SUPREME COURT OF INDIA

Shivdeo Singh

Vs.

State of Punjab

C.A.No.265 of 1958

(B. P. Sinha, C.J.I., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.)

08.02.1961

JUDGEMENT

MUDHOLKAR, J.:

1. This is an appeal special leave from the decision of the Punjab High Court dismissing an appeal under the Letters Patent against the judgment of Gosain J. in a writ petition.

2. The facts leading up to the appeal are briefly as follows :

Certain agricultural lands in the village of Bhaini Bangar in the district of Gurdaspur were allotted to a number of displaced persons, including the appellants, in the beginning of the year 1950 on a quasi- permanent basis. This allotment was made under the Administration of Evacuee Property Act, 1950 and rules made thereunder. In the month of July of that year the Director of Rehabilitation(Rural), Jullunder, declared the village to be a 'fauji" village and stated that the land therein will have to be reallotted. This is what appears from his order dated July 10,1950 (Ex. C), though, according to the statement of facts in the High Court, the Director of Rehabilitation had actually passed an order canceling the allotment already made in favour of "non- fauji" families.

3. It is an admitted fact that the appellants fall under the category of 'non-faujis'. On October 9,1951 Mr. Vikram Singh Director of Relief and Rehabilitation, Punjab, made an order in which, amongst other things, he observed as follows :

"There are 27 non-fauzi allottee in this village, they are all 2nd grade land-holders. They have all to move out if the character of this village as "Fauji" village is maintained. The biggest allottees among non-faujis are:

	SA		U
1. Harbans Singh	37	-	14 1/2
2. Shivdev Singh	18	-	13 1/4
3. Hari Singh	17	-	11 3/4
4. Karam Singh	16	-	15

5. Mangal Singh 16 - 8 1/4

107 - 14 3/4

These persons are likely to be ousted immediately to make room for the four allottees who hold decree from the High Court. They have been informed of this. They seriously oppose this action. The only thing that can be done for them is that they should be fitted in some good II grade village. D.C. Gurdaspur will be asked to find out this much area in a suitable village for the outees of Bhaini Bangar. Action, however, should be taken after the result of appeal which is coming up before the Supreme Court".

Soon after this order was made, the appellant preferred a writ petition before the High Court of Punjab for quashing the order. The Director of Rehabilitation alone was made a party thereto. The petition was allowed by Khosla J., (as he then was). Eventually respondents 3 to 14 who are members of "fauji" families, in whose favour either allotment had been made or was intended to be made, preferred a petition before the High Court under Art. 226 of the Constitution for impleading them as parties in the appellants' petition and rehearing the whole matter. The petition was entertained by the High Court and Khosla J., allowed it. The appellants preferred an appeal before the High Court under the Letters Patent, which, as already stated having been dismissed, they have come up to this Court in appeal by special leave.

4. It was not contended before us that the Director of Rehabilitation had no power to declare a village as a "Fauji" village' nor was it contended that an allotment made in favour of a displaced person could never be cancelled. What was, however, contended was that by virtue of Rules 14(6) and 49 of the Administration of Evacuee Property (Central) Rules, 1950, the power to cancel an allotment could not be exercised after July 22,1952 and that in any case the cancellation of allotment made even prior to this date could not be implemented if it was not implemented before June-15, 1952. This argument is based on R. 49 which was added on July 22, 1952 and reads as follows:

"49. Repeal-The Rules contained in the following notifications, namely :

(i) the notification of the Government of Punjab in the Relief and Rehabilitation Department No. 8689-S (Reh), dated the 29th August, 1951; and

(ii) the notification of the Government of Patiala and East Punjab States Union in the Relief and Rehabilitation Department No.2 dated the 19th February, 1952, are hereby repealed:

Provided that subject to the next succeeding proviso anything done on any action taken in exercise of any power conferred by any of the said Rules shall be deemed to have been done or taken under the corresponding provision of these Rules:

Provided that no order other than an order in an appeal made in exercise of any power conferred by any of the said Rules shall have effect-

(a) if it was made after the 25th May, 1952, or

(b) if it was made on or before the 25th May, 1952, was not implemented or enforced on or before the 15th June, 1952."

5. According to Mr. Gopal Singh learned counsel for the appellant, the order passed by Mr. Vikram Singh dated October 9, 1951, was not an order of cancellation of allotment at all but was in the nature of proposal or at best it was a tentative or an inchoate order. We have quoted that order extensively and a bare perusal thereof would show that there is no substance in the contention of the learned counsel. it is true that Mr. Vikram Singh has stated in his order that the appellants are "likely' to be ousted immediately. But the word "likely" qualifies not 'ousted" but "immediately". The order proceeds to say that the appellants seriously opposed the action and then says that the D. C. Gurdaspur will be asked to ascertain if he can find land for the "oustees" of Bhaini Bangar. This would indicate that a decision had already been taken by Mr. Vikram Singh to the effect that "non-fauii' allottees of Bhaini Bangar including the appellants should be ousted to make room for "faujit" families, immediate action was not taken because as stated in the order, a certain appeal was pending before this court. That appeal, it may be mentioned, was against the decision of the Punjab High Court in a petition filed before it by some other "non-fauji" allottees who have been ousted from their lands in order to allot those lands to "fauji" families. Subsequent to the decision of the Punjab High Court the Director of Relief and Refiabilitation, Punjab, passed the aforesaid order dated October 9, 1951 cancelling the allotment in favour of the appellants in order to accommodate the persons who had succeeded in the petition before the Punjab High Court.

6. We would like to point out that the appellants had themselves accepted the order dated October 9, 1951, as being a final order because in their petition to the High Court they had asked for its cancellation. It was only during the arguments that a contention was raised on their behalf that the order was not final. In our opinion, they cannot be permitted to raise a contention which is clearly contrary to the stand taken by them in their writ petition.

7. The question then is whether the order of Mr. Vikram Singh could be implemented subsequent to June 15, 1952. The action which was taken against the appellant was under the notification of the Punjab Government in Relief and Rehabilitation Department No. 8689-S (Rein) dated August 29, 1951. Learned counsel points out that the rules contained in the aforesaid notification were repealed by notification No. S. R. O. 1290 dated July 22, 1952, and though R. 49 saved "anything done or any action taken in the exercise of any power conferred by any of the rules", it was the second proviso to R. 49 which prohibited the implementation of any order made under the repealed rules before May 25, 1952, unless that order was implemented or enforced on or before June 15, 1952. Rule 49 was amended on August 4, 1952 and the second proviso was deleted. The resultant position, therefore, is that the non-implementation of an order on or before June 15, l952, would not prohibit its implementation subsequent to that date.

8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla' J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was e

entertained by Khosla, J.

9. We, therefore, dismiss this appeal with costs.

Appeal dismissed.

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