



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2019

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.1342 of 2018
and
C.M.P. (MD) No.9537 of 2018

S.Maruthan

.. Appellant/Petitioner

Vs.

1.The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar, Adayar,
Chennai - 20.

2.The Special Officer,
MDA HSG 45,
Tamil Nadu Government Officials Co-operative
House Site Society Limited,
AC Complex, Sri Ram Nagar,
Kottaiyur, Karaikudi,
Sivagangai District.

3.The Deputy Registrar (Housing),
Virudhunagar Division,
Virudhunagar.

4.C.Krishnan

... Respondents/Respondents

Prayer:- Writ Appeal is filed under Clause 15 of Letters Patent Act, against the order of this Court in W.P.(MD).No.7993 of 2008, dated 18.02.2016.

Prayer in WP(MD). 7993 of 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order issued by the 1st respondent in his proceedings R.C.No. 6762/07/SF-1 dated 29/05/2008 and quash the same and direct the 2nd respondent to implement and enforce the order of the 3rd respondent passed in petitioners case prtion No. 77/2002-2003 dated 19/06/2007



For Appellant : Mr.R.Aravindan
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader for R1 to R3
Mr.R.Sundar Srinivasan for R4

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J U D G M E N T

(Judgment of the Court was delivered by **K.KALYANASUNDARAM,J.**)

This writ appeal is directed against the order of the learned single Judge passed in W.P.(MD).No.7993 of 2008, dated 18.02.2016.

2.The first respondent was allotted a house plot bearing No.B161 by an allotment order, dated 23.06.1985, on a condition that the allottee shall put up a house within a period of two years. A sale deed in favour of the appellant was executed by the society on 09.01.1986, however, the sale deed was cancelled on 19.01.1994. Immediately, the society allotted the plot in favour of the 4th respondent, The order of cancellation was challenged before the Deputy Registrar of Co-operative Societies, Virudhunagar, in the year of 2002. The Deputy Registrar, after enquiry, allowed the application and set aside the order of cancellation of the plot made in favour of the appellant. The order of the Deputy Registrar was challenged before the Registrar of Societies by way of Revision. The Registrar allowed the Revision on 29.05.2008 and set aside the order of the Deputy Registrar. Assailing the same, the appellant filed a writ petition in W.P.(MD).No.7993 of 2008. The learned single Judge dismissed the writ petition on 18.02.2016. Aggrieved over the same, the present writ appeal has been filed.

3.Mr.R.Aravindan, learned counsel for the appellant, would submit that after execution of the sale deed in favour of the appellant, the society has not vested with any power of cancellation that too made without any notice to the allottee. The learned counsel has relied upon the judgment of this Court in **Latif Estate Line India Ltd., Vs. Hadeeja Ammal**, reported in **2011 (2) CTC 1**.

4.Per contra, the learned counsel for the 4th respondent would submit that the order of allotment itself has a condition. Further bye-laws of the society mandates the allottee has to construct a house within a period of two years. According to the learned counsel, the sale is not absolute and it carries with the condition and hence the society has every right to cancel the sale deed executed in favour of the allottee. In this regard, he relied upon the judgments in **Indukakkar Vs. Haryana State Industrial Development Corporation Ltd.**, reported in **(1999) 2 Supreme Court Cases 37** and in **Satya Pal Anand Vs. State of Madhya Pradesh and others** reported in **(2016) 10 Supreme Court Cases 767**.



5. The learned counsel further contended that admittedly, the appellant approached the arbitrator after the lapse of eight years, but Section 90 of the Tamil Nadu Co-operative Societies Act, prescribes limitation of 6 years.

6. In the case on hand, it is not in dispute that the allotment has been made in favour of the appellant on condition that he should put up a house within a period of two years. The Sub Rule 38 (6) of the bye-laws of the society would read as thus:

"6) Every member who has been allotted a plot commence construction of a building thereon within a period of two years from the date of allotment failing which the society shall be competent to resume the site and evict the member from it. Every member shall retain possession of the site with a building thereon for a period of 10 years from the date of allotment. It shall be competent to the Board to permit the transfer of the property after this period with the permission of the Registrar, provided that no transfer of site without the building will be permitted. The conveyance deed executed by the society to the member should take into account the provision of the by laws."

7. Full Bench of this Court in the decision of **Latif Estate Line India Ltd., Vs. Hadeeja Ammal** reported in **2011 (2) CTC 1** has held as follows:

"48. Section 54 of the Transfer of Property Act defined the word "Sale", which means transfer of ownership by one person to another. In other words, sale is transfer of all rights, title and interest in the properties which are possessed by the transferor to another person namely, the purchaser. In case of transfer by way of sale, the transferor cannot retain any part of his interest or right in that property. Such transfer of ownership must be for a price paid or promised or part-paid and part-promised. Even if the whole price is not paid, but the document is executed and registered, the sale would be complete. The transfer is complete and effective upon the completion of the registration of the Sale Deed. Once the vendor is divested himself of his ownership of the property, then he retains no control or right over the said property.

...

59. After giving our anxious consideration on the questions raised in the instant case, we come to the following conclusion:

(i) A Deed of Cancellation of a sale unilaterally executed by the transferor does not create, assign, limit or extinguish any right, title or interest in the property and is of no effect. Such a document does not create any encumbrance in the property already transferred. Hence,



such a Deed of Cancellation cannot be accepted for registration.

(ii) Once title to the property is vested in the transferee by the sale of the property, it cannot be divested unto the transferor by execution and registration of a Deed of Cancellation even with the consent of the parties. The proper course would be to re-convey the property by a deed of conveyance by the transferee in favour of the transferor.

(iii) where a transfer is effected by way of sale with the condition that title will pass on payment of consideration, and such intention is clear from the recital in the deed, then such instrument or sale can be cancelled by a Deed of Cancellation with the consent of both the parties on the ground of non-payment of consideration. The reason is that in such a Sale Deed, admittedly, the title remained with the transferor.

iv) In other cases, a complete and absolute sale can be cancelled at the instance of the transferor only by taking recourse to the Civil Court by obtaining a decree of cancellation of Sale Deed on the ground inter alia of fraud or any other valid reasons."

8.A perusal of the documents annexed in the typed set would uninvitably prove that the sale was made in favour of the appellant on a specific condition. The Honourable Supreme Court had an occasion to consider the similar issue and in **Indukakkar Vs. Haryana State Industrial Development Corporation Ltd.**, reported in (1999) 2 Supreme Court Cases 37 has categorically held as follows:

"However, the allottee has contended before the trial court that clause 7 of the Agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled according to us rightly, because the Deed of Conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the Instrument of transfer should evidence that an absolute Interest In favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act. The Section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal Incidents. That apart, Section 31 of the TP Act is enough to meet the



aforesaid contention. The Section provides that on a transfer of property an interest therein may be created with the condition superadded that It shall cease to exist In case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen". Illustration (b) to the Section makes the position clear, and It reads:

"A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His Interest in the farm ceases."

17.All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it Is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an Interest". If the condition is invalid It cannot be set up as a condition precedent for crystallization of the interest created. The condition that the Industrial unit shall be established within a specified period falling which the Interest shall cease. is a valid condition. Clause 7 of the Agreement between the parties is, therefore, valid and is binding on the parties thereto."

9.In the subsequent decision in **Satya Pal Anand Vs. State of Madhya Pradesh and others (2016) 10 Supreme Court Cases 767**, the Supreme Court has held that if the condition is not complied with, the society has every right to cancel the allotment as per the bye-laws of the society. The relevant para is extracted below.

"44.In the dissenting opinion, reference has been made to the decision of the Division Bench of the Madras High court in E.R.Kalaivan. It was a case where the Registering Officer refused to register the deed of cancellation presented before him on the ground that the cancellation deed was sought to be registered without there being a consent from the purchaser. The aggrieved person approached the Inspector General of Registration who in turn issued a circular, dated 05.10.2007 addressed to all the Registering Officers in the State, that the deed of cancellation should bear the signatures of both the vendor and the purchaser. The validity of this circular was challenged by way of writ petition before the High Court. In the present case, out attention has neither been invited to any express provision in the 1908 Act, Rules framed by the State of Madhya Pradesh nor any circular issued by the competent authority of the State of Madhya Pradesh



to the effect that the extinguishment deed should bear the signatures of both the vendor and the purchaser and both must be present before the Registering Officer when the document is presented for registration. Absent such an express provision, insistence of presence of both parties to the documents by the Registering Officer, may be a matter of prudence. It cannot undermine the procedure prescribed for registration postulated in the 1908 Act."

10. In view of the above decisions of the Apex Court, in our considered opinion, the contention of the appellant that the sale was absolute and the authorities have no power to cancel the sale deed has no merit and the Judgment of Full Bench is also not in support of the case of the appellant.

11. It is not in dispute that the sale deed in favour of the appellant was cancelled in the year 1994 by a deed of cancellation, dated 19.01.1994, however, cancellation was challenged before the Deputy Registrar after lapse of eight years. Section 90 of the Co-operative Societies Act, prescribes the period of limitation as six years. Admittedly, the application before the Deputy Registrar was filed after eight years, hence, on the ground of limitation also, the case of the appellant is to be rejected.

12. The order is also questioned on the ground of violation of the principles of natural justice. It is the case of the appellant that before cancellation of sale deed, he was not put on notice. Perusal of the cancellation of sale deed reveals that the society through registered letters reminded the allottee to construct a house, but he did not make any efforts. On the other hand, in the petition submitted to the District Registrar in the year 2002, the appellant has categorically admitted the fact that no construction was put up and there was no whisper about the violation of principles of natural justice. It is further revealed that his case before the Deputy Registrar was that the Society has no authority to impose any condition and the cancellation was illegal. In view of the above facts, we find no force in the submission of the learned counsel for the appellant.

13. The Honourable Apex Court in the case of **Dharampal Satyapal Ltd., Vs. Deputy Commissioner of Central Excise and others**, while considering the issue as to whether the requirement of following principles of natural justice is mandatory in all the situations has observed as follows:

"27. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other



tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in **A.K. Kraipak's** case (supra) that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In the case of **Maneka Gandhi v. Union of India & Anr.** (1978) 1 SCC 248 also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the notice is required. In **Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills & Anr.** (1994) 5 SCC 566, this aspect was explained in the following manner:

3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law: All will depend on facts and circumstances of the case.

28. In the case of **East India Commercial Company Ltd., Calcutta & Anr. v. The Collector of Customs, Calcutta** AIR 1962 SC 1893, this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principle of natural justice are violated. To the same effect are the following judgments:

a) **U.O.I. & Ors. v. Madhumilan Syntex Pvt. Ltd. & Anr.** (1988) 3 SCC 348

b) **Morarji Goculdas B&W Co. Ltd. & Anr. v. U.O.I. & Ors.** (1995) Supp 3 SCC 588

<https://hcservices.ecourts.gov.in/hcservices/> **Metal Forgings & Anr. v. U.O.I. & Ors.** (2003) 2 SCC



d) **U.O.I. & Ors. v. Tata Yodogawa Ltd. & Anr.** 1988 (19)
ECR 569 (SC)

29.Therefore, we are inclined to hold that there was a requirement of issuance of show-cause notice by the Deputy Commissioner before passing the order of recovery, irrespective of the fact whether Section 11A of the Act is attracted in the instant case or not.

30.But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

31.We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for



some reason perhaps because the evidence against the individual is thought to be utterly compelling it is felt that a fair hearing 'would make no difference' meaning that a hearing would not change the ultimate conclusion reached by the decision-maker then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in **Malloch v. Aberdeen Corporation** (1971) 1 WLR 1578 at 1595, who said that a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'. Relying on these comments, Brandon LJ opined in **Cinnamond v. British Airports Authority**, (1980) 1 WLR 582 at 593 that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

32. In **Managing Director, ECIL** (supra), the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle:

30. Hence the incidental questions raised above may be answered as follows:

xx xx xx

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the



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employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an unnatural expansion of natural justice which in itself is antithetical to justice.

33. So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in the case of **General Medical Council v. Spackman**, 1943 AC 627. This Court also spoke in the same language in the case of **The Board of High School and Intermediate Education, U.P. & Ors. v. Kumari Chittra**



Srivastava & Ors. (1970) 1 SCC 121 : AIR 1970 SC 1039, as is apparent from the following words:

8. The learned counsel for the appellant, Mr. C.B. Aggarwal, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.

34. In view of the aforesaid enunciation of law, Mr. Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since judgment in **R.C. Tobacco** (supra) had closed all the windows for the appellant.

35. At the same time, it cannot be denied that as far as Courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in the case of **Managing Director, ECIL** (supra) itself in the following words:

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as it regrettably being done at present. The courts should avoid resorting to short cuts.



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Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

36. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in **R.C. Tobacco** (supra).

37. To recapitulate the events, the appellant was accorded certain benefits under Notification dated July 08, 1999. This Notification stands nullified by Section 154 of the Act of 2003, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefitted under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in **R.C. Tobacco** (supra). Likewise, even the officer who passed the order has no choice but to follow the dicta in **R.C. Tobacco** (supra). It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty formality and we are of the firm opinion that the case stands covered by 'useless formality theory'."

14. It is settled law that following of principle of natural justice is not an empty formality and it depends upon the facts of each case. In the case on hand indisputably no construction was put up by the appellant as per the condition of allotment and the bye-law of the society. So even assuming that he was provided with an opportunity before cancellation of sale deed, it will not vitiate the action taken by the respondents.



15. For the forgoing reasons, we find no ground to interfere with the order of the learned Single Judge. In fine, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

1. The Registrar of Co-operative Societies (Housing),
No.22, 4th Main Road,
Gandhi Nagar, Adayar,
Chennai - 20.

2. The Special Officer,
MDA HSG 45,
Tamil Nadu Government Officials Co-operative
House Site Society Limited,
AC Complex, Sri Ram Nagar,
Kottaiyur, Karaikudi,
Sivagangai District.

3. The Deputy Registrar (Housing),
Virudhunagar Division,
Virudhunagar.

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate in SR-56996

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.57364

+1 CC to M/s.R.ARAVINDAN, Advocate in SR-57593

W.A. (MD) .No.1342 of 2018
and

C.M.P. (MD) No.9537 of 2018
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