
(1955) 10 AP CK 0030

Andhra Pradesh High Court

Case No: Writ Petition No. 635 of 1953

Tavvineni Gangappa

APPELLANT

Vs

State of Madras (now
Andhra) and Another

RESPONDENT

Date of Decision: Oct. 19, 1955

Acts Referred:

Constitution of India, 1950 – Article 226

Citation: (1955) 10 AP CK 0030

Hon'ble Judges: Umamaheswaram, J

Bench: Single Bench

Advocate: P. Ramachandrareddi, for the Appellant; I. Baliah, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Umamaheswaram, J.

This is an application for the issue of a writ of certiorari to quash the order of the
-Government of Madras in

Memorandum No. 98745 F-52/3, dated 18-3-1953. The case of the Petitioner is that he
was in Sivayiiama. occupation of Ac. 11-81 of assessed

waste land in Manila Village, Anantapur District bearing S. No. 40/2-B ever since 1949
and that he applied to the revenue authorities for

assignment of the said land of Darakhast. The Tahsildar of Anantapur granted the land of
patta to the 2nd Respondent herein. The Petitioner

preferred an appeal to the Revenue Divisional Officer, Anantapur who cancelled the patta
granted in favour of the 2nd Respondent. The Revenue

Divisional Officer also refused to assign the land on patta to the Petitioner. Against this order, an appeal was preferred before the Collector

Anantapur and the Collector ordered assignment in favour of the 2nd Respondent, though no appeal was filed by the 2nd Respondent against the

order of the Revenue Divisional Officer. The Petitioner thereupon filed a revision petition to the Board of Revenue and the Board of Revenue

cancelled the assignment in favour of the 2nd Respondent and ordered assignment of the land, to the Petitioner by its order dated 15-7-1952. The

Board of Revenue also directed the Tahsildar Anantapur to issue the "D" Form in Petitioner's name and the Petitioner paid the assignment fee on

5-9-52. The 2nd Respondent moved the Government and the Government by its order dated 18-3-1953 held that they were not convinced

about the bona fides of 2nd Respondent the Petitioner therein who claims to be a landless poor man." Even without giving notice to the Petitioner

herein, the Government set aside the order of the Board of Revenue, observing as follows:

The Respondent Sri Gangappa is 70 years old and possesses no cattle. He is not therefore likely to engage himself in direct cultivation. The

Government are not convinced also about the bona fides of his claim that he is a sivoijamadar of the land in question.

In the result, the Government directed that the orders of the Revenue Divisional Officer, Anantapur in his proceedings L. Dis. 6330/51-B, dated

23-8-1951 should be restored i.e., that the land should not be assigned to either of them. The Petitioner has consequently filed this Writ Petition to

quash the order of the Government.

2. In the counter "affidavit on behalf of the Government, it is stated that the Petitioner is not a sivoijamadar and that he was only a farm servant of

K. Balayya, the erstwhile sivoijamadar. It was further contended that the Government was not bound to give notice to the Petitioner, that it was at

liberty to revise the order of the Board of Revenue and that the order is not a judicial or quasi-judicial one liable to be quashed under Article 226

of the Constitution.

3. Three questions arise for consideration in the Writ: (i) Whether the Government is entitled to interfere and set aside the order of the Board of

Revenue; (ii) Whether the order of the Government is vitiated by the omission to issue notice to the Petitioner before setting aside the order of the

Board of Revenue and (iii) whether the order of the Government is an administrative order not liable to be quashed under Article 226 of the

Constitution.

4. The answer to the first question appears to be rather simple. Paragraph 15 of Board's Standing Order No. 15 provides for one appeal from

every original decision in Darkhast cases whether it is passed by the Tahsildar, the Divisional Officer or the Collector as the case may be.

According to paragraph 17, the order of the authority making the assignment, if no appeal is presented, or the authority to whom an appeal lies

under paragraph 15, if an appeal is presented, is final and no second appeal shall be admitted; but a right of revision is conferred under that

paragraph on the Collector and the Board of Revenue in respect of the orders passed by the Subordinate Authorities.

There is no provision in the Board's Standing Orders reserving a right of revision in the Government to set aside the orders of the Subordinate

Authorities to whom the power of Darkhast, that mentioned in sub-paragraph (2) of paragraph 9, is given viz. the right to dispose of assessed

waste lands at their discretion. That sub-paragraph does not empower the Government to interfere with the Orders passed by the Board of

Revenue or the Subordinate Authorities in accordance with the provisions of B. S. O. No. 15.

5. In *Secretary of State v. Kasturi Reddy*, ILR 26 Mad 268 at p. 282 (A), the question arose whether a grant made under the darkhast rules by

an officer empowered to make could be annulled or revoked by the officer who made the grant, by his successor in office or by the Governor in

Council. Bhashyam Iyengar J. discussed the entire law bearing on the darkhast rules and observed as follows:

It is, therefore, clear that in the exercise of the authority conferred by Government under the Darkhast rules on a Tahsildar (including a Deputy

Tahsildar), Divisional Officer, Collector and the Board of Revenue, their respective action in the disposal of lands under these rules is not subject

to any control other than that specially provided by the darkhast rules, by way of appeal from any of the officers in the district to an officer in the

district or to the Board of Revenue as the case may be." At page 283, he laid down that "the grant, therefore, cannot be annulled or revoked by

the officer who made the grant by his successor in office, or even by the Governor in Council. Under the very terms of the authority conferred

upon the various classes of officers, a grant of land made by any one of them within the scope of his authority is subject only to one condition i.e., it

may be revoked or annulled by an officer of a higher grade on appeal preferred to him.

6. This decision was followed by Govinda Menon J. in *State of Madras v. Subbaraju*, 1952 1 Mad LJ 689: (AIR 1953 Mad 233) (B), and it

directly governs the present case. The question that was posed by the learned Judge was "whether the Government has got any all-pervading or

supervening power to interfere for whatever reason it may be with the orders passed by the subordinate revenue authority in accordance with the

provisions of the Board's Standing orders in the grant of darkhast." The learned Judge, following the observations of Bhashyam Aiyangar J. in the

case stated supra, answered the question in the negative and observed as follows:

If the contention put forward on behalf of the learned Government Pleader is accepted, then it comes to this, that the Government as the principal

can revoke an agreement or grant made by its duly constituted agent without giving any reasons whatever. I do not think that I should go to the

extent contended by the learned Counsel.

I respectfully follow this decision and held that the Government having delegated its powers to the several authorities as provided in B. S. O. No.

15, has no further right to interfere with an assignment duly made by the subordinate authorities within the scope of their authority and in

accordance with the provisions of B. S. O. No. 15. The grounds on which the right may be set aside are stated by Bhashyam Aiyangar J. in ILU

2(3 Mad 268 at p. 282 (A), at p. 283 namely fraud, misrepresentation or mutual mistake as to any matter act essential to the agreement and they

are now embodied in paragraph 17 of B.8. O. No. 15. The learned Government Pleader contended that the decision of Govinda Menon J. is

incorrect and that I should refer the matter to a Bench. I reject his request as I am in entire agreement with the reasoning of Govinda Menon J.

Moreover the decision of Bhashyam Aiyangar J. referred to supra not only is clear on the point but is also binding.

7. The next argument of the learned Government Pleader that the Board's Standing Orders are only departmental rules framed for the guidance of

the officers and that the right of the Government to assign or refuse to assign the property vested in the Crown is not controlled by the Board's

Standing Orders. This argument was repelled by Full Bench in C8 Mad LW 206: K. Nagarathnammal Vs. S. Ibrahim Saheb and Another, .

Delivering the judgment of the Full Bench, Bala Krishna Ayyar J. analysed the "" nature and scope of the Standing Orders of the Board of Revenue.

He observed at page 216 (of Mad LW): (at pp. 313 of AIR), as follows:

But even with reference to matters not governed by statutory provisions or rules but governed only by the Standing Orders of the Board L of

Revenue, the v. passage we have extracted above is liable to be misunderstood. We are unable to subscribe to the view that where a rule already

preexists and provides for any specific matter, still when an individual case comes upon before the Revenue Board, it is open to the Board,

notwithstanding Be the existence of the rule, to decide that case In any manner it thinks fit, even in contravention of the existing rule.

In other words, the Board cannot ignore the existing rule by treating-the order made in that particular case as an amendment of the rule. That the

Government or the Board has the power to punned the rules should make no difference; both the bound to dispose of the matters that come up

therefore them in accordance with the rules at the Sept.) 195T Andh. Pra. D.P./29 time in force on the subject. what we have said about the

Board also applied to the Government.

It appears from the observations of Bhashyam Aiyangar J. at page 277 in ILR 26 Mad 268 (A), that the darkhast rules have all been made with

the previous approval and sanction of the Government though no authentic record of these rules and of the sanction of the Government thereto is

available. Following the Full Bench decision, I hold that it is not open to the Government to set at naught the Board's Standing Orders or claim a

residuary power to interfere with the orders passed by the Board of. Revenue or the Subordinate Officer.

The learned Government Pleader sought to contend that the observations of the Full Bench referred to supra are really obiter dicta as there was no

necessity to constitute a Full Bench to consider the correctness of the Bench decision of Govinda Menon J. and Basheer Ahmed Sayeed J. in

L.P.A. No. 225 of 1952 (Mad) (D). He further urged that the Full Bench was only concerned with the validity of the rules framed by the

Government or by the Board in pursuance of statutory powers and not with the Standing Orders issued by the Government or by the Board with

the approval of the Government. I do not agree with this contention. In the order of reference made by Raja Gopala Aiyangar J. he pointed out

that there was a conflict.

I am, therefore, unable to hold that the observations of the Full Bench, holding that Timmayya's case, L.P.A. No. 225 of 1952 (Mad) (D), was

decided under a misapprehension as regards the true scope and effect of the Standing Orders of the Board of Revenue, are obiter dicta. I also do

not think that in preference to the Full Bench decision I am bound to follow the overruled decision in L.P.A. No. 225 of 1952 (Mad) (D), on the

ground that it was delivered by the Madras High Court prior to 5-7-1954. Moreover, Salmond in his treatise on Jurisprudence (10th Edition)

states at page 189 as follows:

A precedent overruled is definitely and formally deprived of all authority. It becomes null and void, like a repealed statute, and a new principle is

authoritatively substituted for the old.

Following that passage it must be held that the decision in L.A.P. No. 225 of 1952 (Mad) (D), is null and void. Though the Full Bench case was

decided subsequent to 5-7-1954 and is, therefore, not binding on this Court, I am Inclined to follow it, as, in my opinion, it lays down the correct

law. I do not, therefore think it necessary to refer this case to a Full Bench to consider the correctness of the decision in L.P.A. No. 225 of 1952

(Mad) (D).

8. In the above view, the second question does not arise for consideration. Moreover, as the answer to the second question depends upon the

nature of the order passed by the Government, namely whether it is an administrative or a quasi judicial order. I shall deal with it along with the

third contention.

9. A careful perusal of the several paragraphs of B.S.O. No. 15 makes it abundantly clear that the powers exercised by the several officers are

either Judicial or quasi-judicial. Paragraphs 4 and 5 deal with the nature of applications for assessed lands and to whom they should be made.

Paragraph. 6 prescribes the procedure to be followed on receipt of applications.

Paragraphs 8 and 9 lay down the rules as to how the lands should

be granted on darkhast when there is one applicant or more than one applicant.

Paragraph 15 provides for appeals and paragraph 17 for revision.

The procedure to be adopted in hearing appeals is laid down in paragraph 19, An analysis of the several paragraphs leads me to the only

conclusion that the orders passed, by the several authorities including the Board of Revenue are judicial or quasi-judicial orders. The same view

was also taken by the Full Bench of the Madras High Court in 63 Mad LW 206: K. Nagarathnammal Vs. S. Ibrahim Saheb and Another, .

10. Several cases were filed at the Bar wherein the distinction between an administrative order and a quasi-judicial order is pointed out. I do not

think it is necessary to- refer to these decisions in view of the Supreme Court decision in Bombay v. Khushaldas S. Advani, AIR T950 SC 222

(E), Kania C. J. accepted the definition of a judicial act of May C. J. in Regina (John M Evoy) v. Dublin Corporation, 1878 2 LR In 371 at p. 376

(F). Reference was thereafter made to the test laid down by Atkin L. J. in R. v. Electricity Commissioners, 1924 1 KB 171 (G), and to the

analysis made by Blesser L., J., in The King v. London County Council, 1931 2 KB 215 at p. 243 (H), of the four conditions necessary to issue a

rule of certiorari namely, whenever any body of persons (1) having legal authority (2) to determine questions affecting the rights of subjects and (3)

having the duty to act judicially (4) not in excess of their legal authority. According to Kania C. J. the word "quasi-judicial" necessarily implies the

existence of the judicial element in the process leading to the decision. Applying those tests, I hold that the orders passed under B.S.O. No. 15 are

quasi-judicial orders.

11. The learned Government Pleader contended that the orders passed by the officers under the darkhast rules are not quasi-judicial orders

inasmuch as there is no lis between the parties, or, in other words, there is no proposition and opposition. I do not agree with this contention.

When there is more than one claimant for the land there is a lis as the authorities have to decide their claims inter se. The decision of the Tahsildar

or the Revenue Divisional Officer or the Collector making the assignment to any of them is also liable to be challenged in appeal. It is only when

there is a single claimant that it might be said that there is no lis.

But that a lis is not always necessary to hold that an order is a quasi-judicial is pointed out by Atkin L. J. in 1931 2 KB 215 (H). The observations of

lessor L. J. were approved by Kania C. J. in AIR 1950 SO 222 (E). Das J. also discussed this aspect of the matter at page 259 and pointed out

that there are many cases where the act of a statutory authority has been accepted as a quasi-judicial act, although there were not two opposing

parties over whose disputes the authority was to sit in judgment. W, A. Robson in his treatise on ""Justice and Administrative Law"" (3rd Edn.)

states at page 71 that ""we cannot say rigidly that without a lis inter partes there can be no judicial act"". There is, therefore, no force in this

contention of the learned Government Pleader that a Us is always necessary to constitute an act a judicial act.

12. The revenue authorities assigning the islands of the Government under the darkhast rules exercise powers similar to the transport authorities

granting permits under the Motor Vehicles Act. It is clear that the darkhast rules "do not by themselves confer any right on any applicant to claim

and obtain a grant of land on darkhast. Similarly, under the Motor Vehicles Act, no person is entitled to a permit as of right, even if he satisfies all

the prescribed conditions. But it has been held by, the Supreme Court in Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , that though the

transport authorities are administrative bodies, they still exercise quasi-judicial functions in the matter of the grant of permits.

In my opinion, that revenue officers assigning lands under the darkhast rules exercise quasi-judicial functions like the transport authorities and the

order passed by the Board of Revenue under B.S.O. No. 15 in revision is also a quasi-judicial order. In this connection, I might note that the

learned Government. Pleader conceded that if the order passed by the Board of Revenue is not an administrative or ministerial order but only a

quasi-judicial order, the Government cannot set it aside in exercise of its prerogative or residuary powers.

13. I also hold that the order that was passed by the Government on the application of the 2nd Respondent is not and cannot be an administrative

order as the Government purported to decide the rights of parties and set aside the order of the Board of Revenue and restore the order of the

Revenue Divisional Officer. It must be regarded as a quasi-judicial order. So, the Government erred in not giving notice to the Petitioner who is

affected, that the Petitioner should have been given an opportunity to support the order passed in his favour by the Board of Revenue. The order

of the Government is quashed under Article 226 of the Constitution (1) on the ground that the Government acted without jurisdiction in interfering

with the order of the Board of Revenue and (2) on the ground that notice was not given to the Petitioner herein. A Writ of Certiorari is issued as

prayed for. The Petitioner will be entitled to his costs from the 1st Respondent. Advocate's fee Rs. 100/-.