

Onkar Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-14-1978

Reported in : 1978(11)WLN611

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil Writ Petition Nos. 392, 393, 394, 395, 423, 424, 425 and 429/1978

Appellant : Onkar Chand

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

D.P. Gupta, J.

1. In ail these writ petitions common questions of law and fact arise and it would be convenient to dispose of the same by a common order.

2. In village Chohtan, situated in District Barmer of the State of Rajasthan, certain plots of land were sold by private negotiations by the Gram Panchayat, Chohtan to various persons including the petitioners, who were the purchasers in respect of one plot each It appears that some complaints were made to the State Government that Shri Bhagwan Das, who was formerly the Sarpanch of the Gram

Panchayat, Chohtan acting in collusion with certain officers of the State Govt. caused the disputed plots of land of considerable value to be sold to the members of his family, relatives and other persons close to him and irregular sale deeds were executed in respect of the sale of such plots of land and possession over such plots was also delivered to the respective purchasers. The complaints were referred to the Collector, Barmer, who appears to have got an enquiry made into the matter by the Dy District Development Officer, Barmer. The Collector, Barmer came to the conclusion, as a result of the preliminary enquiry that Bhagwan Das, former Sarpanch of the Gram Panchayat, Chohtan got the aforesaid plot of land sold by private negotiation to some persons who got sale deeds executed irregularly and the purchasers were also put into unlawful possession over such plots, of land. Thereupon, acting under the provisions of Rule 272 of the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 (hereinafter referred to as 'the Rules'), the Collector Barmer, by his order dated June 3/5, 1978 set aside all the sales made by the Gram Panchayat, Chohtan through the former Sarpanch, Bhagwandas, including the sales made in favour of the petitioners and directed the Sarpanch of the Gram Panchayat, Chohtan to take possession of all the said plots of land. He also directed the Sarpanch to take the assistance of the police force, in case the purchasers resisted the recovery of possession from them.

3. The petitioners feeling aggrieved against the aforesaid order passed by the Collector. Barmer dated June 3/5, 1978, have approached this Court by way of separate writ petitions. The foremost contention of the learned Counsel for the petitioner is that the impugned order was passed by the Collector in ultra disregard of the principles of natural justice and without affording an opportunity of hearing to any one of the petitioners. It is alleged by the petitioners that they are purchasers for value of the land and valuable rights were created in such lands in favour of the respective petitioner on account of payment of sale price and execution of proper sale deeds in respect thereof under the provisions of Rule 271 of the Rules and that petitioners were in lawful possession of the plots of land in question. The intention of the learned Counsel for the petitioners is that the Collector, Barmer had no jurisdiction or authority to interfere with the peaceful enjoyment of the plot of land by the petitioners without hearing them in the matter and that in some of the cases, the respective petitioner have already raised valuable constructions on the

plots of land sold to them by the Gram Panchayat, Chohtan several years ago.

4. Learned Government Advocate was directed to produce the records of the proceedings before the Collector, Barmer in these matters, for the perusal of this Court. I have gone through the records, which have been produce by the learned Additional Government Advocate before this Court and it appears therefrom that some complaints were made to the State Government that Bhagwandas, former Sarpanch of the Gram Panchayat, Chohtan, had made irregular sale of plots of land to the members of his family or near relatives and to persons close to him and that such persons were also given unlawful possession of the plots of land in question. The State Government, thereupon, sent all such complaints to the Collector, Barmer for making an enquiry. The Collector, Barmer got an enquiry made into the matter by the Deputy. District Development Officer, Barmer, who submitted a report after examining the records of the Gram Panchayat. Chohtan and after recording the statement of Bhagwandas former Sarpanch. It does not appear from the records of these proceedings that either the Collector, Barmer or the Dy. District Development Officer, Barmer, who was entrusted with the work of holding an enquiry into these allegations, gave any notice of such an enquiry to any one of the petitioners, affording an opportunity of hearing to the petitioner concerned. The Deputy District Development Officer submitted his report to the Collector, Barmer, which was forwarded by him to the State Government. The State Government then directed the Collector that proceedings for cancellation of the illegal sale made by the then Sarpanch of Gram Panchayat, Chohtat should be taken in accordance with law. It also appears that some action was contemplated to be taken against Shri Bhagwandas. The records show that the Collector directed the Deputy District Development Officer, Barmer to set aside all the irregular sales made by the Gram Panchayat, Chohtan. But the Deputy District Development Officer drew the attention of the Collector to the fact that the Collector alone was empowered under Section 27-A of the Raj Panchayat Act, read with Rule 272 of the Raj. Panchayat & Nyaya Panchayat (General) Rules to set aside the order pass by the Gram Panchayat, Chohtan in respect of the sales of immovable property, as the powers of the State Government under the aforesaid provisions had been delegated to the Collector of the District concerned Thereupon, the Collector proceeded to pass the impugned order dated June, 3/5,

1978 setting aside several sales made by the Gram Panchayat, Chohtan, including the sales of plots of land made in favour of the petitioners.

5. Learned Additional Govt. Advocate has not been able to defend the order passed by the Collector, Barmer, which apparently appears to have been passed without affording an opportunity of hearing to the concerned petitioners. It is not the case of the respondents that the alleged sales were not made in favour of the petitioners or that sale deeds in respect thereof were not executed by the Sarpanch of the Gram Panchayat, Chohtan in favour of the petitioners, or that possession of such plots of land was not delivered to the petitioners. If the sales were made in favour of the petitioners by private negotiations and sale deeds were executed by the Sarpanch, Gram Panchayat, Chohtan in their favour and thereafter possession was also delivered to the petitioners over the respective plots of land, then certainly valuable rights were created in favour of the concerned petitioner in respect of such plot of land. In case the sales, which were admittedly made in favour of the petitioners, were in any manner illegal or irregular and in case they could be set aside in proceedings under Section 27-A of the Act read with Rule 272 of the Rules, then it was incumbent on the part of the Collector to issue notice to the concerned petitioner and to afford him an opportunity of hearing in the matter. It would have been for the petitioner concerned then to present all documents and other papers in support of his possession and to defend his right before the Collector and thereafter the Collector could have taken a decision in the matter. But it appears from the record of proceedings in these matters that after the preliminary enquiry was made by the Deputy District Development Officer, Barmer no notice or opportunity of hearing was afforded to the petitioners. On the basis of the preliminary enquiry conducted by the Deputy District Development Officer, the Collector proceeded to set aside the sales made by the Gram Panchayat, Chohtan in favour of the petitioners.

6. It is one of the cardinal principles of justice that the person, whose rights were likely to be affected by the order that was proposed to be passed by the Collector, Barmer, should have been given an opportunity of hearing. The principles of natural justice enjoin that an Authority, acting under a quasi-judicial power, should not proceed to pass an order prejudicial to any party without affording such party a

reasonable opportunity of hearing in the matter. This well-established principle of natural justice is fully applicable to the exercise of power of revision under Section 27-A of the Act & under Rule 272 of the Rules Under Section 27-A of the Act, the State Government is authorised to call for and examine the record of any order parsed by the Panchayat or Panchayat Samiti or the Collector, for the purpose of satisfying itself as to the correctness, legality and propriety of such order and has the power to confirm, vary or rescind such order, after examining the connected records The authority under Section 27-A has been delegated by the State Government to the Collector of the District. Similarly Rule 272 also confers the revisional powers to the State Government in respect of matters relating to sale of abadi land, either by public auction or by private negotiation or by transfer and the power under Rule 272 has also likewise been delegated to the Collector of the District. Although Section 27A or Rule 272 do not specifically provide that the person to whose prejudice an order is passed should be afforded an opportunity of hearing, yet it cannot to argued in a democratic country like ours, which is governed by the Rule of law that the revisional jurisdiction could be exercised by the State Government or its delegate, the Collector without affording an opportunity of hearing to the concerned person. The person to whose favour the sale was made acquired a valuable right in the plot of land in question and by setting aside the impugned orders of sale, the right of the purchasers are likely to be affected. In these circumstances, a duty at once arises in the authority passing such an order to give a notice to the person to whose prejudice the order is likely to be passed and to afford to such person a reasonable opportunity of being heard in the matter. There is no doubt that the Authority while exercising the revisional jurisdiction under Section 27-A or Rule 272 of the Rules, was deciding the matter affecting the rights of the concerned parties and the approach of the authority in such matters should be essentially quasi-judicial and not merely administrative Maxwell in his well known treatise on the Interpretation of Statutes (Tenth Edition) has summarised the law on the subject at page 370 as under:

In giving judicial powers to affect prejudicially the rights of person or property, a statute is understood as silently implying, when it does not expressly provide, the condition or qualification that the power is to be exercised in accordance with the fundamental rules of judicial procedure, such for instance, as that which requires

that, before its exercise, the person sought to be prejudicially affected shall have an opportunity of defending himself.

In *Menka Gandhi v. Union of India* : [1978]2SCR621 , it was observed by their Lordships of the Supreme Court:

Although there are no positive words in the statute requiring that the part shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condoned unheard, is part of the rule of natural justice....

7. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be 'does fairness in action demand that an opportunity to be heard should be given to the person affected.' Whether the petitioner has a void sale or not in his favour was itself a matter of enquiry and as such it was necessary that the Collector should have given notice to the petitioners and he should have afforded them an opportunity of hearing in the matter. The action of the Collector in interfering with the rights of the petitioners by setting aside the sales made in their favour by the Gram Panchayat, without giving any notice to them and without affording an opportunity of hearing to them in the matter, must be deprecated. It was also incumbent upon the Collector to find out whether the petitioners had any lawful right or title to the plots of land or not and whether they were put in possession of the plots in dispute or not. The Collector directed the Gram Panchayat to secure the assistance from the police force in order to take immediate possession of the plots of land in dispute from the petitioners. In my view, this part of the order of the learned Collector was passed with a view to terrorise the petitioners, for which there was no justification at all.

8. In the result, all the writ petitions are allowed. The order passed by the Collector, Barmer dated June 3/5, 1978 are set aside. The Collector, Barmer may, if he thinks proper initiate appropriate proceedings against the petitioners or any of them under Section 27-A of the Rajasthan Panchayat Act and Rule 272 of the Rajasthan Panchayat & Nyaya Panchayat (General) Rules after carefully

examining the matter. In case such a proceeding is taken by the Collector, Barmer against the petitioners or anyone of them, then it would be necessary for the Collector to give notice to the petitioner concerned and to afford him a reasonable opportunity of hearing, before passing an order in the proceedings under Section 27-A of the aforesaid Act or under Rule 272 of the Rules. It would be open to the petitioner concerned to submit such objections before the Collector as he may think appropriate and as he may be entitled in law to take.

9. The petitioners shall get their costs of these proceedings from Respondents Nos. 1 and 2.

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