



W.P.(MD) No.3431 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.3431 of 2016
and
W.M.P.(MD) Nos.3046 and 8839 of 2016**

K.R. & Sons Constructions P.Ltd.,
rep. by its Director,
K.R.Arunachalam

... Petitioner

/vs./

1.The Additional Chief Secretary,
Commissioner of Land Administration,
Chepauk,
Chennai 600 005.

2.The District Revenue Officer,
Dindigul.

3.The Revenue Divisional Officer,
Kodaikanal.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the First Respondent



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relating to the proceedings No.F3/20211/2005, dated : 24.11.2015 and quash the same.

For Petitioner : Mrs.A.L.Somayaji Senior Counsel for
Mr.V.Perumal

For Respondents : Mr.P.Thambidurai
Government Advocate

ORDER

The above writ petition has been filed for the issue of a Writ of Certiorari to quash the order passed by the first respondent relating to the proceedings No.F3/20211/2005 dated 24.11.2015.

2. The short point placed for the consideration of this Court is whether the appellate authority can exercise the jurisdiction of an original authority, which the original authority had failed to do.

3. The facts which has given raise to the above writ petition are herein below set out.



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4. The property comprised in S.No.59/3, measuring an extent of 0.19.0 hectares and S.No.69/1, measuring an extent of 0.28.0 hectares at Kodaikanal village was assigned by the Special Tahsildar (Assignment), Kodaikanal in favour of one Jothi Peter. D patta was also issued to the said Jothi Peter by orders of the Assistant Collector, Periakulam on 30.01.1982 with reference to the above lands. The assignment was a conditional one, which clearly stated that the land should not be sold within a period of 10 years from the date of the assignment order and in case, it is sold, the assignment would stand cancelled.

5. It appears that the lands were being cultivated by the said Jothi Peter, who in the month of November 1992, after the completion of 10 years from the date of original assignment, had sold the property orally to one Arjunan, S/o.Chockalinga Thevar and his wife, Saraswathy. The said Arjunan and Saraswathi thereafter by sale deed dated 08.12.1992 sold the lands to one Devasudin, S/o. Late.T.S.Alexander, vide Doc.No.1140/1992. He had obtained the patta in respect of the said lands in patta No.536 by orders of the Revenue Divisional Officer, Periyakulam dated 17.02.1993. Since then, he has been in possession and enjoyment of the same.



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6. While so, it appears that the said Devasudin had filed a suit in O.S.No. 200 of 1995 on the file of the District Munsif Court, Kodaikanal against one Kumari, W/o. Raj Annan for declaration and permanent injunction. The said suit was decreed on 05.01.1996. Thereafter, by a registered sale deed dated 30.05.1997, the said Devasudin had sold the property in question to the petitioner company under a registered sale deed.

7. It appears that on 25.11.1997, the second respondent had directed the Officials and the Revenue Divisional Officer to investigate the malpractices in respect of the assignment of lands in Pondi, Kodaikanal and Poomparai villages. By an order dated 11.06.2002, the third respondent unilaterally cancelled the 7 assignments including the assignment in favour of Jothi Peter without giving an opportunity to the petitioner to make their submissions, though their name has been entered in the revenue records.

8. Challenging the same, the petitioner had preferred an appeal before the District Revenue Officer, Dindigul stating that they have not been heard and



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therefore, there was violation of principles of the natural justice. The second respondent had passed an order remanding the matter back to the third respondent for fresh disposal after giving due opportunities to the parties to put forward their case.

9. Against the said order, the petitioner had preferred an appeal before the first respondent. The first respondent despite accepting the facts that the Original Authority had not afforded an opportunity to the petitioner, however proceeded to pass orders on merits stating that since the first respondent was a forum of a higher level than the District, it could examine the matter on merits and that the order of the District Revenue Officer remitting the matter back to the third respondent was failed into significance, as the first respondent has given the said theory. Challenging this order, the petitioner is before this Court.

10. A counter affidavit has been filed by the second respondent denying the statements made in the petition and contending that the first respondent was well within his rights to pass orders. Since the issue now before this Court is purely legal proposition, this Court does not propose to travel into the counter affidavit.



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11. Mr.A.L.Somayagi, learned Senior Counsel appearing for the petitioner would submit that where the Original Authority had failed to follow the principles of natural justice, the appellate Court cannot correct the initial hearing. In support of this argument, he would rely upon the judgment of the Hon'ble Supreme Court in the case of **63 Moons Technologies Limited and others Vs. Union of India and others** reported in **(2019) 18 Supreme Court Cases 401** and reference was made to para 116 therein, which reads as under:-

“It is then urged by learned counsel for the appellant that the provision of an appeal under [Section 22-A](#) of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. [Section 22-A](#) of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under [Section 21\(4\)](#) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before



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the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on "Administrative Law" (5th Edn.). But as that learned author observes (at p. 487), "in principle there ought to be an observance of natural justice equally at both stages", and

"if natural justice is violated at the first stage, the right of appeal is not so much a true right if appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

And he makes reference to the observations of Megarry, J. in Leary v. National Union of Vehicle Builders [(1971) 1 Ch. 34, 49]. Treating with another aspect of the point, that learned Judge said:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right



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*of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. **As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.**” ”*

12. He would also rely upon the judgment of this Court in the case of ***Nuwood Private Limited, Madras Vs. Superintendent of Central Excise*** reported



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in **1980 SCC Online Mad 404** and would rely upon para 9 of the said judgment, which reads as follows:-

“9. It is equally well settled that the effect of a breach of the principles of the natural justice vitiated the original decision cannot be cured by the principles of natural justice being complied with at the appellate stage. Denning LJ. put the matter very clearly in Barnard v. National Dock Labour Board, 1953-2-QBD 18, thus "So far as the decision of the appeal tribunal is concerned, it seems to me that, once the port manager's order is found to be a nullity, it follows that the order of the appeal tribunal is also a nullity. The appeal tribunal has no original jurisdiction of its own; it cannot itself make a suspension order; it can only affirm or disaffirm a suspension order which has been already made. If none has been made, because it is a nullity the tribunal can do nothing.”

13. Mr.P.Thambidurai, learned Government Advocate appearing on behalf of the respondents would submit that the appellate authority, namely the first respondent has on merits considered the plea raised by the petitioner and passed a



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WEB COPY detailed order. The petitioner by not accepting the order passed by the second respondent remanding the matter back to the third respondent for fresh consideration on the ground that the principles of natural justice has been violated having chosen to challenge the said order is estopped from now raising the contention that the original Authority has passed orders behind the petitioner's back. Therefore, they have given up their rights to question the order of the third respondent on the ground of violation of principles of natural justice.

14. Heard the learned counsel on either side and perused the records.

15. The issue before this Court has been answered by the Hon'ble Supreme Court in the judgment reported in **(2019) 18 Supreme Court Cases 401** (*referred supra*). In that case, one of the arguments that was advanced was that an order of nil compensation is also an order passed under Section 396(3) of the Companies Act, which could be appealed.

16. The Hon'ble Supreme Court after extracting the provisions of Section 396 of the Companies Act went on to hold that the prerequisite for an application



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under the section referred above was that the person should first be aggrieved by an assessment of compensation. When no assessment of compensation has been made, the person cannot be stated to be aggrieved by an order. Therefore, the appellate authority should then assess the compensation for itself as the statute entitles such shareholders and creditors to have compensation assessed first by the prescribed authority and then by the appellate authority. In this context, the learned Judges relied upon the judgment of the Hon'ble Supreme Court in the case of *Chartered Accountants of India v. L.K. Ratna and Ors.*, reported in [1986] 3 SCR 1049, where the learned Judges had held that the defect in observing the rules of natural justice in the trial administrative body cannot be cured by observing these Rules in the appellate body. Para 17 of the said judgment was extracted there and the same is also extracted herein below:-

“It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an



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appeal to the High Court against an order of the Council imposing a penalty under [Section 21\(4\)](#) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on "Administrative Law" (5th Edn.). But as that learned author observes (at p. 487), "in principle there ought to be an observance of natural justice equally at both stages", and

"if natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."



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17. Ultimately, the Hon'ble Supreme Court taking note that the order was one of non assessment, remitted the matter back to the prescribed authority to determine the compensation after which the right of appeal under Section 396(3)A would follow.

18. In the instant case, the initial order of the second respondent remanding the matter back to the third respondent has not been questioned by the respondents and it is only the petitioner who has questioned the same. Therefore, applying the ratio laid down in the above judgments that where the Original Authority has violated the principles of natural justice, the Appellate Authority cannot seek to exercise this original right by considering and passing orders on merits, this Court is inclined to allow this writ petition.

19. In the result, the Writ Petition stands allowed. The impugned order of the first respondent in proceedings No.F3/20211/2005 dated 24.11.2015 is hereby set aside and the matter is remitted back to the third respondent for fresh consideration.



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No costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The Additional Chief Secretary,
Commissioner of Land Administration,
Chepauk,
Chennai 600 005.
- 2.The District Revenue Officer,
Dindigul.
- 3.The Revenue Divisional Officer,
Kodaikanal.



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P.T.ASHA, J.

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