

CASE NO.:  
Appeal (civil) 2447 of 2004

PETITIONER:  
G. Srinivas

RESPONDENT:  
Government of A.P. and Ors.

DATE OF JUDGMENT: 20/09/2005

BENCH:  
S.B. Sinha & C.K. Thakker

JUDGMENT:  
J U D G M E N T

S.B. SINHA, J :

The scope and extent of application of the principles of natural justice is in question in this appeal which arises out of a judgment and order dated 15.09.2003 passed by a Division Bench of the High Court of Andhra Pradesh in Writ Appeal No.1929 of 2001 reversing the judgment and order dated 12.10.2002 passed by a learned Single Judge of the said Court in Writ Petition No. 3479 of 1997.

Plot No.7-A measuring 2 acres 38 guntas situated in Shaikpet village is the subject matter of dispute between the parties. The Appellant herein claims right, title and interest over the said plot relying on or on the basis of an unregistered deed of sale dated 11.11.1949 AD purported to have been executed by one Khaja Moinuddin Ansari in favour of his father. The said Shaikpet village was formerly a Sarfekhas village and after the merger thereof in 1949, the administration thereof vested in the State.

One Khaja Moin Nawaz Jung Bahadur was said to be the Foreign Minister in the Nizam regime. With a view to commemorate the Silver Jubilee Celebrations, the Jubilee Hills Municipality was constituted by including the lands situated in Sarfekhas village. The then Government in order to develop the Jubilee Hills Municipality into a planned city divided the land situated in Survey Nos. 403 into 169 plots and allotted the same in favour of various Nawabs and Nobles on certain terms and conditions which included the payment of specified amounts to the Government.

The Municipal Corporation of Hyderabad is the successor of the Jubilee Hills Municipality. The contention of the Appellant is that the said Plot No.7-A was allotted in favour of Khaja Moinuddin Ansari by the Government, who, as noticed hereinbefore, sold the same in favour of his father.

An application was filed for issuance of supplementary sethwar and no objection certificate. By an order dated 09.01.1985, the said plot was derecognized. On the other hand, the contention of the State appears to be that Khaja Moinuddin Ansari is in fact Moin Nawaz Jung Bahadur, who during the police action was sent to the United Nations of Organization by the then Nizam to raise the issue of police action by the Union of India and he having failed therein left for Pakistan and never returned to India; whereupon by reason of Notification No. 5 dated 15.09.1949, all his properties were declared as evacuee properties in terms of Hyderabad Administration of Evacuee Property Regulation which was published in the Hyderabad Gazette on 19.12.1949. The relevant portion of said notification reads as under :

"By virtue of power vested in one as custodian under section 6 of the Hyderabad Administration of Evacuee

Property Regulation, I hereby declare that the following properties are Evacuee properties within the terms of the said regulation and therefore, vest in me.

NAGENDRA BAHADUR  
Custodian

1. All immovable property of Moin Nawaz Jung Bahadur e.g. bungalows, Muligies and lands etc., at Begumpet gunfoundry etc., including all shares, securities etc., as also property in Aurangabad and elsewhere in the state.

2. All immovable property of Begum Moin Nawaz Jung as also the shares and securities."

Taking advantage of the absence of the said Khaja Moinuddin Ansari, several persons advanced false and frivolous claim thereupon. One K. Satyamma filed a writ petition wherein some order was passed. Similarly, one Khaja Moinuddin Ansari through a purported holder of General Power of Attorney K. Sudarshan also filed a writ petition. A claim over the said plot was also made by one M. Shanker Rao.

The Appellant herein in view of the entertainment of the said writ petition by the High Court also made a representation before the Government. By GOMS No.955 dated 17.09.1992, it was directed :

"In view of the above said findings and observations and in view of the fact that this is also a similar case, the Government consider it just and proper to set aside the orders of de-recognition of plot No.7-A measuring an extent of Ac. 2.38 guntas issued in the Government Memo Second read above and to direct the Collector, Hyderabad to issue no objection certificate and supplementary shethwar in favour of Sri G. Srinivas, the Successor in title after satisfying himself about the documents as was done in the case of Smt. A. Pentamma in Govt. Memo No. 2436/Assn. III(2)/85-21 dated 29.8.1990 to meet the ends of natural justice."

As no action was taken, a writ petition came to be filed by the Appellant herein, being Writ Petition No.2024 of 1996. The writ petition was disposed of directing the Government of Andhra Pradesh to complete the inquiry contemplated in Memo dated 16.07.1994. It was further observed :

"8. It is submitted by the learned Government pleader that the land in question is an evacuee property and hence, the Government is contemplating to take necessary consequential action as warranted under law. This aspect is not the subject matter for enquiry in this writ petition. It is so open to the Government if so advised to proceed in accordance with law in this regard.

9. As and when the enquiry is contemplated in Memo. Dated 16.7.1994 is completed, the second respondent, District Collector, shall take appropriate action to implement G.OMs. No.955 without any further delay, preferably within six months from the date of receipt of a copy of the enquiry report."

The Collector of Hyderabad District, however, drew the attention of the Government that issuance of a supplementary sethwar was not possible for the reason stated therein. He before sending his report had given a notice to the Appellant on or about 15.11.1993 asking him to be present in his office on 22.11.1993 along with the relevant documents and also the address particulars of Moin Nawaz Jung for taking necessary action in the matter. Pursuant to or in furtherance of the said notice, a written submission was filed by the Appellant wherein he appeared to have denied and disputed the fact that Plot No.7-A was a part of evacuee property contending that Khaja Moinuddin Ansari was not an evacuee. The Collector of Hyderabad District by Memo. dated 23.12.1993 issued another notice asking the Appellants to reply satisfactorily with supporting evidence on the points specified therein. The Appellant in reply thereto, inter alia, stated that the Government had already made inquiries, heard his counsel and arrived at certain findings but without prejudice thereto, however he sought to clarify the points raised therein. The Collector thereafter allegedly made an inquiry upon verification of the documents filed by the Respondents herein and submitted a detailed report to the Government, opining that the Appellant's case does not deserve any consideration on the grounds mentioned therein.

By a notice dated 16.07.1994, the parties were asked to appear before the Minister for Revenue on 23.07.1994. It is not in dispute that a detailed written submission was filed by the Appellant and his counsel was heard fully on the said date. However, it appears from the records that another notice was issued to the Advocate of the Appellant which was not served. Before us the original records have been produced from a perusal whereof, it appears that the envelope containing the notice was returned to the Government with an endorsement of the postal authority thereupon. It is not possible to cull out any meaning from the said endorsement.

On 29.11.1996, the Appellant made a representation for giving another opportunity to him of hearing but the Government of Andhra Pradesh issued GOMs dated 26.12.1996 holding inter alia:

"The petitioner has never agitated against the Notification No. 5 dated 15th September, 1949 declaring the properties of Khaja Moinuddin Ansari alias Moin Nawas Jung Bahadur as Evacuee Properties till 10th April, 1997"

Questioning the said order, the Appellant filed a writ petition wherein a learned Single Judge, inter alia, held that the notification issued under Regulation 6 of the Hyderabad Administration of Evacuee Properties Regulation was bad in law, as the same did not contain material particulars of the properties of the evacuee as was mandatorily required. It was further observed that in the said notification, the name of Moin Nawaz Jung Bahadur was mentioned, but the allotment was made to Khaja Moinuddin Ansari and, thus, two persons are not the same. It was further held :

"Accordingly, the impugned order is set aside and consequently it is declared that the property belonged to one Khaja Moinuddin Ansari; and the father of the petitioner having purchased the same under sale document and the petitioner having succeeded the property after the death of his father, he shall be deemed to have acquired the ownership of the property in question. The respondents are directed to implement the orders passed by the Government in G.O.Ms. No 955, dated 17.9.1992 within a period of two months from the date of receipt of a copy of this order."

The Division Bench on an appeal made by the Government of Andhra Pradesh set aside the said judgment.

Assailing the judgment of the Division Bench, Mr. K.K. Venugopal, the learned Senior Counsel, appearing on behalf of the Appellant, would contend that the State of Andhra Pradesh could not have reopened the matter in view of GOMs. No.955 dated 17.09.1992 without initiating a proceeding under the Evacuee Property Regulation as by reason of the said Government Order the Appellant derived a right wherefrom he could be deprived only upon compliance of the principles of natural justice. In the aforementioned situation, the State was required to issue a notice to the Appellant so as to enable him to deal with the question not only as regard vesting of Plot No.7-A in the Government under the Hyderabad Administration of Evacuee Property Regulation but also that Khaja Moinuddin Ansari and Moin Nawaz Jung Bahadur were one and the same person. In absence of such a notice it was urged that the findings arrived at by the State in the impugned order were without jurisdiction.

Mr. Venugopal would contend that the only ground upon which the notice dated 16.07.1994 was issued is that as to why the words 'supplementary sethwar' in para 8 of the GOMs. No.955 dated 17.09.1992 should not be deleted. The learned counsel would further submit that keeping in view the fact that no notice could be served upon the Advocate of the Appellant, as he had shifted his premises in view of the representation made by the Appellant on 29.11.1996 prior to the passing of the impugned order, a fresh opportunity of hearing should be directed to be given.

Mr. K. Sundara Vardan, learned Senior Counsel appearing on behalf of the Respondents, on the other hand, would submit that the principles of natural justice had fully been complied with, as would appear from the fact that the Collector had put the Appellant on notice that Plot No.7-A was an evacuee property and furthermore Khaja Moinuddin Ansari and Khaja Moin Jung Bahadur were one and the same person.

It was further urged that the question as to whether Plot No.7-A has validly been declared to be an evacuee property or not, can be raised only by an evacuee or a person claiming through or under him in an appropriate proceeding and not in a collateral proceeding.

In view of the order proposed to be passed, it is not necessary for us to consider the rival contentions raised at the bar in details. It is beyond any cavil that some findings were arrived at by the Government of A.P. in favour of the Appellant in terms of GOMs No.955 dated 17.09.1992. The said order, however, may not be said to have attained finality in the sense that the Collector had been specifically directed to issue a supplementary sethwar in the name of the Appellant and he was supposed to do so upon satisfying himself in that behalf. Such a satisfaction on the part of the Collector could be arrived at only upon application of mind on the claim of the Appellant. If during inquiry, the Collector came to know that the property in question was in fact an evacuee property and both Khaja Moinuddin Ansari and Khaja Moin Nawab were one and the same person, nothing prevented him from bringing the same to the notice of the State. The State also cannot be said to have acted illegally or without jurisdiction in issuing the show cause notice to the Appellant inter alia for rectifying the mistakes as evidently the said fact had not been brought to its notice before issuing GOMs. No.955 dated 17.09.1992. However, despite the fact that the Appellant had availed the opportunities to respond to the questions raised by the Collector in the notice dated 16.07.1994 he was merely asked to explain as to why the words 'supplementary sethwar' should not be deleted from the GOMs. No.955 dated 17.09.1992. If the intention of the State was to recall the entire order being GOMs. No.955 dated 17.09.1992, it should have said so explicitly. Mr. Sundara Vardan may be right in his submission that when the Appellant had been given ample opportunities of hearing and he had filed a detailed written submission, it was not necessary for the State to issue a second show cause notice but the fact remains that such a notice was issued.

We are not oblivious of the fact that in response to the notice dated 16.07.1994, the learned Advocate appeared for the Appellant before the Minister for Revenue and filed written submissions on 23.07.1994. Yet again in response to the notice dated 14.06.1996, the learned Advocate for the Appellant appeared and filed a detailed representation on 21.06.1996 and also argued the matter. Yet again pursuant to the notice dated 08.11.1996, the parties were heard on 16.11.1996. However, the notice issued on 08.11.1996 does not appear to have been served asking the counsel for the Appellant to appear on 16.11.1996. Furthermore, while passing the order dated 30.11.1996, the Minister for Revenue does not appear to have taken into consideration the representation of the Appellant for further hearing filed on 29.11.1996.

An order passed by mistake and ignorance of the relevant facts indisputably can be reviewed, if inter alia, it is found that a fraud was practised or there was wilful suppression on the part of the Appellant.

It is in the aforementioned situation, we are of the opinion that a further opportunity of hearing may be given to the Appellant. For the aforementioned purpose, it is not necessary for the State to issue another notice inasmuch as in view of the allegations and counter allegations made in the writ petition, special leave petition as also the counter affidavits filed on behalf of the Respondents, each party before us is aware of the contentions raised on behalf of the other side. The appropriate authority of the State may, therefore, give an opportunity to the Appellant to be heard and an appropriate order may be passed thereafter.

However, it is clarified that all the parties would be at liberty to raise all contentions in the said proceeding.

We, however, do not appreciate the approach of the learned Single Judge while passing his judgment dated 12.10.2002. He did not consider the question as to whether validity or otherwise of the notification dated 15.09.1949 issued under Regulation 6 of the Hyderabad Administration of Evacuee Property Regulation could have been questioned in a collateral proceeding. He further did not consider the fact that the question of title could not be determined in a writ proceeding; nor the identity of a person could conclusively be found out therein. The learned Single Judge furthermore did not advert to the limited scope of judicial review, namely, that an administrative order passed by the State can be questioned only on limited grounds and while entertaining a writ petition, the writ court does not act as an appellate authority.

For the reasons aforementioned, both the judgments of the learned Single Judge and the Division Bench are set aside. The appeal is allowed with the aforementioned observations. However, in the facts and circumstances of the case, there shall be no order as to costs.