

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.8287 of 2012

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus declaring the action of the 1st respondent in mutating house bearing No.19-8-85/6, SBI Colony, Tirupati in the name of 2nd respondent pursuant to the proceedings in ROC.No.5587/2012/A6 dated 27.02.2012 as illegal, arbitrary and improper and consequently direct to mutation of the name of the petitioner in the records.

2. The averments in the affidavit are as under :-

The first petitioner, who is the husband of one late N.Anandamma, filed the present Writ Petition. After his death, the second petitioner who is his daughter, is brought on record as a legal representative.

The said N.Anandamma claims to have purchased a vacant house site admeasuring 188-2/3 sq. yards in R.S.No.224/2 of Tirupati town under a registered sale deed vide document No.1781/90 from one Eariki Balasubramanyam Reddy. Later, a house was constructed by N.Anandamma by borrowing loan from third parties. The name of Anandamma was entered in the revenue records. It is stated that said N.Anandamma got three daughters and for their marriage, she borrowed money from the financiers, but could not repay the same as

per the terms agreed upon. As the creditors were pressing for repayment of loans, the 2nd respondent herein, came forward and assured Anandamma that all the outstanding debts will be cleared in case the house is given to her. Believing the said words, the said Anandamma executed a gift deed in favour of the 2nd respondent on 16.09.2005 without taking the consent of her husband, who is the first petitioner herein. Since the 2nd respondent, failed to fulfill her promise of repaying the loans to the creditors, suits came to be filed by creditors against Anandamma. One Chandrasekhar filed O.S.No.9 of 2007 in the court of III Additional District Judge, Tirupati for recovery of money due on a pronote and got the above house attached before judgment on 21.02.2007. Later the said suit was decreed on 26.03.2007. At that stage, the 2nd respondent filed E.A.No.131 of 2007 to raise the attachment, which came to be dismissed on 17.02.2010. Aggrieved by the same, the 2nd respondent preferred A.S.No.197 of 2010 before this Court, which is pending consideration. Two other creditors filed O.S.No.14 of 2007 and O.S.No.105 of 2008 on the file of the III Additional District Judge, Tirupati against Anandamma for recovery of money. Both the suits were decreed on 26.03.2007 and 15.10.2008 respectively. It is further stated that during the pendency of these proceedings, the 2nd respondent got mutated her name in the revenue records on 26.06.2007. Since then the 2nd respondent was behaving in a different manner by picking up quarrels and giving reckless answers to the creditors and to the

petitioner. While things stood thus, on 16.12.2009 the wife of the first petitioner i.e., Anandamma executed a Will revoking the gift settlement deed dated 16.09.2005. It is said that as per the said Will, the first petitioner was given life interest in the above property and after his demise the property shall devolve on their two daughters. It is further stated that in the month of September, 2009, the 2nd respondent and her husband forcibly took away the title deeds from her house, which lead to lodging of a police report before Tirupati P.S., on 29.09.2009. Later on, Anandamma filed O.S.No.678 of 2009 on the file of Additional Senior Civil Judge, Tirupati, seeking grant of permanent injunction against the 2nd respondent and her men. By an order dated 31.03.2010, an ex parte decree came to be passed in the said suit. Subsequently, on 17.06.2011 the first petitioner (died) filed an application before the 1st respondent for mutation of his name in the revenue records basing on the registered Will and also the judgment and decree in O.S.No.678 of 2009. Then the 1st respondent obtained legal opinion in the matter on 28.08.2011 and mutated the name of the first petitioner in the municipal records vide proceedings TTC No.225/111/A5 dated 28.09.2011. Thereafter the 2nd respondent gave a representation for mutation of her name in the revenue records. Then the 1st respondent is said to have taken a legal opinion of the matter and without issuing any notice to the first petitioner, cancelled the mutation effected in favour of the first

petitioner as per proceedings dated 27.02.2012. Challenging the same, the present Writ Petition came to be filed.

3. By an order dated 27.03.2012, this court while admitting the writ petition ordered interim suspension as prayed for.

4. A counter came to be filed opposing the same. It is the case of the 2nd respondent that in view of the evidence of the writ petitioner in E.A.No.131 of 2007 in OEP.No.21 of 2007 in O.S.No.9 of 2007, the stand of the petitioner cannot be accepted. It is further urged that no notice is required to be given to the writ petitioner before effecting mutation in the municipal records, as the same would not serve any purpose, in view of the admissions made while giving evidence in the said suit. It is said that the registered will in favour of the writ petitioner is inconsequential as the testator herself had conveyed the schedule property in favour of the 2nd respondent under a registered gift deed dated 16.09.2005. In support of the same, he placed on record, the deposition of the witness in the above suit.

5. The main ground urged by the learned counsel for the petitioner is that mutation came to be cancelled without giving any notice to the petitioner. It is further urged that the mutation came to be cancelled basing on the representation made by the 2nd respondent, which is contrary to the Sections 207 and 208 of Hyderabad Municipal Corporation Act. It is further urged that in

view of the pendency of cases between either parties it would have been just and proper if a notice had been issued to the petitioner.

6. Learned counsel for the 2nd respondent would submit that the writ petition itself is not maintainable since an alternative remedy is available to the petitioner. Reiterating the averments made in the counter affidavit filed, the learned counsel for the respondent submits that there are no merits in the writ petition and the same is liable to be dismissed.

7. The only question, which falls for consideration is, whether the authorities were right in cancelling the mutation made in favour of the writ petitioner without giving any notice to the petitioner?

8. In **Rajesh Kumar and others v. Dy.Cit and others**¹, the Apex Court held as under :-

"When by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in that behalf, compliance with principles of natural justice would be implicit. Exceptions, therefore, are required to be provided for either expressly or by necessary implication."

9. In **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others**², the Apex Court opined as under:-(SCC p.706, para 202):

¹ (2007) 2 Supreme Court Cases 181

² 1991 Supp (1) SCC 600

"It is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally."

10. In **Swadeshi Cotton Mills v. Union of India**³, Chinnappa Reddy, J., in his dissenting judgment summarized the legal position in the following terms (SCC pp.712-13, para106):

"106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani, Kraipak, Mohinder Singh Gill, Maneka Gandhi etc. etc. They are now considered so fundamental as to be 'implicit in the concept of ordered liberty and, therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced."

³ (1981) 1 SCC 664

11. Admittedly, it is not a case, where the situation was such that there was no time to issue a notice and also an opportunity to hear before an order is passed. As held by the Apex Court, only in such situations the right can be excluded. It is also not a case where the situation was such, which prompted urgent action warranting only post decisional hearing. In view of the judgments of the Apex Court referred to above, it is clear that though the Act is silent as to the applicability of the principles of natural justice, but the rules of natural justice supplement the rules and regulations. Since the order passed by the 1st respondent adversely affects the petitioner, this Court is of the view that the authority should have been heard before passing the order, canceling the mutation made in his favour.

12. Having regard to the above, without going into the other aspects, the order under challenge is set-aside and the matter is remanded back to the 1st respondent to decide the same in accordance with law after hearing the writ petitioner, who is legal representative of the 1st petitioner, and also the unofficial respondent and pass order in accordance with law at the earliest.

13. With the above observation, the Writ Petition is disposed of. No costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Dt: 10.04.2017
GM

