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Court : Chennai

Decided On : Aug-19-2010

Judge : M.Jaichandren, J.

Acts : Constitution Of Indian - Article 226

Appeal No. : W.P.No.4302 of 2006 and W.P.M.No.4581 of 2006

Appellant : Anguraj, and ors.

Respondent : The Special Commissioner and Commissioner of Land Administration, and ors.and anr.

Advocate for Def. : Mr.M.Dhandapani, Adv.

Advocate for Pet/Ap. : Mr.I.C.Vasudevan, Adv.

Judgement :

1. Heard the counsels appearing on behalf of the petitioners, as well as the respondents.

2. The petitioners had stated that they are the absolute owners of the property in S.No.173/4B, of Baguthampalayam Village. A Well is situated in the petitioners land in S.F.Nos.158/3, 4, 5, 141/3, 151/8, 212 and 142/1 Baguthampalayam Village. The water from the said Well is being used for agricultural purposes. A

Track Rent permit had been granted to the petitioners, by the authority concerned, to draw water from the Well, which is situated close to the Bhavani river, permitting the petitioners to use the percolated water from the Well, for agricultural purposes. The petitioners have been paying, periodically, the track rent, the water cess and the kist due from them. The petitioners had also been directed to pay an one time water cess, for the usage of the water percolated in the Well in question, from the Bhavani river.

3. It had also been stated that the petitioners have been using the water from the Well in question, without violating the terms and conditions imposed on the petitioners, while granting the Track Rent Permit, by the authority concerned. The petitioners are not drawing water, directly, from the Bhavani river. However, the impugned proceedings had been passed, cancelling the Track Rent Permit granted in favour of the petitioners, without following the principles of natural justice. No proper enquiry had been conducted before the impugned proceedings had been passed, based on an alleged report of the local Tahsildar concerned. No proof had been shown by the respondents to substantiate their allegation that the petitioners had violated the terms and conditions of the Track Rent Permit granted in his favour. A copy of the report, said to have been submitted by the Tahsildar concerned, had not been given to the petitioners, during the enquiry.

4. It had also been stated that the impugned proceedings had been passed by the District Revenue Officer, the second respondent, based on G.O.Ms.No.2260, Public Works Department, dated 3.11.1967, which had been, subsequently, amended in Government Memo No.115657/N2/67-2, P.W., dated 12.1.1968. The said Government Order may apply only in cases of Wells, which are already in existence and for the sinking of the new Wells and for the deepening of existing Wells, close to the main canals, the branch canals and the distributories. However, it would not be applicable to the Wells situated close to the Bhavani river. It is only the terms and conditions of the Track Rent Permit, which prohibits the drawing of water, directly, from the Bhavani river. Therefore, the impugned proceedings of the District Revenue Officer cannot be held to be legal and valid, both in law and on facts. The said proceedings of the second respondent cancelling the Track Rent Permit granted in favour of the petitioners had also been wrongly confirmed by the

Special Commissioner and Commissioner of Land Administration, Chennai, the first respondent. As such, the impugned proceedings are arbitrary, illegal and void.

5. The learned counsel appearing on behalf of the appellant had relied on the decision of this Court, in Arignar Anna Weavers Co-operative Society Ltd., V. State of Tamil Nadu and others (AIR 1999 Madras 254), wherein it had been stated that the furnishing of the report, based on which the impugned proceedings had been passed, ought to have been supplied to the petitioner before the conclusion of the enquiry. Failure to do so would amount to violation of principles of natural justice.

6. He had also relied on Uma Nath Pandey V. State of U.P. (2009(2) CTC 663), wherein the Supreme Court had held as follows:

5. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, useless formality theorycan be pressed into service.

6. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be feed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

7. The expressions natural justice and legal justice do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure

should ever be permitted to exclude the presentation of a litigants defence.

8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be prescise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approve rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found it sway into the Magna Carta. The classic exposition of Sir Edward Coke of natural justice requires to vocate, interrogate and adjudicate. In the celebrated case of Cooper V. Wandsworth Board of Works, 1863 (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 are thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat.

9. Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

10. Principles of natural justice are those rules which had been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. .....

14. Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase `justice should not only be done, but should be seen to be done.

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves Civil consequences must be consistent with the rules of natural justice. Expression `Civil consequencesencompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

17. How then have the principles natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process judicial interpretation two rules have been evolved as representing the principles natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is `nemo judex in causa sua or `nemo debet esse judex in propria causa sua as stated in (1605) 12 Co.Rep. 114 that is, `no man shall be a judge in his own case. Coke used the form `aliquis non debet esse judex in propria causa quia non potest esse judex at pars(Co.Litt.1418), that is, `no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party. The form `nemo potest esse simul actor et judex, that is, `non one can be at once suitor and judge is also at time sused. The second rule is `audi alteram partem, that is, `hear

the other side. At times and particularly in continental countries, the form `audietur at altera parsis used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely `qui aliquid statuerit parte inaudiata alteram actquam licet dixerit, haud acquum faceritthat is, `he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right----- or in other words, as it is now expressed, `justice should not only be done but should manifestly be seen to be done. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

19. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice

7. Per contra, the learned counsel appearing on behalf of the respondents had submitted that the conditions for drawing of water from channels and Wells have been prescribed, in the Government Order, in G.O.Ms.No.2260, Public Works Department, dated 3.11.1967, which had been, subsequently, amended by a government memo. An audit party had inspected the sites concerned, based on certain complaints that had been received by the respondents, with regard to the illegal drawing of water from the Bhavani river, by some persons. After getting a report from the concerned local Tahsildar and after conducting an enquiry, in which the petitioners, as well as the local village administrative officer, had participated, the impugned proceedings had been passed. As a result of the enquiry it had been found that the petitioners had been drawing water from Wells situated within 50 metres from the Bhavani river, contrary to the conditions specified, in G.O.Ms.No.2260, Public Works Department, dated 3.11.1967. Therefore, the impugned proceedings had been passed by the second respondent, cancelling the Track Rent Permit granted in favour of the petitioners. The appeal filed by the petitioners before the Commissioner and Commissioner of Land Administration, Chennai, had also been confirmed. The petitioners were found to be drawing water from the Bhavani river directly, in violation of the terms

and conditions of the Track Rent Permit granted in favour of the petitioners.

8. The learned counsel had also submitted that sufficient opportunity had been provided to the petitioners to participate in the enquiry and therefore, it cannot be claimed that there have been a violation of the principles of natural justice. Further, no allegation of mala fides had been made, by the petitioners, against the respondents. In such circumstances, it cannot be said that the impugned proceedings are arbitrary, illegal and invalid in the eye of law.

9. In view of the submissions made by the learned counsels appearing on behalf of the petitioners, as well as the respondents, and in view of the records available, it is seen that nothing has been shown on behalf of the respondents to justify their claim that the Government Order, in G.O.Ms.No.2260, Public Works Department, dated 3.11.1967, and the amendment therein, by way of a Memo No.115657/N2/67-2, P.W., dated 12.1.1968, would be applicable to the facts and circumstances of the present case. The Government Order, in G.O.Ms.No.2260, Public Works Department, dated 3.11.1967, seems to apply only in respect of wells, which are situated near the main canals, branch canals and their distributories.

10. The learned counsel appearing on behalf of the respondents had not been in a position to clarify as to how the above mentioned Government Order would be applicable to the petitioners, in the present case, when the allegation relates to the drawing of water, either directly from the Bhavani river, or from a well situated close to the said river. Further, nothing has been placed before this Court, on behalf of the respondents, to show that the copies of the report of the Tahsildar concerned and of the local Village Administrative Officer and the other relevant materials relied upon by the respondents, during the enquiry, had been supplied to the petitioners. Thus, it is seen that the principles of natural justice had been violated in the process followed by the respondents, in conducting the enquiry, based on the allegations made against the petitioners. In such circumstances, this Court is compelled to hold that the impugned proceedings, challenged in the present writ petition, cannot be sustained in the eye of law. Hence, they are set aside. Accordingly, the writ petition stands allowed. No costs. However, it is made

clear that it would be open to the respondents and the other authorities concerned to include the necessary terms and conditions, with regard to the drawing of water, either directly, or indirectly from the Bhavani river, while granting/renewing the Track Rent Permit in favour of the petitioners, as they may deem fit and proper, as per the relevant provisions of law, in public interest, as per the policy of the Government. It is also made clear that the respondents and the other authorities concerned would be at liberty to initiate appropriate action against the petitioners, if the petitioners are found to have acted in contravention of the terms and conditions so imposed, by following the procedures established by law, including the supplying of the inspection report and the other relevant documents, relied upon by the respondents. Further, it is made clear that no prior intimation need be given to the petitioners by the authorities concerned, before conducting the inspection of the site or premises concerned. Consequently, connected writ petition miscellaneous petition is closed.

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