

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.24159 OF 2016

ORDER:

One Smt. T. Lakshmi @ Theresamma, resident of Maddilapalm, Visakahapatnam District, filed this writ petition under Article 226 of the Constitution of India, challenging the proceedings of the second respondent – District Collector in Rc.No.1891/2011/E1 dated 12.02.2013 in ignoring the request of this petitioner to issue 'No Objection Certificate' to sell away the land admeasuring Ac.4-59 cents in Sy.No.371/1, Kapulappadu Village, Bheemunipatnam Mandal, Visakhapatnam District, assigned to the petitioner's husband under Ex-serviceman quota vide Patta No.225-5/1402 dated 17.11.1992 and declare the same as illegal, arbitrary, discriminatory and violative of Articles 14, 21 and 300-A of the Constitution of India and principles of natural justice and consequently, set-aside the same, directing the respondents to grant 'No Objection Certificate' to the petitioner to sell-away the land referred above.

The petitioner's husband – Sri T. Nandayya served in the Armed Forces between the years 1944 to 1961, participated in World War-II and discharged from service on 06.10.1961. On his application, the then Tahsildar Bheemunipatnam assigned land admeasuring Ac.4-59 cents in Sy.No.371/1 of Kapuluppada Village, Bheemunipatnam Mandal, Visakhapatnam District on 17.11.1992 vide Patta No.225-5. The land was carved out of main Sy.No.314 and it was formed out of sloppy hill poramboke. The petitioner's husband made application to the then Tahsildar,

Bheemunipatnam on 11.05.1996 to mutate his name in the revenue records, issue pattadar passbooks and title deeds. The Tahsildar ignored the application of the petitioner's husband and did not take any action. He further made similar applications on 18.09.2000 and 08.09.2005, but the fourth respondent ignored the request of petitioner's husband. While so, the petitioner's husband died on 19.09.2005. Subsequent to his death, the petitioner also made application to the fourth respondent – Tahsildar on 23.12.2009. In spite of repeated requests from the petitioner and her husband, the fourth respondent – Tahsildar had neither rejected nor accepted the request of the petitioner.

As the petitioner became old, she proposed to sell the land and approached the Sub-Registrar, Bheemunipatnam along with prospective buyer. However, the Sub-Registrar, Bheemunipatnam refused to receive the document of conveyance stating that the land is recorded as Government Land and included in the prohibited properties list under Section 22-A of the Registration Act and refused to register the same.

Aggrieved by the same, the petitioner approached the Court and filed W.P.No.30568 of 2010 which was disposed of vide order dated 07.12.2010 directing the Sub-Registrar, Bheemunipatnam to receive the document presented and to register the same in accordance with the provisions of Registration Act, 1908. However, the prospective buyer did not come forward to purchase the same stating that, unless 'No Objection Certificate' is obtained from the revenue authorities, he cannot purchase the same, as he would be suffering a lot due to misery and hardship at every stage of dealing

with the land subsequent to registration of the same. Therefore, the petitioner made an application to the respondents for issuing 'No Objection Certificate' to sell the land after expiry of 10 years from the date of assignment to alienate the same in accordance with G.O.Ms.No.1117, Revenue (Assignment) Department, dated 11.11.1993. Respondent No.4 – Tahsildar submitted his report vide letter dated 19.10.2011 categorically stating that the petitioner's family is in possession of the said land for the last 20 years and the said land is fenced with cement pillars and barbed wire and also that cashew, mango and neem trees are existing in the said land. As the petitioner's application for issue of 'No Objection Certificate' was not acted upon, she filed W.P.No.33225 of 2011 which was disposed of by this Court vide order dated 16.12.2011 directing the second respondent to dispose of the application dated 19.09.2011 for issue of 'No Objection Certificate' in accordance with law within eight weeks.

On receipt of the order of the Court, the second respondent sought report from Respondent Nos. 3 & 4 with respect to the assignment made to the petitioner's husband of the said land and also the records pertaining to the said land. In response to the instructions of the second respondent, the fourth respondent submitted report on 04.04.2012, categorically stating that the said land was assigned to the petitioner's husband and they are in possession of the same for the last 20 years. The third respondent also reported to the second respondent vide letter dated 13.06.2012. The second respondent thereafter passed the impugned order dated 12.02.2013 rejecting the application made

by the petitioner dated 19.09.2011 for issuance of 'No Objection Certificate' for alienation of the subject land.

Aggrieved by the same, the present writ petition is filed questioning the order on the following grounds:

- (a) The impugned order was passed, rejecting the application without affording an opportunity to clear the doubts and it was violative of principles of natural justice;
- (b) The second respondent while passing the impugned order made certain observations without affording an opportunity, but recorded a finding that the signature on the patta was not tallying with the signature with the officer who assigned the land by name T. Mohan Babu and therefore, such finding based on Photostat copy is illegal and baseless;
- (c) The second respondent while passing orders, discriminated this petitioner from similarly situated person like T. Mohan Babu who was assigned land in Sy.No.374/2 and land in Sy.No.373/1 to one Choppala Brahmaiah, an extent of Ac.5-00 in Sy.Nos.373/2 and 375/3/1 to Tokada Ramulu, Ac.5-00 in Sy.Nos.373/3 and 374/1 in favour of Sri Sandaka Venkateswarlu under File No.225/1402 in the month of November, 1992. The second respondent granted 'No Objection Certificate' to T. Mohan Babu by the first respondent vide Memo dated 26.04.2008 and three other persons were granted 'No Objection Certificate' by the second respondent vide proceedings dated 07.06.2010. Therefore, there is any amount of discrimination while passing orders by the second respondent and it is illegal, arbitrary and

violative of Article 14 of the Constitution of India.

(d) The second respondent did not consider the sub-division proceedings of original Sy.No.371/1 for the purpose of assignment in favour of Chalamsetty Mangaiah freedom fighter, as indicated in Column No.11 of the Sub-Division statement appears to be frivolous and prima facie incorrect. But the third respondent on erroneous consideration of the facts and circumstances of the case, passed the impugned order, thereby, it is illegal, arbitrary, discriminatory and violative of principles of natural justice and requested to issue a direction as stated above.

The second respondent – District Collector filed counter affidavit, while admitting passing of order and filing of earlier writ petitions before the Court and issue of directions. The impugned order was passed vide proceedings Rc.No.1891/2011/E1 dated 12.02.2013 with the following reasons:

He further submitted that the husband of this petitioner Sri T. Nanadayya, Ex.No.6260294 had sent a representation through Registered Letter no.2374 dated 06.07.1996 to the District Collector stating that, he served in Indian Army from 29.05.1944 to 05.01.1961 and he could not afford to utilize the facilities provided by the Government and due to his health problems, he is unable to eke out his financial needs and requested to provide housing facility. Further represented that, the petitioner's husband filed several representations before the Mandal Revenue Officer, Visakhapatnam and Zilla Sainik Officer, but they have not

considered and finally requested the Collector to provide housing facility. The representation was forwarded to the Tahsildar, Visakhapatnam (Urban) Mandal vide Rc.No.4208/1995/A10 dated 13.07.1996. Therefore, the representation itself is sufficient to disbelieve the patta granted in favour of the petitioner's husband and no agricultural land or house site was assigned under Ex-Serviceman quota.

Without grant of assignment of government land, no question of cultivation of the land or mutation of the name of this petitioner in the revenue records does not arise and therefore, question of issue of 'No Objection Certificate' does not arise. Further, it is contended that from the D.K. Register of the year 1992, there is no entry in the Register with regard to grant of patta in favour of the petitioner's husband and after due verification of the signature of the then Tahsildar, the signature on the patta produced by the petitioner is not tallying to the naked eye. Therefore, the rejection is based on material and not in violation of any procedure or principles of natural justice and the same cannot be declared as illegal, arbitrary and requested to dismiss the writ petition.

Though Sri J. Rama Rao was impleaded as Respondent No.5 vide order in I.A.No.2 of 2021 dated 23.10.2021, no counter affidavit is filed.

During hearing, Sri G. Purushotham Reddy, learned counsel for the petitioner reiterated the contentions urged in the affidavit, mainly contending that, recording a finding that patta is fake

without affording an opportunity prior to passing of such order is violative of principles of natural justice. At the same time, the recording authority found that the signature on the Photostat copy of the patta is not tallying with the signature of the Tahsildar who issued the patta on verification of D.K. Register is illegal and arbitrary and arriving at a conclusion based on the Photostat copy of the patta is not recognized mode of comparison of signatures, thereby, such finding is illegal, arbitrary and requested to set-aside the impugned proceedings in Rc.No.1891/2011/E1 dated 12.02.2013.

Whereas, learned Assistant Government Pleader for Revenue would submit that, when the patta was not granted in favour of petitioner's husband, question of issuing 'No Objection Certificate' to sell the property, though she is in possession and enjoyment of the property does not arise and that the order is supported by good reasons which does not warrant interference of this Court, while exercising power of this Court and requested to dismiss the writ petition.

Considering rival contentions, perusing the material available on record, the points that need be answered are as follows:

- 1. Whether the impugned order is passed in violation of principles of natural justice, discriminating the petitioner from other similarly situated persons viz. T. Mohan Babu and others, to whom the pattas were granted under the same proceedings?***

2. Whether the impugned order is passed by comparing the signature on the Photostat copy of the patta with the signature of the then Tahsildar, without affording reasonable opportunity is in accordance with law. If not, whether the order is liable to be set-aside?

P O I N T Nos.1 & 2:

The first and foremost contention urged by the petitioner is that, no opportunity was afforded to the petitioner before rejecting the application of this petitioner for issue of 'No Objection Certificate', which amounts to violation of principles of natural justice.

The principles of natural justice should be free from bias and parties should be given fair opportunity to be heard and all the reasons and decision taken by the court should be informed by the court to the respective parties. Supreme Court said that arriving at a reasonable and justifiable judgment is the purpose of judicial and administrative bodies. The main purpose of natural justice is to prevent the act of miscarriage of justice. Natural Justice is an important concept in administrative law. The term natural justice signifies basic principles of justice, which are made available to every litigant during trial. Principles of natural justice are founded on reason and enlightened public policy. These principles are adopted to circumstances of all cases. Such principles are applicable to decisions of all governmental agencies, tribunals and judgments of all courts. In the present world the importance of principle of natural justice has been gaining its strength and it is now the essence of any judicial system. Natural justice rules are

not codified laws. It is not possible to define precisely and scientifically the expression 'natural justice'. The principles of natural justice are those rules which have been laid down by the courts as being minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. The main objective behind the reconciliation between the inclusion and exclusion of protection of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interest where the justice demands. After the discussion of the principles of natural justice it may be concluded that the Courts both in India and England in relation to administrative proceedings created various exceptions to the requirement of Natural Justice Principles and procedure thereof. However, these exceptions are all circumstantial and not conclusive, every exception to be adjudged admissible or otherwise only after looking into the facts and circumstances of each case. The exceptions to the principles of natural justice in UK and India mainly relate to administrative proceedings. The Courts in both these countries especially in India created various exceptions to the requirement of natural justice principles and procedures taking into account various circumstances like time, place, and the apprehended danger and so on prevailing at the time of decision-making. It must be noted that all these exceptions are circumstantial and not conclusive. They do not apply in the same

manner to situations which are not alike. They are not rigid but flexible. These rules can be adopted and modified by statutes and statutory rules also by the Constitution of the Tribunal which has to decide a particular matter and the rules by which such tribunal is governed. Every action of the authorities to be regarded as an exception must be scrutinised by the Courts depending upon the prevailing circumstances. The cases where natural justice principles have been excluded by implication suggest that the Courts have accepted the doctrine even though the legislature has not adopted express words to that effect but those cases appear to depend so heavily on their particular circumstances that they do not yield a clear general principle. There are arguable and also explicable instances where the courts have concluded that natural justice was not necessary. In order to invoke the exceptions the decision of the authorities must be based on bonafide Intention and the Courts while adjudicating the post decision dispute must find the action of the concerned authorities to be fair and just and every such exceptions to be adjudged admissible or otherwise only after looking into the facts and circumstances of each case. The main objective behind the reconciliation between the inclusion and exclusion of protection of Principles of Natural Justice is to harmoniously construe individual's natural rights of being heard and fair procedure as well as the public interest. Larger public interest is to be allowed to override the individual's interest where the justice demands. Thus, exclusion of natural justice should not be readily made unless it is irresistible, since the Courts act on the presumption that the legislature intends to observe the principles

of natural justice and those Principles do not supplant but supplement the law of the land. Therefore, all statutory provisions must be read, interpreted and applied so as to be consistent with the principles of Natural justice.

In **D.K. Yadav v. J.M.A. Industries Limited**¹, the Full Bench of Supreme Court held as follows:

“The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely' the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily effecting the rights of the concerned person.

*It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and be given him/ her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In **Mohinder Singh Gill & Anr. v. The Chief Election Commissioner & Ors**² the Constitution Bench held that 'civil consequence' covers infraction of not merely property or personal right but of civil liberties, material deprivations and non- pecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edition, page 1487 defined civil rights are such as belong to every citizen of the state or country they include rights capable of being enforced or redressed in a civil action. In **State of Orissa v. Dr. (Miss) Binapani Dei & Ors**.³, this court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.”*

¹ (1993) 3 Supreme Court Cases 259

² [1978] 2 SCR 272 at 308F

³ AIR 1967 SC 1269

In view of the principle, a reasonable opportunity be granted to petitioner, it is clear from the record that, no opportunity of hearing afforded to this petitioner before passing such an order impugned in the writ petition. Though, no specific procedure is prescribed affording such opportunity to this petitioner, arriving at various conclusions without affording an opportunity before passing such an order is clear violation of principles of natural justice. A bare look at the order impugned in the writ petition, it is evident that, no opportunity was afforded to this petitioner, thereby the order is liable to be set-aside for violation of principles of natural justice.

Another contention raised by the petitioner is that, comparison of signature of the Tahsildar on the Photostat copy of the patta with the signature of the Tahsildar in the D.K. Register physically by the second respondent without affording any opportunity is a serious illegality. A finding is recorded by the second respondent that, on comparison of the signature of the Tahsildar on Photostat copy of the patta with the signature of Tahsildar in D.K. Register, they are not tallying with each other. Such power to compare the admitted signature with the disputed signature is conferred on the Court under Section 73 of the Indian Evidence Act, but not on the administrative authorities. In addition to that, a Photostat copy is a copy taken from mechanical process. If the entries are shown accurately as in the original patta, there is a possibility of arriving at such conclusion. But, the mechanical process does not show the accuracy on account of blurred signatures/defective photo copying. Therefore, such comparison is

impermissible under law, as there is every possibility of change of signatures due to passage of time and there is every possibility to sign on the documents in disguise, so as to obtain a favourable opinion from the handwriting expert. But, what is required as per law is that, any authentic contemporaneous document containing signatures of the parties has to be referred along with the disputed signatures for comparison and opinion.

A similar question came up before this Court in **P. Kusuma Kumari v. State of Andhra Pradesh and another**⁴ wherein this Court held that disputed signature is required to be referred to the expert along with admitted signatures of the party, the Court is bound to refer the document by exercising power under Section 73.

Section 45 of the Act enables the Court to obtain the opinion of an expert on various aspects, including the one relating to the comparison of disputed signatures. An expert would be in a position to render his opinion, only when the original of the document containing the disputed signature is forwarded to him. Further, there can be effective comparison and verification of the signatures, if only another document containing the undisputed signatures of the contemporary period are made available to the expert. The opinion of a hand writing expert involves the analysis of the slant, which a person uses in the matter of putting his signature, and in some cases, the point of time, at which it may have been subscribed. These analyses would become possible only vis-a-vis an original signature; and the signature mark: on a Xerox

⁴ 2015 (1) ALD (CrI.) 995

copy of a document can never constitute the basis. (vide **Bheri Nageswara Rao v. Mavuri Veerabhadra Rao**⁵).

In view of the law declared by High Court in the judgment referred supra, comparison of disputed signatures on the Photostat copy with the original signature of the then Tahsildar in D.K. Register is erroneous. If really, there is any doubt about the signature, the second respondent ought to have called upon the petitioner to produce the original patta for limited purpose of comparison of disputed signature of the Tahsildar on the patta with the signature available in the D.K. Register. Instead of resorting to such procedure, the second respondent himself has gone to the extent of comparing the signature of the Tahsildar appearing on the Photostat copy with the signature in D.K Register without any sanction of law. On the other hand, it is contrary to the law laid down by High Court of Andhra Pradesh in the judgment referred supra.

Yet, another contention of learned counsel for the petitioner is that, the petitioner was discriminated from the similar situated person T. Mohan Babu to whom a patta was granted vide DR File No.225/1402. The respondents did not grant 'No Objection Certificate' to T. Mohan Babu and others, as contended by this petitioner in Paragraph No.5(b) of the writ affidavit. If really, the said 'No Objection Certificate' was granted either by the third respondent in favour of T. Mohan Babu or to three other persons to whom pattas were granted on the same day vide DR File No.225/1402, such denial of 'No Objection Certificate' to this

⁵ 2006 (4) ALD 295

petitioner while granting 'No Objection Certificate' to other similarly situated persons is violative of Article 14 of the Constitution of India. Therefore, such discrimination is sufficient to set-aside the order passed by the second respondent.

In any view of the matter, there is change of procedure for registration of land assigned to Ex-servicemen. Once a property is assigned to an Ex-service man, after lapse of 10 years, the Government will not have any control on the said land and the said land becomes absolute property of the Ex-service man. No reasons are assigned for inclusion of the said properties in the list under Section 22-A of the Registration Act, 1908. The respondents are just dodging the matter instead of following guidelines issued in G.O.Ms.No.279, Revenue (Assn.I) Department, dated 04.07.2016.

The learned Assistant Government Pleader for Revenue, contended that in view of G.O.Ms.No.279 dated 04.07.2016, certain guidelines were issued, in view of the said guidelines, no objection certificate is not required, for sale of property assigned to Ex-service man. As per G.O.Ms.No.279, dated 04.07.2016, the Government clarified in sixth para of G.O as follows:

(i)The procedure of issuing 'NOC' shall be dispense with. There shall be no need for obtaining NOC in all cases of assignment of Ex-servicemen and freedom fighters in which a period of 10 years has expired and there is no dispute on the land with the Government.

(ii)All such cases without dispute shall be deleted from the prohibitory list under Section 22-A of Registration Act, 1908 and furnished to the Registration Department.

(iii) In respect of cases in which there is a dispute with Government about the genuineness of the assignment or otherwise a list of such cases shall be prepared by District Collector and furnished to Registration Department by following the procedure under Section 22- A. The Sub-Registrar shall enter the details of such disputed lands in the online records deleting all other lands in which there is no dispute.

In view of guidelines in G.O.Ms.No.279 dated 04.07.2016, 'No Objection Certificate' is not required for sale of land, assigned to Ex-servicemen, if necessary, on the application of this petitioner or otherwise intimate the same that no 'No Objection Certificate' is required to sell the property, in view of the various G.O.Ms.No.279 dated 04.07.2016 discussed above.

In view of my foregoing discussion, I find that the order passed by the second respondent/District Collector impugned in the writ petition i.e. Rc.No.1891/2011/E1 dated 12.02.2013 is in violation of principles of natural justice, discriminatory hit by Article 14 of the Constitution of India, as the similarly situated persons are discriminated. The conclusions arrived by the second respondent comparing the signatures of the Tahsildar on Photostat copy of the patta with the signature appearing in the D.K. Register is without any authority of law and that, no 'No Objection Certificate' is required to sell the property in terms of various G.Os referred supra; consequently the order is not sustainable under law. Hence, the order passed by the second respondent/District Collector in Rc.No.1891/2011/E1 dated 12.02.2013 is declared as illegal, arbitrary and consequently set-aside the same while remanding the matter to the second respondent – District Collector and afford reasonable opportunity to this petitioner before passing appropriate orders. In case, 'No Objection Certificate' is necessary for the petitioner, Respondent Nos. 1 & 2 shall adopt the same procedure for consideration of the application of this petitioner, which was similarly applied by T. Mohan Babu and three others and pass appropriate orders in accordance with law.

In the result, writ petition is allowed, declaring the order passed by the second respondent/District Collector in Rc.No.1891/2011/E1 dated 12.02.2013 as illegal, arbitrary and consequently set-aside the same while remanding the matter to the second respondent – District Collector to pass appropriate orders after affording reasonable opportunity to this petitioner. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.11.2021

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