

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+W.P. NOs. 18517, 18521, 18551, 18552, 18553, 18561 and 18580 of 2019

% 14.11.2019

Dr D Dwaraknath Reddy S/o Sri D Raghunath Reddy
aged about 66 years occ Doctor residents of
Premises No 8-2-293/82/J/18-A Journalist Colony Jubilee Hills
Hyderabad & another

....petitioners

Vs.

\$ The State of Telangana
rep by its Principal Secretary Revenue Department Secretariat
Hyderabad & others

.... Respondents

!Counsel for the petitioners : Sri D. Prakash Reddy, Senior
Counsel

for Ms D Madhavi

Counsel for the Respondents 2 to 5 : Govt Pleader for Revenue

Counsel for the Respondent No.6 : Sri N Sridhar Reddy

<Gist :

1997 (6) ALD 277
(1997) 1 SCC 134
AIR 1987 SC 2235
AIR 1089 SC 1972
AIR 1966 SC 828
(1980) 4 SCC 379
(1999) 6 SCC 237
(1996) 3 SCC 364
(1991) 4 SCC 54)
(1995) 2 SCC 577
(1995) 5 SCC 762

>Head Note:

? Cases referred:

IN THE HIGH COURT FOR THE STATE OF TELANGANA

+W.P. NOs. 18517, 18521, 18551, 18552, 18553, 18561 and 18580 of 2019

Between :

Dr D Dwaraknath Reddy S/o Sri D Raghunath Reddy
 aged about 66 years occ Doctor residents of
 Premises No 82293/82/J/18A Journalist Colony Jubilee Hills
 Hyderabad & another

.... Petitioners

AND

The State of Telangana
 rep by its Principal Secretary Revenue Department Secretariat
 Hyderabad & others

.... Respondents

JUDGMENT PRONOUNCED ON : 14.11.2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
 Be allowed to see the Judgments ? : YES
2. Whether the copies of judgment may be marked :
 To Law Reporters/Journals : YES
3. Whether Their Ladyship/Lordship wish to :
 See fair Copy of the Judgment ? :NO

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs. 18517, 18521, 18551, 18552, 18553, 18561
and 18580 of 2019

Date: 14.11.2019

WP 18517 of 2019

Between:

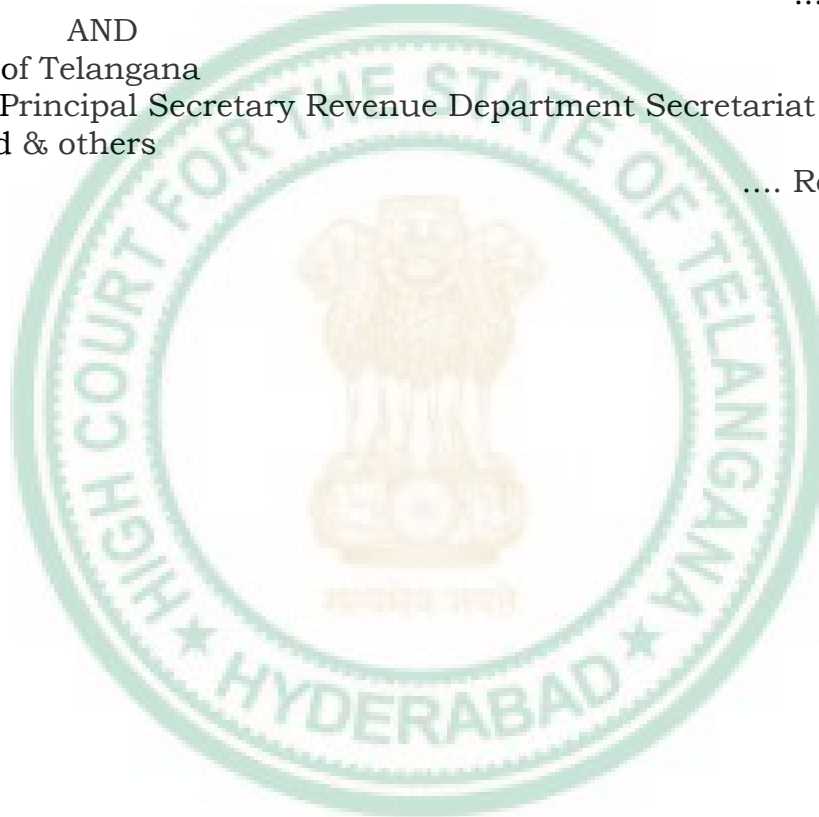
Dr D Dwaraknath Reddy S/o Sri D Raghunath Reddy
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Premises No 82293/82/J/18A Journalist Colony Jubilee Hills
Hyderabad & another

.... Petitioner

AND

The State of Telangana
rep by its Principal Secretary Revenue Department Secretariat
Hyderabad & others

.... Respondents



This Court made the following :

HON'BLE SRI JUSTICE P.NAVEEN RAO**WRIT PETITION NOs. 18517, 18521, 18551, 18552, 18553, 18561
and 18580 of 2019****COMMON ORDER:**

Since the issue raised in all these writ petitions is same, they are disposed of by this common order.

2. Heard Sri D Prakash Reddy, learned senior counsel, appearing for petitioners and Sri N Sridhar Reddy, learned counsel appearing for Journalists Cooperative Housing Society Limited-6th respondent and learned Government Pleader for Revenue.

3. The background facts leading to this litigation and respective pleadings are as under:

3.1 Large extent of land was allotted to Jubilee Hills Cooperative Housing society for development of residential layout in Jubilee Hills. On representation made by the journalists working in print and electronic media, Government decided to apportion Ac.25.00 of land exclusively to journalists from out of the land already allotted to Jubilee Hills Cooperative Housing Society and directed the Jubilee Hills Cooperative Housing Society to handover the land to Journalists Cooperative Housing Society (hereinafter referred to as the society). Accordingly, Jubilee Hills Cooperative Housing Society executed sale deed in favour of the Society on 26.11.1992 and land was put in possession of the Society. The Society obtained tentative lay out from Hyderabad Municipal Corporation and formed lay out and allotted plots to its members. As required by law, certain open spaces are also earmarked for community purposes including development of parks and recreational facilities. Petitioners herein have purchased house plots from the members of the Society to whom plots were allotted. The respective particulars of plots and other details are tabulated hereunder:

Sl. No.	WP No. & name of Petitioner	Plot No.	Extent of land purchased in sq yds	Extent of land regularised as per G.O.Ms.No. 166 in sq yds	Date of order of District Collector to cancel deed of conveyance
1	18517 of 19 Dr D Dwarkanath Reddy & another	8-2-293/82/J/18-A	350	230	27.7.19
2	18551 of 19 Dr D Nageshwar Reddy	8-2-293/82/J/27-A	350	375	27.7.19
3	18521 of 19 Dr E C Vinay Kumar & another	8-2-293/82/J/16-A	350	360	27.7.19
4	18553 of 19 G Sree Rama Murthy	8-2-293/82/J/A/26	350	245	27.7.19
5	18552 of 19 N Vasavi	8-2-293/82/J/A/28	475	500	27.7.19
6	18561 of 19 M Madan Mohan Reddy	8-2-293/82/J/A/25	350	500	27.7.19
7	18580 of 19 D Prabhakar Reddy	8-2-293/82/J/73-A	406	315	27.7.19

3.2. According to petitioners, they have obtained building permissions and constructed houses in plots purchased by them. Abutting their plots, there is vacant Government land covered with boulders and bushes and inhabited by snakes and reptiles. As there was threat to life, petitioners spent huge money to clean the bushes, constructed servant quarters and compound wall and they have been in occupation and possession of said vacant land ever since they purchased house plots from the members of the respondent society. G.O.Ms. No. 508 Revenue (Assn.I) Department dated 20.10.1995 was issued by Government inviting applications for regularisation of encroachments by way of dwelling houses on Government lands. Petitioners and others made applications on 5.12.1995 to the District Collector, Hyderabad district seeking regularisation of encroachments made by them in T.S No. 6, 7, 8 Ward No.9, Block D and T.S. No.1 Block-J, Ward No.9, Shaikpet village and mandal. Responding to said request the District Collector directed the Mandal Revenue Officer to enquire into the matter. The MRO conducted enquiry and submitted his report stating that the encroachments made by petitioners and others are unobjectionable, not required for any public purpose; that as per approved master plan the land use is specified for residential purposes and the land is vacant.

Based on the said report, the District Collector vide his letter dated 5.6.1999, addressed to the Chief Commissioner of Land Administration, recommended for regularisation. The then Chief Commissioner of Land Administration, vide his letter dated 11.6.2011 submitted proposals to the Government for regularisation on payment of market value, followed by further recommendation dated 21.7.2001. What transpired thereafter till 2008 is not stated.

3.3. While so, on 16.2.2008 Government issued G.O.Ms.No.166 framing policy guidelines for transfer of rights on certain occupations/ encroachments of specified categories of unassigned Government lands by way of structure or otherwise, on payment basis. In pursuant thereof, claim of the petitioners was placed before the District Level Regularization Committee on 20.10.2008. The Committee recommended for transfer of rights to petitioners on payment of market value determined based on extent of land in the possession of individual applicants. However, as the extent of regularisation of many plots was more than 250 sq yards, matter was placed before the State Level Regularisation Committee. The State Level Regularisation Committee recommended for regularisation and requested the District Collector to take further action. Accordingly, petitioners have deposited the amount arrived at towards payment of total value of the land in their possession. On said deposit, deed of conveyance was executed in favour of the petitioners vide document dated 8.5.2009.

3.4. Petitioner in W.P. No. 18580 of 2019 applied for building permission to construct house in his regularised plot and accordingly building permission was granted.

3.5. On the objections filed by the Society and after affording opportunity of hearing, the GHMC cancelled the building permissions

vide proceedings dated 21.8.2017. Questioning the same, W P No. 28993 of 2017 is filed by petitioner in W.P.no.18580 of 2019. Learned single Judge granted interim directions. Aggrieved thereby, the society filed W.A.No.1394 of 2017. Hon'ble Division Bench by order dated 18.09.2017 disposed off the Writ Appeal directing petitioner in the writ petition not to make further construction for a period of three months, granted liberty to the society to file vacate petition and further liberty to seek extension of interim orders granted by the Division Bench. While so, pursuant to the directions issued by this Court in W P No. 42138 of 2018 filed by respondent society the Government directed the District Collector to cancel the sale deeds executed in favour of petitioners. Consequent to said directions, the District Collector issued impugned proceedings directing the Tahsildar to cancel the earlier sale deeds. Aggrieved thereby, these writ petitions were instituted. The deeds of conveyance executed in favour of petitioners were cancelled on 30.7.2019.

SUBMISSIONS OF SENIOR COUNSEL FOR PETITIONERS:

4.1 According to learned senior counsel, the cancellation deeds are without notice and opportunity to petitioners, therefore they are liable to be set aside on that ground. A validly executed sale deed made in the year 2009 cannot be unilaterally cancelled. As held by this Court and Supreme Court in several decisions, unilateral cancellation of registered deed of conveyance is not valid in law, therefore, on that ground alone, impugned cancellation of deed is liable to be set aside.

4.2 Thorough enquiry was conducted following due process and on receiving market value of the property in possession by the petitioners, the respective properties were transferred to the petitioners by executing deeds of conveyance in the year 2009. No objections were raised at that time. After lapse of ten years, the deeds of conveyance cannot be cancelled. If the impugned order is allowed to stand, manifest

injustice would be caused to petitioners and ends of justice would suffer and petitioners would be subjected to irreparable loss as hard earned money was spent to purchase the plots in the year 2009 and at this stage even a small portion of the said plot cannot be purchased with that money.

4.3 He would further submit that petitioners are in occupation of open spaces for years which vested in Government, were validly regularised and society has no role in the said matter. He would further submit that society made only a draft lay out and there is no final approved lay out. Therefore, claim of respondent society that the plots abutting the houses of the petitioners are earmarked as open spaces and the plots cannot be regularised is not valid based on a tentative layout. In fact, houses in entire Journalists colony are illegally constructed, when based on tentative lay out, no construction can be taken up. Thus, society cannot claim the land as belonging to them.

4.4. He would further submit that petitioners are not parties to W.P.No.42138 of 2018 and behind their back, respondent society obtained orders and also instituted contempt case alleging violation of the directions issued and only under compulsion, respondents resorted to register the deed of cancellation of registered deeds of conveyance and this entire procedure is ex-facie illegal.

4.5. He would further submit that though such regularisation was granted to several plot owners, the respondent society has selectively proceeded against petitioners and same is vindictive and amounts to arbitrariness and discrimination.

SUBMISSIONS OF COUNSEL FOR THE SOCIETY:

5.1 Per contra, Sri N Sreedhar Reddy, learned counsel for sixth respondent contended that plots claimed by petitioners are forming part

of Ac.25.00 land allotted to respondent society. The society purchased the land from the Jubilee Hills Cooperative Housing Society Limited and it became property of the society. It is not a Government land.

5.2. By referring to various clauses in G.O.Ms.No..166 dated 16.2.1998, learned counsel submitted that the scheme of regularisation notified through G.O.Ms No.166 was only to unassigned Government lands and same is not applicable to private properties. As subject property has become property of respondent society, it being a private property, question of regularisation would not arise.

5.3. Having come to know that such illegal regularisation was granted without knowledge of the society, the society complained to the Government and in response, Government examined the matter in detail and having found that the land belongs to the society, steps were taken to cancel the deeds of conveyance earlier executed in favour of petitioners.

5.4. He would submit that as land does not belong to Government, the question of Government undertaking sale of land and regularisation of land in occupation of petitioners, is ex-facie illegal. Assuming that the petitioners are entitled to notice and opportunity, setting aside deeds of cancellation of previously registered deeds of conveyance would only be resulting in restoring the earlier illegality and such course is not permissible in law. In support of the said contention, learned counsel placed reliance on decision of the learned single Judge of this Court (as he then was) in **Kalasagaram, Secunderabad Cultural Association Vs State of Andhra Pradesh**¹ wherein this Court held that it is not permissible to restore the illegal order. He would submit that facts in that case are identical to facts in these writ petitions.

5.5. He would further submit that in any lay out, there have to be open spaces earmarked for the purpose of development of parks and

¹ 1997 (6) ALD 277

recreational facilities and open spaces cannot be converted into houses. Thus, assuming that Government was competent to regularise plots claimed by the petitioners, regularisation of plots which are earmarked as open spaces in a lay out are not permissible. He further submitted that G.O.Ms No. 166 also indicates this fact very clearly.

5.6. According to learned counsel, taking advantage of the open spaces which were not developed as originally intended abutting the plots owned by the petitioners, they claimed to be in occupation and by persuading the revenue authorities, they obtained favourable reports behind the back of the society and got orders of regularisation. He would submit that if the regularisation is permitted, there will be no open spaces left for the society. The impugned order of the District Collector was based on Government Memo No. 21064/Assn.III(1)/2017 dated 22.7.2019, authorising the Tahsildar to cancel the previously registered deeds of conveyance and unless and until the Government memo is challenged, the prayer sought in these writ petitions cannot be granted.

REPLY BY SENIOR COUNSEL :

6.1. In reply to the said contentions, learned senior counsel Sri D Prakash Reddy submitted that the Government proceedings mentioned as reference no. 24 dated 22.7.2019 in the impugned orders of District Collector was not communicated to the petitioners and apparently it is an internal correspondence. Therefore, petitioners need not challenge the same and writ petitions are maintainable. He would further submit that cancellation deeds are not with the previous knowledge of the petitioners. He would further submit that if what is claimed by the respondent society is correct, there is no question of revenue authorities taking possession of the land and vesting in the Government. This portion of the order of the District Collector is not challenged by the respondent society. If the impugned order is sustained those portions of land would

go to Government and therefore, society has no manner of right to contest the claim of petitioners.

6.2. He would submit that petitioners have been in possession since 1991 and land is never put to use for community purposes as sought to be contended by the society and all the plots which are regularised are abutting the petitioners' plots and petitioners are in possession and occupation of the same. These parcels of land cannot be developed for parks or other recreation activities and they are not accessible from internal roads.

6.3. He would further submit that orders of the District Collector, impugned in these writ petitions are silent on the status of the property.

7. Shorn of details, the crux of the issue is, certain open spaces abutting plots owned by petitioners were regularized by the Government in consequence to scheme formulated and notified by Government vide G.O.Ms.No.166 dated 16.02.1998 treating these open spaces as 'unassigned Government land', whereas these open spaces are forming part of a tentative layout of the society on land belonging to the society, and was not a Government land. Having realized earlier mistake, Government decided to cancel previously registered deeds of conveyance. The order impugned is consequent to the said decision.

8. The issues for consideration are as under:

- 1) Whether the direction issued by the District Collector, impugned herein to cancel previously registered deeds of conveyance is valid ?
- 2) Even if the decision to cancel the previously registered deed of conveyance is held illegal, can it be set aside, if it would result in restoration of another illegality ?

- 3) Can open spaces in a private layout be regularised by the Government ?

9. Indian Registration Act, 1908 regulates all aspects of registration of a document which is compulsorily to be registered, to have legal sanctity and binding on parties to the document. Telangana Rules under the Registration Act, 1908 (for short, 'the Rules') prescribe procedure to deal with registration of documents and all incidental aspects. Rule 26(i)(i) deals with documents classified as deeds of cancellation of previously registered document. It reads as under:

"26. (i) Every document shall, before acceptance for registration, be examined by the Registering Officer to ensure that all the requirements prescribed in the Act and in these rules have been complied with, for instance—

(a) to (j) xxxxx

(k) That the Cancellation Deed of the previously registered deed of conveyance on sale of immovable property is executed by both the executing and the claiming parties thereof unless such Cancellation deed is executed under the orders of a competent Court or under Rule 243. (Vide G.O.Ms.No.121, Rev.(Regn.I) Dept, dt.1.6.2016, w.e.f. 2.6.2014).

Provided that the registering officer shall dispense with the execution of cancellation deeds by executant and claimant parties to the previously registered deeds of conveyances on sale before him if the cancellation deed is executed by a Civil Judge or a Government Officer competent to execute Government Orders declaring the properties contained in the previously registered conveyance on sale to be Government or Assigned or Endowment lands or properties not registerable by any provision of law."

10. The amended provision is specific. However, in the case on hand, what is challenged is consequential decision of District Collector based on the order of the Government, directing the Tahsildar to take steps to cancel the earlier deeds of conveyance executed in favour of the petitioners. Thus, it is only an order giving effect to Government directions and is not an order by which previously registered deed of conveyance was cancelled. Further, a party to a conveyance deed can decide to cancel the previously registered deed of conveyance. In what manner he would present the cancellation deed and whether the registering authority accepted the document cancelling the previously registered deed of conveyance have to be agitated before appropriate

forum. Thus, the decision of District Collector, impugned herein, *per se* does not give rise to a cause of action.

11. However, it can still be argued that the directions of the District Collector are binding on the Tahsildar and the consequential action of Tahsildar is a fate-accompli and unless the order of the District Collector is set aside, petitioner can have no valid legal remedy.

12. Assuming that the order of District Collector gives rise to cause of action affects their rights and can be assailed and that said decision is made without opportunity of hearing, it is necessary to consider said contention and the effect of setting aside the decision of District Collector impugned herein. The challenge to order of District Collector is primarily on the ground that it was issued without prior notice and 10 years after the registration of deed of conveyance. Thus, whether the order is liable to be set aside on this ground requires consideration.

13. Under Article 226 of the Constitution of India, writ remedy is an equitable remedy and discretionary. Writ court exercises equity jurisdiction. Though scope of power of writ Court to undertake judicial review of administrative actions is very wide, its exercise is subjected to self-imposed restraint. *'It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point'* [**RAMNIKLAL N BHUTTA Vs. STATE OF MAHARASTRA**²]. It must be exercised with great caution and only in furtherance of public interest or to set right grave illegality. Larger public interest must be kept in mind to decide whether intervention of the court is called for in a given case, more so when community properties are involved.

14. Writ Court may refuse to grant relief in a case where justice and larger public interest require denial of such relief as compared to

² (1997) 1 SCC 134

grievance of an individual, even assuming there is breach of natural justice/statutory prescription and writ Court do not issue futile writs.

15. While considering the grievance in a petition under Article 226, the writ court need not grant relief merely because the petitioner makes out a legal point. *'Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved [RASHPAL MALHOTRA Vs SATYA RAJPUT MRS AND ANOTHER³ & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT⁴]'.*

16. In the following three leading decisions this very issue was considered by the Hon'ble Supreme Court.

16.1. In **Gadde Venkateswara Rao v. Government of A.P.**⁵, the Panchayat Samithi passed resolution on 25.08.1960 to locate a primary health centre at Dharmajigudem. It passed another resolution on 29.05.1961 to locate it at Lingapalem. On a representation, Government passed orders on 07.03.1962 setting aside the second resolution of Panchayat Samithi and thereby restoring the earlier resolution dated 25.08.1960. On a review, Government passed orders on 07.03.1962 accepting shifting of primary health centre to Lingapalem. The earlier order was without notice to the Panchayat Samithi and later order was passed without notice to villagers of Dharmajigudem, on whose representation Government passed orders on 07.03.1962.

16.2. To the extent relevant for the case on hand, Supreme Court observed at page 189 as under:

³ AIR 1987 SC 2235

⁴ AIR 1089 SC 1972

⁵ AIR 1966 SC 828

“Both the orders of the Government, namely, the order dated 7-3-1962, and that dated 18-4-1963, were not legally passed: the former, because it was made *without giving notice* to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did *not give notice* to the representatives of Dharmajigudem village.”

16.3. Supreme Court further observed that if the High Court quashed the order of Government dated 18.04.1963, it would have restored another illegal order and it would have given health centre to a village contrary to the valid resolution passed by the Panchayat Samithi and upheld the decision of High Court in not exercising its extraordinary discretionary jurisdiction.

16.4. In **S.L.Kapoor v. Jagmohan**⁶, principal contention was that the order of supersession of New Delhi Municipal Corporation of Delhi made by Lt. Governor was in complete violation of principle of natural justice and total disregard of fair play. No notice to show cause was issued and no opportunity was afforded on the allegations made for such supersession. Supersession resulted in premature termination of tenure of members of the Municipal Committee. Supreme Court held opportunity needs to be given before superseding Committee and that the Municipal Corporation was not put on notice before exercising power to supersede the committee and held such action as illegal.

16.5. The observations of Hon'ble Supreme Court in paragraph-24 are apt to note at this stage. Supreme Court held,

“24. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.”

16.6. The view expressed by the Supreme Court in **S.L. Kapoor** (supra) is referred to and relied upon in subsequent decisions.

⁶ (1980) 4 SCC 379

16.7. In **M.C.Mehta vs. Union of India and others**⁷, Bharat Petroleum Corporation Limited (BPCL) assailed cancellation of retail petroleum outlet on the ground that prior to such cancellation, no notice or opportunity was afforded to BPCL. Earlier the very same piece of land was allotted to Hindustan Petroleum Corporation Limited (HPCL). This allotment was cancelled, and allotment was in turn made to BPCL. By order dated 10.03.1999, the plot was restored to HPCL withdrawing from BPCL. Both have contended that principles of natural justice violated when allotment was cancelled.

16.8. In the above factual background, Supreme Court observed as under:

“15. It is true that whenever there is a clear violation of the principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this Court because the orders of the Department were consequential to the orders of this Court. *The question however is whether the Court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no de facto prejudice is established.* On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10-3-1999 order will restore an earlier order dated 30-7-1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10-3-1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the latter order of this Court dated 7-4-1998? ”
(emphasis supplied)

16.9. In **M.C.Mehta**, by referring to **Gadde Venkateswara Rao**, Supreme Court observed,

“17. The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. *The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.*”

xxxx

21. It is, therefore, clear that if on the *admitted or indisputable factual position*, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of the principles of natural justice.”

(emphasis supplied)

⁷ (1999) 6 SCC 237

16.10. This principle is applied in all subsequent decisions by the Hon'ble Supreme Court.

17. In **State Bank of Patiala v. S.K. Sharma**⁸, Supreme Court examined the issue whether merely because a person is not afforded reasonable opportunity it would not automatically result in setting aside the decision of a competent authority unless the person also satisfies the writ court that grave prejudice was caused and if only opportunity was afforded he would have satisfied that authority to take a view in his favour as against him. In this case, Supreme Court introduced the **test of prejudice principle** to test the validity of a contention on denial of reasonable opportunity. Supreme Court delineated the principles that should govern the issue of denial of reasonable opportunity. To the extent relevant they read as under:

“33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) xxxx

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. **To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing**

⁸ (1996) 3 SCC 364

considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) xxxxx

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between “no opportunity” and no *adequate* opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”.

(a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem).

(b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

18. In **Kalasagaram, Secunderabad Cultural Association** (**supra**), learned single Judge of this Court, as he then was, considered the very issue and held as under:

“10. There is no controversy whatsoever about the nature of the land granted to the petitioner by the respondent-Corporation on lease. The land itself admittedly, does not belong to the Corporation. The land belongs to Government Employees Co-operative Housing Society and forms part of sanctioned layout. In the layout the land in question is admittedly reserved for the purpose of play ground, park *etc.* May be, under the provisions of the layout Rules and the Hyderabad Municipal Corporation Act, after the reservation of land for parks and play grounds, the lands stood vested in the Municipal Corporation.

14. Even if it is to be assumed that the impugned order suffers from some infirmities, should the Court grant relief to the petitioner and issue writ as prayed for? Whether the petitioner is entitled for any relief from this Court? It is settled law that this Court does not issue writs in exercise of its jurisdiction under Article 226 of the Constitution of India, as a matter of course. The Court exercising jurisdiction under Article 226 of the Constitution of India is also a Court of equity. The relief to be granted in exercise of such power is an equitable one. Mere infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of Mandamus. The Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and now subtleties invented to evade law' (See *A.P. State Financial Corporation v. Gar Re-Rolling Mills*, (1994) 2 SCC 647 at 662. Writ of Mandamus is highly discretionary remedy as the aggrieved person has to not only establish the infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of a judicially enforceable right. The existence of a right is the foundation of the jurisdiction of Court to issue a writ of Mandamus.

16. Be that as it may, the Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the Government or statutory authorities to act in an illegal manner. The respondent-Municipal Corporation ought not to have granted lease of the said land to the petitioner herein as it is reserved as open space and for a specified purpose, namely, play grounds, perks. The land reserved for such purpose cannot be even allowed to be utilised for any other public purpose. Land reserved for a park and play ground can never be allowed to be converting to be utilised even for any other public purpose (See *Bangalore Medical Trust v. S. Muddappa*, (1991) 4 SCC 54 : AIR 1991 SC 1902. It is not as if an equal extent of a land was made available in the same layout for the play grounds and parks by allotting the land in question to the petitioner."

19. Thus, the following principles can be deduced from the treasure trove of precedents, few of which are referred to above:

(A) In exercise of power of judicial review under Article 226 of the Constitution of India, it being discretionary and equitable remedy, Writ Court may decline to grant the relief to a petitioner, in the given facts of a case, even if legal flaw in the decision of competent authority is made out.

(B) Even when there are procedural infirmities in taking a decision by statutory authority affecting the petitioner adversely, Court need not grant the relief prayed for, if setting aside the decision assailed would result in restoring another illegal decision.

(C) Even when there are procedural infirmities vitiating a decision of competent authority, it need not be set aside on that ground and petitioner has to prove prejudice caused to him and that if opportunity

was afforded to him he could have persuaded the competent authority to take a different view and such is possible and permissible.

20. In the above backdrop of principles governing the issues, a brief recapitulation of facts is necessary. Consequent to decision of the Government to allot Ac.25.00 to Society for housing purposes of journalists, the Jubilee Hills Cooperative Housing Society executed sale deed in favour of the society on 26.11.1992 and the society is put in possession. Thus, the said land became the property of the society. The society prepared layout comprising of house sites, roads and open spaces. Temporary layout was approved. House plots were allotted to members of the society. Members constructed houses and a full fledged housing colony has come up. Petitioners are subsequent purchasers of house plots from the members of the society. Claiming that open spaces adjacent to their house plots are in their occupation for a long time, taking advantage of the scheme formulated by Government to regularize unassigned house plots, notified vide G.O.Ms.No.166, applied to Government seeking to regularize those occupations. The revenue authorities extended helping hand to report to Government that the plots sought for regularization are open plots belonging to Government and unassigned and that the applicants have proved their possession. Accordingly, Government accepted the request and directions issued to regularize the concerned plots on payment of money determined as value of the property. Accordingly, sale deeds were executed in favour of the petitioners. In the entire process the society was not involved. It appears when petitioner in W.P.No.18580 of 2019 obtained building permission to construct house in the regularized plot, the society was alerted and thereafter started pursuing the matter with GHMC and the Government, resulting in the Government decision and the consequential orders of the District Collector, impugned in these writ petitions.

21. From the material on record, it is apparent that the plots which were regularized in favour of petitioners form part of the layout drawn by the society. They are the properties of the society and do not belong to Government. Private properties cannot be regularized by the Government and G.O.Ms.No.166 has no application to private properties. Therefore, regularisation exercise is *ex facie* illegal and void *ab initio*. Third parties cannot deal with occupation of properties belonging to the society.

22. Further, as per the draft layout, these areas are marked as open spaces. In all layouts to develop housing colonies, certain portions have to be shown as open spaces to be utilized for parks and recreational facilities. The Hyderabad Metropolitan Development Authority Act, 2008, the Greater Hyderabad Municipal Corporation Act, and the Telangana State Building Rules, 2012 require provisions of open spaces in any layout as mandatory requirement. Open spaces vest in the GHMC/HMDA/Municipality/Gram Panchayat. These open spaces become community properties and even developer/in the instant case society, the GHMC, the HMDA and the Government have no competence to divert these open spaces for any other purpose. Thus, the Government cannot convert them for housing purpose. Admittedly, regularization exercise was taken up by treating the open spaces adjacent to petitioners houses as Government land in occupation of petitioners and can be regularized under the scheme notified vide G.O.Ms.No.166. This was an illegal exercise.

23. At this stage, it is apt to note how the Supreme Court took cognizance of environmental issues and frowned upon the decision to convert open spaces to other purposes in the following decisions:

23.1. In **Bangalore Medical Trust v. B.S.Muddappa**⁹, a piece of land reserved as open space near Sankey's Tank in Bangalore meant to be a park was allotted to construct a private hospital. This conversion of land use was challenged. Dealing with environment and public health, Supreme Court observed as under:

“25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation.

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Earlier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology.

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Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility.

48. Much was attempted to be made out of exercise of discretion in converting a site reserved for amenity as a civic amenity. Discretion is an effective tool in administration. But wrong notions about it results in ill-conceived consequences. In law it provides an option to the authority concerned to adopt one or the other alternative. But a better, proper and legal exercise of discretion is one where the authority examines the fact, is aware of law and then decides objectively and rationally what serves the interest better. When a statute either provides guidance or rules or regulations are framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the Authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its authorities to abuse the law or use it unfairly.”

23.2. In the following two decisions, it was pleaded that the Hospital and school are meant to serve the society and substantial amount invested and therefore the conversion be upheld. Supreme Court rejected the said submissions.

⁹ (1991) 4 SCC 54)

23.3. In **Virender Gaur and others v. State of Haryana and others**¹⁰, the importance of proper environment was highlighted. It is apt to note the observations of Hon'ble Supreme Court:

"11. It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would clearly defeat the purpose of the scheme. Shri D.V. Sehgal, learned Senior Counsel, again contended that two decades have passed by and that, therefore, the Municipality is entitled to use the land for any purpose. We are unable to accept the self-destructive argument to put a premium on inaction. The land having been taken from the citizens for a public purpose, the Municipality is required to use the land for the protection or preservation of hygienic conditions of the local residents in particular and the people in general and not for any other purpose. Equally acceptance of the argument of Shri V.C. Mahajan encourages pre-emptive action and conduct, deliberately chartered out to frustrate the proceedings and to make the result fait accompli. We are unable to accept the argument of fait accompli on the touchstone of prospective operation of our order."

23.4. Yet again in **Dr.G.N.Khajuria and others v. Delhi Development Authority and others**¹¹, Supreme Court frowned upon the manner in which an open space was converted to establish a School. Supreme Court observed as under:

"8. We, therefore, hold that the land which was allotted to Respondent 2 was part of a park. We further hold that it was not open to the DDA to carve out any space meant for park for a nursery school. We are of the considered view that the allotment in favour of Respondent 2 was misuse of power, for reasons which need not be adverted. It is, therefore, a fit case, according to us, where the allotment in favour of Respondent 2 should be cancelled and we order accordingly. The fact that Respondent 2 has put up some structure stated to be permanent by his counsel is not relevant, as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, we would observe that the same has been advanced only to get sympathy from the court inasmuch as children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up either by Respondent 2 or by any other body."

24. It is thus apparent that open spaces cannot be converted for any purpose other than park and recreation.

¹⁰ (1995) 2 SCC 577

¹¹ (1995) 5 SCC 762

25. Learned senior counsel forcefully submitted to nullify the impugned order of the District Collector on the ground of delay in taking decision (regularization was granted in the year 2009), that there are others also in occupation of open spaces whose occupation was regularized and not disturbed and that what was relied upon was only a draft layout and unless layout is finally approved the Society cannot claim them as open spaces.

26. The said contentions are stated to be rejected for the following reasons:

i) The issue of conversion of open spaces is no more between petitioners and the Government. They are community properties. Merely because the society which developed the layout was silent for long time cannot save the glaring illegality in converting community open spaces to private plots without competence. In matters of this nature, where the open spaces are community properties every one living in the city are concerned and not confined to the society, and in larger public interest open spaces are required to be preserved. Therefore, the delay cannot enure to the benefit of petitioners to save *ex facie* illegal decision.

ii) Merely because the society was complaining only against petitioners, but there are others whose regularization is not disturbed is no ground to save an illegal action. One wrong cannot save another wrong. Conversion of open spaces as house plots being *per se* illegal not taking action against others may not be valid, but that *per se* cannot be a ground to save the petitioners. It is needless to emphasis that all open spaces have to be preserved and it is hoped and expected that authorities concerned would take appropriate measures in this regard.

iii) Admittedly, based on draft layout house plots were allotted. Layout contains roads and open spaces. Houses are constructed and

people are living. Open spaces shown in the draft layout cannot be changed in the final layout. Thus, merely because final layout is not approved cannot save the conversion of open spaces to private house plots.

27. Further, regularization of open spaces claimed to be occupied by petitioners was based on scheme floated vide G.O.Ms.No.166. G.O.Ms.No.166 contemplated regularization of unassigned Government lands. It has not envisaged mechanism of opportunity of hearing to take a decision in favour or against. However it is elementary principle of natural justice that before a decision is made affecting the property claim of a person, he must be put on notice and afforded opportunity of hearing. However, there are exceptions to this principle noticed above.

28. Thus, as earlier decision of Government to regularize open spaces, treating them as unassigned plots and executing deeds of conveyance was *ex facie* illegal, petitioners have no manner of right to claim regularisation of open plots, which belong to the society and are community spaces. Thus, even assuming that petitioners were entitled to prior opportunity before taking a decision, as the facts on record are clear as crystal and petitioners in no manner can contend that there is still scope for regularisation of such plots, no useful purpose would be served by remitting the matter on that ground. More over, the orders of the District Collector impugned in these writ petitions are consequential steps taken by the District Collector as per the directions issued by the Government but the decision of the Government is not under challenge.

29. For the aforesaid reasons, I see no merit in the contentions urged by the learned senior counsel for petitioners. Writ Petitions are

accordingly dismissed. Pending miscellaneous petitions if any shall stand closed.

30. It is however made clear that the discussion in the judgment is with reference to validity of direction of District Collector to the Tahsildar to take steps to cancel previously registered deeds of conveyance and opportunity of hearing and there is no expression of opinion on merits of respective claims and parties are at liberty to raise all pleas available to them in law in appropriate legal proceedings.

JUSTICE P.NAVEEN RAO

Date: 14.11.2019
TvK/kkm



THE HONOURABLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOS. 18517, 18521, 18551, 18552, 18553, 18561
and 18580 of 2019

Date: 14.11.2019