

**HIGH COURT FOR THE STATE OF TELANGANA :: AT
HYDERABAD**

WRIT PETITION NO.23112 OF 2019

Between:

Sri Vallakati Yadagiri, s/o. late Pentaiah,
Aged 59 years, occu: Retired Employee,
r/o.Ramayampet village and mandal,
Medak district and others.

.....Petitioners

and

The State of Telangana, rep.by its
Prl.Secretary, Revenue Department,
Secretariat Buildings, Hyderabad and
others.

.....Respondents

DATE OF JUDGMENT PRONOUNCED : 28.01.2020

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION NO.23112 OF 2019:

% 28.01.2020

Sri Vallakati Yadagiri, s/o. late Pentaiah,
Aged 59 years, occu: Retired Employee,
r/o.Ramayampet village and mandal,
Medak district and others.

... Petitioners

and

\$ The State of Telangana, rep.by its
Prl.Secretary, Revenue Department,
Secretariat Buildings, Hyderabad and
others.

.... Respondents

!Counsel for the petitioners : Sri P.Sriharinath

Counsel for the Respondents : Govt.Pleader for Revenue

<Gist :

>Head Note:

? Cases referred:

2007 (6) ALD 348
AIR 1987 SC 2235
AIR 1089 SC 1972
(1997) 1 SCC 134
AIR 1966 SC 828
(1980) 4 SCC 379
(1999) 6 SCC 237
1997 (6) ALD 277

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.23112 OF 2019

ORDER:

Heard Mr. Palle Sriharinath learned counsel for petitioners and learned Government Pleader for Revenue for the respondents.

2. The material averments and documents placed on record would disclose that petitioners 1, 2, husband of petitioner No.5 and late Vallakati Laxmaiah are the sons of late Pentaiah, and petitioners 3 and 4 are the daughters-in-law of late Laxmaiah. Petitioners claim that late Pentaiah purchased the land to an extent of Ac.1.05 guntas in Sy.No.1567/A of Ramayampet village and mandal, Medak district, by way of unregistered sale deed dated 28.01.1964 from the then pattadar Sri Alladi Bhoomaiah. In acknowledgment of payment of full sale consideration, the then pattadar also issued receipt, attested by his sons and late Pentaiah was inducted into physical possession of the subject land and ever since the family has been in possession and enjoyment of the said extent of land. The name of late Pentaiah was recorded in the revenue records against possession column. He was also issued Rythu Passbook. Late Pentaiah applied to validate unregistered sale deed. During the pendency of proceedings, he died. Thereafter, successors-in-interest to late Pentaiah prosecuted the matter.

3. According to petitioners, unregistered sale deed was validated by the Tahsildar and 13-B Certificate was issued on 03.09.1997. Consequently, pattadar passbooks and title deeds in patta Nos.1788 to 1792 were also issued. These proceedings were

not challenged by the respondents 5 to 12. Further, though 13-B certificate was issued, names of petitioners were not mentioned in the revenue records. According to the petitioners, after issuing notices to the respondents 5 to 12 and on consideration of their objections, the Tahsildar passed orders on 04.05.2007 directing the Village Revenue Officer, Ramayampet to mutate the names of petitioners by deleting the names of unofficial respondents. However, mutation proceedings were confined to Ac.0.19 guntas only. Aggrieved against mutation, respondents 5 and 6 filed appeal under Section 5 (5) of the A.P.Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'Act, 1971') praying to set aside the orders of Tahsildar dated 04.05.2007. Stand of unofficial respondents appears to be that the copies of 13-B certificate and unregistered sale deeds were not supplied by petitioners in spite of specific request made, implying thereby they were in dark about said documents. On 17.08.2012, the Revenue Divisional Officer passed orders setting aside the 13-B Certificate and matter was remanded to Tahsildar. Aggrieved thereby, petitioners preferred revision to the Joint Collector under Section 9 of the Act, 1971. Said revision was rejected by the order dated 20.04.2019, impugned in this Writ Petition.

4. According to the learned counsel for petitioners, the order of the Joint Collector is *ex facie* illegal and is in violation of the principles of natural justice, without jurisdiction and competence. The Joint Collector failed to appreciate that the Revenue Divisional Officer erred in setting aside the 13-B Certificate after long lapse of granting the certificate. Further, though there was no challenge to 13-B certificate, it was erroneously set aside by the appellate

authority. Having held that the files are not traceable, the Joint Collector has no basis to uphold the decision of the Revenue Divisional Officer. It also appears that both the Joint Collector and the Revenue Divisional Officer have failed to verify the relevant revenue records. According to the learned counsel for petitioners, the sale transaction, which was validly executed followed by possession and validated by the competent authority, cannot be nullified after long lapse of time. Learned counsel submitted that the Joint Collector exceeded his jurisdiction by directing the petitioners to avail civil law remedy. The Joint Collector was only concerned as to whether the decision of the Revenue Divisional Officer was validly made and in due compliance of law and was competent to set aside the 13-B Certificate issued long ago, whereas he has exceeded his jurisdiction upheld such illegal order of the Revenue Divisional Officer and erroneously advised the petitioners to avail civil law remedy.

5. It is not in dispute that Alladi Bhoomaiah was the pattadar of land to an extent of Ac.1.05 guntas in Sy.No.1567/A. The basis of petitioners' claim is alleged unregistered sale deed executed by Alladi Bhoomaiah in favour of late Pentaiah and inducting him into physical possession, in recognition of completion of sale transaction. The Tahsildar validated the sale transaction and issued 13-B Certificate on land to an extent of Ac.1.05 guntas on 03.09.1997 i.e., after 33 years. On an application made by the revision petitioners, ten years from the date of 13-B Certificate to mutate their names, the Tahsildar passed orders on 04.05.2007, confining the mutation to the extent of Ac.0.19 guntas instead of what was recorded in 13-B certificate. The Revenue Divisional

Officer held that no record was produced to show the 13-B certificate was issued by observing procedure, sets aside mutation order and 13-B certificate. According to the Joint Collector, the order of Tahsildar under Section 5-A of the Act, 1971 was not preceded by notice and opportunity to the pattadar and their family members. The Joint Collector therefore observed that the Tahsildar has committed serious illegality in entertaining application for validation of sada sale deed, issuing 13-B Certificate, and entertaining correction of entries in revenue records after ten long years thereon. From the above dateline of events, it is seen that there was delay on the part of petitioners to apply under Section 5A of the Act to validate sada sale deed; delay in applying to mutate the names as per 13-B certificate; and serious lapses by Tahsildar in processing application under Section 5A of the Act, 1971 and granting mutation.

6. In the above factual background, validity of the decision of Revenue Divisional Officer setting aside the 13-B certificate and mutation proceedings and remitting to Tahsildar, affirmed by Joint Collector needs to be considered.

7. Right to property is a valuable right vested in a person and same cannot be taken away/deprived by any means without following the due process of law. Transfer of ownership of immovable property is only with free consent of the person, who claims to be the owner on receiving valid sale consideration or he intends to transfer the property owned by him for any other reason in favour of any other person. There has to be a clear intention to transfer/sell the property. The transaction has to be transcribed

and signed with free will in the presence of independent witnesses. Then only it can be treated as concluded contract. However, any sale transaction on immovable property whose value is 100/- or more has to be registered under Section 17 of the Registration Act, 1908 on payment of requisite stamp duty. As per Section 49 of the Registration Act, 1908, unless such document is registered it would not affect immovable property and it has no legal validity. Thus, person in whose favour, the document is stated to have been executed cannot claim to have acquired right to the said property, unless it is registered. Registration of the document per force, requires execution of the document by both parties, present physically before the registering authority and authenticate their signatures to the document in the presence of the registering authority.

8. Section 5-A is introduced into the Act, 1971 to give legal sanctity to otherwise valid sale transaction of agricultural land except registration of the document under the Indian Registration Act, 1908. If a vendee or his successors rely on unregistered sale deed to claim that property was sold to vendee on payment of full sale consideration and possession was vested after execution of the document, but formally document was not registered, he/they can take advantage of the provision introduced in Act, 1971 in the form of Section 5-A to seek validation of unregistered sale deed instead of resorting to civil litigation. It is an exception carved out to the mandate of Sections 17 and 49 of the Registration Act. However, it does not relax essential ingredients to register a document which seeks to convey passing of title. The object and intent of Section 5-A of the Act, 1971 is to enable the purchaser of the property to

overcome the restriction imposed by Sections 17 & 49 of the Registration Act to enjoy the property where there is no dispute on acquisition of property except to the factum of registration of the document as per the Registration Act. Thus, validation/regularisation, perforce, require that there was a valid sale transaction with the consent of both parties.

9. Two primary requirements to apply the provision in Section 5-A of the Act, 1971 are, (1) the person who applies for validation must be in possession of the subject land by virtue of valid alienation or transfer made or effected except registration of the document executed and applies for validation within the time prescribed for a certificate declaring that such alienation or transfer is valid; and (2) issuing notice to the vendor of the property/his successors and persons interested and consideration of their objections and passing orders in their presence.

10. Rule 22 of the Rules made under the Act, 1971 prescribes various modes of issuing notice before accepting the request to validate unregistered sale deed. It also requires notice in Form-XI to alienor/transferor and any other person interested. Rule 22(3) read with Form XI presupposes that alienor/transferor is alive and is silent on a situation where alienor/transferor is not alive when such application is made. However, it cannot be assumed that after the death of original pattadar his legal heirs need not be heard. Thus, perforce, notice in Form-XI has to be issued to them. Alternatively, they are also the persons interested in the property having succeeded to the original pattadar and therefore, they have

to be issued notice in form-XII. Either way, notice has to be issued to legal heirs.

11. It is apparent from the statutory scheme, as valuable right to property is sought to be affected in this manner, notice on the vendor/his successor(s) and persons interested is mandatory, and they must be heard before validating the unregistered sale deed. From the material averments of the petitioners, it is noted that original pattadar died long ago and that the unofficial respondents are legal heirs. Apparently, no notice was sent to them in Form-XI/Form-XII.

12. Dealing with recording of rights under Section 5 of the Act, Full Bench in **Chinnam Pandurangam v. The Mandal Revenue Officer, Serilingampally Mandal and others**¹ emphasized the primary requirement of putting on notice the persons interested or affected. The requirement to put on notice legal heirs of original pattadar to validate alleged unregistered sale deed under Section 5A of the Act cannot be of less important when claim is based on alleged completed contract of sale of immovable property affecting their right to property.

12.1. Its apt to note the law declared by the Full Bench. It reads as under:

“7. The above analysis of the relevant statutory provisions shows that proviso to Section 5(1) and Section 5(3) represent statutory embodiment of the most important facet of the rules of natural justice i.e. audi alteram partem. These provisions contemplate issue of notice to the persons likely to be affected by the action/decision of the Mandal Revenue Officer to carry out or not to carry out amendment in the Record of Rights. Proviso to Section 5(1) lays down that if the Mandal Revenue Officer decides not to make an amendment in the Record of Rights, then he shall pass appropriate order only after giving an opportunity of making

¹ 2007 (6) ALD 348

representation to the person, who gives intimation regarding acquisition of any right referred to in Section 4. Section 5(3) provides for issue of written notice to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment. Similarly, a notice is required to be issued to any other person whom the recording authority has reason to believe to be interested in or affected by the amendment. A copy of the amendment and the notice is also required to be published in the prescribed manner. The publication of notice in the prescribed manner is in addition to the notice, which is required to be given in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to any other person whom the recording authority has reason to believe to be interested in or affected by the amendment. To put it differently, the publication of a copy of the amendment and the notice is only supplemental and not the alternative mode of giving notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and to any other person to whom the recording authority has reason to believe to be interested in or affected by the amendment. If the Legislature thought that publication of a general notice in Form-VIII will be sufficient compliance of the rules of natural justice, then there was no occasion to incorporate a specific requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to other person whom the recording authority has reason to believe to be interested in or affected by the amendment. ***In our considered view, the requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to any other person whom the recording authority thinks to be interested in or affected by the amendment clearly negates the argument that publication of notice in Form-VIII is sufficient.***

[Emphasis Supplied]

13. To test the contentions of the learned counsel for petitioners on the order of the appellate authority remanding the matter to Tahsildar, affirmed by Revisional Authority, the relevant documents in issue placed on record are looked into. The documents give an interesting assessment of entire issue.

14. It is not clear when application was made under Section 5-A of the Act to validate the unregistered sale deed of 1964. However, in the year 1993, notices in Forms-XI & XII (Ex.P6) were generated proposing to hold enquiry on 28.08.1993 on the application made by Vallakati Pentaiah for validation of unregistered sale deed. Ex.P-6 does not disclose to whom the notices were addressed and no material is placed on record to show that notices were served.

The decision made under Section 5-A of the Act, 1971 is not placed on record. It appears, Mandal Revenue Officer issued 13-B certificate on 03.09.1997 covering an area of Ac.1.05 guntas.

15. At this stage, it is interesting to note the contents of the order passed by the Tahsildar on 04.05.2007 accepting the mutation application filed by the successors of Sri Vallakati Pentaiah based on the validation of unregistered sale deed. According to this proceeding, in the year 1993-94, name of late Alladi Bhoomaiah was reflected in the revenue records. His grand sons have applied for mutation of their names and accordingly, the name of Alladi Narsaiah to an extent of Ac.0.22 guntas and the name of Alladi Kistaiah to an extent of Ac.0.23 guntas were mutated. He also records that together they have sold Ac.0.26 guntas of land during the year 1993-94 to Sri Budda Narayana. The same was recorded in the revenue records. After the death of Budda Narayana, legal heirs transferred the lands in their names; their names are mutated and pattadar pass books and title deeds were issued. According to the Mandal Revenue Officer, even by the year 1993-94, only Ac.0.19 guntas of land was left in the name of successors of Alladi Bhoomaiah. He therefore points out as to how 13-B certificate was issued to an extent of Ac.1.05 guntas in the year 1997 when only Ac.0.19 guntas of land remained with the successors of Alladi Bhoomaiah. Apparently, they were not put on notice before validating an unregistered sale deed covering the extent of land purchased by them from the successors of late Alladi Bhoomaiah even before an application stated to have been made. Further, having noticed these infirmities instead of probing into the issue and calling upon the applicants to clarify, he strangely

proceeds to issue orders to mutate the names of Vallakati Yadagiri and four others only on Ac.0.19 guntas of land.

16. Further, from the reading of 13-B certificate, it is seen that the entire extent of Ac.1.05 guntas was divided into five separate units, and the Mandal Revenue Officer apportions the extent of land in the name of five individuals separately, viz., Ac.0.13 guntas in the name of Vallakati Yadagiri, Ac.0.14 guntas in the name of Vallakati Laxmaiah, Ac.0.06 guntas in the name of Vallakati Narsimlu, Ac.0.06 guntas in the name of Vallakati Siddaiah, and Ac.0.06 guntas in the name of Vallakati Vittal. How this apportionment was taken up is not stated. From the reading of the orders of Joint Collector, it is seen that Vallakati Pentaiah applied for validation of unregistered sale deed and during the pendency of proceedings, he died and, therefore, the revision petitioners 1 to 3, who are children of late Pentaiah, prosecuted the application for validation of unregistered sale deed. Therefore, those three persons may be entitled to 13-B certificate as successors of late Pentaiah. How other names are incorporated in 13-B certificate and how apportionment of property was made is not clear.

17. Further, it has been the vehement submission of the learned counsel for petitioners that even though 13-B certificate was not challenged, the Revenue Divisional Officer sets aside the said certificate and the same is *ex facie* illegal. To appreciate this contention, it is also necessary to look into the grounds urged by the appellants before the Revenue Divisional Officer. Copy of the appeal filed by appellants Sri late Alladi Narsaiah and Alladi Kistaiah is filed as Ex.P4. It is seen from this document, the

appellants contended that when they received notice on mutation application, they raised objections and they also requested the Tahsildar to furnish certified copies of 13-A, 13-B and 13-C certificates stated to have been issued validating unregistered private sale deed, but the same were not furnished. It was further contended that alleged 13-B certificate, based on alleged private sale deed 28.01.1964, were concocted documents and that there was no notice of enquiry leading to issuance of 13-B certificate. It was also contended that though they requested to furnish certified copies of the certificates issued, but they were not furnished. Therefore, they specifically stated in paragraph-5 of their appeal that they would reserve the right to challenge 13-B certificate, dated 08.09.1997 as and when certified copies were furnished to them. It was therefore contended that having regard to the contentions urged by them on validity of alleged 13-B certificate, the Tahsildar could not have proceeded to grant mutation.

18. It is seen from the material filed in the writ petition, no record dealing with validation of sale deed was produced by the Tahsildar. The petitioners, being respondents before the Revenue Divisional Officer, did not file counter opposing the claim of appellants, and no documents were produced before the Revenue Divisional Officer to show that proper procedure was followed and 13-B certificate was validly issued. By their conduct, they invited adverse decision from the Revenue Divisional Officer.

19. At this stage, reverting to the order of Tahsildar granting mutation in his proceedings dated 04.05.2007, the Tahsildar recognizes the factum of issuing 13-B certificate to a larger extent

of land though even by then the said extent of land was not vesting in the successors to the original vendor. Having regard to these observations of the Tahsildar, not producing record relating to 13-B certificate is significant.

20. These aspects are significant, having regard to the finding of the Revenue Divisional Officer, affirmed by the Joint Collector that there was no record of proceedings leading to issuance of 13-B certificate and no material to show whether procedure was followed before issuance of 13-B certificate.

21. The Joint Collector also extracted the finding recorded by the Revenue Divisional Officer on production of record by Tahsildar, and also found that no record was produced to substantiate the claim of issuance of 13-B certificate. He also found that there was inordinate delay of 33 years to apply for validation of unregistered sale deed and 10 more years for mutation. He observed that proper procedure was not followed by the Tahsildar before validating unregistered sale deed. From the reading of order of the Joint Collector, it is also seen that no material was produced before him to show that orders were passed validating unregistered sale deed and amount required to be paid towards stamp duty was paid.

22. It is also interesting to note that though application to validate unregistered sale deed was stated to have been made prior to August, 1993, enquiry stated to have been conducted on 28.08.1993, Certificate was claimed to have been actually issued on 03.09.1997 i.e., four years later and even by the time the exercise was undertaken, major portion of land was already changed hands but strangely Tahsildar did not notice the changes

in the extent of land, does not take steps to put on notice those persons whose names are reflected in the revenue records and even though total extent of land standing in the name of successors of late Bhoomaiah was only 19 guntas, the validation was stated to have been granted to an extent of Ac.1.05 guntas. No explanation is forthcoming on this, either from the order of the Tahsildar or from the petitioners. These infirmities/illegalities would cast enough doubts on the entire exercise stated to have been undertaken by the Tahsildar.

23. Having regard to these glaring illegalities, the objection to the decision of the Revenue Divisional Officer setting aside 13-B certificate has no legs to stand. When very existence of 13-B certificate is in jeopardy, the decisions of Revenue Divisional Officer remanding to the Tahsildar cannot be faulted and on that ground orders issued by him affirmed by Joint Collector cannot be nullified.

24. Assuming that the decision of the Revenue Divisional Officer setting aside 13-B certificate and to remand the matter in an appeal filed under Section 5(5) of the Act against mutation proceedings is not valid, in view of the patent illegalities noticed above, the said contentions pale into insignificance. Accepting such contentions would result in affirming alleged *ex facie* illegal decision of the Tahsildar, even if there was one.

25. 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

subject to self-imposed restraint. In a given case, writ Court may refuse to grant relief even when there is breach of natural justice/ statutory prescription. Extraordinary jurisdiction under Article 226 of the Constitution of India must be exercised with great caution and only in furtherance of public interest or to set right grave illegality. It is the bounden duty of writ Court to ensure justice and equity.

26. 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 ANOTHER² & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT³]'.* *'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 MAHARASTRA⁴].*

27. Further, writ Court may refuse to set aside an order if it would result in restoring an illegal exercise.

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

28.1. In **GADDE VENKATESWARA RAO V. GOVERNMENT OF A.P.**⁵, the Panchayat Samithi passed resolution on 25.08.1960 to

² AIR 1987 SC 2235

³ AIR 1089 SC 1972

⁴ (1997) 1 SCC 134

⁵ AIR 1966 SC 828

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.

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

“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.”

28.3. 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.

28.4. 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

⁶ (1980) 4 SCC 379

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.

28.5. 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.”

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

28.7. 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.

⁷ (1999) 6 SCC 237

28.8. 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)

28.9. 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)

28.10. This principle is applied in all subsequent decisions by the Hon’ble Supreme Court.

28.11. In **KALASAGARAM, SECUNDERABAD CULTURAL ASSOCIATION VS STATE OF ANDHRA PRADESH**⁸, learned single Judge of this Court, as he then was, considered the very issue and held as under:

⁸ 1997 (6) ALD 277

“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.”**

xxxxxx

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”.

(emphasis supplied)

29. The following principles can be deduced from the treasure trove of precedents:

(i) 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.

(ii) Even when there are serious illegalities 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.

30. In the facts of this case, it cannot be said that the decisions of Revenue Divisional Officer and the Joint Collector are so grave

vis-à-vis the grave infirmities noticed in the exercise undertaken by the Tahsildar to order regularization/validation of unregistered sale deed and to issue 13-B certificate. When such infirmities go to the root of the matter, and when substantive right in property being affected, in the absence of relevant documents to justify that proper procedure was followed before validating unregistered sale deed and issuance of 13-B certificate, the order of the Revenue Divisional Officer, remanding the matter to the Tahsildar for taking up exercise *de nova*, affirmed by the Joint Collector, cannot be interfered as it would be amounting to restoring an *ex facie* illegal order, if one exists.

31. Lastly, it was sought to be contended that the Joint Collector erred in relegating the petitioners to avail civil law remedy. This observation of Joint Collector has to be seen in the background of his earlier observations. Firstly, he has recorded grave illegalities on the exercise undertaken by the Tahsildar on the claim of petitioners and then proceeds to note that even after remand by the Revenue Divisional officer, though notices were issued by the Tahsildar on 04.12.2012 parties were not cooperating and proceedings were still pending for more than six years. Further, he noticed rival dispute over the issue and therefore advised to avail civil law remedy. Thus, order of Joint Collector need not be interfered by referring to these observations when his substantive decision is affirmation order of Revenue Divisional Officer remanding the matter to the Tahsildar. Further, in the peculiar facts of the case, it cannot be said that the dispute could best be resolved by competent civil Court.

32. I, therefore, see no merit in the contentions of learned counsel for petitioners. Writ Petition is accordingly dismissed.

33. However, it is made clear that there is no expression of opinion on merits of respective claims. What is discussed herein above is consideration of submissions of learned counsel for petitioners and to test the validity of decision of Revenue Divisional Officer remanding the matter to Tahsildar, affirmed by the Joint Collector. It is open to petitioners to appear before the Tahsildar in pursuant to notice No.B/3141/12 dated 04.12.2012 and to request him to conduct proceedings or to avail civil law remedy, if such remedy is available. If petitioners make an application enclosing copy of this judgment within four weeks from the date of receipt of this judgment, the Tahsildar shall conduct proceedings in pursuant to notice No.B/3141/12 dated 04.12.2012 objectively, uninfluenced by the observations made in this judgment and after affording due opportunity to both parties shall pass appropriate orders as warranted by law. His decision shall be supported by reasons. He shall complete the exercise within eight weeks from the date of receipt of application from petitioners as directed above. If no such application is received by the Tahsildar within the time stipulated above, the Tahsildar is competent to close the file and inform the parties accordingly. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 28.01.2020
Kkm/tvk

Note: LR copy to be marked : Yes

HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NO.23112 OF 2019

Date: 28.01.2020

kkm