

Eric Alvares Vs. Collector and ors.

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Court : Orissa

Decided On : Nov-02-1995

Reported in : 1996(I)OLR25

Judge : A. Pasayat and ;P.C. Naik, JJ.

Acts : [Orissa Prevention of Land Encroachment Act, 1972](#)

Appeal No. : O.J.C. No. 4166 of 1994

Appellant : Eric Alvares

Respondent : Collector and ors.

Advocate for Def. : Additional Government Adv.

Advocate for Pet/Ap. : S.K. Padhi, S. Parida and D. Mohapatra

Judgement :

A. Pasayat, J.

1. Encroachment Case No. 9 of 1982 was initiated against the petitioner under the provisions of [Orissa Prevention of Land Encroachment Act, 1972](#) (in short, 'the Act') on the basis that he was in unauthorised possession of Government land. A reference to few dates would suffice. The proceeding was initiated on 6-2-1982. Thereafter the matter was adjourned from time to time. On most of the dates the

petitioner was present. On 9-2-1387 the case was put up before the Tahasildar. Prior to that date, i. e., on 30-9-1986 the petitioner was present. By that date the enquiry report from the Revenue Inspector was not received, and the matter was adjourned to 31-10-1986 awaiting the report. Thereafter nothing appears to have taken place, and on 3-2-1987 the case record was put up before the Tahasildar. Since that was not the date to which the case was posted, question of petitioner's presence did not arise. The matter was posted to 24-2-1987 by Tahasildar. On the said date the petitioner was absent. Direction was given to put up the case record on 15-5-1987, and for spot enquiry. On 25-2-1987 it appears that when the Tahasildar was coming to office, he visited the land in question and was of the view that the report given by the Revenue Inspector was defective, and called for an explanation. He directed the Revenue Supervisor to make spot enquiry, demarcate the land as per the physical possession of some persons, initiate cases against them and the matter was directed to be placed on 27-2-1987 for orders. Thereafter nothing happened. On 30-10-1987 case record was put before the Tahasildar after receipt of the report from the Revenue Supervisor and after perusal of the same the impugned order was passed. A bare perusal of the order-sheet shows that the proceeding has been conducted in the most casual manner. Records were not put up on various dates to which the case was posted, but the same was placed on the dates to which it was not posted. Since the direction given on 24-2-1987 was to put up the case record on 15-5-1987, the Tahasildar could not have taken up the case on 25-2-1987 and than adjourned the same to 27-2-1987 for orders. In any event the records were directed to be placed on 27-2-1987 which was not done and suddenly on 30-10-1987 the matter was taken up and the impugned order was passed. The records do not appear to have been placed on 15-5-1987 also, as was the direction on 24-2-1987. The appellate and revisional Courts do not appear to have attached importance of this fundamental requirement of principles of natural justice, violation of which has been committed by the Tahasildar. This appears to be a case of gross violation of the principles of natural justice. It is a basic requirement of principles of natural justice that before an order adverse to a person is passed, he should be granted an opportunity to be heard. Two fundamental principles of narural justice are that a man should not be a Judge of his own cause, and no order should be passed without hearing the

affected party. Essential characteristic of 'natural justice' is put by Romans in two maxims; (i) *nemo iudex in causa sua*, and (ii) *audi alteram partem* pattern, which respectively mean (i) no-one can be a judge in his own case, and (ii) hear both sides. The aim of the rules of natural Justice is to secure justice to prevent miscarriage of justice. The person affected must have; (i) a reasonable opportunity of being heard and (ii) the hearing must be a genuine one and not an empty public relation exercise. Petitioner was not granted an opportunity to have his say in respect of the Revenue Supervisor, which has been utilised by the Tahasildar to draw adverse inference. The requirement of natural justice was to disclose the material collected by the Revenue supervisor and proposed to be used against the petitioner. In the celebrated case of *Cooper v. Wandsworth Board of Works* : 1963 (143) ER 414, the principle was thus stated 'Even God did not pass a sentence upon Adam, before he was called upon to make his defence' 'Adam' says God, 'where art thou' 'has thou not eaten of the tree where of I commanded thee that thou should not eat'. Since then the principle has been chiselled, honed and refined, enriching its content. A more recent statement of the law in *Mulloy v. Mulloy* 1971 (2) ER 1278 is that 'the right of a man to be heard in his defence is the most elementary protection.'

2. In the circumstances we find substance in the plea of the petitioner that he has not received a fair-deal in the hands of the Tahasildar and, therefore, the impugned order dated 30-10-1987 passed by him cannot be maintained. We quash the said order 30-10-1987 and also the appellate order dated 18-7-1990, and the revisional order dated 19-2-1994 as contained in Annexures 4, 6 and 7 to the writ application. To avoid unnecessary delay the parties are directed to appear before the Tahasildar on 5th December, 1995 so that a date can be fixed by him for hearing of the matter. The writ application is allowed to the extent indicated above.

P.C. Naik, J.

3. I agree.