

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.24534 of 2004

ORDER:

Heard Mr. Madhusudhan Reddy, learned Counsel for petitioner, Mr.Durga Reddy, learned Government Pleader for respondent Nos.1 and 2 and Mr.K.Vasudeva Reddy, learned Counsel for respondent Nos.3 to 5.

The issue arises under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act').

The petitioner filed W.P.No.13719 of 2003 challenging the order of respondent No.1 dated 12.04.2001. By order dated 29.07.2003, W.P.No.13719 of 2003 was dismissed, and the petitioner filed W.A.No.1989 of 2003. On 06.01.2004, Writ Appeal was allowed, and the operative portion reads thus:

"It is not disputed that on 19.03.2001, notice was issued to the appellant for appearance on 24.03.2001. Since the appellant did not appear on 24.03.2001, the evidence of respondents ought to have been recorded in the presence of the appellant, or, at least, an opportunity ought to have been allowed to cross-examine the witnesses who deposed in the absence of the appellant, on the next date of hearing. Appellant's case is that on 19.03.2001, was issued, and, on 24.03.2001, case was not taken up by the respondent No.1, and, the first respondent took decision on 12.04.2001. Thus, failure to conduct enquiry in the presence of the appellant, and, failure to afford opportunity of cross-examining the witnesses examined in her presence makes the order impugned in the writ petition bad in law being in violation of the Principles of

Natural Justice. For this reason alone, Writ Petition ought to have been allowed. Learned Single Judge proceeded to dismiss the Writ Petition after holding that the respondent No.1 had taken pains in deciding the case, and, thus, declined to exercise the power of judicial review without taking into consideration the ground which was urged before the learned Single Judge that the order was vitiated for violation of the Principles of Natural Justice. Consequently, Writ Appeal is allowed setting aside the impugned, as also, the order impugned in the Writ Petition passed by the first respondent dated 12.04.2001 with a direction to the first respondent to decide the matter afresh in accordance with law after affording an opportunity of being heard to the appellant.”

From the above, it is clear that the Division Bench set aside the order in W.P.No.13719 of 2003, and also the order of respondent No.1, and directed respondent No.1 to afford opportunity to petitioner herein and dispose of the appeal pending before him in accordance with law.

It is matter of surprise that respondent No.1 appears to have undertaken rehearing of the appeal, but has passed the following order vide Case No.B/1999/2000 dated 15.10.2014:

“He requested to confirm the orders passed by the RDO, Peddapalli earlier.

On perusal of the record connected to the case, averments made by both the parties and records put forth before the undersigned, it is revealed that even after giving the opportunity according to the directions of the High Court, the respondent has failed to adduce any evidence or documentary support in her favour. In view of the above, I am declined to interfere with the orders passed by this Court earlier. Accordingly, the matter is disposed.”

This Court is of the view that respondent No.1 did not take note of the fact that the earlier order passed by respondent No.1 was already set aside by the Division Bench in W.A.No.1989 of 2003. Respondent No.1 was called upon to dispose of the appeal pending before him in accordance with law. The rider put by this Court is to afford opportunity to the petitioner as well. Assuming without admitting the petitioner was non-cooperative, and respondent No.1 was compelled to dispose of the appeal, still non-cooperation by itself is not a ground to decide the appeal. Respondent No.1 is required, by Section 4A of the Act, to pass an order reflecting characteristics of adjudication or decision, firstly, the order impugned does not reflect either decision or adjudication; and, secondly, confirms the order which is already set aside by the Division Bench.

For the above reasons, the order impugned in the writ petition is set aside, and the matter is remitted to respondent No.1 to dispose of Case No.B/1999/2000 within a period of two months from the date of receipt of a copy of this order. Petitioner is given liberty to file documents or written submissions within four weeks from today by enclosing a copy of this order. Documents or written submissions, as permitted by this Court, if are not filed, respondent No.1 can presume that the petitioner has

nothing to add, and the appeal can be disposed of on merits.

The Writ Petition is accordingly allowed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

S.V.BHATT, J

Date:08.02.2018
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