

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

+ WRIT PETITION NO.19079 OF 2017

% Dated 23.03.2022

W.P.No.19079 of 2017

#

Lance Naik Korrapati Kishore Kumar

..... Petitioner

Vs.

\$

The State of Andhra Pradesh
Rep. by its Principal Secretary,
Revenue (Assignment), Department,
Secretariat, Velagapudi
Amaravati, Guntur District & 7 others

.....Respondents

JUDGMENT PRONOUNCED ON: 23.03.2022

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ WRIT PETITION NO.19079 OF 2017

% Dated 23.03.2022

W.P.No.19079 of 2017

Lance Naik Korrapati Kishore Kumar
s/o Korrapati Anjaneyulu
occ: Serviceman in Indian Army
R/o Konanki Village, Martur Mandal
Prakasam district

Presently at 18 Armoured Brigade Signal Company
c/o 546 APO Petitioner

Vs.

\$
The State of Andhra Pradesh
Rep. by its Principal Secretary,
Revenue (Assignment), Department,
Secretariat, Velagapudi
Amaravati, Guntur District & 7 othersRespondents

! Counsel for the petitioner : Sri P. Roy Reddy

^ Counsel for the respondents :
1. Respondent Nos. 1 to 5 – Government Pleader for Revenue
2. Respondent No.6 - Government Pleader for School Education
3. Respondent No.8 – Sri V.V.L.N. Sarma

<GIST:

> HEAD NOTE:

? Cases referred

1. 1964 SC 477
2. (2014) 9 SCC 105
3. (2021) 2 SCC 551
4. (2001) 6 SCC 260
5. W.P.No.2397 of 2021 and WPMP No.2703 of 2021 dated 17.09.2021
6. AIR 1971 S.C 862.
7. 1995 (1) ALD 484
8. (2006) 7 SCC 592
9. (1978) 1 SCC 405
10. AIR 1952 SC 16
11. (2014) 3 Supreme Court Cases 502
12. AIR 1952 SC 16

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.19079 OF 2017

ORDER:

- 1) One Lance Naik Korrapati Kishore Kumar filed this writ petition under Article 226 of the Constitution of India to issue writ of certiorari, challenging the Order in D.Dis.No.E5/1861/2016 dated 02.05.2017 passed by the third respondent-Joint Collector and to set-aside the same.
- 2) The facts of the case in nut-shell are that, the petitioner is a native of Konanki Village, Martur Mandal, Prakasam District, serving in the Indian Army since 13.09.2005 as soldier, presently serving as Lance Naik at 18 Armoured Brigade Signal Company c/o 99 APO. When the petitioner was working at 12 Corps Air Support Signal Unit, the Commanding Officer of the Unit addressed a letter dated 26.12.2009 to the District Officer, Prakasam District, duly forwarding the request of the petitioner for assignment of Government Land. In pursuance of the letter of the Commanding Officer and as per B.S.O.15 that, both ex-servicemen as well as serving soldiers are entitled to claim assignment of government land. The petitioner was assigned total extent of Ac.3-43 cents of land in different survey numbers in Konanki Village, Martur Mandal, Prakasam District, vide D.K.No.1/1420 F dated 16.06.2011. The name of the petitioner was entered in the Record of Rights (Khata No.1995) and pattadar passbooks and title deeds were issued in his favour. The petitioner is in possession of the above land and online adangal also reflects his name.

- 3) While so, one Shaik Mahaboob Basha, resident of Ongole describing him as High Court Advocate interfered with the land of this petitioner and started sending petitions and complaints. On 07.08.2014, the Commanding Officer addressed a letter to the District Collector, Prakasam, informing about the harassment being meted out by the petitioner due to acts of one Thanneru Ramanjaneyulu of Bollapally Village and also the conduct of advocate by name Shaik Mahaboob Basha. In the said letter, it was intimated that a serving soldier is also entitled for assignment of Government Land. The Commanding Officer also further addressed a letter dated 02.06.2016 to the Hon'ble Chief Minister and District Authorities.
- 4) The Joint Collector, Prakasam District, purportedly in exercise of Revisional power conferred under BSO 15(18)(1), took up suo-motu revision in D.Dis.No.E5/1861/2016 and passed an order on 02.05.2017, cancelling the assignment granted to the petitioner and the same is impugned in the present writ petition.
- 5) The petitioner contended that the Revisional powers under B.S.O.15(18)(1) can only be exercised if the Revisional authority is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation, he may in the case of an order passed by an officer subordinate to him, set aside, cancel or in any way modify the decision".

- 6) In the instant case, the parameters of the aforesaid provision i.e. BSO-15(18)(1) are nowhere satisfied and the said provision is not at all attracted to the assignment made in his favour. The said assignment was made strictly in adherence to the procedure contemplated in BSO-15, with a recommendation from the then Commanding Officer. The matter was also placed before the Assignment Committee and the chairman of the Assignment Committee i.e. the then M.L.A., who has signed on the application and also affixed his official stamp. The request was only thereafter forwarded to the assigning authority i.e. the Tahsildar, Martur Mandal.
- 7) It is the specific contention that suo-motu revision was taken-up at the behest of the aforesaid advocate by name Shaik Mahaboob Basha, who is a busy body and who has nothing to do with the subject land, which was assigned to a serving soldier. Shaik Mahaboob Basha and the Revenue Divisional Officer, Ongole are shown as the "Complainants" in the said revision.
- 8) It is further contended that, no notice of any nature was served on the petitioner by the Joint Collector, Prakasam at any point of time. In the impugned order, dated 02.05.2017 (which was served on 29.05.2017 to petitioner's brother Sri K.Krishna Murthy), it is shown that registered notices were issued on 7 occasions, but it is not shown that they were served on the petitioner. Further, the Administrative Officer of the 33 Corps Air Support Signal Unit C/o 99 APO had intimated to the District Collector, Prakasam District (R-2) that 3 registered post articles sent in the name of "K.Krishna Kumar" are returned, since no such

person is posted in the unit. Evidently, even the petitioner's name was incorrectly shown on the postal covers, which were not served on the petitioner. The gross negligence on the part of the respondent is writ large *ex facie*. In the impugned order, it is shown that the Tahsildar made an effort to serve a notice on petitioner family members, who are stated to have refused the same and no such effort was made to effect such service nor was substituted service effected by affixing it on petitioner's house, in the village. As such, the impugned order is in utter violation of the principles of natural justice and has been passed behind the petitioner.

- 9) It is submitted that the impugned proceedings have been passed wholly without jurisdiction and without issuing notice to the petitioner and have been issued on the wrong assumption that serving soldiers are not entitled for assignment under B.S.O-15. There is a reference to the statement made by the Director of Sainik Welfare, A.P. in a video conference, saying that "the serving soldier was not entitled for grant of a patta", which is quite contrary to the purport of B.S.O-15. Further, it is also stated in the impugned order that clarification is awaited from the Chief Commissioner Land Administration, on the subject. There is also a reference to Government Memo, dated 28.02.2017 in the impugned order and a further reference to a decision of this Court in W.P.No.28209 of 2014. In the said order, this Court disagreed with the view of the Director, Sainik Welfare, that only Ex-servicemen are entitled for assignment. Curiously, the Joint Collector, Prakasam District (R-3) ordered cancellation of petitioner's

assignment. This is indicative of total non-application of mind on the part of the Revisional authority.

The main grounds urged in the writ petition are:

- a) The impugned order, dt.02.05.2017 passed by the 3rd respondent, is illegal, arbitrary, wholly without jurisdiction, violative of the principles of natural justice and violative of Articles 14, 21 and 300 - A of the Constitution of India and suffers from errors apparent on the face of the record.
- b) The 3rd respondent could not have invoked the revisional jurisdiction under BSO-15 Para- 18(1) in the instant case, inasmuch as none of the prescribed parameters for such exercise of revisional jurisdiction have been satisfied.
- c) The 3rd respondent failed to see that it was not a case of material irregularity in the procedure or decision being grossly inequitable or exceeding of powers by the assigning authority or mistake of fact or fraud/misrepresentation and as such, ought not to have taken-up the so called revision.
- d) The 3rd respondent failed to see that the assignment granted to the petitioner was strictly in terms of the procedure prescribed in BSO-15 Para-11 (2)(1)(g) and that the request of the petitioner was forwarded through and recommended by the Commanding Officer of the Army Unit, in which the petitioner was serving at that point of time.
- e) The 3rd respondent failed to notice that BSO-15 Para-11(2)(1)(g) is in force and that, serving soldiers are entitled for assignment under the Dharkast Rules and ought not to have cancelled the assignment after a lapse of 6 years.
- f) The 3rd respondent's decision is not in consonance with the various circulars of the Government of India and the Army Head Quarters and it also renders BSO-15 Para- 11(2)(1)(g) otiose and nugatory, which is wholly impermissible in law.
- g) The impugned order was passed without any notice to the writ petitioner and hence, cannot be sustained in the eye of law.
- h) The 3rd respondent referred to BSO-15 Para-11 (2)(1)(g) and also took note of the fact that this Hon'ble Court had rendered a decision on the issue of assignments to serving soldiers and that, the revisional authority had sought for a clarification from the office of the Chief Commissioner of Land Administration, on the issue and this being the case, ought not to have cancelled the assignment granted to the

writ petitioner, which was bonafide, proper and in terms of the Dharkasth Rules.

- i) The finding that the assignment was made without the approval of the Assignment Committee, is baseless and is perverse, more particularly in the light of the fact that the assigning authority (Tahsildar) had reported that the Dharkast File was not available and also in the light of the fact that Hon'ble M.L.A, Purchur, Chairman of the Assignment Committee had signed and affixed his stamp on the application of the petitioner.
 - j) The impugned order of the 2nd respondent has the effect of defeating the State policy of providing relief to serving soldiers and also has the effect of rendering otiose the relevant provisions of the Dharkast Rules.
 - k) The observation of the 3rd respondent in Para-2 of the impugned order, dt.02.05.2017 that G.O.Ms.No.743, dt.30.04.1963 allowed grant of patta to Ex-servicemen only, is perverse and shows that the revisional authority totally neglected the other relevant provisions of BSO-15 dealing with grants to serving soldiers.
 - l) The parameters for issuance of a writ of certiorari, as laid down by the Hon'ble Supreme Court in **Syed Yakub vs. Radhakrishnan**¹ are satisfied in the instant case.
- 10) It is contended that the order impugned in the present writ petition is vitiated by serious infirmities, both substantive and procedural which rendered the order illegal. It is also contended that the order passed by the Joint Collector is totally contrary to B.S.O.15(11)(2)(1). On the other hand, the finding recorded by the Joint Collector was to the effect that the assignment was not approved by the Assignment Committee, which is baseless and perverse, in view of the report of the Tahsildar and that the order of the Joint Collector impugned in the writ petition is *ex facie* illegal and sought to quash the same exercising power under Article 226 of the Constitution of India by issuing writ of certiorari.

¹ AIR 1964 SC 477

- 11) The third respondent – Joint Collector, Prakasam District, Ongole filed counter affidavit, denying material allegations, *inter alia*, admitting that Lance Naik Korrapati Kishore Kumar s/o Korrapati Anjaneyulu is serving in Indian Army and permanent resident of Konanki Village, Martur Mandal, Prakasam District.
- 12) It is contended that, as per the connected DK file traced out recently by the Tahsildar, Martur, the Commanding Officer has forwarded the application of the petitioner for grant of government land in Sy.Nos.465/A & B of Konanki Village to the District Collector and the District Collector has forwarded the same to the Tahsildar, Martur through Re.E2/71/2009, dated 24/1/2010 for enquiry, field inspection and report compliance within a fortnight about the action taken. The said letter of the Commanding Officer marked to the Tahsildar, Martur was also found endorsed by the then Hon'ble MLA, Parchur Assembly Constituency. The Letter dated 24.04.2010 of the District Collector was forwarded by the Tahsildar, Martur, on 01.06.2011, to the Additional Revenue Inspector, Martur, for detailed report immediately. The then Additional Revenue Inspector, Martur who got enquired into the matter has reported through his Dis.88/2011, dated 07/06/2011, that the present petitioner Sri Korrapati Kishore Kumar was a bachelor, his family was not having any agricultural Land and that the individual was eligible for assignment of the vacant land in S.Nos.465/1,2,3,5 of Konanki Village, Martur Mandal. Accordingly, the then Tahsildar, Martur Mandal has issued D.K Patta vide DK.1/1420F, dated 16/6/2011 to Sri Korrapati Kishore Kumar for the extent admeasuring Ac.0-85 in Sy.No.465/1, Ac.0-85 in

Sy.No.465/2, Ac.1-00 in Sy.No.465/3 & Ac.0-73 in Sy.No.465/5 of Konanki village of Martur Mandal, without placing the proposal and getting the approval of the Assignment Committee of Martur Mandal.

- 13) Respondent No.3 also admitted about issue of Pattadar Pass Book and Title Deed with Khata No.1195, on which, Sri Shaik Mahaboob Basha, High Court Advocate, has issued a Legal Notice Dated 12.07.2014, stating that assignment has to be made to the servicemen, who retired from service and the application should be made within 12 months from the date of discharge from service, as per G.O.Ms.No.743, dated 30/4/1963 of Revenue Department. He also stated that Mr.Tanneeru Ramanjaneyulu, S/o Jayaramaiah, R/o Bollapalli Village, Martur Mandal, Army No.14345741 Y Rank L/HAV, retired from service represented for grant of land before six months of his retirement through proper channel of his Unit address, to the District Collector and that copies sent to the MRO, Martur, RDO, Ongole, VRO and Revenue Inspector, dated 07.11.1995 and that the District Sainik Welfare Officer, Ongole also recommended application and addressed letter to the MRO, Martur, on 24/11/199, as per the above G.O and waiting for sanction. But, Mr. Korrapati Kishore Kumar, who joined in the Armed Services on 01/11/2009 forwarded his application within 1 year of service, i.e., 26.12.2009 who is serving soldier and getting more than Rs.20,000/- as salary had taken undue advantage, influenced the Revenue authorities through political persons obtained Patta for a total extent of Acs.3-43 Cents in S.No.465/1,

465/2, 465/3 and 465/5 of Konanki Village, though he was a bachelor and he and his family were having Patta lands.

14) The District Collector, Ongole has, vide Lr.No.L.Dis. E2/1817/2014 Dt: 06.08.2014, forwarded the above legal notice, while instructing the Tahsildar, Martur to go through the contents of the Lawyer Notice, enquire and take necessary action as per rules in force and report compliance. Accordingly, the Tahsildar, Martur, who got enquired into the matter, has reported to the Revenue Divisional Officer, Ongole that the petitioner was a bachelor at the time of assignment and he is still in service at present and that his family was also having Acs.2-00 Cents of Patta land in Konanki Village and that therefore the above assignment made to the individual was contradictory to the provisions of G.O.No.743, Dated 30/04/1963 of Revenue Department and BSO 15 (11) (ii).

15) Accordingly, the Revenue Divisional Officer, Ongole has, in Lr. RC/C/1466/2015 Dt: 01.06.2016, submitted report to the District Collector, stating that the assignee (writ petitioner) is a serving soldier and whereas as per G.O.Ms.No.743 Revenue Dt: 30.04.1963, only Ex Service Men are entitled for grant of DK pattas and that the Director, Sainik Welfare has, vide Lr. No.4870/E&W/2007 Dt: 25.06.2007, assured not to entertain any applications, for assignment of lands, received directly from serving soldiers or Commanding Officers, on behalf of serving soldiers and to return all such applications with an advice that the applicant must route his application, only after his retirement, through Zilla Sainik Welfare Officer and whereas in this case, the Writ Petitioner has

submitted his application, within 2 months from the date of his joining in service and that he was bachelor at the time of assignment and that, therefore, the assignment made to the petitioner was contradictory to the G.O.Ms.No.743 and B.S.O 15(11)(ii) and therefore the said assignment deserves cancellation.

- 16) After receipt of report by the Revenue Divisional Officer, Ongole, and after due examination the then Joint Collector has taken up the matter, as suo motu revision, under BSO 15(18)(1) and accordingly issued a Show Cause Notice Dt: 26.08.2016 issued, in File No.COLPKM-ESECOLAS/11/2016-JA (E6) to the petitioner, requiring him to show cause, as to why the DK patta granted to him should not be cancelled for the reasons mentioned therein. The case was adjourned from time to time by the then Joint Collector and totally 7 notices were issued to the petitioner, by RPAD, to the following address:

***"33 Corps, Air Support Signals Unit, C / o 99 Army Post
Office, PIN 917633."***

- 17) The notices dated 26.08.2016, 07.11.2016, 22.11.2016, 21.12.2016, 17.01.2017 and 28.02.2017, all sent by registered post with acknowledgment due and were found as, " consignment details not found", as per the information obtained from the website www.indianpost.gov.in of the postal department and with regard to the notice dated 26.03.2017, it was recorded in the said website that the bag was dispatched to 1710 FPO on 04.04.2017. As the 7 notices were found to be not served, the 8th notice Dt: 01.04.2017 was addressed to his permanent residential address and sent to the Tahsildar, Martur, for service and the

Tahsildar in his Lr.No.RC/C/51/2017 dated 08.04.2017, submitted a report, stating that the family members of the petitioner herein have refused to receive the notice and therefore affixed it on the house of the petitioner and the Gram Panchayat as well.

18) The Joint Collector, besides issuing Show Cause Notice to the petitioner against the DK patta issued to him, has also, vide this office Lr. No.RC/E2/1861/2016 Dt: 14.06.2016, called for the connected record in which the petitioner was granted DK patta, from the Tahsildar, Martur. In reply to the said letter, the Tahsildar, Martur has, in his Lr.No.RC/A/129/2014 dated 18.06.2016, stated that a thorough search was made in his office for the connected DK file; but it was not available and enclosed an attested copy of the relevant page of the DK register, which shows that the petitioner herein was assigned DK patta for the land in question.

19) The then Joint Collector, has taken up the suo motu revision, relying on the letter No.4870/E&W /2007 Dt: 25.06.2007 of the Director, Sainik Welfare, AP, Hyderabad and the recent instructions of the said Director, in the Video Conference, reiterating the earlier instructions and the report of the Revenue Divisional Officer, Ongole, in RC/C/1466 6/2015 Dt: 01.06.2016, in which he has submitted proposals for cancellation of the DK patta in question and the report Dt: 18.06.2016 in RC/A/129/2014 of the Tahsildar, Martur, wherein he has reported that the assignment was made, without the approval of the Assignment Committee. It is further submitted that the file was not

earlier available, but, traced recently on proper search and therefore, failure to furnish copies is not a ground to set-aside the order.

20) It is specifically contended that, patta was cancelled on two grounds and they are as follows:

- (i) To examine as to whether the DK patta was granted to the petitioner herein, duly specifying the conditions mentioned in the said BSO 15(11)(2)(ii)(g) , the Tahsildar has reported, vide his Lr. No.RC/A/129 /2014 Dt: 18.06.2016, that the DK file in which the petitioner was granted DK patta was not available, even after thorough search.**
- (ii) The assignment was not made, with the approval of the Assignment Committee, as reported by the Tahsildar, Martur vide letter dated 18.06.2016.**

21) Respondent No.3 admitted that B.S.O.15(11)(2)(ii)(g) though not considered as it was brought to the notice at the time of issue of show cause notice dated 26.08.2016, but it was taken note in Paragraph No.5 of the impugned order, even without representation from the petitioner. Therefore, it is an irregularity. Apart from that, the assignment was issued without approval of Assignment Committee and it is a material irregularity under B.S.O.15(18)(1), as such, cancellation of patta is in accordance with law.

22) Respondent No.3 further improved the case alleging that, while issuing DKT patta, Tahsildar committed the following material irregularities:

- (i) The A1 notice, inviting the objections against the proposed grant was not published, as required under BSO 15-B (6).*
- (ii) That the fact of application was not published by beat of tom tom in the village, as required under 15-B (6).*
- (iii) That the application was not sent to the VRO, for complying with the above 2 stages of work, as required under BSO 15(6) and also there is no report of the VRO in the prescribed format.*

“A Memorandum”, as required under BSO 15-B(6), which should have been attested by the literate residents of the village.

- (iv) *The Govt. have also, vide Memo No.44577/Assn.POT(2)/2007-1 dated 24.09.2007, given under BSO 15-B(6), that the procedure of assignment of Govt. land, as stipulated under BSO 15-B should be followed strictly.*
- (v) *Also, it was not placed in the Assignment Revenue Committee”*

23) On account of those irregularities, granting assignment in favour of this petitioner, assigning an extent of Ac.3-43 cents in Konanki Village, Martur Mandal is vitiated by serious irregularity and therefore, the assignment was cancelled by exercising power of revision by the Joint Collector in terms of B.S.O.156(18) of the Andhra Pradesh Board Revenue Standing Orders. Consequently, the order impugned in the writ petition warrants no interference by this Court to set-aside the same, exercising power under Article 226 of the Constitution of India and requested to dismiss the writ petition.

24) Respondent No.8 also filed a detailed counter affidavit, denying material allegations, while admitting grant of patta in favour of this petitioner on the application forwarded by the Commanding Officer, 12 Corps Air Support Signal Unit c/o 56 APO, but, specifically contended that the government issued Memo No.44577/Assn.POT(2)/2007-1 dated 24.09.2007 under B.S.O.15-B, specifying the procedure of assignment of government land and they are as follows:

- (i) *The A1 notice, inviting the objections against the proposed grant was not published.*
- (ii) *The application of the writ petitioner was not published by beat of tom tom in the village*
- (iii) *That the application was not sent to the VRO, for complying with the above 2 stages of work*
- (iv) *There is no report of the VRO in the prescribed format. “A Memorandum”, which should have been attested by the literate residents of the village; as required under BSO 15-B(6);*

(v) The application was not placed before the Assignment Review Committee.

25) Respondent No.8 pleaded ignorance about letters dated 07.08.2014 and 02.06.2016 from the Unit Officers of the writ petitioner as there is no dispute as to the entitlement of a serving soldier for assignment of government land. But the question in the writ petition is only to the extent of compliance of procedural specifications for issue of patta while processing the application of eligible persons like this petitioner. However, noting the irregularities, assignment issued in favour of this petitioner, Respondent No.3 passed the impugned order in exercise of suo motu power conferred on him by B.S.O.15(18).

26) It is contended that, Respondent No.8 joined in Army as Artillery Gunman on 13.02.1980, served Indian Army for 17 years and discharged from service on 01.03.1996. About six months prior to his discharge on 06.11.1995, as a serving soldier, Respondent No.8 applied for assignment of land through proper channel and the application was duly forwarded by the Unit Head routing through the District Sainik Welfare Officer, Ongole on 24.11.1995 to the 5th Respondent as per the provisions of G.O.Ms.No.743 Revenue (B) Department, dt. 10.04. 1963. Since no action was taken once again Respondent No.8 submitted another application which was forwarded by the District Sainik Welfare Officer, Prakasam District, Ongole to the 2nd Respondent. Once again Respondent No.8 submitted representations on 03.06 2010, 28.05.2007, 19.12.2011, 2011 etc., to the 2nd Respondent. On 08.03.2014, the Gram Panchayat, Konanki has passed a resolution

expressing no objection for assignment of the land in question to Respondent No.8. Since no action is being taken, Respondent No.8 got issued a legal intimation through 7th Respondent to the District Sainik Welfare Officer, Prakasam District to the official Respondents and to the Unit Officer of the Writ Petitioner. The Unit Office sent Lr.dt: 23.07.2014 advising to interact directly with individual at his present address stated at para No.2. Later, the 2nd Respondent has sent Lr.L. Dis.No. E2/1817/2014, dt: 06.08.2014 to the 5th Respondent enclosing copy of the legal intimation and requesting to take necessary action as per Rules in force under proper reply to the Advocate and report compliance to his office. Once again Respondent No.8 sent another representation dated 18.08.2014 to the 5th Respondent. No reply was given to Respondent No.8. After some time, the 5th Respondent has addressed Lr.Rc.No.A1/129/2014 dt: 25.08.2014 to the 4th Respondent reporting that the bachelor at the time of assignment, that the petitioner was a still in service, that his family has got Ac.2.00 cts of patta land in Konanki village, that the assignment made to the Writ Petitioner is contrary to the provisions of G.O.Ms.No.743, dt: 30.04.1963 and deserves for cancellation etc. Respondent No.8 submitted another representation on 08.09.2014 to the 3rd Respondent. On 05.10.2014, Respondent No.8 and the village elders have sent a written complaint/representation to the authorities requesting to cause enquiry into the matter. On 16.09.2015 once again Gram Panchayat, Konanki has passed detailed resolution to take action against the Writ Petitioner for misrepresenting the facts to the Government, cancel the

assignment made to him and assign the land in question to Respondent No.8. The 4th Respondent has also sent Lr. Rc. NO.C/1466/2015 dt: 16.09.2015 to the 5th Respondent enclosing a copy of the legal intimation dt: 12.07.2015 from 7th Respondent and requesting to enquire into the matter and take appropriate action as per Rules etc. Thereupon the 5th Respondent has sent Lr.Rc. No. A1/129/2014 dt: 05.10.2015 to the 4th Respondent that earlier he has already sent his report dated 25.08.2014 in the matter and enclosing once again a copy of the same. In the above circumstances, the 3rd Respondent has taken up the matter in suo motu revision, sent notices to the Writ Petitioner and finally passed the impugned orders. Thereupon, Respondent No.8 submitted a representation dated 27.05.2017 to the 3rd Respondent requesting to issue pattadar pass books in his favour. Respondent No.8 denied the other allegations made against him, by this petitioner regarding harassment and requested to dismiss the writ petition.

- 27) During hearing, Sri Roy Reddy, learned counsel for the petitioner would contend that, suo motu power can be exercised strictly adhering to the procedure prescribed under B.S.O.15(18) by the third respondent and before cancellation of patta based on any of the grounds enumerated in B.S.O.15(18), a notice has to be served in compliance of principles of natural justice and procedure. But, without serving any notice to this petitioner, assignment was cancelled by exercising *suo motu* power. Apart from that, the reason mentioned in the show cause notice dated 26.08.2016 is different from the reason mentioned in the final order dated 02.05.2017. But, the third respondent improved the case on the

allegation of irregularity to exercise power under B.S.O.15(18) even without issuing notice to this petitioner by way of show cause notice dated 26.08.2016 and invented a different cause for the first time and passed the impugned order dated 02.05.2017 without issuing notice to the petitioner about such ground for cancellation of patta.

28) More curiously, the third respondent again improved his case about non-compliance of the procedure in the counter affidavit which is not a ground for passing the impugned order. Thus, it is evident from the order impugned in the writ petition and counter affidavit filed by the third respondent that the impugned order is vitiated by malafides. Improvement of the case of cancellation of patta by the third respondent itself indicates that the impugned order was passed with a malafide intention somehow to deprive the petitioner from claiming the benefit of assignment, being a serving soldier, though the eighth respondent in the counter affidavit admitted that a serving soldier is entitled to claim patta as per the Board of Revenue Standing Orders. Therefore, the order impugned in the writ petition is vitiated by serious irregularities and requested to set-aside the same by placing reliance in the order in W.P.No.26046 of 2018 dated 31.12.2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and Andhra Pradesh.

29) Whereas, learned Government Pleader for Revenue contended that, there are as many as three irregularities, more particularly, non-compliance of the procedure in granting patta in favour of the petitioner by the Tahsildar. The second respondent

narrated various irregularities in processing the application of the petitioner by the concerned Army officials, so also by the revenue officials to grant patta in favour of this petitioner. Therefore, the Joint Collector exercised suo motu power of revision under B.S.O.15(18) and rightly cancelled the patta. It is also contended that, sending notice to the petitioner's permanent address at Konanki Village, which was refused by the parents of this petitioner is sufficient service for all practical purposes to cancel the patta under B.S.O.15(18) and thereby, the order impugned in the writ petition cannot be set-aside.

30) Whereas, Respondent No.8 while highlighting the irregularities in grant of patta in favour of the writ petitioner with reference to B.S.O.15(18), pointed out the action of the second respondent in not granting assignment in his favour, though he made several applications, while admitting about entitlement of the serving soldier to claim benefit of assignment and requested to dismiss the writ petition, affirming the order passed by the Joint Collector.

31) Considering rival contentions, perusing the material available on record, the points that need be answered by this Court are as follows:

1) Whether the reason mentioned in the show cause notice dated 26.08.2016 is a ground to cancel the patta by exercising suo motu power by the Joint Collector?

2) Whether inventing a different ground in the order impugned dated 02.05.2017 and in the counter affidavit regarding procedural non-compliance vitiates the order passed by the third respondent, exercising power under B.S.O.15(18). If so, whether the order impugned in the

writ petition be quashed issuing writ of certiorari, exercising power under Article 226 of the Constitution of India?

P O I N T Nos. 1 & 2:

32) As both points are inter-connected, I find it expedient to decide both the points by common discussion.

33) Issue of patta in favour of this petitioner assigning an extent of Ac.3-43 cents in Konanki Village, Marturu Mandal, Prakasam District, based on the application submitted by this petitioner through Commanding Officer and cancellation of patta by the Joint Collector exercising power under B.S.O.15(18) are not in dispute. But, the only dispute is with regard to passing of final order dated 02.05.2017 on different ground than the ground mentioned in the show cause notice dated 26.08.2016. Therefore, before deciding other aspects, it is appropriate to decide the first contention based on the material available on record.

34) A show cause notice in RC/E2/1861/2016 dated 26.08.2016 was allegedly issued to the petitioner for cancellation of patta granted in his favour. In the subject of show cause notice, it is stated that the petitioner is found ineligible for grant of patta. The reason stated in the show cause notice 26.08.2016 calling for explanation is as follows:

(1) The individual was assigned Ac.3.43 cent of Govt. land of Ac.0.85 cents in Sy.No.465 65/1, Ac: 0.85 cents in .465/2 Ac:1.00 cents in 165/3 , Ac.0.73 cents in Sy.No.465/5 of Konanki Martur Mandal, vide serial No.1995, OD.K.1/1420F and file No.678/2007, dated: 16/06/2011, whereas, as per G.O.Ms.No.743, dated: 30.04.1963, the application should be made within 12 months from the date of discharge or in the case of death on active service, from the date of intimation to the family of the deceased and whereas the application by the individual for assignment is contradictory to the said provision. This shows that the individual had no even

eligibility to apply for grant of the land, as on the date of the application for the same.

(2) The Director, Sainik Welfare has addressed a letter to the District Collector Prakasam District, Ongole, vide letter 870/E8 W/2007 dated: 25.06.2007, which also reiterate that the application, for assignment of land by Ex- Service Men, should be submitted within 12 months from the date of discharge and the said letter also asked the District Collectors not to entertain the applications for assignment of land coming directly from the serving soldiers or Commanding Officers, on behalf of serving soldiers, whereas the application of K.Kishore Kumar was entertained and forwarded by the District Collector, vide R/E2/71 /2009 Dt: 24.04.2010, to the Tahsildar, Martur, contrary to the directions of the Director.

(3) Sri Korrapati kishore Kumar who had got assigned land of Acs.3-43 under konanki Village of Martur Mandal had forwarded his applications through his unit C /o 56 APO, dated: 26.12.2009, he himself admitted that he was serving in the army since 1st November 2009 and as such the grant of DK patta for the land in question to him is irregular.

35) Based on the above grounds, the third respondent – Joint Collector called upon the petitioner to explain as to why patta should not be cancelled.

36) One of the contentions of the petitioners is that, notice was not served upon him. But, that will be examined at appropriate stage.

37) The reason assigned in the impugned Order dated 02.05.2017 for cancellation of patta of the petitioner is as follows:

“5. After issue of to the Show Cause Notice, to the respondent, in Even No. Dt: 26.08.2016, in another reference received from the Revenue Divisional Officer, Ongole in Rc.C/345/2015, dt.15.08.2016, the eligibility of a serving soldier for assignment was re-examined thoroughly and found that, as per BSO (15)(11) (2)(2)(ii)(g) applications for assignment of lands from the soldiers serving the army should be considered, in case their families volunteer to take up cultivation, on their behalf, subject to the condition if a jawan who has been allotted land is not de-mobilized in the normal course but has been dismissed or court martialled, the land assigned to such person would revert to the Govt., as amended by Govt.Memo No.B1/3388/Rev, dated 11.01.1964, as noted down in the BSO; but the Director Sainik welfare in Video Conference held a few months back has stated that the serving soldier was not entitled for grant of patta. Hence, the Special Chief Secretary to Govt in Revenue Department, Govt. of Andhra Pradesh was addressed to get the matter examined and clarify, as to

whether Commissioner of Land Administration was also addressed, vide this office BSO (15)(11)(2)(ii)(g) is an existence or not. The Special Chief Secretary and Chief Lr.No.COLPKM-ESEC/183/ 2016-JA(E6), dated 05.02.2017 to clarify the matter, and the clarification from the both is awaited. At this juncture, the Govt. Memo NO.24022/2014/Assn(V)/2017 dt.28.02.2017, has been received referencing to the decision of the Hon'ble High Court, dt.13.10.2014 in W.P.No.28209/2014, which shows that the provision of allotment of land to serving soldiers can be made subject to availability of land, also there is no reference in the said Govt.Memo that the BSO (15)(11)(2)(ii)(g) is annulled.

*However to examine, as to whether the D.K.Patta was granted to the respondent duly specifying the conditions mentioned in the said BSO (15)(11)(2)(ii)(g), the Tahsildar, has reported vide R.C.A/129/2014 dt.18.06.2016, that the DK file in which the respondent was granted DK patta is not available, even after thorough search. **The Tahsildar has further reported that the said assignment was made, without the approval of the Assignment Committee, which is not in accordance with law.***

- 38) It is evident from the extracted part of the order that, the reason for cancellation of patta is the basis of report of Tahsildar, where the Tahsildar reported that the assignment was made without the approval of the Assignment Committee, but, it was not the cause mentioned in the show cause notice issued to the petitioner. Therefore, it is clear from the material on record that the reason mentioned in the show cause notice dated 26.08.2016 to submit his explanation as to why patta shall not be cancelled is different from the reason mentioned in the impugned order dated 02.05.2017. In those circumstances, the petitioner is denied from an opportunity to rebut the allegation(s) made against him, if the notice is actually served upon the petitioner. Therefore, it amounts to denial of an opportunity violating the principles of natural justice. Hence, such order cannot be sustained, in view of the law declared by the Apex Court in **Gorkha Security Services vs. Government (NCT of Delhi)**², wherein it was held that, serving

² (2014) 9 SCC 105

of show cause notice is to make the notice understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. In **UMC Technologies Private limited vs. Food Corporation of India**³, the Apex Court held that, that the legal position is that the show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom. Expressed its mind in the show cause notice so that the noticee could have sent suitable reply for the same. In this case, the show cause notice does not fulfil the requirements of the valid show cause notice. In **Tarlochan Dev Sharma vs. State of Punjab**⁴, the Apex Court had held that the orders passed there one of the requirement is that the principle of natural justice is with the proper show cause notice to be served seeking explanation for any omission or commission. It is clear that the facts constituting gravamen of the charge have to be communicated.

- 39) Following the same principles in the judgments referred above, the Madras High Court in **Ellora Restaurant vs. Commissioner of Police**⁵ held that the petitioner has to be put on notice, calling for his explanation for all the reasons. Applying the law laid down by the Apex Court and reiterated by the Madras High Court in the judgments referred supra, the order passed by

³ (2021) 2 SCC 551

⁴ (2001) 6 SCC 260

⁵ W.P.No.2397 of 2021 and WPMP No.2703 of 2021 dated 17.09.2021

the Joint Collector which is impugned in the writ petition is liable to be set-aside.

- 40) Even as per Paragraph No.2 of impugned Order dated 02.05.2017, the Joint Collector took up *suo motu* revision on the ground that the petitioner is a serving soldier, whereas, G.O.Ms.No.743 dated 30.04.1963 allowed grant of patta to Ex-servicemen only, those who make an application within 12 months from the date of discharge or in the case of death, on active service from the date of intimation of the family of the deceased and whereas the application by the petitioner, for assignment, is contradictory to the said provision. Thus, it is evident from the material on record that the reason mentioned for proposed cancellation of patta in the show cause notice dated 26.08.2016 is that, the petitioner was not eligible, as he is a serving soldier, since only ex-servicemen are entitled to claim DKT Patta, in view of G.O.Ms.No.743 dated 30.04.1963. But, the conclusion arrived at the end of the Order dated 02.05.2017 is totally contrary to the reason mentioned in the show cause notice. If, the show cause notice is served on this petitioner, the petitioner would have submitted an appropriate reply to the show cause notice rebutting the allegations made therein. But, after alleged enquiry taken up by the Joint Collector *suo motu*, the cancellation was not on the ground that the petitioner was not an ex-serviceman, but on different ground that the patta was issued without the approval of Assignment Committee. Thus, the petitioner was deprived from rebutting the cause noted in the impugned order by giving explanation, if the notice is served on

him. Therefore, the Order dated 02.05.2017 passed by the Joint Collector on different grounds other than the grounds mentioned in the show cause notice dated 26.08.2016 is *ex-facie* erroneous, as it is in violation of principles of natural justice. Consequently, the order is liable to be set-aside on this ground also.

41) Turning to the other contention that the third respondent – Joint Collector did not serve any notice on this petitioner, enabling him to submit his explanation to the show cause notice as to his eligibility to obtain a patta while in service and without serving any notice, the order was passed. On this ground also, the petitioner sought to set-aside the order.

42) B.S.O.15(18) enables the Joint Collector to take up *suo motu* revision to cancel the patta. But, in the instant case on record, based on the notice got issued by one Mahaboob Basha, practicing High Court Advocate, the file was examined and took up *suo motu* revision exercising power under B.S.O.15(18). According to B.S.O.15(18)(1), the order of the authority making the assignment, if no appeal is presented, or of the appellate authority, if an appeal is disposed of is final and no second appeal shall be admitted. But if, at any time after the passing of the original or appellate decision, the Collector is satisfied that there has been a material irregularity in the procedure or that the decision was grossly inequitable or that it exceeded the powers of the officer who passed it or that it was passed under a mistake of fact or owing to fraud or misrepresentation he may set aside, cancel or in any way modify the decision passed by an officer sub-ordinate to him. No order should be reversed or modified adversely to the respondent without

giving the respondent a notice to show cause against the action proposed to be taken adversely to him. Thus, it is clear from B.S.O.15(18)(1) that, a notice is mandatory for cancellation of patta or to set-aside or to pass any order on the grounds enumerated therein by the Collector.

43) The word 'Collector' is defined under Section 2(2) of the Act and according to it, 'Collector' means the Collector of a district and includes 'Joint Collector' and in view of G.O.Ms.No.77 Revenue dated 22.01.1968, work is distributed among the District Collector and Joint Collector, the Joint Collector is vested with the power to deal with matters relating to pattadar pass books assignment of land. Hence, the Joint Collector is competent to review the orders either on the application of either of the parties or by suo motu to decide the legality, regularity of the order passed by the recording authorities. Therefore, in view of G.O.Ms.No.77 Revenue dated 22.01.1968, the Joint Collector is competent to issue show cause notice.

44) Consciously, the third respondent – Joint Collector issued show cause notice to the petitioner on 26.08.2016, calling upon the petitioner to submit his explanation within the specified time. But, as narrated in the impugned order and the allegations made in the counter affidavit, show cause notice dated 26.08.2016, notices dated 07.11.2016, 22.11.2016, 21.12.2016, 17.01.2017, 28.02.2017 and final notices dated 25.03.2017 and 01.04.2017 were sent to the address of the petitioner with name K. Krishna Kumar, whereas, the name of the petitioner is Korrapati Kishore Kumar. The petitioner admitted that he is holding the rank of

Lance Naik and presently working at 18 Armoured Brigade Signal Company c/o 99 APO. But, notices were sent to “33 Corps, Air Support Signals Unit, c/o 99 Army Post office, PIN 917633”. The details of eight notices sent to the petitioner and the mode of service is enumerated in Paragraph No.8(c) of the counter affidavit and the details are as follows:

Sl.No	No & date of Notice to the respondent	Mode of service	Result of service
1	Show cause notice even No. dt.26.08.2016	Registered post No.RN677981439IN Dt.30.08.2016	Consignment details not found
2	Notice even No. dt.07.11.2016	Registered post No.RN759919234IN Dt.10.11.2016	Consignment details not found
3	Notice even No. dt.22.11.2016	Registered post No.RN759929792IN Dt.25.11.2016	Consignment details not found
4	Notice even No. dt.21.12.2016	Registered post No.RN756796584IN Dt.24.12.2016	Consignment details not found
5	Notice even No. dt.17.01.2017	Registered post No.RN756872073IN Dt.18.01.2017	Consignment details not found
6	Notice even No. dt.28.02.2017	Registered post No.RN780174510IN Dt.28.02.2017	Consignment details not found
7	Final Notice even No. Dt.25.03.2017	Registered post No.RN770733007IN	Bag dispatched to 1710 FPO on 04.04.17
8	Final Notice even No. Dt.01.04.2017	Registered post On 04.04.2017 & through the Tahsildar, Martur	Bag dispatched to 1710 FPO on 09.04.17 Tahsildar, Martur has reported vide Lr.No.RC/C/51/2017 dt.08.04.2017 that the family members of the respondent have refused to take the notice and therefore pasted on the house of the respondent and the Gram Panchayat, Konanki

45) Admittedly, Notices in Sl.Nos.1 to 6 were not served to the petitioner and the consignment details were not found in the website www.indiapost.gov.in. The final notice i.e. Notice dated 25.03.2017 was sent by registered post. But, the bag was dispatched to 1710 FPO on 09.04.2017 and no details as to

delivery of the notice were available in the website. Mere dispatch of the bag without service on the addressee is not sufficient service, since the language employed in B.S.O.15(18) specifically states that, without giving the respondents a notice the show cause, adverse order should not be passed. "Giving" means actual handing over service i.e. actual service of notice or handing over notice to the addressee. Therefore, in the absence of proof that the notices were served, it can safely be concluded that the mandatory requirement under B.S.O.15(18) was not complied with by the official respondents.

- 46) Dissatisfied upon "giving notices" to the petitioner, the third respondent – Joint Collector sent final notice dated 01.04.2017 by registered post on 04.04.2017 through the Tahsildar, Martur. The bag was dispatched to 1710 FPO on 09.04.2017. Again, no proof is filed that the notice was delivered atleast by the postal authorities, as per the information from the website. But the notice sent through Tahsildar, Martur allegedly refused by the family members of this petitioner and the Tahsildar intimated vide Lr.No.RC/C/51/2017 dated 08.04.2017 stating that the family members of the respondents have refused to receive the notice and therefore, affixed on the house of the petitioner and Gram Panchayat, Konanki. The final notice was sent in the name of K. Krishna Kumar, but, whereas, the name of the petitioner is Korrapati Kishore Kumar s/o Korrapati Anjaneyulu. Sending notice in the name of K. Krishna Kumar and tendering the notice to the family members of this petitioner is not proper service, as K. Krishna Kumar is not the person to whom the patta was

granted and proposed to be cancelled. In the absence of any authorization from the petitioner to receive notice(s), the family members are not entitled to receive the notice(s) and thereby refusal of the notices sent to the addressee by name of K. Krishna Kumar by the parents of the petitioner or family members is proper refusal and that they are not supposed to receive the notices of some other person who is unrelated to them. Therefore, refusal of notice by family members of the petitioner/Korrapati Kishore Kumar is proper and that cannot be held to be proper or sufficient service.

47) The Tahsildar intimated to the Joint Collector in Letter Rc.No.51/17 dated 08.04.2017 that the notice was affixed to the house of the petitioner and Gram Panchayat Office, Konanki. But, affixture of notice to the house in the absence of any details where it was affixed at the conspicuous place of the house and affixture of notice at the Gram Panchayat Office are not authorized modes of service under the Act and such notice if any, is to be affixed in chavidi or in any other conspicuous place, or on the notice boards of the Gram Panchayat Office, Primary Co-operative Agricultural Credit Society or School, if any, in the village; or by beat of tom tom in the village; or on the notice board of the office of the Mandal Revenue Officer having jurisdiction over the village; or on the notice board of the office of the Mandal Praja Parishad in which the village is situated.

48) Therefore, affixture of notice on the house of this petitioner parents and at the office of the gram panchayat is not a proper service and such sending notice cannot be held to be in

compliance of mandatory requirement under B.S.O.15(18). Hence, I find that the notices as mandated under B.S.O.15(18) are not served properly and thereby, cancellation of patta by the Joint Collector without giving notice to the petitioner is a grave illegality. On this ground also, the order impugned is liable to be set-aside.

49) Yet, another contention of this petitioner is that, no opportunity was afforded to the petitioner of personal hearing. In fact, no personal hearing is contemplated in B.S.O.15(18). But, the Hon'ble Apex Court held that, no order prejudicial to any person shall be passed unless such person has been given an opportunity of making his representation. Nevertheless, the principles of natural justice require that the person likely to be affected should be given an opportunity of making a representation. Any order passed without giving such opportunity is liable to be set aside. Whether such opportunity includes personal hearing fell for consideration before the Supreme Court in **Travancore Rayon vs. Union of India**⁶. It was held in that case that, though the statutory provision does not require the revisional authority to give a personal hearing to the aggrieved party, if in appropriate cases where complex and difficult questions requiring familiarity with technical problems are raised, personal hearing is given, it would conduct to better administrative and more satisfactory disposal of the grievance of citizens.

50) In the present case, except calling for explanation in the alleged show cause notice issued to the petitioner, no opportunity of personal hearing was afforded before passing any order to

⁶ AIR 1971 S.C 862

enable the petitioner to explain as to his eligibility to claim patta while in service. Therefore, disposal of the grievance of Respondent No.8 by issuing notice and passing an adverse order against the petitioner on the basis of such notice without complying the mandatory requirement under B.S.O.15(18) is a grave illegality and the impugned order is liable to be quashed on this ground.

51) In view of my foregoing discussion, I find that the order impugned in the writ petition is contrary to the principles of natural justice and that the impugned order was passed cancelling the patta on a different ground that the patta was issued without approval of assignment committee. But the reason mentioned in the show cause notice for the proposed cancellation was that the petitioner was not eligible for assignment, being a serving soldier. Therefore, the reason mentioned in the show cause notice dated 26.08.2016 and impugned order dated 02.05.2017 for proposed cancellation of patta are contrary to one another and based on a different reason. Passing such an order is a grave illegality and the petitioner was denuded from refuting such allegation submitting his reply to the show cause notice. Apart from that, no notice was issued to the petitioner in terms of B.S.O.15(18), thereby, the order is vitiated by serious irregularities and contrary to the principles of natural justice and law laid down by the Apex Court in the judgments referred supra and the impugned order is liable to be set-aside. Accordingly, the point is answered in favour of the petitioner and against the respondents.

52) One of the grounds raised by the official respondents initially was that, the petitioner was not eligible for grant of patta, being a

serving soldier as per the show cause notice dated 26.08.2016. But, Respondent Nos.3 & 8 in the counter affidavit admitted that, a serving soldier is also eligible for assignment of land. Even otherwise, as per B.S.O.15(11)(2)(ii), all Jawans domiciled in Andhra Pradesh and serving in the defence forces of India, will after demobilisation be eligible for the assignment of lands in their own villages or elsewhere. However, as per B.S.O.15(11)(2)(ii)(g), applications for assignment of lands from the soldiers serving in the army shall be considered in case their families volunteer to take up cultivation on their behalf, subject to the condition that if a jawan who has been allotted land is not demobilised in the normal course but has been dismissed or court-martialled, the land assigned to such person would revert to the Government.

53) Similar question came up before High Court of Andhra Pradesh in **W.P.No.28209 of 2014** and the Court was of the candid view that, as per Government Memo No.24022/2014-Assn(s)2/2017 dated 28.02.2017 read with B.S.O.15(11)(2)(ii), serving soldiers are also entitled to claim assignment of land.

54) Another contention of Respondent No.3 is that, the application was not forwarded to the State through District Sainik Board and thereby, the procedure has not been followed by the petitioner and the assignment is liable to be cancelled. But, this contention cannot be accepted for the reason that the Under Secretary to the Government of India vide Letter No.25098/XIII/AG/PS5(B)/961/S/D(AG-II) dated 15.06.1964 requested the State Governments to consider favourably the applications from Defence Services personnel for allotment of waste land in their

State. The Letter dated 15.06.1964 is extracted hereunder for better appreciation of the case:

“I am directed to say that it has been brought to the notice of Government that the applications from serving personnel of the Defence Services for allotment of waste land for cultivation forwarded to the various State Governments, have had no results. In the light of the representations received by lower formations from certain serving personnel, I am to request that the authorities concerned may kindly be asked to consider favourably the applications from Defence Services personnel for allotment of waste eland in their State.”

55) Vide Letter No.25098/XIII/AG/PS5(b)/1B05/D(AG-II) dated 25.04.1967, the Under Secretary to the Government of India requested that expeditious action on applications from serving personnel for allotment of Government waste land may be taken and disputes arising from such allotment may kindly be settled as expeditiously as possible. Letter dated 25.04.1967 is extracted hereunder:

“I am directed to refer to Ministry’s letter No..25098/XIII /AG/PS5(B)/961/S/D(AG-II) dated 15.06.1964 on the above subject, and to say that it has been brought to the notice of this Ministry that service personnel are facing great difficulty for the waste lands allotted to them by the civil authorities due to the following reasons:-

- (i) Allotment of land are not made on permanent basis
- (ii) Allotments of lands for home-stand and agriculture are made in different places far away from each other which cause much inconvenience.
- (iii) Lands allotted are at times not free from trouble of the original cultivators.

I am to add that it has also been represented by the service personnel that early action on the requests made on the subject is not taken, even on personal representations to the civil authorities concerned when soldiers are on leave.

In view of the position stated above, I am to request that necessary steps may kindly be taken to remove the difficulties mentioned above. It is also requested that expeditious action on applications from serving personnel for allotment of Government waste land may be taken and disputes arising from such allotment may kindly be settled as expeditiously as possible.

56) Apart from the above two letters, the Andhra Pradesh Board of Revenue Standing Orders did not specify any procedure for forwarding applications of serving soldiers for allotment of waste land in their favour for cultivation by their family members. But, executive instructions were issued from time to time for forwarding the applications from District Sainik Board. Though Andhra Pradesh Board of Revenue Standing Orders are framed in terms of Madras Act. 3 of 1895, the State Government issued instructions from time to time, but the instructions have no statutory force to compel any person to follow their instructions ignoring the procedure prescribed under Andhra Pradesh Board of Revenue Standing Orders. These circulars will not supplement or supplant to the Andhra Pradesh Board of Revenue Standing Orders. When the Central Government addressed such letters, the State Government cannot issue any circular(s) contrary to the communication sent by the Central Government referred above.

57) Similar question came up before High Court of Andhra Pradesh in ***Maddu Tatha vs. Uttaravilli Nagamani***⁷, where, the Court while deciding the validity of B.S.O.15, held that, the law appears to be that all that is found in the form of Board of Revenue Standing Orders may not have the force of law, but such of the orders which are issued by virtue of the statutory powers of the Board will have the force of law. The Board's Standing Orders are both statutory and non-statutory depending upon the fact whether they are issued under any statute or whether they are issued in the form of a Government Order by the Government in exercise of

⁷ 1995 (1) ALD 484

their executive power to issue instructions under Article 162 of the Constitution of India. Standing Order No. 15 relating to disposal of land found in Part II of the Board or Revenue Standing Orders are admittedly issued by virtue of the statutory powers of the Board of Revenue under the Regulations supra concerning the Revenue administration, It is significant to note that the Board of Revenue which was constituted under the Andhra Pradesh (Andhra Area) Board of Revenue Regulation, 1803 which was in charge of the general superintendence of the revenue from whatever source they may arise were also entrusted with many functions including the administration of justice and Courts. Admittedly, no other rule or statute is pointed out to deal with the disposal of lands by the Board of Revenue and now the Commissioner which is equivalent to Standing Order No. 15 and therefore, it must be taken to be the rule having force of law regarding disposal of lands. Therefore, the law now settled appears to be that orders regarding assignment of lands are to be disposed of in a quasi-judicial manner and even the rules contained in the Standing Orders envisages disposal of applications for assignment in the same manner. The Officer who is competent to order the assignment is thus bound by Standing Order No. 15 in regard to disposal of land by way of assignment or otherwise. In sum and substance, the legality, propriety and the correctness of disposal of land by way of assignment or otherwise are to be decided with reference to Standing Order No. 15. There is a clear prohibition to assign the poramboke tank-beds by the assigning officer and if an assignment is contrary to this prohibition, the same cannot be termed as legal. There will be

failure of duty on the part of the officer assigning such a land despite the prohibition. Therefore, even in the normal result of illegal consequences such assignment would become void and unenforceable. The consideration of the object of D-patta being the assignment is forbidden by law and if permitted would defeat the Standing Order No. 15 Para 4(i) and (ii) having force of law and therefore, would not be lawful. It would be a flagrant violation of and repugnant to Section 23 of the Indian Contract Act. The operative portion of Section 23 of the Contract Act makes such transaction of which the object or consideration is unlawful, void. In other words would be void since inception (*void ab initio*) conferring no right on the plaintiff. Her claim of possession over the suit property based on such void document could never thus be lawful.

58) Yet, Respondent Nos. 3 & 8 raised several other contentions in their counter affidavits regarding issue of notification. Respondent No.3 in Paragraph No.16 of the counter affidavit raised an additional ground which is as follows:

“It is true that the writ petitioner was assigned Ac.3-43 cents of land, as shown in the petitioner’s affidavit. But, grant of the said DK patta contains the following material irregularities:

- (vi) The A1 notice, inviting the objections against the proposed grant was not published, as required under BSO 15-B (6).*
- (vii) That the fact of application was not published by beat of tom tom in the village, as required under 15-B (6).*
- (viii) That the application was not sent to the VRO, for complying with the above 2 stages of work, as required under BSO 15(6) and also there is no report of the VRO in the prescribed format. “A Memorandum”, as required under BSO 15-B(6), which should have been attested by the literate residents of the village.*
- (ix) The Govt. have also, vide Memo No.44577/ Assn.POT(2)/2007-1 dated 24.09.2007, given under BSO 15-B(6), that the procedure of assignment of Govt. land, as stipulated under BSO 15-B should be followed strictly.*
- (x) Also, it was not placed in the Assignment Revenue Committee”*

59) Whereas, Respondent No.8 in Paragraph No.6 raised a different ground about procedural non-compliance, which reads as follows:

- (i) *The A1 notice, inviting the objections against the proposed grant was not published.*
- (ii) *The application of the writ petitioner was not published by beat of tom tom in the village*
- (iii) *That the application was not sent to the VRO, for complying with the above 2 stages of work*
- (iv) *There is no report of the VRO in the prescribed format. "A Memorandum", which should have been attested by the literate residents of the village; as required under BSO 15-B(6);*
- (v) *The application was not placed before the Assignment Review Committee.*

60) Finally, in Paragraph No.23 of the counter affidavit filed by Respondent No.3, specific reasons are given for cancellation of patta under B.S.O.15(18) and they are as follows:

- (i) *That the impugned order was passed on the grounds mentioned in para 3 above, as noted in para 7 of the impugned order, but not on the ground of ineligibility of the serving soldiers for assignment, as alleged in the Writ Petition.*
- (ii) *That the BSO 15(11)(2)(ii)(g) relied upon by the petitioner, though not taken into consideration. as it did not come to light, in the Show Cause Notice Dt: 26.08.2016, it was taken into account in para 5 of the impugned order, even without representation from the petitioner.*
- (iii) *That grant of assignment, without the approval of the Assignment Committee is a material irregularity, attracting the provisions of BSO 15(18) * (1) and this is such a case, since the Tahsildar, Martur has reported, vide his Lr. .RC/A/129/2014 Dt: 18.06.2016, that the assignment was made, without the approval of the Assignment Committee. Also, there are other material irregularities enlisted in the grant of patta, as submitted below.*
- (iv) *That when it is required that the assignment should be made, after approval of the Assignment Committee, if the Tahsildar has made assignment, without the approval of such Committee, then certainly, the Tahsildar has exceeded his jurisdiction and in such a case the provisions of BSO 15(18) * (1) attracts to such cases. This case is such a one, since the there was no approval of the Assignment Committee and therefore BSO 15(18) (1) attracted to this case. The petitioner has in para 14 of the petitioner's affidavit contended that it was placed in the Assignment Committee and forwarded by the Chairman of the said Committee, i.e., the then MLA with signature, whereas the Tahsildar's report Dt: 18.06.2016 reveals that it has no approval of the Assignment Committee. Hence, the petitioner is put to strict proof of the same. However, it is submitted to the Hon'ble High Court, mere forwarding of the application of the petitioner by the Chairman of the Assignment Committee to the Tahsildar, cannot be said to be the approval of the Assignment Committee. The Assignment Committee consists of, not only the MLA, but also other members too, and such a Committee has to sit and pass a decision, approving or disapproving the proposal. If the petitioner has such a proof of placing in the Committee, he may produce the same and in such a case of evidence, one of the grounds of the impugned order that it has no approval of the Committee, loses ground.*

- (v) *Even as per BSO (15) (11)(2)(2)(ii)(g), applications for assignment of lands from the soldiers serving the army should be considered, in case their families volunteer to take up cultivation, on their behalf, subject to the condition, if a jawan who has been allotted land is not de- mobilized in the normal course, but has been dismissed or court martialled, the land assigned to such person would revert to the Govt., To examine as to whether such conditions stipulated in the DK patta granted, the connected DK file was reported by the Tahsildar to be not available. But, now the Tahsildar, Martur has reported that the connected file is available and that it is processed in the Assignments - General file containing NO. RC/C/678/07 and on verification of the same, the material irregularities shown in para 23(iii) above are noticed.*
- (vi) *That in the above circumstances, the then Joint Collector has passed the impugned order, based on the material available then, on record.*

61) Hence, it is clear from the admission made by Respondent No.3 in the counter affidavit that, cancellation of patta was not on the ground of ineligibility, but on different grounds. The grounds mentioned in the show cause notice dated 26.08.2016 for proposed cancellation of D.K. patta of serving soldier are as follows:

Grounds for cancelation of D.K Patta of Serving Soldier :

(i) The individual was was assigned Ac.3.43 cent of Govt. land of Ac.0.85 in 465/1 Ac: 0.85 cents in 0.465/2 Ac:1.00 cents in .465/3, Ac: 0.73 cents in SyNO.465/5 of Konanki Martur Mandalvide serial no.1995, O.K1/120F and file .678/2007 dated: 16/2011, whereas, as per G.O.Ms.No.743, dated: 30.04.1963, the application should be made within 12 months from the date of discharge or in the case of death on active service, from the date of intimation to the family of the deceased and whereas the application by the individual for assignment is contradictory to the said provision. This shows that the individual had no even eligibility to apply for grant of the land, as on the date of the application for the same.

(ii) The Director, Sainik Welfare has addressed a letter District Collector Prakasam District, Ongole, vide letter 4870/E8W/2007 dated: 25.06.2007, which also reiterate that the application, for assignment of land by Ex-Service Men, should be submitted within 12 months from the date of discharge and the said letter also asked the District Collectors not to entertain the applications for assignment of land coming directly from the serving soldiers or Commanding Officers, on behalf of serving soldiers, whereas the application of K.Kishore Kumar was entertained and forwarded by the District Collector, vide R/E2/71/2009 Dt: 24.04.2010, to the Tahsildar, Martur, contrary to the directions of the Director.

(iii) Sri Korrapati kishore Kumar who had got assigned land of Acs 3.43 under Konanki Village of Martur Mandal had forwarded his applications through his unit C / o 56 APO, dated: 26.12.2009, he himself admitted that he was serving in the army since 1 ^ (st) November 2009 and as such the grant of DK patta for the land in question to him is irregular.

6. Sri K. Kishore Kumar S / o Anjaneyulu, r/o Konanki Village of Martur Mandal is, therefore, hereby required to show cause, within 15 days, from the date of receipt of this notice, as to why the DK Patta granted, for the lands in question, should not be cancelled, on the grounds mentioned in para 5 above. If he wants to submit his case in person or through Advocate, they may do so, on 17.09.2016 at 11.00 A.M, Collector's Office, Ongole. If he fails to submit his explanation within the stipulated time or failed to avail of the personal opportunity of representation given, it will be presumed that there is nothing to offer and orders deemed fit will be passed, based on the material available on record.

62) It appears from the grounds in the show cause notice that the assignment is contrary to the provisions of Board Standing Orders. The first ground is based on ineligibility i.e. the application should be made within 12 months from the date of discharge on active service. The second ground is that, application for assignment of land by Ex-Service Men, should be submitted within 12 months from the date of discharge. But, in the present case, the petitioner submitted application within 12 months from the date of joining, but not from the date of discharge. The third ground is that, the petitioner had forwarded his application through his unit C/o 56 APO, dated: 26.12.2009, while serving in the army since 01.11.2009 for grant of DK patta, which is allegedly irregular. As the grounds shown in the show cause notice are entirely different from the grounds mentioned for cancellation in the impugned order, as admitted by Respondent No.3 in Paragraph No.23 of the counter affidavit, therefore, it is clear that the grounds mentioned in the show cause notice are different from the grounds based in the order impugned in the writ petition, and such order is illegal and arbitrary, in view of the judgment of the Hon'ble Supreme Court in ***Commissioner of Customs, Mumbai vs. Toyo Engineering Limited***⁸.

63) Though the respondents raised several contentions in the counter affidavit to disqualify the petitioner to obtain patta being a serving soldier in the Army, it is nothing but an improvement and that, Respondent Nos. 3 & 8 cannot supplement or supplant

⁸ (2006) 7 SCC 592

additional grounds or raise a ground which is different from the ground mentioned in the show cause notice. It is a settled proposition of law that, pleading cannot substitute a reason in an administrative order and this view is fortified by the judgment of the Constitutional Bench in ***Mohinder Singh Gill vs. The Chief Election Commissioner, New Delhi***⁹, wherein it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned therein and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise; otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, gets validated by additional reasons/grounds later brought in. In the said judgment, the Constitution Bench referred to earlier judgment in ***Commissioner of Police, Bombay vs. Gordhandas Bhanji***¹⁰, wherein the Apex Court observed as follows:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. As such orders are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed’ they must be construed objectively with reference to the language used in the order itself.”

64) In ***Dipak Babari and another vs. State of Gujarat and others***¹¹, the Apex Court held as follows:

“That apart, it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as

⁹ (1978) 1 SCC 405

¹⁰ AIR 1952 SC 16

¹¹ (2014) 3 Supreme Court Cases 502

laid down by this Court long back in **Commissioner of Police v. Gordhandas Bhanji**¹² in the following words:

..... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

65) In view of the law declared by the Hon'ble Apex Court in the judgments referred supra, the grounds supplemented or substituted for the grounds in the show cause notice which were for the first time mentioned in the counter affidavit or in the order cannot be looked into by this Court and such attempt to supplement the grounds is contrary to the law, as declared by the Hon'ble Apex Court in the judgments referred supra. Hence, the grounds mentioned in the order impugned in the writ petition and the additional grounds raised in the counter affidavit by Respondent Nos. 3 & 8 can never form a basis for cancellation and to uphold the order passed by Respondent No.3/Joint Collector.

66) In view of my foregoing discussion, it is clear that, obviously for reasons best known to the revenue department, more particularly, Respondent No.3 issued notice(s) on the ground that the petitioner is ineligible for grant of patta. But, after alleged enquiry, even without giving notice to the petitioner, the third respondent passed orders on different grounds which is impermissible under law and improved the case raising several additional grounds in the counter affidavit, which is nothing but bad under law. The way in which the revenue department passed

¹² AIR 1952 SC 16

the order impugned in the present writ petition and raised grounds gives scope for drawing an inference about malafides on the part of the third respondent. The soldiers in Army are working at a distant place from their families sometimes alone, without any support either morally or physically, sometimes those places are not accessible to general public with a fear of insecurity and threat to the family members. That is reason for providing the policy to assign land to serving soldiers to create a secured life atleast in future while in service or after discharge from the Army service. But, to frustrate such security in future, the third respondent acted in such manner and exhibited certain malafides by the show cause notice, impugned order and counter affidavit, perhaps at the instance of Respondent No.8 who is competing with the petitioner for allotment of land being an ex-serviceman. If, for any reason, the request of Respondent No.8 was not attended by the revenue authorities, his application can be considered and allotment can be made, subject to his eligibility. But, at the instance of Respondent No.8, got issued legal notice dated 12.07.2014 through Mr. Mahaboob Basha, High Court Advocate. The respondents are not expected/supposed to take such decision to entertain *suo motu* revision after lapse of five years, though no time limit is prescribed, but, it appears that it is reasonable.

- 67) The third respondent/Joint Collector is a Public Officer discharging his public duties. Passing such orders inventing ground(s) other than the grounds mentioned in the show cause notice and raising several other contentions in the writ petition other than the ground(s) mentioned in the show cause notice and

the order is depreciable and such callous approach is not expected from an Indian Administrative Service Officer. Hence, I find that the order impugned in the writ petition is illegal and arbitrary in view of the reasons mentioned above and the same is liable to be set-aside.

68) In the result, writ petition is allowed, declaring the order passed by the third respondent/Joint Collector in D.Dis.No.E5/1861/2016 dated 02.05.2017 as illegal, arbitrary and consequently set-aside the same. No costs.

69) Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:23.03.2022

Note: LR copy to be marked
b/o
SP