

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1063 OF 1995

Ramlal Keshav Patil (Died)
Through his L.Rs.

1. Pradip s/o Ramlal Patil
Age 50 years, Occu. Agri.,
2. Jagdish s/o Ramlal Patil
Age 45 years, Occu. Agri.,
3. Ujwalabai wd/o Ramlal Patil
Age 67 years, Occu. Household,

All R/o Tondapur, Tq. Jamner,
Dist. Jalgaon.

4. Pratibha w/o Nana Patil,
Age 52 years, Occu. Household,
R/o : Nachankheda, Tq. Jamner,
District Jalgaon.

... Petitioners

Versus

1. Abdul Shenu Tadvī (Died)
Through L.Rs.

1-A. Sandu Abdul Tadvī
Age 60 yrs, Occu. Agriculture
and Labourer, R/o : Tondapur,
Tq. Jamner, District Jalgaon.
2. Mirza Bahadur Baig Nirma Hamam
Major, Occ. Nil.
3. Hayat Mohamad Baig
Major, Occ. Nil.

Respondent Nos. 2 and 3
Deleted as per Court's order
dated 29.07.1998 in
C.A. No. 4159 of 1998.

4. The Additional Commissioner,
Nasik Division, Nasik.
5. The State of Maharashtra ... Respondents

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Mr. N. B. Khandare h/f Mr. S. R. Dheple, Advocate for the
Petitioners.
Mr. N. B. Patnekar h/f Mr. P. R. Katneshwarkar for Respondent
No.1-A.
Mr. S. P. Tiwari, AGP for Respondent Nos. 4 & 5-State.

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CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 26.04.2018**

**Date of pronouncing
the Judgment : 03.05.2018**

JUDGMENT :-

1. Being aggrieved and dissatisfied by the judgment and order dated 31.10.1994 passed by the learned Additional Commissioner, Nasik Division, Nasik, in Adivasi Revision Application No.20/1991, the petitioners have approached this Court by filing the present Writ Petition.
2. Brief facts giving rise to this Writ Petition are as follows:

a. Petitioner no.1 was a non-tribal and the owner of land Survey No. 139/1 situated at village Tondapur, Taluka Jamner, District Jalgaon. Land Survey No. 139/1 is ad-measuring 2 Hectares and 65 R. One Mr. Abdul Shenu Tadvī, who claimed to be a member of tribal community, sold the very land in favour of Mirza Bahadur Baig and Hayat Mohammad Baig (respondent nos. 2 and 3 herein) for a valuable consideration of Rs.2,000/- by executing registered sale deed dated 02.02.1970. Thereafter, said Mirza Bahadur Baig sold four acres of the land in favour of the petitioner under a registered sale deed for a valuable consideration on 04.06.1970 and again sold the remaining land ad-measuring 2 Hectares 23 Gunthas in favour of the petitioner on 29.12.1970.

b. The learned Sub-Divisional Officer, Chalisgaon, District Jalgaon had issued a notice under Section 3 of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 (hereinafter referred to as, "Act of 1974"), to the petitioner and the other contesting respondents. The learned Sub-Divisional Officer has registered the case as Watan Case no. J-71 and after hearing

both sides, the Sub-Divisional Officer, Chalisgaon, District Jalgaon, on 16.11.1976 was pleased to pass order to the effect that the tribal transferer is not entitled to the restoration of the suit land and accordingly dropped the proceedings.

c. After lapse of near about 18 years, respondent no.4/Additional Commissioner, Nasik Division, Nasik had issued a notice on 28.03.1994 under Section 7 of the Act of 1974 for reopening the case by observing that the tribal is *prima facie* entitled for possession under Section 3 of the said Act. The petitioner, therefore, had immediately filed Writ Petition No. 2080 of 1994 challenging the validity of the said notice before this Court. This Court, on 14.07.1994, was pleased to pass ad-interim relief in terms of prayer clause (B) staying the hearing of Adivasi Revision Application No. 20 of 1991 pending before the Additional Commissioner, Nasik Division, Nasik. By order dated 24.08.1994, this Court had dismissed the said Writ Petition No. 2080 of 1994.

d. The learned Additional Commissioner, Nasik Division, Nasik, by the impugned order dated 31.10.1994, quashed and set aside the order dated 16.11.1976 passed by the Sub-

Divisional Officer Chalisgaon in Watan Case No. J-71 and directed the petitioner to hand over possession of the suit land to the tribal person i.e. respondent no.1 herein. Hence this Writ Petition.

3. The learned counsel for the petitioners, submits that the learned Additional Commissioner has exercised jurisdiction contrary to the provisions of Section 7 of the Act of 1974 and reopened the case after lapse of so many years. In terms of the provisions of Section 7 of the Act of 1974, the Commissioner may *suo-motu* or on the directions of the State Government at any time call for the record of any inquiry or proceeding of any Collector for the purpose of satisfying himself as to the legality and propriety of any order passed by such Collector, provided that such jurisdiction has to be exercised within a period of three years from the date of such an order. The learned counsel submits that after a period of three years from the date of passing of the initial order, the learned Commissioner has no jurisdiction to call for the record. In view of the provisions of Section 7, there is a bar over the powers of the Commissioner and as such, the impugned order is required to be quashed and

set aside. The learned counsel submits that the learned Commissioner has overlooked the fact that the petitioner has purchased the land from the person who is a non-tribal and therefore, the provisions of the Act of 1974 are not at all attracted. The learned counsel submits that the Additional Commissioner, after the Writ Petition came to be disposed of by this Court, has not issued any notice of hearing to the petitioner and has also not taken any hearing of the case. The learned counsel submits that the learned Commissioner has directly passed the impugned order without giving an opportunity of being heard to the petitioner. The learned counsel thus submits that the principles of natural justice are not followed. The learned counsel submits that by filing of Writ Petition No. 2080 of 1994, the petitioner had challenged the notice of Revision issued by the learned Commissioner on various grounds including the ground that respondent no.1 is not a tribal. Even during the course of the inquiry conducted by the Sub-Divisional Officer in Watan Case No. J-71, statement of witnesses came to be recorded including the statement of respondent no.1/tribal person. The learned counsel submits that there is every scope to argue that respondent no.1 is not a tribal person. However, since

no opportunity of hearing was given to the petitioner, the principles of natural justice were not followed. The learned counsel submits that a copy of the Roznama is placed on record and on perusal of the same, it appears that the learned Commissioner, after disposal of Writ Petition No. 2080 of 1994, has not given notice of hearing to the petitioner, nor decided the matter after hearing the contesting parties including the petitioner. It also reflects from the impugned order itself that on the basis of the order passed in Writ Petition No. 2080 of 1994, the learned Additional Commissioner has decided the matter in favour of respondent no.1. The learned counsel submits that this Court, while disposing of Writ Petition No. 2080 of 1994, has not accepted the contention raised on behalf of the petitioner herein. The learned counsel submits that the said Writ Petition came to be filed mainly on the ground that the notice issued by the Additional Commissioner is without jurisdiction and the learned Additional Commissioner has no right to issue notice under the Act of 1974 after lapse of so many years. After disposal of the aforesaid Writ Petition, it was incumbent upon the learned Additional Commissioner to issue notice of hearing to the petitioner and considering all the grounds raised, pass an

appropriate order. On the other hand, the learned Additional Commissioner has decided the Revision without any hearing only on the basis of the order passed by this Court dated 24.08.1994 in the aforesaid Writ Petition.

4. The learned counsel for the petitioners, in order to substantiate his contention, placed his reliance on the following cases:

1. *Manohar s/o Manikrao Anchule vs State of Maharashtra & Anr.*, reported in (2012) 13 SCC 14,
2. *Dadan Ram & Ors. Vs State of Bihar & Ors.*, reported in (2007) 13 SCC 583 and
3. *Pundalik Sonu Shimpi vs Radhabai Sampat Dhumase & Ors.*, reported in 2002 (4) All. M. R.51.

5. The learned counsel for respondent no.1-A submits that in terms of the provisions of the Act of 1974, a limitation of three years is not contemplated when the directions are issued by the State Government. The learned Additional Commissioner has exercised jurisdiction under Section 7 of the Act of 1974 under the directions of the State Government and the same is also

reflected from the first paragraph of the impugned order. It has been specifically mentioned by the Additional Commissioner in the impugned order that the revisional jurisdiction has been exercised as provided under Section 7 of the Act under the directions of the State Government. The learned counsel submits that on careful consideration of the order passed in Writ Petition 2080 of 1994 dated 24.08.1994 by this Court (Coram: A. D. Mane, J), it appears that the counsel representing the petitioner had only raised the ground that the petitioner has purchased the land from the non-tribal i.e. respondent nos. 2 and 3 herein and as such, the provisions contained in the Act of 1974 are not applicable. Thereupon, this Court has observed that it is not possible to accept his contentions. The transfer of land in favour of respondent nos. 2 and 3 was void in law and therefore, no better title to land could have been passed to the petitioner. The learned counsel submits that the petitioner has waived the other grounds and only raised the ground which has been dealt with by this Court in the order dated 24.08.1994 while disposing of Writ Petition No. 2080 of 1994. The learned counsel submits that the Additional Commissioner, Nasik Division, Nasik has therefore rightly disposed of the pending Revision in the light of the order

passed by this Court dated 24.08.1994 in Writ Petition No. 2080 of 1994. The learned counsel submits that there is no question of reopening the hearing in the pending Revision and it was merely a formality to dispose of the said pending Revision Application in the light of the order passed by this Court in the aforesaid Writ Petition.

6. I have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, I have perused the pleadings, grounds taken in the petition and the annexures thereto. The petitioner has produced on record a copy of Writ Petition No. 2080 of 1994. This Court has also called for the record and proceedings of the said Petition. However, due to passage of time, copy of the petition came to be destroyed. However, the copy of the said Petition placed on record is not disputed by the learned counsel appearing for the respondent. On careful perusal of the same, it appears that the petitioner herein has filed the said Writ Petition No. 2080 of 1994 solely on the ground that the notice issued by the Additional Commissioner, Nasik Division, Nasik is without

jurisdiction and in terms of the provisions of Section 7 of the Act of 1974, the learned Additional Commissioner has no power to issue notice after lapse of so many years. This Court has disposed of Writ Petition No. 2080 of 1994 by order dated 24.08.1994 by observing that the transfer of the land in favour of respondent nos. 2 and 3 was void in law and therefore, no better title to the land would have been passed to the petitioner. This Court, however, has not passed any specific order as to the pending Revision before the Additional Commissioner, Nasik Division, Nasik. Consequently, it was incumbent upon the learned Additional Commissioner to issue notice of hearing to all the contesting parties before deciding the pending Revision. It appears from the copy of the Roznama that the learned Additional Commissioner has not issued any notice of hearing to the petitioner after disposal of the aforesaid Writ Petition No. 2080 of 1994 and directly passed the impugned judgment and order. That is the reason that by order dated 10.06.1998, this Court (Coram: R. M. Lodha, J.) has granted Rule and also pass an ad-interim order in the present Writ Petition.

7. In the case of ***Dadan Ram & Ors. Vs State of Bihar & Ors.*** (supra), The Supreme Court in the facts of the said case, in para 20 of the Judgment, has made the following observations:

“20. In view of the same, we are unable to agree with the observation of the Division Bench since the appellants had the knowledge of the order of status quo passed by the District Collector on 24.8.2005, the rules of natural justice were substantially complied with. We have already held that prior to reopening, notice to all the parties including person(s) in possession was mandatory. It is not in dispute that the case was reopened and earlier decision was reversed holding that there was no excess land without issuing notice to the appellants.”

8. In the case of ***Manohar s/o Manikrao Anchule vs State of Maharashtra & Anr.***(supra), in para nos. 21, 23, 24 and 25 of the judgment, the Supreme Court has made the following observations:

“21. Referring to the requirement of adherence to principles of natural justice in adjudicatory process, this Court in Namit Sharma v. Union of India [2013 (1) SCC 745], held as under: (SCC p. 799, para 99)

“99. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in *Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India & Anr.* [(1976) 2 SCC 981]; and *CCT v. Shukla & Bros.* [(2010) 4 SCC 785].”

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23. Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be

permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2).

24. In *Udit Narain Singh Malpaharia v. Board of Revenue, Bihar* [AIR 1963 SC 786], the Court stressed upon compliance with the principles of natural justice in judicial or quasi-judicial proceedings. Absence of such specific requirement would invalidate the order. The Court, reiterating the principles stated in the English Law in *R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.* [(1924) 1 KB 171], held as under : (Udit Narain case, AIR pp.788-89, para 8)

“8. ...The following classic test laid down by Lord Justice Atkin, as he then was, in *R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd.* and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:

'Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.’

Lord Justice Slessor in *R. v. London County Council, ex p Entertainments Protection Assn. Ltd.* dissected the concept of judicial act laid down by Atkin, L.J., into the following

heads in his judgment:

“Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority - a writ of certiorari may issue.”

It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, *ex hypothesi* it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it.”

25. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.”

9. In the instant case, prior to reopening of the Revision, the learned Additional Commissioner has not issued notice to any of the parties including the present petitioner, who is in possession of the suit land. It is not in dispute that the learned Additional Commissioner has reopened the Revision and reversed the earlier decision passed by the Sub-Divisional Officer only on the ground that this Court has disposed of Writ Petition No. 2080 of 1994. Thus, there is clear violation of the principles of natural justice. Further, the learned Additional Commissioner has not stated the reasons in support of the impugned decision. It is the solemn duty of every adjudicatory body to set reasons in support of its decision.

10. In view of the above discussion, this Court is left with no other choice but to remand the matter to the learned Additional Commissioner with certain directions. Hence the following order

ORDER

- I. The Writ Petition is hereby partly allowed. No costs.

II. The impugned judgment and order dated 31.10.1994 passed by the Additional Commissioner, Nasik Division Nasik in Adivasi Revision Application No. 20 of 1991 is hereby quashed and set aside.

III. The matter is remitted to the Additional Commissioner, Nasik Division, Nasik with the following directions:

- a. to restore Adivasi Revision Application No. 20 of 1991 to its original number.
- b. The learned Additional Commissioner, Nasik Division, Nasik shall decide the Adivasi Revision Application No. 20 of 1991 after giving opportunity of hearing to both the sides afresh, within a period of three months from the date of appearance of the parties.
- c. The parties shall appear in the aforesaid revision before the Additional Commissioner, Nasik Division, Nasik on 18th June, 2018.

IV. Rule is accordingly made absolute. The Writ Petition stands disposed of.

(V. K. JADHAV, J.)