

(2002) 10 AP CK 0014

Andhra Pradesh High Court

Case No: W.A.Nos. 121 and 122 of 2001

B.G. Laxman (died) per L.Rs.

APPELLANT

Vs

Joint Collector and Others

RESPONDENT

Date of Decision: Oct. 8, 2002

Acts Referred:

- Andhra Pradesh Record of Rights in Land Rules, 1989 - Rule 19, 19(1), 5, 5(2)
- Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 - Section 11(1), 4, 4(1), 5, 5(1)

Citation: (2003) 1 ALT 3 : (2002) 3 APLJ 340

Hon'ble Judges: S.R. Nayak, J; Dubagunta Subrahmanyam, J

Bench: Division Bench

Advocate: G. Ramakrishnaiah and Vedula Venkataramana, for the Appellant; Govt.

Pleader for Revenue for Respondent Nos. 1 to 3, Mahipath Rao, for Respondent Nos. 4 to 7 and T. Amarnath Goud, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.R. Nayak, J.

Both the writ appeals are directed against the same judgment of the learned single Judge dated 7-12-2000 in W.P.No. 15242 of 1999. Writ Appeal No. 121 of 2001 is by writ petitioners 1 to 6 whereas Writ Appeal No. 122 of 2001 is by writ petitioners 7 to 12.

2. The dispute relates to a mutation ordered by the Mandal Revenue Officer by virtue of the power conferred on him u/s 5 of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971 (Act No. 26 of 1971) (for short "the Act"). The mutation was ordered by the Mandal Revenue Officer by his order dt. 10-12-1996. The said order of the Mandal Revenue Officer has been confirmed both by the appellate authority and the revisional authority. The learned single Judge of

this Court has also dismissed the writ petition wherein the validity of those orders was called in question by the writ appellants.

3. The background facts leading to the filing of the writ petition be noted briefly as under: Respondents 4 to 7 filed an application before the Mandal Revenue Officer in form No. VI(A) u/s 4(1) of the Act requesting the Mandal Revenue Officer to direct mutation of entries in the revenue records in terms of the judgment dated 27-6-1996 passed in O.S.No. 28 of 1982 on the file of the District Munsif at Medchal, Ranga Reddy District. The Mandal Revenue Officer on receipt of the said application caused a notice in form No. VIII prescribed under Rule 19 of the A.P. Record of Rights in Land Rules, 1989 (for short "the Rules") and on consideration of the evidence and the material placed before him, directed the mutation of the entries in the names of respondents 4 to 7.

4. Before the appellate authority as well as the revisional authority, the main contention of the writ appellants was that the Mandal Revenue Officer did not adhere to the mandatory provisions of Sub-section (3) of Section 5 of the Act inasmuch as he did not issue any individual notices to the writ appellants and therefore, the order passed by the Mandal Revenue Officer directing mutation of entries in the revenue records in the names of respondents 4 to 7 is nullity in the eye of law. This contention was dealt with both by the appellate authority and the revisional authority and both the authorities have opined that the Mandal Revenue Officer had complied with the procedure substantively. The revisional authority further took notice of the fact that the writ appellants being aggrieved by the judgment and decree passed in the suit O.S.No. 28 of 1982 have filed a suit being O.S.No. 510 of 1996 on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District for declaration that the decree passed in O.S. No. 28 of 1982 by the District Munsif at Medchal is nullity in the eye of law and also for recovery of possession of the said land and the said suit is pending.

5. In the background of this factual matrix, M/s. G. Ramakrishnaiah and Sri V. Venkataramana, learned counsel for the appellants contended mainly that the procedure prescribed under Sub-section (3) of Section 5 of the Act is mandatory in terms and since admittedly the Mandal Revenue Officer did not issue individual notices to the writ appellants, his order could not have been sustained by the appellate and the revisional authorities as well as the learned single Judge of this Court. Sri Venkataramana contended that Sub section (3) of Section 5 of the Act contemplates two kinds of notices, viz., individual notices to those persons whose names are entered in the revenue records of the land in respect of which mutation is sought and also a general notice to others who may be having right or interest in such a land. Sri Venkataramana would maintain that issuance of notice in Form No. VIII prescribed under Rule 19 of the Rules could not be equated to the personal notice contemplated under Sub-section (3) of Section 5 of the Act to those persons whose names are entered in the revenue records of the land. Sri Venkataramana

also contended that if the Court were to find that the Mandal Revenue Officer passed the order directing mutation of the names in favour of the contesting respondents 4 to 7 in breach of the mandatory provision, only on that ground his order is liable to be struck down for violation of the principles of natural justice as well as infraction of the procedure prescribed by the Act without going into the question of prejudice.

6. Sri Mahipathi Rao, learned counsel for the contesting respondents 4 to 7 on the other hand contended that individual notice was not necessary to the writ appellants. Alternatively, the learned counsel would maintain that even assuming that individual notice was necessary having regard to the provisions of Sub-section (3) of Section 5 of the Act, simply because, notice was not served in that mode, there is no justification for the Court to interfere with the order made by the Mandal Revenue Officer as affirmed by the appellate and the revisional authorities as well as the learned single Judge of this Court in the absence of any prejudice shown by the writ appellants. The learned counsel also contended that the writ appellants have had a fair and reasonable opportunity both before the appellate authority and the revisional authority to put forth their case and in fact both the authorities considered the claims of the writ appellants on merits and looking from that angle also, it is not permissible for the writ appellants to put forth the plea of violation of the principles of natural justice before this Court. The learned counsel would submit that in the matter of enforcement of principles of natural justice and fair play in action, there is no hard and fast rule and the only thing to be seen by the reviewing Court under Article 226 is whether the person who makes grievance with regard to principles of natural justice has had a fair and reasonable opportunity to put-forth his case and contest the case of the other side and in the instant case, according to the learned counsel, the writ appellants have had such an opportunity. In that regard, the learned counsel would place reliance on the judgment of a Division Bench of this Court in *Ch. Anitha and Ors. v. State of Andhra Pradesh* 2002 (2) ALT 299 = 2001 (2) ALD 358

7. The learned Government Pleader for Revenue would also support the contentions on behalf of the contesting respondents and maintain that under Sub-section (3) of Section 5 of the Act, no personal notice was necessary to the writ appellants; the writ appellants were quite aware of the general notice issued in Form-VIII under Rule 19 of the Rules; that the writ appellants did not plead any prejudice on account of non-issuance of individual notice to them. The learned Government Pleader would conclude that no case was made out to interfere with the order of the Mandal Revenue Officer which has been affirmed not only by the statutory appellate and revisional authorities but also by the learned single Judge of this Court.

8. In the context of the contentions of the learned counsel for the parties, the basic question that arises for decision is whether any substantive ground is made out to interfere with the order of the learned single Judge affirming the orders made by

the statutory authorities particularly in the context of fact-situation of this case. It is trite that the mutation entries would not decide the title questions. The title questions have to be decided by competent civil Courts. The decree on the basis of which mutation was sought and ordered has been sought to be nullified by filing a suit, O.S.No. 510 of 1996, by no other than the writ appellants themselves. It is also admitted fact that the writ appellants have lost possession of the land by virtue of the execution of the decree passed in O.S.No. 28 of 1982. Nevertheless, the pointed arguments by Sri Venkataramana is that Sub-section (3) of Section 5 of the Act mandates that individual notices should be issued to all those persons whose names are entered in the record of rights of the land in question and since the names of the writ appellants are entered in the records of rights of the land in question, they should have been served with individual notices and since there is nothing on record to show that such notices were issued to the writ appellants, the mutation order passed by the Mandal Revenue Officer should be condemned as a nullity in the eye of law. In support of the plea, learned counsel placed reliance on the judgment of the Supreme Court in [M/s. Madan and Co. Vs. Wazir Jaivir Chand](#), .

9. Sub-sections (1) to (3) of Section 5 of the Act read as under:

"Amendment (and updating) of Record of Rights:--

(1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, the recording authority shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence therefore and shall carry out the amendment in the record of rights in accordance with such determination;

Provided that no order refusing to make an amendment in accordance with the intimation shall be passed unless the person making such intimation has been given an opportunity of making his representation in that behalf.

(2) Where the recording authority has reason to believe that an acquisition of any right of a description to which Section 4 applies has taken place and of which an intimation has not been made to him under that Section and where he considers that an amendment has to be effected in the record of rights, the recording authority shall carry out the said amendment in the record of rights.

(3) The recording authority shall, before carrying out any amendment in the record of rights under Sub-section (1) of Sub-section (2) issue a notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. A copy of the amendment and the notice aforesaid shall also be published in such manner as may be prescribed. The recording authority shall consider every objection made in that behalf and after making such enquiry as may be prescribed pass such order in

relation thereto as he deems fit."

10. It is true that the Mandal Revenue Officer who is the primary authority on receipt of intimation of the fact of acquisition of any right referred to u/s 4, before directing mutation of entries, is required to issue notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. What Sub-section (3) mandates is undoubtedly issuance of notice to all persons who may be having right or interest in the land in question in respect of which mutation is sought. The Legislature itself has not prescribed any particular mode of service in Sub-section (3) of Section 5 of the Act. No other provisions of the Act were brought to our notice by the learned counsel who argued before us which prescribe any particular mode of notice to be served under Sub-section (3) of Section 5 of the Act. In the absence of such prescription by the lawmaker itself, the Governor of Andhra Pradesh in exercise of the powers conferred by Sub-section (1) of Section 11 of the Act has framed the Rules. Rule 19 of the Rules reads as follows:

"19. (1) The notice referred to in Sub-section (3) of Section 5 of the Act shall be in Form VIII.

(2) Such notice together with a copy of the amendment shall also be published in the manner specified in clauses (a) to (e) of Sub-rule (2) of Rule 5."

11. Should it be noticed that the validity of Rule 19 is not assailed in the present writ petition. Therefore, we should take that Rule 19 is valid and it is made in accordance with the rule-making power conferred on the Governor. Therefore, the only question to be considered is whether the procedure prescribed under Rule 19 of the Rules has been adhered to by the Mandal Revenue Officer before he passed the impugned order under Sub-section (1) of Section 5 of the Act directing mutation of entries in favour of respondents 4 to 7. Sub-rule (1) of Rule 19 mandates that the notice that is required to be issued under Sub-section (3) of Section 5 of the Act should be in Form-VIII. Form-VIII prescribed under Rule 19(1) reads as follows:

"FORM-VIII

[See Rule 19(1)]

NOTICE

Whereas the undersigned has received an intimation of the fact of acquisition of a right as described in the schedule hereunder and it appears that an amendment has to be made in the Record of Rights in consequence thereof.....

and/or

Whereas the Recording Authority has reason to believe that an acquisition of a right has taken place as described in the schedule hereunder and it appears that amendment has to be made in the Record of Rights in consequence thereof.

Now, therefore, under Sub-section (3) of Section 5 of the Andhra Pradesh Record of Rights in Land and Pattadar Pass Books Act, 1971.

All persons interested or affected are hereby required to show cause on or before.....(date to be specified not being earlier than 30 days from the service/publication of the notice) as to why the amendment should not be carried out.

you

◆◆.. ◆◆.. ◆◆.

◆◆..

All persons interested or affected are also required to appear before the undersigned on (date not earlier than forty five days from the service/publication of the date of notice) at..... (Place)..... (time) in connection with the enquiry proposed to be held in respect of the above matter.

Recording Authority."

12. The language employed in form-VIII provides a key in understanding the intendment of the rule-making authority. If it was the intendment of the rule making authority that individual notices should be served on all those persons whose names are entered in the revenue records as contended by Sri Venkataramana, the language to be employed in para (4) of the notice would have been different. The phrase "all persons interested or affected are hereby required" clearly indicates that a kind of general notice is required to be issued informing all the affected/interested persons who may be having a say in the matter if the Mandal Revenue Officer were to allow the application filed under Sub-section (1) of Section 5 of the Act. Therefore, we do not find any warrant or justification to read some thing into the provisions of Sub-section (3) which is not there and hold that Sub-section (3) of Section 5 contemplates not only general notice but also individual notices to all those persons whose names are entered in the revenue records.

13. Looking from another angle also, we do not find any justification to interfere with the order of the learned single Judge. It is quite often said and reiterated by the constitutional Courts that principles of natural justice are handmaids and they are required to be insisted and enforced only to see that justice is done and not to thwart justice. It is very pertinent to notice that in the entire writ affidavit filed in support of the writ petition, the writ appellants have not specifically averred that they were not aware of the general notice issued in Form-VIII by the Mandal Revenue Officer under Rule 19 of the Rules. The only consistent contention urged

before all the authorities and the learned single Judge was that the mandatory procedure prescribed under Rule 5 was not complied with by the Mandal Revenue Officer.

14. The third circumstance which weighed with us in not interfering with the order of the learned single Judge is that as already pointed out supra, the writ appellants themselves have filed a suit for a substantive relief of declaration as well as for recovery of possession. The title claimed by the writ appellants has to be decided in the suit. It is also pertinent to note that this suit was instituted by the writ appellants even before the Mandal Revenue Officer directed the impugned mutation by his order dated 10-12-1996.

15. In the result, we dismiss the writ appeals. However, we direct the learned Senior Civil Judge, Ranga Reddy District to expedite the trial of the suit O.S.No. 510 of 1996 and dispose of the same within a period of six months from the date of receipt of the order.

16. Registry is directed to forthwith send a copy of this order to the learned-Senior Civil Judge, Ranga Reddy District.