the discharge of any quasi-judicial function.

10. Then the latest pronouncement of the Supreme Court which the learned counsel has not brought to out notice at the time of the arguments in the writ appeal is *Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others*, . It was a case where Government did not give any notice communication to the appellant about the application in revision preferred by the respondents. The Supreme Court held that the minimal requirement under S. 77 (2) of the Andhra Pradesh Co-operative Societies Act is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in his petition. The minimal requirement of the principles of natural justice which are ingrained in s. 77 92) is that the party, whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed, should have a written notice of the proceedings from the authority disclosing the grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can on no account be dispensed with by relying upon the principles of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for. In the light of these principles the Supreme Court held the impugned order to be invalid, as it violated the principles of natural justice quashed the same under Art. 226 of the Constitution.

11. Chinnappa Reddy, J. also held in *W. Kuppaswamy, v. State of A. P.* (1970) 2 APLJ 300 that violation of the principles of natural justice warrants interference by the High Court under Art. 226.

12. The decisions referred to above lay down principles which are at once well-known and well-established. The problem is only in respect of the application of these principles. As Alagiriswami, J., observed in *City Corner Vs. Personal Assistant to Collector and Addl. District Magistrate, Nellore*, the contention that principles of natural justice have been violated in a particular case will have to be

decided on its facts and circumstances. It is true, as the learned Government Pleader has pointed out, that this alleged violation of the principles of natural justice was not specifically pleaded or raised. But we are not prepared to repel the contention raised in this behalf on that technical ground. Once a complaint of violation of the principles of natural justice is made, it is too important a point to be brushed aside on technical grounds. We would like to therefore deal with it as it had been raised before us. The complaint in this behalf is that while enhancing the tax, the petitioner had not been given an opportunity to make his representation. It was an arbitrary enhancement of property tax. Further, in issuing the special notice the appropriate authority stated that the enhancement was made on the basis of the estimated or reported rental value. Apart from the illegality of making the assessment or enhancement not on the basis of the standard rent but on the estimated or reported rental value, no opportunity had been given to the petitioner to make his representation as to the estimated or reported rental value. The procedure laid down by s. 95 and R. 6 of Sch. II of the 1965 Municipalities Act had not been complied with. It was in this manner that the principles of natural justice had been violated. When this was complained of, so argued Sri Koteswara Rao, we should have set aside the enhancement and the special notice and allowed the writ petition.

13. Dealing with this contention we pointed out that Kuppuswami, J. who disposed of the writ petition, considered this aspect of the matter and held that the entire procedure should be examined from the perspective of the 1920 Act. We expressed the view that we could not go into the objections as to the actual enhancement in the writ proceedings. We also expressed the view that these are matters which could be considered in depth with the aid of details and evidence about the standard and estimated rent and the actual procedure which was followed by the Municipal Council before it enhanced the taxes. Therefore, without expressing any opinion on those points, we left it open for the petitioners to pursue other remedies available to them under the law. In face we observed in that context :

"These are matters which can be considered in depth with the aid of details and evidence about the standard and evidence about the standard and estimated rent and the actual procedure which was followed by the Municipal Council before it enhanced the taxes." The stand of the Municipality and the Government was in the first place that they were not liable to give any notice or opportunity under the 1920 Act which was applicable. This view found favour with Kuppuswami, J. That apart, the contention of the learned counsel for the petitioner was that the Municipality acted illegally in assessing and enhancing the tax on the basis of estimated or reported rental value while it should have made it one the basis of the standard rent. It could not be know whether the estimated or reported rental value was in accordance with the standard rental value. As the learned Government Pleader pointed out, it could as well have been the standard rental value and that it is a matter for investigation by the appropriate authority. A revision to the appropriate authority is available wherein the material on the

basis of which enhancement was made could be examined and the dispute raised could be decided on that basis. Here in the writ petition and in the writ appeal we have only before us rival contentions and what is contained in the special notice. Whether really an opportunity was denied to the petitioner before the values were determined, and whether the standard rent would tally with the rental value fixed by the appropriate authority are matters in dispute which can be decided with the aid of the material which was not available to us when we disposed of the writ appeal. That was why we left it open to the petitioner to pursue other remedies. It was not known whether the principles of natural justice were violated by not giving adequate opportunity to the petitioner. In those circumstances, we could not assume that principles of natural justice were violated and on that basis strike down the enhancement. In the circumstances we thought it best if we did not make any observations one way or the other and leave it to the parties to have the problem adjudicated upon before a forum which (would) go into all this material and find out whether due opportunity was given to the petitioner or not. Therefore, the principles laid down in the decisions cited above do not really apply at this stage.

14. Strong reliance was placed on *The Guntur Municipal Council Vs. The Guntur Town Rate Payers' Association etc.*, to contend for the proposition that the standard rental value alone should have been taken as the basis. In fact we have noticed this decision in our judgement of 9th Dec., 1977. As we have pointed out above, it is to be ascertained by the appropriate authority, after examine the material, whether the standard rental value is in consonance with the estimated or reported rental value which was mentioned in the special notice.

15. At this juncture we must refer to some other decisions placed before us by the learned counsel for the petitioner. In *New Samundri Transport Co. (P) Ltd. Vs. The State of Punjab and Others*, a notice under the Motor Vehicles Act was issued without making any reference to any particular permit for cancellation or suspension of which action had been taken. It contained nothing but general allegations. It was held that the procedure was violative of the principles of natural justice, *Murarilal Mahabir Prasad and Others Vs. Shri B.R. Vad and Others*, was relied on for the proposition that a taxing statute must be construed strictly.

16. Particular emphasis was laid on a recent Bench Decision of this Court in *Tax Payers Association v. Special Officer, Tirupati* (1977 2 APLJ 167) wherein the special notice issued by the Municipality with a laconic statement setting out the reasons for increase of tax viz., inadequate assessment without any further details was held to be bad and liable to be quashed as it did not provide any material for presenting a revision petition or an appeal against the decision of the Commissioner. This was followed by another Division Bench consisting of one of (Sambasiva Rao, J.) in W.P. No. 4121/76 dated 31-10-1977. A decision of A. V. Krishna Rao, J. dated 18th of March, 1976 in S. A. 593/74 was also referred to.

17. Relying on these decisions it was argued that special notices like the

impugned notice enhancing the tax with a laconic statement like inadequate assessment were struck down. there should be uniformity of law and we sitting in a Division Bench are bound by decisions of co-ordinate Division Bench, it is not inclined to agree with the view expressed by another Division Bench, cannot by itself express a different view but will have to refer the matter to a Full Bench. But this principle of procedure, reasonable and safe as it is, is always subject to the other principle that each case and the ratio therein will have to be understood in the light of the facts and circumstances of that case. Judges dealing with cases before them should examine whether the decisions cited would really apply to and govern the facts of the case before them. in fact we referred to Delhi Municipality v. M. N. Soi AIR 1977 SC 302 in our judgement. Then we noticed the view expressed by Kuppuswami, J. and then observed that the matters will have to be considered in depth with the aid of details and evidence about the standard and estimated rent and the actual procedure which was followed by the Municipal Council before it enhanced the taxes. It is thus abundantly clear that in the light of the facts of the case before us, we felt that it was a matter for further examination of the circumstances in which the enhancement was made and that was why we relegated the petitioner to the remedies prescribed under the statute.

18. For the reasons stated above, we do not think that there is any error apparent on the face of the record and consequently we hold that this is not a matter for review.

19. In the result, the review petition is dismissed but having regard to the circumstances of the case without costs, Advocate's fee Rs. 150/-.

20. Petition dismissed.