Hukam Chand Etc.

Vs

Union of India and Others

Prithvi Chand (Deceased) Through Lrs.

Vs

Union of India and Others

Civil Appeals Nos. 177 of 1968

(P. Jgmohan Reddy, K. S. Hegde, H. R. Khanna JJ)

22.08.1972

JUDGMENT

KHANNA, J. -

1. This judgment would dispose of four appeals Nos. 1031, 1094 and 1095 of 1967 and 177 of 1968 which are directed against the judgment of the Punjab High Court. Appeals Nos. 1094 of 1967, 1095 of 1967 and 177 of 1968 have been filed on certificate of fitness granted by the High Court, while appeal No. 1031 of 1967 has been filed by special leave. The common question which arises for determination in these four appeals is whether in exercise of the powers conferred by Section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (14 of 1954) (hereinafter referred to as the Act), the Central Government could amend Rule 49 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter referred to as the Rules) with retrospective effect.

2. Arguments have been addressed in Appeal No. 177 of 1968 and it is stated that the decision in that appeal would govern the other appeals also.

3. Prithvi Chand appellant in appeal No. 177 of 1968 is a displaced person from West Pakistan. He filed a petition under Article 226 of the Constitution in the High Court on the allegation that he was the owner of agricultural land and buildings in West Pakistan. After petition he settled permanently in village Tihar in Union Territory of Delhi. The claim of the appellant was verified in respect of agricultural land for four standard acres and 9 1/2 units. In November, 1953, the Additional Custodian of Evacuee Property (Rural) allotted barani agricultural land measuring 28 bighas and 16 biswas situated in village Tihar to the appellant and delivered him possession thereof. The appellant claimed to be in possession of that land since then. He also claimed to have spent more than Rs. 3,000/- on effecting improvements on the land. On July 10, 1959 the Settlement Officer-cum-Managing Office issued notice to the appellant stating that he was not entitled to the transfer of the land allotted to him as it was included in urban limits and was of the value of more than Rs. 10,000/-. The appellant was called upon to show cause why the allotment of land, except in respect of one Khasra number valued below Rs. 10,000/- be not cancelled. The appellant preferred objections against the proposed action, but his objections were rejected. The allotment of land was

cancelled, except in respect of one Khasra number, viz. No. 1489, measuring 4 bighas, 16 biswas, which was valued at Rs. 9,680/-. Appeal filed by the appellant was dismissed by the Assistant Settlement Commissioner on October 21, 1959, on the ground that it was time-barred. The appellant then filed a writ petition in the High Court.

4. The writ petition was dismissed by the learned Single Judge on the ground that the departmental counsel had stated during the course of arguments that the department was willing to give the benefit of the new rules to the appellant. In Letters Patent filed by the appellant controversy centered on the point as to what was effect of the Explanation added to Rule 49. Rule 49 as it originally stood read as under :

> "49. Compensation normally to be paid in the form of land. - Except as otherwise provided in this chapter, a displaced person having verified claim in respect of agricultural land shall, as far as possible, be paid compensation by allotment of agricultural land. Provided that where any such person wishes to have his claim satisfied against property other than agricultural land, he may purchase such property by bidding for it at an open auction or by tendering for it and in such a case the purchase price of the property shall be adjusted against the compensation due on this verified claim for agricultural land which shall be converted into cash at the rates specified in Rule 56."

In 1960 the following explanation was added to the above rule :

> "Explanation. - In this rule and in the other rules of this chapter, the expression 'agricultural land' shall mean the agricultural land situated in a rural area."

5. The amendment was given a retrospective effect by providing that the explanation was to be deemed always to have been inserted : vide amendment No. XXXIX, dated February 11, 1960, made by the Central Government acting under Section 40 of the Act. The case set up on behalf of the respondents was that in view of the Explanation, which incorporated the policy laid down in an earlier press note, the land which could be allotted under the above rule was only rural land and not land situated in urban area. As the land in dispute was situated in urban area and was of the value of more than Rs. 10,000/-, the same, it was submitted, could be transferred only by means of sale and not by means of allotment. As against that the contention advanced on behalf of the appellant was that the Explanation to Rule 49 could not be given retrospective effect as the Central Government had no power to amend Rule 49 retrospectively. This contention on behalf of the appellant did not find favour with the learned judges of the High Court. Reference in this context was made to the fact that the rules made under Section 40 of the Act had to be laid under sub-section (3) of that section before each House of Parliament for a period of 30 days for annulment and modification, if so considered proper. In the result the appeal was dismissed.

6. Mr. Mehta on behalf of the appellants in the four appeals has argued in this Court that Rule 49 could not be amended with retrospective effect and that the Explanation added to the rule could not operate from a date prior to that on which it was added as result of amendment made in February, 1960. The view taken by the High Court, according to the learned counsel, was incorrect. As against that, the learned Solicitor General has canvassed for the correctness of the view taken by the High Court and has submitted that the Central Government could give retrospective effect to the Explanation added to Rule 49. In our opinion, the contention advanced by Mr. Mehta is well founded.

7. Rules have been framed by the Central Government in exercise of the powers conferred by Section 40 of the Act. According to sub-section (1) of that section, the Central Government may, be notification in the official Gazette, make rules to carry out the purposes of the Act. Sub-section (2) mentions the matters in respect of which the rules may make provisions without prejudice to the generality of the power conferred by sub-section (1). Sub-section (3) reads as under :

> "(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a period of thirty days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

8. Perusal of Section 40 shows that although the power of making rules to carry out the purposes of the Act has been conferred upon the Central Government, there is no provision in the section which may either expressly or by necessary implication show that the Central Government has been vested with power to make rules with retrospection effect. As it is Section 40 of the Act which empowers the Central Government to make rules, the rules would have to conform to that section. The extent and amplitude of the rule-making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of Section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule. The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled (see Craies on Statute Law, p. 297, Sixth Edition).

9. The learned Solicitor-General has not been able to refer to anything in Section 40 from which power of the Central Government to make retrospective rules may be inferred. In the absence of any such power, the Central Government, in our view, acted in excess of its power insofar as it gave retrospective effect to the Explanation to Rule 49. The Explanation, in our opinion, could not operate retrospectively and would be effective for the future from the date it was added in February, 1960.

10. In the case of Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin and Others ((1970) 2 SCR 830 : (1969) 3 SCC 112.), this Court dealt with an explanation which had been added by the Central Government in purported exercise of the power vested under the Central Excise and Salt Act, 1944. Question arose whether the explanation had a retrospective effect. The Court referred in the context to the rule making power of the Central Government under the aforesaid Act and observed :

> "Dr. Seiyed Muhammad, learned Counsel for the department, did not support the impugned demand on the basis of the retrospective effect purported to have been given to the explanation referred to earlier by the notification, dated February 16, 1963, (Exh. P-12) for obvious reasons. The rule making authority had not been vested with power under the Central Excise and Salt Act to make rules with retrospective effect. Therefore the retrospective effect purported to be given under Exh. P-12 was beyond the powers of the rule-making authority."

11. In the case of The Income Tax Officer, Alleppy v. M. C. Ponnoose and Others, etc. ((1969) 2 SCC 352 : (1970) 1 SCR 678.) this Court dealt with a notification, dated August 14, 1963, which empowered the revenue officials, including the Tehsildar, to exercise the powers of a tax recovery officer under the Income Tax Act, 1961 in respect of arrears. The notification was given retrospective effect. Question which arose for determination was whether the State Government could invest the Tehsildar with such powers retrospectively. Answering this question in the negative, this Court observed :

> "The Parliament can delegate its legislative power within the recognise limits. Where any rule or regulation is made by any person or authority to whom such power have been delegated by the Legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the persons or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

Reference was made in the above cited to an earlier decision of this Court in B. S. Vadera, etc. v. Union of India and Others ((1968) 3 SCR 575 : AIR 1969 SC 118 : 17 FLR 411.), wherein it had been observed with reference to rules framed under the proviso to Article 309 of the Constitution that those rules could be made with retrospective operation. Vadera's case was distinguished on the ground that the view expressed therein was based upon the language employed in the proviso to Article 309 that any rules so made shall have effect subject to the provisions of any such Act. It was also observed.

> "As the Legislature can legislate prospectively as well as retrospectively there can be hardly any justification for saying that the President or the Governor should not be able to make rules in the same manner so as to give them prospective as well as retrospective operation. For these reasons the ambit and content of the rule-making power under Article 309 can furnish no analogy or parallel to the present case."

12. We are, therefore, of the opinion that the Explanation added to Rule 49 in the present case cannot be given retrospective operation.

13. The fact that the rules framed under the Act have to be laid before each House of Parliament would not confer validity on a rule if it is made not in conformity with Section 40 of the Act. It would appear from the observations on pages 304 to 306 of the Sixth Edition of Craies on Statute Law that there are three kinds of laying -

> (i) laying without further procedure;

(ii) laying subject to negative resolution;

(iii) laying subject to affirmative resolution.

The laying referred to in sub-section (3) of Section 40 is of the second category because the above sub-section contemplates that the rule would have effect unless modified or annulled by the House of Parliament. The act of the Central Government in laying their rules before each House of Parliament would not, however, prevent the courts from scrutinizing the validity of the rules and holding them to be ultra vires if on such scrutiny the rules are found to be beyond the rule-making power of the Central Government.

14. It has also been submitted by the learned Solicitor General that in case this Court finds that the Explanation to Rule 49 could not be given retrospective effect, the appeals may be allowed and the impugned orders about the cancellation of the allotment in favour of the appellants may be set aside. It has also been stated that this Court need not go in these appeals into the question as to whether the allotment in favour of the appellants could be cancelled under some other provision of law.

15. We accordingly accept the appeal, set aside the judgment of the High Court and quash the order relating to the cancellation of allotment of the lands in dispute in favour of the appellants. The appellants shall be entitled to costs of this Court as well as those incurred in the High Court. One hearings fee. Court fee in appeal No. 177 of 1968 should be received from the appellant in that appeal.

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