

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.2519 of 2020

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue an appropriate Writ more particularly one in the nature of Writ of Mandamus declaring the order of the 4th respondent dated 05.10.2019 made in Rc.B/262/2019 and interfering with the possession and enjoyment of the petitioners over the land admeasuring Ac.0.30 cents in R.S.No.904/1 of Kotha Edara Village, Agiripalli Mandal, Krishna District as illegal arbitrary and violative of principles of natural justice and without jurisdiction and consequently direct the respondents not to interfering with the possession and enjoyment of the petitioner over the land admeasuring Ac.0.30 cents in R.S.No.904/1 of Kotha Edara Village, Agiripalli Mandal, Krishna District.”

Petitioner No.2 is the absolute owner of the land admeasuring Ac.0.30 cents in R.S.No.904/1 of Kotha Edara Village, Agiripalli Mandal, having inherited the same from his father. The said site is being used for tethering cattle, keeping hayrick and dung heap since long time. Earlier there were thatched huts in the said site for tethering cattle and falling down regularly due to cyclones, about five years ago, the petitioners raised tin sheet shed in the said land and fenced the same with barbed wire. Petitioner No.1 and her husband are residing in one room in the shed, obtained power supply and drinking water tap.

While the matter stood thus, on 30.01.2020 the Village Revenue Officer, served an order dated 05.10.2019 alleging that the land admeasuring Ac.0.30 cents in R.S.No.904/1 of Edara Village was assigned to Narayanapu Subbamma, but presently said land is in possession of petitioner No.2. It is contended that Form-1 notice was issued to the original assignee, however, whereabouts of the original assignee is not available, Form-II notice was issued to

petitioner No.2, but no explanation was offered. The impugned order itself shows that no notice as mandated in Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007 was issued, consequently the impugned order is liable to be set aside in view of non-compliance of mandatory requirement and the petitioners are requested to set aside the order.

Heard the learned counsel for petitioners and learned Assistant Government Pleader for Revenue (Assignments).

On perusal of the order impugned in the writ petition, it is clear that the original assignee Smt.Narayanapu Subbamma sold away the above said assigned land in contravention of the provisions of sub-Section (1) and (2) of Section 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the Act 9 of 1977). According to Rule 3, notice in Form-I and II shall be served on both transferee and transferor, if the assignee contravened Section 3 of the Act 9 of 1977, and the Government proposed to resume the land for contravention of Section 3 of Act 9 of 1977. In the present facts of the case, no notices were served.

In any view of the matter, when fourth respondent failed to comply the procedure mandated under Rule 3 of Rules framed in 2007, the entire proceedings are vitiated. This issue is squarely covered by judgment of this Court in ***M/s Sudalagunta Sugars Limited., v. The Joint Collector, Chittoor and another***¹.

This Court can exercise jurisdiction under Article 226 of Constitution of India, when administrative authorities failed to follow the procedure and pass any order. The jurisdiction of this Court is

¹ (2017) 2 ALD 529

though limited, circumscribed by certain limits, in **West Bengal Central School Service Commission v. Abdul Halim**² the Apex Court reiterated the following principles of judicial review.

“It is well settled that the High Court in exercise of jurisdiction Under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision making process to ascertain whether there was such infirmity in the decision making process, which vitiates the decision and calls for intervention Under Article 226 of the Constitution of India.

In any case, the High Court exercises its extraordinary jurisdiction Under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the Petitioner, or whether there has been lapse in performance by the Respondents of a legal duty.

The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

*In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan v. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory Rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.*

The sweep of power Under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ Court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

² 2019 (9) SCALE 573

However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ Court does not interfere, because a decision is not perfect."

When the administrative authorities failed to strictly adhere to procedure, this Court can exercise power of judicial review under Article 226 of Constitution of India and pass appropriate order, setting aside the order passed by quasi judicial authority or administrative authority, by applying the principles laid in **West Bengal Central School Service Commission v. Abdul Halim** (referred supra).

In view of my foregoing discussion, I find, it is a fit case to set aside the order impugned in the writ petition, on the ground of violation of Rule 3 of Rules framed under Act 9 of 1977 in 2007.

In the result, the writ petition is allowed, declaring the action of fourth respondent in passing order vide proceedings Rc.B.262/2019 dated 05.10.2019 as illegal and arbitrary, consequently the same is hereby set aside. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

05.02.2020
Ksp