

Aribam Tuleshwar Sharma

Vs

Aribam Pishak Sharma and Others

Civil Appeal No. 2284 of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

25.01.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. The appellant filed a writ petition under Article 226 of the Constitution of India in the court of the Judicial Commissioner, Manipur, challenging the orders dated August 11, 1961 and September 30, 1961 of the Chief Commissioner of Manipur. The substance of his complaint was that the Chief Commissioner had permitted, by these orders, the 'settlement' of part of the public road on respondents 1 to 4, thereby preventing the petitioner's free access to the public road from the adjoining land belonging to the petitioner on which his homestead was situated. The writ petition was contested on various grounds. By his judgment dated May 25, 1965, the learned Judicial Commissioner allowed the writ petition on the ground that the settlement of land which was part of a public road was prohibited by the Manipur Land Revenue and Land Reforms Act, 1960, as well as the Manipur Land Revenue and Land Reforms Act, 1958. The learned Judicial Commissioner who decided the writ petition was Shri Rajvi Roop Singh, JC. Thereafter, on July 2, 1965, respondent 1 to 4 filed an application for review purporting to be under Order 47, Rule 1 and Section 151, Civil Procedure Code. The application for review was allowed, the earlier order dated May 25, 1965 was set aside and the writ petition was dismissed by Shri C. Jagannadhacharyulu, JC, who succeeded Shri Rajvi Roop Singh as Judicial Commissioner. The appellant sought and obtained a certificate under Article 133(1)(c) of the Constitution from Shri R. S. Bindra, JC, who succeeded Shri C. Jagannadhacharyulu as Judicial Commissioner. Pursuant to the certificate granted by the Judicial Commissioner this appeal has been filed.

2. The submission of Shri Goburdhun, learned counsel for the appellant, was that the Judicial Commissioner acted entirely without jurisdiction in reviewing the order made by his predecessor. In reviewing the earlier order, as he did, the Judicial Commissioner exercised appellate powers which he did not possess. He was not entitled to sit in appeal over the judgment of his predecessor.

3. The Judicial Commissioner gave two reasons for reviewing his predecessor's order. The first was that this predecessor had overlooked two important documents Exs. A/1 and A/3 which showed the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC 1909), there is nothing in Article 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. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate Court.

4. In the present case both the grounds on which the review was allowed were hardly grounds for review. That the two documents which were part of the record were not considered by the Court at the time of issue of a writ under Article 226 cannot be a ground for review especially when the two documents were not even relied upon by the parties in the affidavits filed before the Court in the proceedings under Article 226. Again that several instead of one writ petition should have been filed is a mere question of procedure which certainly would not justify a review. We are, therefore, of the view that the Judicial Commissioner acted without jurisdiction in allowing the review. The order of the Judicial Commissioner dated December 7, 1967 is accordingly set aside and the order dated May 25, 1965, is restored. The appeal is allowed but without costs.

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