

(1993) 06 CAL CK 0025

Calcutta High Court

Case No: Civil Rule No. 42 (W) of 1992

Captain Kesari Phireoz Noble

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: June 7, 1993

Acts Referred:

- Environment (Protection) Act, 1986 - Section 3(1), 3(2)(v)

Citation: 97 CWN 855

Hon'ble Judges: N.K. Bhattacharyya, J

Bench: Single Bench

Advocate: A.S. Roy and H.R. Bahadur, for the Appellant; Asish Roy, for the Respondent

Judgement

N.K. Bhattacharyya, J.

petitioner by this writ application has prayed for quashing of the notice dated 20/2/92 issued by the Tehsildar, Ferrargunj (Annexure - C to the petition), the Judgment and Order dated 25/2/92 issued by the Tehsildar, Ferrargunj (Annexure -D to the petition) and also for commanding the respondents and each of them, their men, servants and agents to act in accordance with law and to forbear from demolishing the jetty and wooden structure built by the petitioner as a landing point to a plot of land at "Flat Bay" island within the Ferrargunj Tehsil, South Andaman. The petitioner has also prayed for a writ of certiorari for directing the respondents to transmit the records relating to the impugned notices and orders as aforesaid upon certification of the same by the respondents and to set aside the said notices and orders. Shorn of the detail, the petitioner's case is that one Avtar Singh purchased in public auction sale a land measuring 10,00 hectares, bearing Khasra No. 5, being a small island, known as "Flat Bay" in South Andaman, after fulfilling the necessary conditions as required under the law. The petitioner in turn purchased the said land from the said Avtar Singh sometime in April 1986. There were standing coconut plantations on the said plot. The petitioner developed the land by making further plantations and taking other appropriate steps. The said

"Flat Bay" island is within Ferrargunj Tehsil and after such purchase the petitioner had his name mutated in respect of the said land from the Tehsildar, Ferrargunj.

2. The petitioner further alleged that in order to negotiate that island from the sea, the petitioner faced enormous difficulty due to the hostile nature of the beach, so in order to facilitate to negotiate, the island from the sea by boat the petitioner constructed a wooden platform on the sea and connected the same with a jetty to go to the island from the boat and also constructed a two storied building.

3. It is also alleged that the Respondent No. 6, Tehsildar, Ferrargunj, served a notice upon the petitioner dated 20/2/92 (Annexure-C to the petition) u/s 202 of the Andaman & Nicobar Islands Land Revenue & Land Reforms Regulation, 1966 (hereinafter referred to as "the Regulation"), asking the petitioner remove the constructions made and to restore the land to its original position as the constructions were made beyond the limit of the petitioner's plot of land and also to vacate the said land in unauthorised occupation of the petitioner within five days from the date of receipt of the said notice or to appear before the Tehsildar, Ferrargunj, on 24/2/92 at 10.00 A.M. and to show cause as to why the petitioner should not be evicted from the said premises on the expiry of the time given. Pursuant to the said notice, the petitioner showed cause in writing denying all the material allegations made by the respondent No. 6 and also explaining the difficulties faced by him in negotiating the island from the boat. It may be mentioned that the respondent No. 6 had started Revenue Case No. 13/1992. It is alleged that as directed by the respondent No. 6, when on 25/2/92 the petitioner entered the office of the respondent No. 6 the Judgment and Order dated 25/2/92 passed in Revenue Case No. 13/1992 (Annexure-D to the petition). By that judgment, the respondent No. 6 directed the petitioner to remove the alleged illegal occupation from the Government land and the structure etc. and to restore the land to its original position on 28/2/92, in exercise of his power u/s 202 of regulation.

4. On that day itself the respondent No. 6 u/s 202(8) of the Regulation intimating his intention to institute a civil suit and requesting the respondent No. 6 desist from carrying out his order passed u/s 202(1) of the Regulation for a period of 90 days. This prayer was allowed by the respondent No. 6 by his order dated 25/2/92 (Annexure-F to the petition) staying the proceedings for ninety days.

5. By another notice dated 29/2/92 the respondent No. 6 informed the petitioner about his opinion to review the order dated 25/2/92 passed in Revenue Case No. 13/1992 in exercise of power u/s 34 of the Regulation. By that notice, the petitioner was directed to appear before the respondent No. 6 on 4/3/92 at 10.00 A.M. On 4/3/92, however, the petitioner prayed for adjournment which was granted and the Revenue Case was fixed for hearing on 6/3/92. On 6/3/92 the petitioner's learned Advocate had expressed his inability to appear before the respondent No. 6 because of his preoccupation and for that reason he had given a petition for adjournment to the petitioner to be filed before the respondent No. 6.

6. It has been alleged that with that petition for adjournment the petitioner reached Chatham Jetty, Port Blair, at about 7.30 A.M. on 6/3/92 to avail of the ferry boat to go to Bambooflat and then to Ferrargunj Tehsil office for the purpose of attending the case and at the Chatham Jetty itself the petitioner met the respondent No. 6 and explained the difficulty to him, when the respondent No. 6 asked the petitioner to hand over to him that adjournment petition and shoved the petitioner a copy of the purported order dated 6/3/92 issued by the respondent No. 6 in Revenue Case No. 13/1992. The text of that order has been set out in para. 19 at page 12 of the petition, which reads as follows:-

The Stay Order dated 25.2.92 issued in the above said case is hereby vacated in view of true spirit of Sub-Section (8) of Section 202 of Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966.(sic)

7. But the extract of the order-sheet dated 6/3/92 in the said Revenue Case No. 13/1992 (Annexure-I to the petition) reads as follows: -

Case taken up today. Shri K.P. Noble present and filed a petition which is added in the case file requesting for allowing time for a week as his pleader is busy with some other matters.

I do not find any justification in retain the Stay Order and hence vacated the same.

Put up orders. (sic)

8. alleged that by Memo. No. 5-5/92/157 dated 25/2/1992 issued by respondent No. 5 (Annexure H) and served, amongst others, upon the respondent No. 6 was asked to show cause as to why departmental proceedings should not be initiated against him and others for dereliction of duties and neglect of their work. The dereliction of duty, as had been specified in the said Memo., was that the respondent No. 6 and others failed to notify the fact of construction of jetty and R.C.C. building on the eastern side of the "Flat Bay" island by the petitioner without obtaining necessary permission from the competent authority and that they also failed to notify the fact that the petitioner had removed and cut mangrove and/or earth from the said land unauthorisedly which might have environmental repercussion in the region.

9. The allegation of the petitioner on the face of the said letter is that the respondent No. 5 mechanically and that the act and order of the respondents No. 5 and 6 are arbitrary, highhanded, tainted with bias and are in violation of the principles of natural justice. It is also alleged that the respondent No. 6 harassed the petitioner under the dictate of the respondent No. 5 and that the respondent No. 6 had no jurisdiction to invoke the power for reviewing his order dated 25/2/1992.

10. As has already been pointed out, in paragraph 19 of the petition, the petitioner alleged that he made over the adjournment petition in Revenue Case No. 13/1992 on 6/3/92 and there the respondent No. 6 showed the petitioner the order refusing such prayer.

11. An affidavit-in-opposition has been affirmed by one N. Mohammed, the respondent No. 5 herein, on 19/5/92. In paragraph 19 of the said affidavit-in-opposition, the allegations that have been made in paragraph 19 of the petition, have been admitted and only there is a bald denial to the effect that the facts which are not borne out by record, are not admitted. So the allegations as made in paragraph 19 of the petition stand non-traversed.

12. In paragraph 16 of the affidavit-in-opposition, the respondents have stated that the review proceedings was initiated on getting the report that the petitioner was continuing the unauthorised illegal construction work of jetty and building taking undue advantage of the stay-order. But Annexure-R/12 to the affidavit-in-opposition shows that Capt. S.R.L. Chowdhury, Harbour Master, had visited the spot on 19/2/92 at 7.00 A.M., whereas the stay-order was granted by the respondent No. 6 on 25/2/92, i.e. long after that visit. So it is incorrect to state that the review proceedings was initiated by the respondents on getting the report.

13. Even the copy of the. FIR lodged by the Additional District Magistrate Port Blair, with the Dandus Point P.S., (Annexure-S/5 to the affidavit-in-opposition to the Supplementary Affidavit filed by the petitioner), shows that the occurrence took place on 18/3/92 at 4.00 P.M. In that FIR, it has been mentioned that: "As per the High Court's stay order no further construction work is to be carried out till the disposal of the case". It is not understandable which stay-order of this Court has been referred to in the said FIR, because the writ petition was affirmed on 6/3/92 and the stay-order was granted by 1 his Court on 9/3/92.

14. Mr. A.S. Roy. Id. Advocate, appearing for the writ petitioner, contended that the entire proceedings initiated by the respondents is vitiated by bias, arbitrariness, highhandedness and in violation of the principles of natural justice and that the respondents, in particular, the respondent No. 6 proceeded with the revenue Case No. 13/1992 with a closed mind.

15. Mr. Asish Roy, Id. Advocate, appearing for the respondents, contended that there were some irregularities in the orders impugned and he was not in a position to support the same. He, however, submitted that liberty should be given to the respondents to proceed afresh in the matter.

16. Section 202 (1) of the Regulation reads as follows:-

202.(1) Any person who unauthorisedly takes or remains in possession of any unoccupied land or abadi may be summarily ejected by order of the Tahsildar and any crop which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix, shall be liable to forfeiture.

(The underscoring is by me)

17. So on a plain reading of Section 202(1) of the Regulation it appears that the said sub-section (1) contemplates a summary proceedings. But in the Regulation no

summary procedure has been enumerated. Sections 17 to Section 27 under Chapter III of the Regulation provide for procedure in a Revenue Case. Though sub-Section (1) of Section 202 of the Regulation envisages summary procedure, but the respondent No. 2 resorted to a Revenue Case as envisages in Section 17 under Chapter III of the Regulation.

18. The power of review is u/s 34 of the Regulation, which reads as follows:-

34. (1) Every revenue officer may either of his own motion or on the application of any party interested, review any order passed by himself or by any of his predecessors-in-office and pass such order in reference thereto as he thinks fit:

Provided that -

(i) no order shall be varied or reversed unless notice has been served on the parties interested to appear and opportunity has been given to them for being heard;

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall be reviewed;

(iii) no order affecting any question of right between private persons shall be reviewed except on the application of a party to the proceedings and no application for the review of such order shall be entertained unless it is made within ninety days from the date of the order.

(2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908.

(3) For the purposes of this section the Deputy Commissioner shall be deemed to be the successor in office of any revenue officer who has left the district or who has ceased to exercise powers as a revenue officer and to whom there is no successor in the district.

19. Sub-section (2) of Section 34 of the Regulation envisages that no order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908. So the provisions under Order XLVII of the Code of Civil Procedure, 1908, will *pari materia* apply in case of review under the Regulation. Rule 1 of Order XLVII of the Code envisages, *inter alia*, review when there is error apparent on the face of the record and when there is any other sufficient reason.

20. In the instant case, the reason that was shown and as has been disclosed in the affidavit-in-opposition, is that the petitioner was continuing construction work of R.C.C. building and jetty even after the stay-order. I have already pointed out that this is a mis-statement on the face of the Inspection Report dated 19/2/92 (Annexure-R/XII to the affidavit-in-opposition) and also the FIR dated 18/3/92 (Annexure-S/5 to the affidavit-in-opposition to the supplementary Affidavit filed by the petitioner). The Inspection Report dated 19/2/92 shows that the occurrence took place on 18/2/92. i.e., before the passing of the stay-order by the respondent No. 6

which was passed on 25/2/92.

21. It appears that the said stay-order was vacated on 6/3/92 by the respondent No. 6 (vide, Annexure-R/IX to the affidavit-in-opposition to the writ petition). It further appears from the FIR dated 18/3/92 that the Additional District Magistrate, Port Blair, alleged further construction work on 18/3/92, i.e., long after vacating of the said stay-order.

22. So, there is little truth in stating that on getting the information that the petitioner was continuing with the construction work the review proceedings were started. So there was no basis for reviewing that order granting stay passed by the respondent No. 6 on 15/2/92.

23. It is patent on the face of the record that due to the threat of suspension (Annexure-H) from the higher authority (i.e., the respondent No. 5) the respondent No. 6 passed such order.

24. In paragraph 26 at page 16 of the affidavit-in-opposition to the writ petition, the respondents have alleged that the act alleged to have been done by the petitioner is in violation of notification u/s 3(1) and Section 3(2) (v) of the Environment (Protection) Act, 1986 and Rule 5(3) (d) of Environment (Protection) Rules, 1986, declaring coastal stretches as coastal regulation zone (CRZ) and regulating activities in the CRZ.

25. The respondents were not sure as to the provision the petitioner has violated and under what Act, whether it is under the Regulation or under the Environment (Protection) Act, 1986 and the Rules framed thereunder.

26. That apart, it is patent on the face of the record starting from the issuance of Notice dated 20/2/92 (Annexure-C to the petition) to the end of the Revenue Case No. 13/(sic)92 under the Regulation that the same was vitiated by bias, arbitrariness, high-handedness and also for violation of the principles of natural justice, for the reasons as stated earlier. The writ petition is, therefore, disposed of by quashing the impugned notice dated 2./2/92 issued by the Tehsildar, Ferrargunj, the impugned judgment and order dated 25/2/92 issued by the Tehsildar, Ferrarganj, the impugned notice dated 29/2/92 issued by the Tehsildar, Ferrargunj, and the impugned order dated 6/3/92 passed by the Tehsildar, Ferrargunj. Liberty is granted to the respondents to proceed afresh in the matter in accordance with law upon notice to the writ petitioner. The interim order made earlier stands confirmed. There will be no order as to costs.