

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOS.21053 & 25179 OF 2017

Date: 06.09.2017

WP No.21053 of 2017:

Between:

Shaik Sufee Baba S/o late Shaik Baji, Aged about 44 years
Occu: Agriculture, R/o. D.No.49-4/1-14/B, Shirdi Sai Colony,
Gunadala, Vijayawada, Krishna District and another.

.....Petitioners

and

The State of Andhra Pradesh, rep.by its Principal Secretary,
Revenue Department, A.P.Secretariat, Velagapudi, Amaravathi,
Guntur district and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.21053 & 25179 OF 2017

COMMON ORDER:

Petitioners claim that they are the owners and possessors of land to an extent of Ac.3.50 cents in R.S.No.392 of Atmakur Village, Mangalagiri Mandal, Guntur District. According to the petitioners, D-Form patta was granted to their father on 07.08.1993 and was also issued pattadar pass books on 15.10.1995. Their father has been in possession and enjoyment of the said property. Their father died on 22.11.2014 leaving behind the petitioners. After the death of their father, petitioners by way of representations dated 04.02.2015 and 22.04.2015 and by representation dated 22.06.2015, requested the Revenue Divisional Officer to mutate their names in the revenue records. Alleging inaction, petitioners earlier filed W.P.No.18160 of 2016 praying to grant direction to the respondents to mutate their names in the revenue records. The said writ petition was disposed of, by order dated 10.06.2016, granting liberty to the petitioners to file application in Form No.VI-A along with relevant documents and further direction was issued to consider the said application and to take appropriate decision. Petitioners filed application, as directed by the Court, on 20.06.2016. Alleging that even before a decision is made on the application filed, respondent authorities sought to dispossess the petitioners and to allot the land for construction of building by political party, petitioners filed W.P.No.31049 of 2016. Said writ petition was dismissed by order dated 14.10.2016. Aggrieved thereby, Writ Appeal No.1180 of 2016 was filed, which was disposed on 10.11.2016 with direction to the respondents not

to allot the subject land to any person till the application in Form VI-A was disposed of by the Tahsildar. The Tahsildar vide his endorsement dated 14.12.2016 rejected the request of the petitioners. Aggrieved thereby, petitioners preferred appeal before the Revenue Divisional Officer. The Revenue Divisional Officer dismissed the appeal by order dated 22.05.2017. Thereon, petitioners filed revision. During the pendency of the said revision, petitioners filed W.P.No.21053 of 2017 praying to grant declaration that action of the respondents in trying to allot the subject land to the political parties or any third parties is illegal and unconstitutional.

2. By order dated 28.06.2017, learned single Judge of this Court, after elaborately hearing respective submissions, appointed Ms.M.Siva Jyothi as Advocate-Commissioner to inspect the land in an extent of Ac.3.50 cents in R.S.No.392 of Atmakur Village and file status report on physical features of the land and whether agricultural activity is carried on in the land. During the pendency of the writ petition, the Joint Collector, passed orders on 06.07.2017, affirming the decision of lower authorities. Aggrieved thereby, petitioners filed W.P.No.25179 of 2017.

3. Report of the Advocate-Commissioner, dated 06.07.2017 is submitted in a sealed cover. The said report is opened. The report would disclose that in the presence of Joint Collector, by name, Ms.Kritika Shukla, I.A.S., and other officers, inspection was conducted and photographs were taken. The photographs would show some kind of cleaning and ploughing of the land. The Advocate-Commissioner reported that most of the land appears to

be hardened by movement of heavy vehicles and land on Southern side was recently razed; on the Western side, there are Neem trees in a row, small heaps of earth and iron construction material are also lying; that there are no features to show that agricultural activity has been carried out. The report of the Advocate-Commissioner along with enclosures continuously numbered from pages 64 to 87 are taken on record.

4. Learned Government Pleader submits that after it was noticed that the land was not put to use in terms of the assignment granted, Government took a decision to allot the land to the political parties.

5. At this stage, learned counsel for petitioners submits that the very same Joint Collector, i.e., Ms. Kritika Shukla, who actively participated in the inspection when the Advocate-Commissioner conducted the inspection, by exercising powers in revisional jurisdiction, passed orders and the same amounts to acting with bias and closed mind while exercising revisional power. Learned counsel, therefore, submits that order of the revisional authority is vitiated on this ground.

6. In support of the said contention, learned counsel for petitioners placed reliance on the decision of Supreme Court in **Mahipal Singh Tomar v State of Uttar Pradesh and others**¹ and the decision of learned single Judge of this Court in **Chand Shah and others v. Union of India and others**².

¹ (2013) 16 SCC 771

² 2011 (3) ALD 106

7. The record would disclose that same Officer, who participated in the inspection conducted by the Advocate-Commissioner, being the Joint Collector and the revisional authority, passed orders concerning the same subject property in the pending proceedings within few days after the inspection was conducted by the Advocate-Commissioner.

8. Petitioners claim subject land as belonging to them as it was assigned to their father and they have put the land to use and cultivating the same. After the death of their father, prayer to mutate their names in the revenue records is rejected by Tahsildar and on appeal, by the Revenue Divisional Officer. Aggrieved thereby petitioners invoked revisional jurisdiction and filed revision before the Joint Collector. Petitioners contended that even before their revision is decided, the very same land was sought to be assigned to a political party to construct building for that party. The claim of assignment and cultivation was disputed by the authorities of the State. Having regard to rival claims, Court appointed Advocate-Commissioner to assess ground position to enable the Court to decide the issue appropriately. The order appointing Advocate-Commissioner was made on 28.06.2017; Advocate-Commissioner conducted physical inspection of the subject site on 02.07.2017 and filed report on 06.07.2017. During the physical inspection by Advocate-Commissioner, Ms. Kritika Shukla was present along with other revenue officials. By then, revision was pending before said officer concerning the same property. In all fairness, she ought not to have participated when the physical inspection was conducted by Advocate-Commissioner, more so when same issue was pending for her

consideration in revisional jurisdiction. Learned counsel for petitioners alleges bias and that she could not have acted with fair and open mind on considering the revision and the decision made by her is vitiated on that ground alone.

9. One important facet of adjudication, be it Courts of law or administrative authorities vested with power to adjudicate as quasi-judicial authorities is such person must not have any attachment to the issue in person and has not pre-judged/has predetermined notion and must consider the issue placed before him objectively. In the case on hand for petitioners to succeed in their endeavour to retain the subject land they must not only prove of grant of assignment and subsistence of assignment, but also prove that the land is put to use. This Court intended to know the ground reality in putting the land to use. By the time Advocate-Commissioner was appointed and conducted inspection the revision filed by petitioners was pending before the Joint Collector. Thus, it cannot be said that physical presence of Joint Collector when Advocate-Commissioner conducted physical inspection cannot have an impact on her decision making process.

10. In this context, it is appropriate to note observations of Supreme Court in **Mahipal Singh Tomar** (supra). Supreme Court observed as under:

“15. In administrative law, the “rules of natural justice” have traditionally been regarded as comprising *audi alteram partem* and *nemo judex in sua causa*. The first of these rules requires the maker of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation. ***The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest or might otherwise be biased.***

(emphasis supplied)

11. In **Chand Shah** (supra), learned single Judge of this Court observed as under:

“28. Bias, if found to be existing in the course of exercise of administrative or quasi judicial powers by an authority, adversely effecting the rights of the citizens; would vitiate such proceedings. It is treated as one of the important facets of the principles of natural justice. Broadly classified, the bias can be personal and pecuniary. Personal bias in turn has several facets. It may range from an authority being related to, or inimically indisposed to a party to the proceedings; to his entertaining predetermined notions and inclination to hold on to a particular view point, in utter disregard of the evidence or material before him.

29. *I.P Massey*, in his treatise on Administrative Law, has, *inter alia* , this, to say about bias:

“...The dictionary meaning of the word ‘bias’ also suggests ‘anything which tends or may be regarded as tendering to cause such a person to decide a case otherwise on evidence must be held to be biased’. In other words, a predisposition to decide for or against one party without regard to the merit of the case is ‘bias’. Therefore, if a person, for whatever reason, cannot take an objective decision on the basis of evidence on record he shall be said to be biased...”

30. It is not necessary that bias must be proved beyond any pale of doubt, as is required under the proceedings before a Court of law. It is enough that “reasonable suspension of bias”, or “real likelihood of bias”, are shown to be existing”. In *B.B.Rajwanshi v. State of Uttar Pradesh* (1988) 2 SCC 415), the Supreme Court held that the apprehension as to existence of bias must be judged from a healthy, reasonable and average point of view and not on mere apprehension and vague suspicion of whimsical, capricious and unreasonable people. Almost on the same lines, is the judgment of the Supreme Court in *Jiwan K. Lohia v. Durga Dutt Lohia* (1992) 1 SCC 56.”

12. Having regard to the peculiar facts of this case and the fact that very same person, who participated in the inspection when the Advocate-Commissioner visited the site passed orders within few days after the inspection conducted by the Advocate-Commissioner and even before Advocate-Commissioner submitted report, it cannot be said that apprehension of petitioners is baseless and cannot be brushed aside.

13. In the interest of justice and for proper adjudication of the matter, I deem it proper to set aside the order passed by the

revisional authority on 06.07.2017 and remit the matter for fresh consideration of the revision petition filed by the petitioners.

14. At this stage, learned Government Pleader informs the Court that there is no other Joint Collector in the district who can decide the revision and the District Collector be directed to act as revisional authority. Learned counsel for petitioner also agrees to the said suggestion of learned Government Pleader.

15. Having regard to the peculiar facts of these cases and in view of the submissions made by the learned counsel, the order of revisional authority dated 06.07.2017 is set aside and the matter is remitted for fresh consideration of the revision petition filed by petitioners by the District Collector, Guntur. The District Collector, Guntur, may fix the date of hearing and inform the date of hearing in advance to the petitioners. Petitioners shall appear on the date fixed by the District Collector in person or represented by an Advocate with all supporting documents and on hearing the submissions made by the petitioners, the District Collector shall pass appropriate orders as warranted by law by assigning due reasons in support of the decision. If on the date fixed for hearing, petitioners do not appear, it is open to the District Collector to pass appropriate orders as per the material available on record. Till the decision is made by the District Collector, parties are directed to maintain *status quo* on the ground position as obtaining on the day the Advocate-Commissioner conducted the inspection and not to change the physical features of the subject land.

16. The writ petitions are allowed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 06.09.2017
kkm



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOs.21053 & 25179 OF 2017

Date: 06.09.2017

kkm