

Andhra High Court

Chinnam Pandurangam S/O. Late ... vs The Mandal Revenue Officer, ... on 11 July, 2007

Equivalent citations: AIR 2008 AP 15, 2007 (6) ALD 248, 2007 (6) ALT 134, 2008 (2) JCR 164 AP

Author: G Singhvi

Bench: G Singhvi, G Seethapathy, C N Reddy

ORDER G.S. Singhvi, C.J.

1. This petition has been placed before the Larger Bench for considering whether the judgment of the Division Bench in B.G. Laxman (died) per L.Rs. v. Joint Collector, Ranga Reddy District 2003(1) ALT 3 runs contrary to the plain language of Section 5(3) of the Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971 (for short, 'the Act') and requires re-consideration.

2. Petitioner - Chinnam Pandurangam and respondent No. 3 - Chinnam Narsimlu are real brothers. Their father Manaiah died in 1984 leaving behind several properties including land measuring Ac. 1-14 guntas comprised in Survey No. 346 of Chandanagar Village, Serilingampally Mandal, Ranga Reddy District. Even after his death, the name of late Manaiah continued to be shown as pattedar in the Record of Rights. On 24.3.2001, the petitioner made an application to Mandal Revenue Officer, Serilingampalli Mandal, Ranga Reddy District (respondent No. 1 herein) to mutate his own name along with that of respondent No. 3 in respect of the land comprised in Survey No. 346 in equal shares. The same was rejected by respondent No. 1 vide his order dated 4.8.2001 on the ground that the land in question is being used for non-agricultural purpose and the provisions of the Act are not applicable to such land. The petitioner challenged that order in Writ Petition No. 5213 of 2004. During the pendency of that petition, respondent No. 3 made an application dated 20.1.2004 for review of order dated 4.8.2001 and mutation of his name in the revenue records to the extent of land allotted to his share in the partition effected on 1.6.1981. Respondent No. 1 got published a notice in Form-VIII inviting claims and objections from the public and then passed order dated 16.3.2004 mutating the names of respondent No. 3 and the petitioner to the extent of 0.29 guntas and 0.06 guntas respectively.

3. The petitioner questioned the aforementioned order in Writ Petition No. 7868 of 2004 on the ground of violation of Section 5(3) of the Act and the rules of natural justice by contending that he was not given notice of the application filed by respondent No. 3. In the counter filed by respondent No. 3, it was averred that the publication of notice in Form-VIII was sufficient compliance of Section 5(3) of the Act.

4. The learned Single Judge referred to the provisions of Section 5(3) of the Act and Rule 19 of the Andhra Pradesh Rights in Land and Pattadar Passbooks Rules, 1989 (for short, 'the Rules') and opined that the judgment of the Division Bench in B.G. Laxman's case (supra) requires re-consideration. Accordingly, she directed that the matter be placed before an appropriate Bench. The Division Bench agreed with the learned Single Judge and referred the matter to the Larger Bench.

5. We have heard learned Counsel for the parties. Sections 4, 5(1) to (4) of the Act, Rules 5 and 19 of the Rules and Form-VIII read as under:

Andhra Pradesh Rights in Land and Pattadar Passbooks Act, 1971

4. Acquisition of rights to be intimated (1) Any person acquiring by succession, survivorship, inheritance, partition, Government patta, decree of a Court of otherwise any right as owner, pattadar, mortgagee, occupant or tenant of a land and any person acquiring any right as occupant of a land by any other method shall intimate in writing his acquisition of such right, to the Mandal Revenue Officer within ninety days from the date of such acquisition, and the said Mandal Revenue Officer shall give or send a written acknowledgment of the receipt of such intimation to the person making it:

Provided that where the person acquiring the right is a minor or otherwise disqualified, his guardian or other persons having charge of his property shall intimate the fact of such acquisition to the Mandal Revenue Officer.

(2) Notwithstanding anything contained in the Registration Act, 1908 (Central Act 16 of 1908) every registering officer appointed under the Act and registering a document relating to a transaction in land, such as sale, mortgage, gift, lease or otherwise shall intimate the Mandal Revenue Officer of the Mandal in which the property is situate of such transaction.

5. Amendment and updating of Record of Rights (1) On receipt of intimation of the fact of acquisition of any right referred to in Section 4, the [Mandal Revenue Officer] shall determine as to whether, and if so in what manner, the record of rights may be amended in consequence therefor and shall carryout the amendment in the record of rights in accordance with such determination:

Provided that no order refusing to make an amendment in accordance with the intimation shall be passed unless the person making such intimation has been given an opportunity of making his representation in that behalf.

(2) Where the [Mandal Revenue Officer] has reason to believe that an acquisition of any right of a description to which Section 4 applies has taken place and of which an intimation has not been made to him under that Section and where he considers that an amendment has to be effected in the record of rights, the recording authority shall carry out the said amendment in the record of rights.

(3) The [Mandal Revenue Officer] shall, before carrying out any amendment in the record of rights under sub section (1) or sub section (2) issue a notice in writing to all persons whose names are entered in the record of rights and who are interested in or affected by the amendment and to any other persons whom he has reason to believe to be interested therein or affected thereby to show cause within the period specified therein as to why the amendment should not be carried out. A copy of the amendment and the notice aforesaid shall also be published in such manner as may be prescribed. The recording authority shall consider every objection made in that behalf and after making such enquiry as may be prescribed pass such order in relation thereto as he deems fit.

(4) Every order passed under this section shall be communicated to the person concerned.

Andhra Pradesh Rights in Land and Pattadar Passbooks Rules, 1989

5. (1) The Recording Authority shall as soon as may be after the commencement of the Act for the first time and whenever a notification has been issued by the Commissioner to make the Record of Rights upto date in the area in which a village is situate cause to be published separate notices -

(a) (i) declaring his intention of preparing a record of rights in lands in the village for the first time, or declaring the intention consequent on the issue of a notification by the Commissioner to make the record of rights up-to-date in the village by updating the registry of holdings and by splitting up of joint pattas.

(ii) declaring his intention consequent on the issue of a notification by the Commissioner to make the record of rights upto date in the village.

(a) by updating the registry of holding by splitting up of joint pattas etc.

(b) calling upon all persons claiming any interest in any land in the village to furnish either through the Village Assistant concerned or directly:

(i) a statement in writing in duplicate in Form 1-A, showing the particulars of the lands in which an interest is claimed; and

(ii) the nature of such interest on or before a specified date to be indicated in the notice not being earlier than fifteen days from the date of publication thereof; and

(iii) if a person has interest in lands in more than one village in a Mandal or in more than one Mandal in a District, he shall file his claim in Form 1 (A) in triplicate giving the particulars of all the lands in which, an interest is claimed Mandal-wise and village-wise and where person has interest in lands in only one village, he shall append a certificate to the claim in Form I(A) that does not have interest in lands in any other village in the District.

(c) declaring also his intention to hold an enquiry in respect of the above matter in the village on a date to be specified in the notice in this behalf not being earlier than twenty two days from the date of publication of the notice and calling upon all persons interested to appear before him at the said enquiry on the date so specified.

(2) The notice referred to Sub-rule (1) shall be in Form-II and shall be published in the District Gazette of the District in which the village is situate and also in the following manner namely:

(a) by affixture in the chavidi or if there is no chavidi, in any other conspicuous place of the village.

(b) by affixture on the notice boards of the Gram Panchayat Office Primary Co-operative Agricultural Credit Society or School, if any in the village.

(c) by beat of torn torn in the village;

(d) by affixture on the notice board of the office of the Mandal Revenue Officer having jurisdiction over the village; and

(e) by affixture on the notice board of the office of the Mandal Praja Parishad in which the village is situated.

19. (1) The notice referred to in Sub-section (3) of Section 5 of the Act shall be in Form VIII.

(2) Such notice together with a copy of the amendment shall also be published in the manner specified in clause (a) to (e) of Sub-rule (2) of Rule 5.

Form VIII Notice Whereas the undersigned has received an intimation of the fact of acquisition of a right as described in the schedule hereunder and it appears that an amendment has to be made in the Record of Rights in consequence thereof....

and/or Whereas the Recording Authority has reason to believe that an acquisition of a right has taken place as described in the schedule hereunder and it appears that amendment has to be made in the Record of Rights in consequence thereof.

Now, therefore, under Sub-section (3) of Section 5 of the Andhra Pradesh record of Rights in Land and Pattadar pass Books Act, 1971.

All persons interested or affected are hereby required to show cause on or before...(date to be specified not being earlier than 30 days from the service/publication of the notice) as to why the amendment should not be carried out.

All persons interested or affected are also required to appear before the undersigned on...(date not earlier than forty five days from the service/publication of the date of notice) at...(Place)...(time) in connection with the enquiry proposed to be held in respect of the above matter.

Recording Authority.

6. A reading of the plain language of Section 5(1) together with its proviso makes it clear that on receipt of intimation about acquisition of any right referred to in Section 4, the Mandal Revenue Officer is required to determine whether the Record of Rights should be amended and, if so, what should be the mode of carrying out the amendment. A negative decision on the issue of amendment of the Record of Rights can be made by the officer concerned only after giving an opportunity of representation to the person who gave intimation regarding acquisition of right in terms of Section 4. Sub-section (2) of Section 5 empowers the Mandal Revenue Officer to make amendment in the Record of Rights, if he has reason to believe that an acquisition of any right of a description given in Section 4 has taken place. Section 5(3) requires, that before carrying out any amendment in the Record of Rights, the Mandal Revenue Officer shall issue a notice in writing to all persons whose

names are entered in the Record of Rights and who are interested in or affected by the amendment and to any other person whom he has reason to believe to be interested therein or affected thereby to show cause against the proposed amendment. A copy of the amendment and the notice is also required to be published in the prescribed manner. The word "prescribed" has been defined in Section 2(8) to mean "prescribed by rules made under the Act". Rule 5(1) of the Rules lays down the procedure for preparation of the Record of Rights and updating the entries contained therein. Rule 5(2) lays down that notice contemplated under Sub-rule (1) shall be in Form-II and shall be published in the village by various modes specified in Clauses (a) to (e). Rule 19(1) and (2) lays down that the notice referred to in Section 5(3) shall be in Form-VTII and the same shall be published in the manner specified in Clauses (a) to (e) of Sub-rule (2) of Rule 5.

7. The above analysis of the relevant statutory provisions shows that proviso to Section 5(1) and Section 5(3) represent statutory embodiment of the most important facet of the rules of natural justice i.e. audi alterem partem. These provisions contemplate issue of notice to the persons likely to be affected by the action/decision of the Mandal Revenue Officer to carry out or not to carry out amendment in the Record of Rights. Proviso to Section 5(1) lays down that if the Mandal Revenue Officer decides not to make an amendment in the Record of Rights, then he shall pass appropriate order only after giving an opportunity of making representation to the person, who gives intimation regarding acquisition of any right referred to in Section 4. Section 5(3) provides for issue of written notice to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment. Similarly, a notice is required to be issued to any other person whom the recording authority has reason to believe to be interested in or affected by the amendment. A copy of the amendment and the notice is also required to be published in the prescribed manner. The publication of notice in the prescribed manner is in addition to the notice, which is required to be given in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to any other person whom the recording authority has reason to believe to be interested in or affected by the amendment. To put it differently, the publication of a copy of the amendment and the notice is only supplemental and not the alternative mode of giving notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and to any other person to whom the recording authority has reason to believe to be interested in or affected by the amendment. If the Legislature thought that publication of a general notice in Form-VIII will be sufficient compliance of the rules of natural justice, then there was no occasion to incorporate a specific requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to other person whom the recording authority has reason to believe to be interested in or affected by the amendment. In our considered view, the requirement of issuing written notice to the persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment and also to any other person whom the recording authority thinks to be interested in or affected by the amendment clearly negates the argument that publication of notice in Form-VIII is sufficient.

8. In B.G. Laxman's case (supra), the Division Bench interpreted Section 5(3) and held:

What Sub-section (3) mandates is undoubtedly issuance of notice to all persons who may be having right or interest in the land in question in respect of which mutation is sought. The Legislature itself has not prescribed any particular mode of service in Sub-section (3) of Section 5 of the Act. No other provisions of the Act were brought to our notice by the learned Counsel who argued before us which prescribe any particular mode of notice to be served under Sub-section (3) of Section 5 of the Act. In the absence of such prescription by the lawmaker itself, the Governor of Andhra Pradesh in exercise of the powers conferred by Sub-section (1) of Section 11 of the Act has framed the Rules. Rule 19 of the Rules reads as follows:

19.(1) The notice referred to in subsection (3) of Section 5 of the Act shall be in Form VIII. (2) Such notice together with a copy of the amendment shall also be published in the manner specified in clauses (a) to (e) of Sub-rule (2) of Rule 5.

The language employed in Form-VIII provides a key in understanding the intendment of the rule-making authority. If it was the intendment of the rule-making authority that individual notices should be served on all those persons whose names are entered in the revenue records as contended by Sri Venkataramana, the language to be employed in para (4) of the notice would have been different. The phrase "all persons interested or affected are hereby required" clearly indicates that a kind of general notice is required to be issued informing all the affected/interested persons who may be having a say in the matter if the Mandal revenue Officer were to allow the application filed under Sub-section (1) of Section 5 of the Act. Therefore, we do not find any warrant or justification to read something into the provisions of Sub-section (3) which is not there and hold that Sub-section (3) of Section 5 contemplates not only general notice but also individual notices to all those persons whose names are entered in the revenue records.

9. While interpreting the provisions in the manner aforesaid, the Division Bench did not give due weightage to the words "issue notice in writing" and the expression "shall also be published" appearing in Section 5(3) and Rule 19(2) and this is the reason why it was held that individual notice is not required to be given to the persons whose names are entered in the revenue records or/and who are interested in or affected by the amendment. With respect, we are unable to subscribe to the view of the Division Bench, which is per se contrary to the language of Section 5(3) of the Act read with Rule 19(2) of the Rules.

10. The issue deserves to be considered from another angle. If an application is made for amendment of the existing entries in the Record of Rights, the person whose name already exists in such record is entitled to contest the proposed amendment. He can do so only if a notice regarding the proposed amendment is given to him by the recording authority. An order passed against a person whose name already exists in the Record of Rights without giving him notice of the proposed amendment and effective opportunity of hearing is liable to be declared nullity on the ground of violation of the rule of audi alteram partem, which, as mentioned above, represents the most important facet of the rules of natural justice. It needs no emphasis that the rules of natural justice are applicable in all judicial and quasi-judicial proceedings. The rule of hearing is also applicable in purely administrative proceedings and actions where any public authority passes an order affecting the rights of any individual. The applicability of the rules of natural justice to purely administrative

actions has been recognized by the Supreme Court in *State of Orissa v. Dr. (Miss) Binapani Dei* and has been reiterated in various judgments including those of *A.K. Kraipak v. Union of India*, *Maneka Gandhi v. Union of India*, *S.L. Kapoor v. Jagmohan*, *Swadeshi Cotton Mills v. Union of India* and *Olga Tellis v. Bombay Municipal Corporation*.

11. From the above discussion, it is clear that the requirement of issuing notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the amendment is independent of the requirement of publication of notice in accordance with the second part of Section 5(3) read with Rule 19 and 5(2) of the Rules. The language of Form-VIII in which the notice is required to be published cannot control the interpretation of the substantive provision contained in Section 5(3), which, as mentioned above, casts a duty on the recording authority to issue notice in writing to all persons whose names are entered in the Record of Rights and who are interested in or affected by the proposed amendment.

12. In the result, we hold that the judgment of the Division Bench in *B.G. Laxman's case* (supra) does not lay down correct law.

13. The matter may now be placed before the appropriate Single Bench.