SUPREME COURT OF INDIA

Kaushalya Devi

Vs.

Bachittar Singh

C.a.no.85 of 1958

(P. B. Gajendragadkar and K. N. Wanchoo, JJ.)

08.04.1959

JUDGEMENT

WANCHOO, J.:

1. This is an appeal by special leave against the judgment of the Punjab High Court by which the order of the Deputy Custodian General with respect of the cancellation of an allotment was set aside.

2. The main facts of the case are not in dispute being matters of record. The only point which was in controversy was whether the order of cancellation of the allotment in favour of the respondents had been made before July 22, 1952. The facts may therefore be briefly summarised in order to understand how this controversy arose. One Ragha Ram, who is dead and is now represented by the respondents, was a temporary allottee in village Fatoewal. District Hoshiarpur. He was also allotted some land on a quasi-permanent basis in village Budhewal. Of the appellants, Nil Kanth and Bindraban were sitting allottees in village Budhewal. It seems that they along with other three appellants were given quasi-permanent allotments in various other villages of Hoshiarpur district. All five of them applied to the Director-General Rehabilitation (Rural) praying that they be all restored to village Budhewal, On July 3, 1950, the Director-General made an order to the effect that

"these persons were sitting allottees in village Budhewal, but had been given quasi-permanent allotment in various other villages of Hoshiarpur District. Revenue Assistant (Rehabilitation) was directed to ensure during review that these persons were consolidated in village Budhewal, if there was no difficulty of grade. Otherwise they were to be consolidated in some other village of suitable grade. In case land was available adjustment might be made at once."

This order does not seem to have been implemented till the beginning of 1952. On February 27, 1952, a report was made that in Nil Kanth etc. had to be fited in village Budhewal, non-sitting allottees would have to be ousted because there was no area left in that village and proper orders were prayed for. On this report an order was passed by the Revenue Assistant (Rehabilitation) to the effect that the order had already been passed for fitting Nil Kanth etc. in village Budhewal and in consequence Ragha Ram would have to be ousted from that village. A notice was ordered to issue to Ragha Ram to file his objections to this course being taken. The date of this notice is not clear on the record; but is appears that Bachittar Singh respondent appeared on April 28, 1952, before the Revenue Assistant (Rehabilitation) and stated that his father Ragha Ram was dead that he and his two brothers were his heirs and that he was also muktiar-i-am of his two brothers. He further said

that they should not be ousted and in case their outsting was inevitable they might be fitted in village Fatoowal, which adjoined village Budhewal. On this an order was passed summoning the parties for May 6, 1952. On that dated Bachittar Singh filed a written-statement and again objected to their being ousted from village Budhewal. Thereupon an order was passed that the persons affected had been informed and the order of the Director-General Rehabilitation should be implemented. The contention of the appellants is that it was on this date, (namely, May 6, 1952) that a further order was passed by the Deputy Commissioner, who was in charge of rehabilitation, cancelling the allotment in favour of the respondent in village Budhewal. It further appears that on the same day, apparently after the above order has been passed. Bachittar Singh made an application to the effect that the allotment in village Budhewal in the name of his father had been cancelled by the Director-General Rehabilitation by his order dated July 3, 1950, and he had received an order in this respect on May 6, 1952. He therefore, prayed that he might be allotted the entire land in village Fatoowal. It is said that thereafter the implementation of the order of May 6, 1952, was taken in hand and in consequence thereof the allotment of the present appellants in other villages was cancelled on June 17, 1952. On the same date, proposals were made for fitting in the appellants in village Budhewal and the proposal form refers to the order of the Deputy Commissioner dated May 6, 1952. On June 19, 1952, the patwari made a report to the effect that the allotment of Ragha Ram in village Budhewal had been cancelled and therefore consequential proposals were put forward to fit the appellants in village Budhewal and to allot Ragha Ram's heirs alternative land to make up for the cancellation. This was followed by an implementation sheet dated July 4, 1952, in which the details were worked out on the assumption that the appellants were to be accommodated in village Budhewal and Ragha Ram's heirs were to be allotted land in lieu of what they would lose by cancellation of their allotment in village Budhewal. On this proposal, the Revenue Assistant (Rehabilitation) commented that the order of the Director-General Rehabilitation did not require the ejectment of any allottee: and as there was no area available in village Budhewal, the present appellants could not be accommodated there. The Deputy Commissioner agreed with this and it seems that the order passed on May 6, 1952 was overlooked. The appellants then apparently represented the matter to the Deputy Commissioner who went into the file and was of opinion that there was some mischief in the office and that explanations of the officials concerned should be called for and the orders already passed in favour of the present appellants on May 6, 1952, implemented. The matter was gone into again and on September 11, 1952, the Deputy Commissioner cancelled his order of July 15, 1952 and ordered that the Director-General Rehabilitation's order dated July 3, 1950 and of the Revenue Assistant (Rehabilitation) dated May 6, 1952, would stand and be implemented. Thereupon a further implementation-sheet was prepared and submitted on September 13, 1952. This implementation-sheet practically repeated what had been said in the implementation-sheet of July 4, 1952, so far as the appellants were concerned, and the Deputy Commissioner approved of the proposals in this implementation-sheet on September 18, 1952.

3. The respondents felt aggrieved by the final order which was passed on September 18, 1952 and went in revision to the Custodian General. This revision application was heard by the Deputy Custodian General and the main contention raised by them was that the order of September 18, 1952, cancelling their allotment was illegal inasmuch as a rule had been made, which came into force on July 22, 1952, according to which no quasi-permanent allotment could be cancelled after that date except in certain circumstances, which admittedly did not exist in this case. Thus the narrow point for the consideration of the Deputy Custodian General was whether the quasi-permanent allotment made in favour of the respondents had been cancelled after July 22, 1952, or before it. There was no misapprehension in the mind of the Deputy Custodian General as to the

effect of the change in the Rules in case the order of cancellation was made after July 22, 1952. The question that had to be decided by the Deputy Custodian General was a question of fact, namely, whether the order of cancellation had been made before July 22, 1952 or after it. The Deputy Custodian General came to the conclusion that the order of allotment in favour of the respondents had been cancelled on May 6, 1952 by the Deputy Commissioner, though that order was not actually available on the record. He gave certain reasons in support of the conclusion and eventually dismissed the revision filed by the present respondents.

4. The respondents then filed a writ application in the Punjab High Court and their principal contention was that there was no order of the Deputy Commissioner on the record of the case dated May 6, 1952, cancelling the allotment and that in fact the allotment was cancelled for the first time on September 18, 1952, and, therefore, in view of the change in the Rules from July 22, 1952, the cancellation was illegal.

5. The writ application was heard by a learned single Judge and he upheld the contention of the respondent's that the order of cancellation was passed on September 18, 1952. On that conclusion it followed that the order was illegal in view of the change in the Rules from July 22 1952. The writ application was therefore allowed and the order of the Deputy Custodian General upholding the cancellation of the allotment was set aside. There was then a Letters Patent Appeal by the present appellants, which was dismissed by a Division Bench, which in a short order agreed with the view taken by the learned single Judge. The appellants then applied for leave to appeal to this Court, which was dismissed. They then applied for special leave to this Court, which was granted; and that is how the matter has come up before us.

6. Shri Achhru Ram for the appellants has urged a narrow point before us. His contention is that the Deputy Custodian General, who admittedly had jurisdiction in the matter, decided in favour of the appellants and came to a conclusion of fact, namely, that the order of cancellation had been made on May 6, 1952. On that conclusion he was bound to uphold the order of the Deputy Commissioner in connection with this matter of allotment. He further contends that it was not open to the High Court by a writ of certiorari to interfere with the order of the Deputy Custodian General, unless it found that there was an error of law apparent on the record. He submits that in this case there was no error of law apparent on the record so far as the decision of the Deputy Custodian General is concerned and that the decision was merely on a question of fact and even if the High Court did not agree with the view taken by the Deputy Custodian General it should not have interfered with a mere wrong decision on a question of fact.

7. It appears from the judgment of the learned Single Judge that the High Court was also aware of this Court in Hari Vishnu Kamath v. Syed Ahmed Ishaque, (1955) 1 SCR 1104 : ((S) AIR 1955; SC 233). where the law on the subject has been laid down. The learned Single Judge however, went on to say that it was well settled that a finding based on no evidence was an error of law. He then reviewed the material on the record and came to the conclusion that the finding of the Deputy Custodian General in this case was based on no evidence and therefore there was an error of law apparent on the word, which called for interference by the High Court in certiorari. The Division Bench apparently accepted this view in dismissing the Letters Patent Appeal filed by the present appellants.

8. The question therefore further narrows down to this, namely, whether the finding of the Deputy Custodian General that there was in fact an order of cancellation dated May 6, 1952, i.e. before the change in the Rules on July 22, 1952, is based on no evidence. We have already set out the facts as

they appear from the record and we must say, with respect, that it cannot be said that there was no evidence on which the Deputy Custodian General could come to the conclusion that the allotment of the respondents in village Budhewal had in fact been cancelled on May 6, 1952. The Deputy Custodian General has referred to that evidence as it appeared from the record in the Deputy Commissioner's office, and we again say, with respect, that the evidence cannot be considered irrelevant. It is true that the actual order of the Deputy Commissioner dated May 6, 1952, cancelling the allotment is not available on the record; but we cannot forget that the order of September 18, 1952, does not cancel the allotment of the respondents in village Budhewal in terms, as for example is the case with the order of June 17, 1952 cancelling the allotment of Nil Kanth appellant. We are of opinion that the Deputy Custodian General was entitled to take into account all the reports, proposals and orders appearing on the record and if on a review of these he came to the conclusion that an order of cancellation must have been passed on May 6, 1952, though it did not appear on the record, it cannot be said that this conclusion of fact was based on no evidence or on no relevant evidence. This Court had occasion again to consider the question of the extent of the High Court's powers to interfere on a writ of certiorari in Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam, (1958) SCR 1240 : (AIR 1958 SC 398). It was pointed out in that case that the principle underlying the jurisdiction to issue a writ or order of certiorari was no more in doubt; but the real difficulty arose, as it often did, in applying the principle to the particular facts of a given case. It was also pointed out that the High Court had exercised its supervisory jurisdiction in that case in respect of errors which could not be said to be errors of law apparent on the face of the record; if at all they were errors, they were errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences. In other words, it was further observed, these were errors which a Court sitting as a court of appeal only, could have examined and, if necessary corrected. In the present case also we feel, with respect, that what the High Court has done is to correct what may be errors in appreciation of documentary evidence or errors in drawing inferences. We are, therefore, of opinion that there was no error of law apparent on the face of the record in this case which would justify interference by the High Court with the order of the Deputy Custodian General, who undoubtedly had jurisdiction to deal with the matter and did not in any way exceed that jurisdiction or fail to deal with the matter in accordance with the essential requirements of law which he was authorized and required to administer. We, therefore, allow the appeal, set aside the orders of the High Court and restore that of the Deputy Custodian General. As all this trouble has arisen because the order of the Deputy Commissioner dated May 6, 1952, was not to be found on the record and was, therefore, overlooked when the order of July 15, 1952, was passed by the Deputy Commissioner, we order the parties to bear their own costs throughout.

Appeal allowed.

</html