

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH**

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**WRIT PETITION No.24298 of 2015**

**BETWEEN**

T. Purushotham Rao and another.

**... PETITIONERS**

**AND**

State of Telangana, Rep. by its Principal Secretary, Revenue Department,  
Secretariat, Hyderabad and others.

**...RESPONDENTS**

DATE OF JUDGMENT PRONOUNCED: 22.12.2015

**THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR**

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|----|----------------------------------------------------------------------------|----|
| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals?    | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

**ORDER:**

The present writ petition questions the notice dated 31.07.2015 issued by the fourth respondent under Section 7 of the A.P. Land Encroachment Act, 1905 (for short 'the Act').

2. A contention is raised by the petitioners with regard to the applicability of the Act for their land, which is stated to be covered by approved layout with a compound wall with structures and which is not in the nature of water body, road etc. Petitioners also assert ownership and possession for over 100 years and rely upon grant of layout by the Secunderabad Cantonment Board way back in 2008 and also on the no objection certificates issued by the Revenue and Military authorities. Petitioners also contend that merely because the State thinks and treats the aforesaid land as State Government land, merely based upon certain entries in the GLR records and the Defence Estate Officer, cannot empower the State Government to apply the provisions of the Act to claim the land. It is stated that the remedy under the Act is only summary in nature and the Act applies where the title of the Government is undisputed where encroachment is found.

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3. The other substantial contention raised is that before issuance of the impugned notice, the District Collector/second respondent had written a letter dated 28.06.2015 to the Chief Executive Officer, Secunderabad Cantonment Board asserting claim over the subject property and requiring the CEO to cancel the building permission granted by the Cantonment Board to the petitioner. It is, therefore, contended that in the teeth of the aforesaid letter of the District Collector, the impugned notice issued by the Tahsildar under Section 7 of the Act would only be an empty formality, as the Tahsildar is subordinate to the District Collector and the entire issue is prejudged and pre-decided, as the primary as well as the appellate authority under the Act is subordinate to the District Collector and cannot come to a contrary conclusion.

4. In support of the aforesaid contention, petitioners claim that they are owners of the subject land and the layout was duly sanctioned, the Revenue Department of the State also issued NOC on 21.08.2008, which on the face of it acknowledges the title of the petitioners and that earlier the petitioners had filed WP.No.22575 of 2010 seeking to restrain the revenue authorities

from interfering or demolishing any structures. In that writ petition, on 20.04.2012,

an interim direction was granted directing the revenue authorities not to interfere with the possession of the petitioners without following due process of law. The said writ petition is pending. It is stated that despite the aforesaid interim order, letters were written by the Tahsildar to the General Officer Commanding, Head Quarters Andhra Sub Area; the Chief Executive Officer, Secunderabad Cantonment Board and the Sub Registrar, Bowenpally, Secunderabad asserting title whereupon the petitioners had filed another WP.No.23607 of 2012 challenging the said letters wherein also this Court suspended all the three letters vide interim order dated 24.08.2012. Apart from this, when there was physical interference by the military authorities, when the petitioners were developing the land as per layout sanctioned, various writ petitions were filed, being WP.No.14286 of 2013, WP.No.385 of 2014, WP.No.3991 of 2014 and WP.No.12842 of 2015, which are also stated to be pending. In addition to that, questioning the letter written by the District Collector dated 20.06.2015 to the CEO asserting title and to cancel the building permission granted to the petitioners, WP.No.19401 of 2015 was filed.

5. The last of the writ petitions, referred to above, was heard by me and disposed of by order dated 13.07.2015 holding, in the relevant paras, as follows:

**"11.** It is evident from the said letter that it is only an assertion of title by a person interested in claiming title, which in this case, is State Government and has to be treated only as a claim on behalf of the State Government. Undoubtedly, the petitioners dispute the said claim and assert their own title. Obviously, the said issue of title cannot be adjudicated in proceeding under Article 226 of the Constitution of India.

**12.** ...

**13.** Evidently, the Collector has merely requested the CEO to revoke the building sanction plan. So far as the Cantonment Act is concerned, the District Collector is not the authority to give any direction to the cantonment board. The said impugned letter,

therefore, in my view, is only advisory in nature and as rightly pointed out by the learned Advocate General, does not decide upon or adjudicate the rights of the parties in any manner. It may be that the petitioners are stiffly contesting the said claim of the Collector in various pending writ petitions, but it cannot be said that in the teeth of the orders passed therein, the Collector cannot even assert his claim for title.

14. To the extent of request of revocation in the impugned letter is concerned, the same is, undoubtedly, a matter for the cantonment board to consider and take an independent decision in the matter. If really the cantonment board decides to re-examine and take any action with regard to the permissions and sanctions granted by them, the said action cannot be unilaterally taken but has to be in conformity with the due process of law. As on today, no action has been taken by the cantonment board, hence, in my view, there is no subsisting cause of action to entertain the writ petition.

6. When the present writ petition came up for admission on 11.08.2015, the following order was passed:

“A request is made on behalf of the learned Advocate General for further time to file counter.

Post after six (6) weeks.

In the meantime, the impugned notice requiring the petitioners to submit their explanation shall not be enforced and the time given to the petitioners for submitting their explanation shall stand extended by two (2) months from today.”

The aforesaid order is being extended from time to time and is in force.

7. The District Collector/respondent No.2 has filed a detailed counter asserting and ownership of the State land, has belonging to the State Government. The said counter affidavit, *inter alia*, states in para 26 that the impugned notice is issued in exercise of statutory power under Section 7 of the Act and the exercise of power by the said statutory authority has nothing to do with the hierarchy of officers.

It is also that in the Government hierarchy, each officer and authority is vested with certain responsibility and power of statute and though the duties are discharged, on instructions of officers of hierarchy but statutory power has no such hierarchiality and the same will not affected the statutory

functioning of the authority. Hence, counter affidavit opposes the claim of the petitioners while contending on fact that the petitioners claim for title is without any basis and is certainly not *bonafide*.

8. A reply affidavit is also filed by the petitioners reiterating their stand.

9. I have heard Mr. D. Prakash Reddy, learned senior counsel for the petitioners and learned Advocate General for the respondents. Though the hearing initially proposed was on the stay petition, learned senior counsel on the either side have exhaustively argued the writ petition itself and even otherwise, the primary contention raised in the writ petition is as to bias of the fourth respondent. In my view, therefore, the said primary issue, which requires adjudication, is as to whether the fourth respondent is incompetent to initiate proceedings under the Act, on the contention of bias raised by the learned senior counsel for the petitioners. I have deeply considered the submissions on either side, examined them with reference to the authoritative books on Administrative Law and various decisions of the Supreme Court, which are discussed hereunder.

10. While hearing this writ petition, learned senior counsel for the petitioners supplemented and developed his submissions on the averments in the affidavit by contending that even prior to the impugned notice, the District Collector asserted his title and called upon the CEO, Cantonment Board to revoke the building sanction granted to the petitioners by claiming the subject land as Government land. Hence, the impugned notice issued by the Tahsildar cannot but be entertained, as the Tahsildar cannot hold a line contrary to the stand and the orders of the District Collector. Learned senior counsel, therefore, submits that it is impossible to expect an impartial adjudication by the Tahsildar in the light of the assertion by the District Collector. Learned senior counsel, further, contends that the said apprehension of petitioners is further reinforced by the counter affidavit filed by the District Collector in this writ petition wherein extensive assertions are made claiming as to how the State Government has title and as if claiming

that the petitioners are only encroachers. Learned senior counsel also points out that the impugned notice has no details and the counter affidavit cannot improve the deficiencies in the notice and that resorting to the summary enquiry under the Act where the petitioners title is contested and is equally strongly asserted by the petitioner himself, clearly shows that the remedy under the Act is misconceived on the ratio of **GOVERNMENT OF ANDHRA PRADESH v. TUMMALA KRISHNA RAO**<sup>[1]</sup>.

11. Per contra, learned Advocate General submits that the title claimed by the petitioner is merely based on some unregistered document whereas according to the State, their entitlement to the subject land is established not only by GLR entries but several other documents and adjudications including that of Wakf Tribunal. However, without touching upon the merits of the respective claim, learned Advocate General submits that the writ petition itself is directed against the show cause notice, which is normally not entertained by this Court and relied upon decisions of the Supreme Court in

**EXECUTIVE ENGINEER, B.S.H.B v. RAMESH KUMAR SINGH**<sup>[2]</sup> and

**SPECIAL DIRECTOR v. MOHD. GHULAM GHOUSE**<sup>[3]</sup>. Learned Advocate General would further contend that administrative superiority of the District Collector is no reason to declare the impugned proceedings as unenforceable inasmuch as the Tahsildar, who is the statutory authority to initiate the proceedings under the Act, has to discharge his statutory functions. Thus, learned Advocate General submits that administrative functions and statutory functions need to be clearly demarcated and viewed at this angle,

it cannot be said that the action of the statutory authority is vitiated merely because an administratively superior authority has passed any order or has taken any stand adverse to the petitioner.

12. In view of the above contentions, the following points emerge for

consideration:

1. Whether judicial review is justified against the impugned show cause notice?
2. Whether the fourth respondent is, in law, biased and is incompetent to invoke the A.P. Land Encroachment Act by issuing the impugned notice?

**POINT No.1:**

13. The decision in **RAMESH KUMAR SINGH's** case (2 supra) relied upon by the learned Advocate General may be noticed at this stage and it is appropriate to extract para 10 of the decision for convenience:

“10. We are concerned in this case, with the entertainment of the Writ Petition against a show cause notice issued by a competent statutory authority. It should be borne in mind that there is not attack against the vires of the statutory provisions governing the matter. No question of infringement of any fundamental right guaranteed by the Constitution is alleged or proved. It cannot be said that Ext. P-4 notice is ex facie a "nullity" or totally "without jurisdiction" in the traditional sense of that expression -- that is to say even the commencement or initiation of the proceedings, on the face of it and without anything more, is totally unauthorised. In such a case, for entertaining a Writ Petition under [Article 226](#) of the Constitution of India against a show-cause notice, at power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and taken up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to him, to assail the same either in appeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under [Article 226](#) of the Constitution of India.”

The decision in **MOHD. GHULAM GHOUSE's** case (3 supra) relied upon by the learned Advocate General also deals with the said question, as is elaborated in para 5, extracted hereunder:

“5. This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a

matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is accorded to the writ petitioner even at the threshold by the interim protection not granted.”

14. The ratio of the decision in **TUMMALA KRISHNA RAO’s** case

(1 supra) is pressed by the learned senior counsel for the petitioners to contend that summary proceedings under the Act cannot be invoked, particularly, when there is a serious contest on title.

It is, however, to be noted that in response to the impugned show cause notice neither any reply nor explanation is filed by the petitioners so far and the stand of the petitioners as to title is yet to be pleaded. It may be that the petitioners have asserted title in various other judicial proceedings by pleading the material facts on which they claim title. However, based on the said pleadings elsewhere, it cannot be accepted that the title set up by the petitioners elsewhere would attract the ratio of the decision aforesaid. Hence, I am unable to see as to how the said decision would assist the petitioners at the threshold when the show cause notice is questioned. Consequently, judicial review against impugned show cause notice cannot be entertained.

Point No.1 is, therefore, decided against the petitioners.

**POINT No.2:**

15. The exercise of power by the fourth respondent as a primary authority under the Act in issuing the impugned show cause notice is required to be considered in some detail keeping in view the allegation of bias.

16. To my mind, three categories of bias would disqualify any adjudicatory

authority viz. (1) Pecuniary bias; (2) Personal bias and (3) Departmental or Policy or Official bias. In the case on hand, it is the third category of bias, which is alleged against the fourth respondent. The first category of bias, however, insignificant disqualifies the decision maker whereas the second category of bias is where the decision maker himself may be interested either for himself or friend or relation or may have some personal animosity or hostility against one of the parties. We need not dwell deeper into the first two categories, as the petitioners only allege official bias.

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17. The issue, therefore, has to be examined in the light of the submissions in the following background:

- (a) It is true that the District Collector wrote a letter to the CEO, Cantonment Board asserting title and the said issue is agitated before this Court by the petitioners in WP.No.19401 of 2015.  
I have already held in the paras quoted above that the aforesaid letter is merely an assertion by the Collector of the State Government's title to the subject land. The said order has, admittedly, attained finality as it was not appealed against by any of the parties and therefore, it has to be considered as to whether the existence of said letter by the Collector would vitiate the statutory power exercised by the Tahsildar under Section 7 of the Act.
- (b) It is, undoubtedly, true that the District Collector is administratively superior to the fourth respondent, who has issued the impugned notice. Whether the administrative superiority can be taken into consideration while adjudicating upon discharge of statutory duty of the fourth respondent is, therefore, the matter, which requires consideration.
- (c) To my mind, the question of bias and reasonable apprehension of bias are required to be understood in the context of facts set out hereinabove. It has, therefore, to be seen whether the exercise of power by the fourth respondent while issuing the impugned notice violates the principle that no man can be judge of his own cause or whether existence of any bias or reasonable apprehension of bias can be attributed to the fourth respondent. It is to be noted that except claiming possible official bias, there are no other allegations against the fourth respondent.

18. The Administrative Law, Tenth Edition, Pg.392 and 393, H.W.R. Wade and C.F. Forsyth, have discussed the issue in detail and the following extract therefrom would be very informative:

“In administrative cases the same exigency may easily arise. Where statute empowers a particular minister or official to act, he will usually be the one and only person who can do so. There is then no way of escaping the responsibility, even if he is personally interested. Transfer of responsibility is, indeed, a recognised type of ultra vires. In one case it was unsuccessfully argued that the only minister competent to confirm a compulsory purchase order for land for an airport had disqualified himself by showing bias and that the local authority could only apply for a local Act of Parliament. The court will naturally not allow statutory machinery to be frustrated in this way. It is generally supposed, likewise, that a minister must act as best he can even in a case where he, for instance, himself owns property which will be benefited if he approves a development plan. Such cases of private and personal interest are conspicuous by their absence in the law reports ...”

“Similarly in a New Zealand case the Privy Council held that a marketing board could not be prevented from making a zoning order allotting the milk produced by a certain district to a certain dairy company, even though the board had given the company a large loan and therefore had a pecuniary interest in its prosperity. Both the power to make zoning orders and the power to make loans to dairy companies were expressly conferred by statute on the board and on no one else, so that ‘although the board may find itself placed in an unenviable position’, it was bound to exercise both powers if the statutory scheme was to be workable. The same doctrine should, perhaps, have been invoked in English cases where local authorities had to exercise different functions one of which could prejudice the other.”

19. DE Smith’s Judicial Review, Sixth Edition, also discusses that “*The existence of bias depends entirely on the context of the relevant relationships between the decision-maker and a party with an interest in, or influence upon, the decision ...*”. “*... The courts have refused to hold that a person is disqualified from sitting to hear a case merely on the ground that he is a member of the public authority, or a member of or subscriber to the voluntary association, that is a party to the proceedings*”. “*Membership of particular organisations which adopt well-known attitudes towards particular issues may or may not disqualify a decision-maker for bias. In R. (on the application*

*of Port Regis School Ltd) v North Dorset DC [2006] EWHC 742 (Admin)] it was held that members of the Society of Freemasons were not barred on the ground of bias from participating in local government decisions whenever another Freemason had an interest in the decision's outcome.” (Paras 10-037, 10-045 and 10-048).*

20. In the Principles of Administrative Law by M.P. Jain & S.N. Jain, 6<sup>th</sup> Enlarged Edition, the following passage therefrom at pg.550-551, is apt to be extracted hereunder:

“So far as the courts are concerned, they do not ordinarily regard policy bias, to some extent, as an infirmity in an adjudicator. A rule has thus come into vogue that ordinarily mere policy or official bias does not disentitle an official from acting as an adjudicator in a dispute in which either the departmental policy may be in issue, or the department may be a party. An official is not disqualified to act in an adjudicatory capacity merely because he is a limb of the government department which is a party to the dispute which he is called upon to decide. The reason, as stated above, is that if he were to be so disqualified, then the whole of the present day edifice of adjudicatory system will crumble to the ground. Therefore, if an official arrives at a decision in a matter, after giving full consideration to the issues involved, and following natural justice in all respects, then merely because he is connected with a department which is also a party to the dispute, the proceedings taken before him are not vitiated. However, there are limits to this rule. An official may become disqualified from acting as an adjudicator, and deciding a dispute involving a policy, if he has personally identified himself too much with the formulation of, or has exhibited an abnormal desire to uphold or implement, the policy in question. In such a situation, it could be said that his mind is closed to the issues arising before him and that he is no longer fit to sit as an adjudicator. Thus, only a blatant or very strong policy bias operates as a disqualification. Cases where the courts have disqualified officials from acting in an adjudicatory capacity on account of strong policy bias are rare indeed.”

21. The Supreme Court in **HINDUSTAN PETROLEUM CORPN. LTD v. YASHWANT GAJANAN JOSHI** <sup>[4]</sup> had an occasion to consider similar question with regard to the competent authority appointed under the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act.

Paras 12 and 13 thereof are extracted hereunder:

"12. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. There is no provision in the Act prohibiting the Central Government to make an appointment of an employee of the Corporation as competent authority. Apart from determining the compensation, may other functions are assigned to the competent authority and there may be one competent authority for all the above purposes or different persons or authorities may be authorised to perform all or any of the functions of the competent authority under the Act.

The scheme of the Act shows that a competent authority has to discharge various and diverse duties under the Act. He has to attend survey of land required for pipeline, verification of land revenue records of the surveyed area, drawing up of panchanama for land, crop, plantation, trees or any other agricultural or non-agricultural activity carried on in the surveyed land or the pipeline, issue of notification u/S. 3(1) of the Act, receipt of claims/objections for assessment of damages, disputes etc., issues of clearance to concerned oil company and deciding all the disputes arising out of the authorised persons power to enter notified lands and various other duties. Thus such person becomes a better qualified and experienced person equipped with a proper background to decide the amount of compensation also. We cannot accept the contention of Mr. Dholakia that merely because a person is an employee of the corporation, he would have a bias in deciding the compensation u/S/ 10(1) of the Act.

13. It may also be pertinent to note that the Legislature has used the words "the amount of which shall be determined by the competent authority in the first instance" (emphasis supplied) in sub-s. (1) of S.10 of the Act. This clearly shows that in the first instance it has to be decided by the competent authority and such determination shall not attain any finality. Then u/sub-s/ (2) of S. 10 itself it has been provided that if the compensation is not acceptable to either of the parties then an application can be filed before the District Judge. No doubt there is a marked difference in this regard between the provisions of this Act and the provisions contained in the Land Acquisition Act 1894 but in our view u/S. 10(1) the compensation is to be determined by the Competent Authority only in the first instance. A party is entitled to raise the ground of bias against an appointment of an individual officer as competent authority on sufficient material placed on record in this regard, but not merely because such competent authority is an employee of the corporation. It cannot be a ground for any disability or disqualification in appointing such person as competent authority. If we take the matter to its logical conclusion the result would that no employee of the State Government or the Central Government as the case may be will be appointed as competent authority where petroleum and minerals pipelines are to be laid for a project initiated by the State

Government or the Central Government respectively.

It would be too broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different case if it was a case of a private employer and his employee. We cannot equate the case of a person in a private employment with that of a person in public employment. The authorities mentioned above and relied upon by Mr. Dholakia are clearly distinguishable.

22. The decisions of the Supreme Court in **A. K. KRAIPAK v. UNION OF INDIA**<sup>[5]</sup> (para 20) **AND UNION OF INDIA v. COL. J. N. SINHA**<sup>[6]</sup> (para 7) hold that the Rules of natural justice “can operate only in areas not covered by any law validly made. In other words, they do not supplant the law, but supplement it.” It was also held that the statutory provisions, whenever, possible, must not be outweighed by the rules of natural justice. In the case on hand, it is the fourth respondent alone, who is competent under the Act to initiate proceedings under the Act and no other authority and he alone is empowered to adjudicate. For the sake of convenience, relevant paras are extracted hereunder:

**A. K. KRAIPAK’s case (5 supra):**

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria cause) and (2) no decision shall be given against a party without affording him a reasonable hearing (Audi alter partem). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned.”

**COL. J. N. SINHA’s case (6 supra):**

“7. Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the, concerned government servant 'to show cause against his compulsory retirement.

A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Art. 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law-made under Art. 309 as well as to the conditions prescribed under Art. 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak v. Union of India* AIR 1970 SC 150, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred / and the effect of the exercise of that power.”

23. In a recent decision in **UNION OF INDIA v. SANJAY JETHI**<sup>[7]</sup> the Supreme Court has considered the tests in applying the principle of real likelihood of bias/reasonable apprehension of bias that such reasonable apprehension must be based on cogent material and must be in consonance with thinking of a reasonable man and must be decided by adopting rationale approach keeping in view the basic concept of legitimacy of interdiction in such matters. It was also held that *‘the fundamental facet of principle of natural justice that in the case of quasi-judicial proceeding the authority empowered to decide a dispute between the contesting parties has to be free from bias. When free from bias is mentioned, it means there should be absence of conscious or unconscious prejudice to either of the parties’*.

The Supreme quoted the decision of **CHANDRA KUMAR CHOPRA v. UNION OF INDIA** [(2012) 6 SCC 369] wherein the conclusions, extracted

from said decision in paras 44 and 45, are reproduced hereunder:

**44.** In *Chandra Kumar Chopra v. Union of India* it has been held that:

"25. ... mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a face of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum."

**45.** The plea of bias is to be scrutinised on the basis of material brought on record whether someone makes wild, irrelevant and imaginary allegations to frustrate a trial or it is in consonance with the thinking of a reasonable man which can meet the test of real likelihood of bias. The principle cannot be attracted in vacuum."

Another decision of the Supreme Court in **G. SARANA v. UNIVERSITY OF LUCKNOW** [(1976) 3 SCC 585] was also quoted in para 36, extracting para 12 of the decision in **G. SARANA's** case, which is also reproduced hereunder:

**36.** In *G. Sarana* the learned Judges referred to the *Principles of Administrative Law* by J.A.G. Griffith and H. Street (4<sup>th</sup> Edn.), and observed that the position with regard to bias has been aptly and succinctly stated thus:

"12. ... The prohibition of bias strikes against factors which may improperly influence a judge in deciding in favour of one party. The first of the three disabling types of bias is bias on the subject-matter. Only rarely will this bias invalidate proceedings. "A mere general interest in the general object to be pursued would not disqualify," said Field J., holding that a Magistrate who subscribed to the Royal Society for the Prevention of Cruelty to Animals was not thereby disabled from trying a charge brought by that body of cruelty to a horse. There must be some direct connection with the litigation. If there is such prejudice, on the subject-matter that the court has reached fixed and unalterable conclusions not founded on reason or understanding, so that there is not a fair hearing, that is bias of which the courts will take account, as where a justice announced his intention of convicting anyone coming before him on a charge of supplying liquor after the permitted hours ...

Secondly, a pecuniary interest, however, slight will disqualify, even though it is not proved that the decision is in any way affected.

The third type of bias is personal bias. A Judge may be a relative, friend or business associate of a party, or he may be personally hostile as a result of events happening either before or during the course of a trial. The courts have not been consistent in laying down when bias of this type will invalidate a hearing. The House of Lords in *Frome United Breweries Co. Ltd. v. Bath JJ* approved an earlier test of whether "there is a real likelihood of bias." The House of Lords has since approved a dictum of Lord Hewart that "justice should not only be done, but should manifestly and undoubtedly be seen to be done" although it did not mention another test suggested by him in the same judgment: Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice."

24. Applying the said tests and examining the contentions of the petitioners, it is, undoubtedly, true that the District Collector asserted title to the subject land as belonging to the State Government.

But the question, however, is would it vitiate the initiation of statutory proceedings by the fourth respondent. It cannot be disputed that the District Collector is only administratively superior authority to the fourth respondent and statutory function or duty bestowed by the Act on the fourth respondent cannot be put under administrative control of any other superior authority. While the fourth respondent exercises statutory duty of a primary authority under the Act, even the Revenue Divisional Officer, who is the appellate authority, cannot exercise his administrative superiority over the statutory function to be exercised by the primary authority nor any other superior authority.

Viewed from this angle, I find it difficult to accept the contention of the learned senior counsel for the petitioners and in my view, accepting the said contention would amount to restraining a statutory authority from discharging its statutory duty merely because its administratively superior authority makes a claim over the subject land. The fourth respondent, in law, is required to independently examine the issue and come to a just and reasonable conclusion duly supported by reasons. In the circumstances,

therefore, the allegation of official bias raised by the petitioners against the fourth respondent cannot be accepted.

Point No.2 is accordingly answered.

25. In the result, while upholding the impugned notice, the petitioners are granted six (6) weeks time to file their reply to the impugned notice and on receipt of such reply, the fourth respondent shall fix a date of hearing, intimate the petitioners and if they so desire, hear the petitioners, examine the records and then pass a reasoned order.

The writ petition is disposed of. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

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VILAS V. AFZULPURKAR, J

December 22, 2015  
DSK

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[\[1\]](#) (1982) 2 SCC 134

[\[2\]](#) (1996) 1 SCC 327

[\[3\]](#) (2004) 3 SCC 440

[\[4\]](#) AIR 1991 SC 933

[\[5\]](#) AIR 1970 SC 150

[\[6\]](#) AIR 1971 SC 40

[\[7\]](#) (2013) 16 SCC 116