Harbhajan Singh

Vs

Karam Singh and Others

Civil Appeal No. 447 of 1963

(A. K. Sarkar, V. Ramaswami – I, Raghuvar Dayal JJ)

16.09.1965

JUDGMENT

RAMASWAMI, J. –

This appeal is brought by Special Leave from the judgment and decree of the Punjab High Court dated 19th April, 1960 in letter patent Appeal No. 128 of 1960.

In the year 1955, consolidation proceedings under East Punjab Holdings [Consolidation and Prevention of Fragmentation] Act, 1948 [hereinafter called the Act] were started in the village Bholpur of District Ludhiana. In accordance with the provisions of the Act, a scheme for consolidation of holding was published on 29th March 1956. On 14th May 1956 that scheme was confirmed under s. 20 of the Act. The consolidation officer accordingly re allotted parcels of land to the appellant and respondents Nos. 1 and 8 in the village of Bholpur. Being dissatisfied with the allotment, respondents 1 and 8 preferred appeals under s. 21 [3] of the Act but theses appeals were dismissed by the settlement officer. Respondents 1 and 8 thereafter preferred further appeals under s. 21 [4] of the act to the Assistant Director, consolidation of holdings. The Assistant Director partially allowed the appeal of respondent No. 1 by his order dated 29th October, 1957 but dismissed the appeal of respondent No. 8 On 10th February, 1958, t

It appears that Harbhajan Singh had filed two copes of the application under s. 42 of the Act and on one copy the Director of Consolidation of Holdings passed an order on 17th February 1958, that the application should be put up with previous papers. On the second copy of the application the Director passed an order on 3rd April 1958 to the following effect.

> "The order of Assistant Director, Consolidation of Holding, under s. 21 [4] need not be amended, File. Inform."

On the copy of the application on which the order of 17th February, 1958 was passed, the Director heard the parties and passed his order on 29th August, 1958 by which he allowed the application of Harbhajan Singh and set aside the order of the Assistant Director. Respondent No. 1 thereafter moved the Punjab High Court under Art. 226 of the Constitution for quashing the order of the Director, Consolidation of Holding made on 29th August, 1958. The application was allowed by the High Court on 11th August January, 1960 on the ground that the Director, Consolidation of Holdings, was not competent to pass the order dated 29th August, 1958 in view of his previous order dated 3rd April, 1958 dismissing the application of Harbhajan Singh. The appellant took the matter in appeal under Letter Patent but the appeal was dismissed on 19th April 1960.

The question of law presented for determination in the appeal is, whether the Director, Consolidation of Holdings, had power to review his previous order dated 3rd April 1958 dismissing Harbhajan Singh's application, and whether his subsequent order made under s. 42 of the Act dated 26th August 1958 is legally valid ?

S. 42 of the Act States:

> " The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:
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> Provided that no order, scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceeding have been vitiated by unlawful consideration."

There is no provision in the Act granting express power of review to the State Government with regard to an order made under s. 42 of the Act. In the absence of any such express power, it is manifest that the Director, Consolidation of Holdings, cannot review his previous order of 3rd April, 1958 dismissing the application of Harbhajan Singh under S. 42 of the Act. It follows therefore that the order of the Director dated 29th August, 1958 is ultra vires and without jurisdiction and the High Court was right in quashing that order by the grant of a writ under Art. 226 of the Constitution.

In Drew v. Willis, Lord Esher, M. R. pointed out that no court [and I would add no authority] has..... a power of setting aside an order which has been properly made, unless it is given by statute.

In another case Hession v. Jones Bankes. J. pointed out that the court, under the statue, has no power to review an order deliberately made after argument and to entertain a fresh argument upon it with a view to ultimately confirming or reversing it and observed:

> "Then as to the inherent jurisdiction of the Court. Before the judicature acts the courts of common law had no jurisdiction whatever to set aside an order which had been made. The Courts of Chancery did exercise a certain limited power in this direction. All courts would have power to make a necessary correction if the order as drawn up did not express the intention of the court; the court of Chancery however went somewhat further than that, and would in a proper case recall any decree or order before it was passed and entered; but after it had been drawn up and perfected on court of Judge had no power to interfere with it. This is clear from the Judgment of Thesiger L. J. in the case of in re. St. Nazaire Co. [1879] 12 Ch. D. 88".

The same principle was laid down by the Madras High Court in Anantharaju Shetty v. Appu Hegada in which Seshagiri Aiyar J. Observed:

> " It is settled law that a case is not open to appeal unless the statue gives such a right. The power to review must also be given by the statute. Prima Facie a party who has obtained a decision is entitled to keep it unassailed, unless the Legislature had indicated the mode by which it can be set aside. A review is practically the hearing of

> an appeal by the same officer who decided the case. There is at least as good reason for saying that such power should not be exercised unless the statute gives it, as for saying that another tribunal should not hear an appeal from the Trial Court unless such a power is given to it by statute."

The same principle has been affirmed by the Judicial Committee in Baijnath Ram Goenka v. Nand Kumar Singh in which a mahal was sold for arrears of revenue. Two appeals to annual the sale were preferred to the Commissioner under the Bengal land Revenue Sales Act, 1859, s. 33 as amended by the Bengal land Revenue Sales Act, 1868. One of these appeals was by the respondent, a co-sharer of the mahal, and was dismissed on the ground that the auction purchaser had not been made a defendant. A Second Appeal was preferred by the other co-sharer in the mahal, and in this appeal the Commissioner, on March 23, 1900, made an order annulling the sale on the ground of an irregularity in the sale notice. This order related to the entire mahal. On June 21, 1900, the Commissioner having come to the conclusion that his order of March 23, 1900, was wrong in law, reviewed it, and made an order upholding the sale. The respondent thereupon brought the suit giving rise to the appeal to the Judicial Committee praying for a declarat

> " Their Lordships are clearly of opinion that the order of March 23, 1900, was final and conclusive, and that, so far as the Commissioner was concerned, he had no power to review that order in the way in which he has reviewed it."

The same principle has been reiterated by this court recently in Patel Chunibhai Dajibhai etc. v. Narayanrao Khanderao Jambekar and another. In that case respondent No. 1 was a landlord and the appellant was a tenant. On May 1, 1956, respondent No. 1 gave a notice to the appellant under s. 14 of the Bombay Tenancy and Agricultural Lands Act, 1948 [Bombay Act LXVII of 1948] terminating his tenancy. On December 25, 1956 respondent No. 1 gave another notice to the appellant under s. 31 terminating the tenancy. On July 10, 1957, respondent No. 1 filed an application under s. 29 read with s. 14 recovery of possession of the lands. By an order dated December 25, 1957 the Mahalkari allowed respondent No. 1's application under s. 29 read with s. 14 filed on July 10, 1957, and directed that the tenancy be terminated and possession of the lands be delivered to respondent No. 1. The appellant applied to the Collector of Baroda on August 9, 1958 and again on August 26, 1958 under s. 17A for revision of the Mahalkari's o

> " Where no appeal has been filed within the period provided for it, the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government at any time, -
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> [a] call for the record of any enquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, as the case may be, and
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> [b] pass such order thereon as he deems fit :
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> Provided that no such record shall be called for after the expiry of one year from the date of such order and no order to such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard."

An application for revision preferred by respondent No. 1 on March 24, 1959 was dismissed by the

Tribunal on February 23, 1961. An application under Art. 227 of the Constitution preferred by respondent No. 1 June 15, 1961 was allowed by the High Court on November 5, 1963. In this state of facts, it was held by this court that in the absence of any power of review the Collector had no power to reconsider his previous decisions dated October 3, October 4 and October 17, 1958 and the subsequent order of the collector dated February 17, 1959 re- opening the matter was illegal, ultra vires and without jurisdiction. The majority judgment of this court states:

> " Though s. 76A unlike s. 76, does not provide for an application for revision by the aggrieved party, the appellant property drew the attention of the Collector to his grievances and asked him to exercise his revisional powers under s. 76A. Having perused the applications for revision filed by the appellant, the Collector decided to exercise his suo motu powers and called for the record on August 14, 1958 within one year of the order of the Mahalkari. But before the record arrived and without looking into the record, the collector passed orders on October 3, October 4 and October 17, 1958 rejecting the applications for revision. By these orders, the Collector decided that there was no ground for interference with the Mahalkari's order..... All these orders were passed by the Collector in the exercise of his suo motu power of revision. These orders as also the previous order calling for the record could be passed by the Collector only in the exercise of this revisional power under s. 76-A. As he refused

We are of the opinion that the same principle applies to the present case and the Director, Consolidation of Holding had no power to review his previous order dated 3rd April, 1958 rejecting the application of Harbhajan Singh under s. 42 of the Act. It follows that the subsequent order of the Director, Consolidation of Holdings dated 29th August, 1958 allowing the application of Harbhajan Singh was ultra vires and illegal and was rightly quashed by the High Court.

Accordingly we dismiss the appeal with costs.

Appeal dismissed.

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