JAMMU AND KASHMIR HIGH COURT

Tej Ram

Vs.

Custodian General

Writ Petn. No. 2 of 1965

(S. Murtaza Fazl Ali, J.)

07.04.1966

JUDGMENT

S. Murtaza Fazl Ali, J.

1. This is an application for an appropriate writ in order to quash an order of the Custodian General by which on a review petition filed by respondent No. 2, he set aside his previous order dated 21-12-1964.

2. It appears that the house in dispute was allotted to the petitioner as far back as in 1958 along with some agricultural lands. Subsequently, however, one Inder Singh father in-law of respondent No. 2 came into wrongful possession of the house and did not vacate possession of the house in spite of the orders of the authorities concerned. Subsequently the matter was taken before the Custodian who by his order dated 11-3-1963 cancelled the petitioner's allotment but on revision to the Custodian General this order was set aside and the allotment in favor of the petitioner was confirmed. Against this order, respondent No. 2 filed a review petition before the Custodian General, who accepted the review petition and cancelled the allotment of the petitioner. Hence this petition before this court.

3. Mr. Mahajan appearing for the petitioner submitted that the Custodian General had committed a serious error of law in accepting the review petition beyond the grounds laid down by Order 47 Rule 1 of the Code of Civil Procedure. The learned counsel for the petitioner further submitted that the Custodian General was influenced by extra-judicial information in setting aside his own order which was passed on legal materials on the record.

4. The petition has been contested by the respondents firstly, on the ground that the petitioner has no right to maintain this petition as he was a mere allottee and secondly, it was contended that the Custodian General had ample jurisdiction to review his previous order.

5. I would first take up the contention regarding the maintainability of the writ petition.

6. Mr. Sehgal appearing for the respondent strenuously relied on AIR 1964 SC 685 in order to

urge that the petitioner allottee had no right to maintain this petition. Reliance was also placed on AIR 1956 Jammu and Kashmir 33. I have gone through AIR 1964 SC 685. The facts in that case appear to be quite different from those in the present case. In that case, the petitioner was doubtless a grantee and a clear question of title was involved. Their Lordships in those circumstances held that since the grant made to the petitioner before them was a resumable grant and the question of title of the petitioner was not at all clear, no writ could be maintained by him. In the instant case, however, the petitioner is an allottee under the statutory provisions of the Jammu and Kashmir State Evacuee's (Administration of Property) Act, 2006. It is true that an allottee has no right to property as held by the Supreme Court in AIR 1957 SC 599 but at the same time it cannot be denied that a quasi permanent allottee has undoubtedly a legal right and such a right must be protected. In a later case reported in AIR 1963 SC 507, their Lordships clearly held that a quasi permanent allottee had a valuable right in the property allotted to him and the said right is entitled to protection of the constituted authorities and the courts. In this connection, their Lordships have observed as follows:

> "The existence of a right and infringement thereof are the foundations of the exercise of the jurisdiction of the court under Article 226 of the Constitution. The right that can be enforced under Article 226 of the Constitution shall ordinarily be the personal or individual right of the applicant. It may first be considered whether the respondents had such a right on the date when they filed the petition under Article 226 of the Constitution. They filed the petition on November 9, 1955 i.e. after the Central Govt. issued the notification acquiring all the evacuee properties and before it issued the sanad conferring proprietary rights on the respondents in respect of the lands allotted to them. The nature of interest of a displaced person in the properties allotted to him under the evacuee law has been authoritatively decided by this court in 1957 SCR 801 AIR 1957 SC 599. There Jagannadhadas J. speaking for the court after an elaborate survey of the law on the subject came to the conclusion that the interest of a quasi permanent allottee was not property within the meaning of Article 19 (1) (f) and Article 31 (2) of the Constitution. But the learned Judge made it clear that notwithstanding the said conclusion an allottee had a valuable right in the said interest.....

The observations of this court indicate that notwithstanding such notification an evacuee has a valuable right in the property allotted to him and that the said right is entitled to the protection of the constituted authorities and the courts." It is manifest from the observations of their Lordships that it cannot be laid down as a universal rule of law that an allottee in all cases is a licensee and has no legal right. Even if an allottee does not have a right to property as contemplated by Article 31 of the Constitution of India, it is sufficient for him to prove that he has some sort of a legal right to the property. In view of the observations of their Lordships in the aforesaid case, the authority reported in AIR 1956 Jammu and Kashmir 33 (FB) is considerably weakened. Moreover in AIR 1956 Jammu and Kashmir 33 (FB) the position was essentially different. In my opinion, however, the status of an allottee has to be determined with reference to the provisions of the statute which confers the right of allotment on him. In the instant case, the allotment having been made under the Jammu and Kashmir Evacuee (Administration of Property) Act, we have to analyse the provisions of this Act in order to see whether the allottee has a legal right within the four corners of the statute or not. Under Section 9 of the Act, the Custodian has been

given powers to take such measures as he considers necessary or expedient for the purpose of administering, imposing, preserving and managing any evacuee property. Similarly Section 10 of the Act lays down that an allotment made by the Custodian or a lease granted by him could be cancelled, amended or terminated by him. Proviso to Section 10 however, imposes a duty on the Custodian not to cancel any allotment except as provided for in the Rules framed by the Government in this behalf. Para 14 Rule 3 (as amended by Order No. 121 of 1960 dated 14-4-1960) lays down the grounds on which an allotment of an allottee can be cancelled. The second proviso to this sub-section makes it obligatory on the Custodian to give a reasonable notice to an allottee before cancelling his allotment. This proviso runs as follows:

> "Provided also that in all other cases referred to above a reasonable notice shall be given to an allottee before an order for the cancellation of the allotment is made by the Custodian.

Furthermore, sub-rule 3-a applies the provisions of sub-rule 3 mutatis mutandis to leases granted by the Custodian. It would thus appear that the statute treats an allottee and a lessee more or less on the same footing. In these circumstances, therefore, it cannot be said that an allottee has no legal right whatsoever to maintain the petition and I do not see any reason why the petitioner cannot be allowed to maintain this petition for the limited purpose of showing that the order by which his allotment has been cancelled is either without jurisdiction or suffers from a legal infirmity. In other words the right conferred on the allottee by the Act is doubtless a legal right to be exercised subject to the conditions laid down in the Statute. The allottee, therefore, has a right to remain in possession of the property allotted to him so long as his allotment is not cancelled in accordance with the provisions of the Act. Where however, his allotment is cancelled by a statutory authority, under the Act, without complying with the conditions of the Statute or in direct contravention thereof, there is a direct invasion of the legal right conferred on the allottee by the Statute and the allottee can certainly approach this court for correcting the error of law committed by the said authority in order to keep it within the bounds of law. In doing so, the allottee is not asking the court to enforce a fundamental right but as an interested person affected by the order, he is trying to show to the court that the order passed against him is without jurisdiction and is in direct contravention of the statutory provisions of law. In this view of the matter, the petition cannot be thrown out on the ground that the petitioner has no locus standi to maintain this petition. For these reasons, therefore, the contention of the learned counsel for the respondents that the petitioner has no locus standi to maintain this petition is rejected.

7. I would now come to the second point which relates to the merits of the order passed by the Custodian General. Section 30 sub-clause 5 of the Act, runs as follows:

> "The Custodian General, Custodian, Additional Custodian or Authorized Deputy Custodian, but not a Deputy or an Assistant Custodian may after giving notice to the parties concerned review his own order."

8. There is, no doubt, that the Custodian General has been given power to review his own order. The grounds of review have not been specified in the Section, but it is well settled that when a Statute uses a term of well known legal significance, the Legislature must be presumed to have the intention of attaching to that term that known legal significance. Under Order 47 Rule 1 CPC

a review lies only on certain specified grounds namely, where there is an error of fact apparent on the face of the record or where there is some discovery of new and certain matters or the like. Read ing the order impugned in this case, it seems to me that the Custodian General has set aside his previous order without there being any error of fact apparent on the face of the record or there being any discovery of new and important matter. The main ground taken by the Custodian General in his order under review was that the petitioner had three more houses in his possession in village Barota. It would appear from his original order dated 21-12-1964 that this defense was taken by the respondent before him at that time also, but at that time, the Custodian General did not think it necessary to hold a local inspection. While reviewing the order, however, the Custodian General visited the spot in presence of the parties and made oral enquiries and on being informed by some persons that the petitioner had got other houses he came to the conclusion that the allotment in favor of the petitioner should be cancelled. Mr. Sehgal appearing for the respondent has not urged that the order of the Custodian General is covered by the provisions of Order 47 Rule 1 Civil Procedure Code On the other hand, Mr. Sehgal has submitted that as the Statute does not prescribe any limitations on the power of review to be exercised by the Custodian General, the said power cannot be confined to the grounds mentioned in Order 47 Rule 1 CPC I am, however, unable to agree with this contention. An identical question was considered by a Division Bench of the Patna High Court reported in AIR 1954 Patna 43, where their Lordships observed as follows:

> "It is manifest therefore that the expression "review" has a well known legal significance, and Section 26 (2) Administration of Evacuee Property Act must be construed in the context and background of the Code of Civil Procedure where the same expression has been used. It is a familiar rule of construction that when the Legislature has deliberately used a term which has a known legal significance in law, it must be taken that the Legislature has attached to that term that known legal significance. See *Lewis Pugh Evans Pugh v. Ashutosh Sen*[1], In our opinion the expression "review" used in Section 26 (2) Administration of Evacuee Property Act must be construed not in a grammatical sense but it must be construed to have the same legal meaning as in Order 47 Rule 1 Civil Procedure Code If this view is right, it follows that Mr. R. P. Singh had no jurisdiction to review the order of his predecessor, Mr. S. N. Ray. in absence of any fresh material or in the absence of any mistake or error apparent on the face of the record. In this view of the matter, the petitioners would be entitled to a writ of certiorari for quashing the order of M. R. P. Singh dated 18-12-52 on the ground that he acted in excess of his

[1] AIR 1929 PC 69

> jurisdiction." The same view has been taken by a Single Bench of this Court in AIR 1960 Jammu and Kashmir 125. The Privy Council in AIR 1929 PC 69 took also the same view. In other words, where the word "review" is used by a Statute, it must be presumed that the exercise of the powers must be limited to the grounds laid down in Order 47 Rule 1 CPC. The Custodian General has thus committed a serious error of law apparent on the face of the record, in exercising his powers of review by travelling beyond the grounds mentioned in Order 47 Rule 1 CPC.

9. The order of the Custodian General suffers from another serious infirmity. When the

Custodian General went for spot inspection, he appears to have acted solely on the information given to him by certain persons at the spot and gave no opportunity to the petitioner to rebut the information given to him by the persons whom he met in the village. There can be, no doubt, that the Custodian General while passing an order of review is acting as a quasi judicial Tribunal and it is against the elementary tenets of nature justice that such a Tribunal should act on extra-judicial information furnished to him. Furthermore, even Section 30 sub-clause 5 makes it obligatory on the authority concerned to review its own order only after giving notice to the parties concerned. If the Custodian General wanted to act on some evidence, which was not on the record, he should have allowed the petitioner an opportunity to meet that evidence. The petitioner, however, has submitted that the houses which were shown to the Custodian General, did not in fact belong to him but belonged to somebody else. He has also filed some documents in support of his contention. It is not necessary for me to go into this question, because I am satisfied that the Custodian General had no jurisdiction to review his own order on the basis of the evidence, to rebut which no opportunity to the petitioner was given. Thus the order of the Custodian General is contrary to the mandatory provisions of Section 30 sub-clause 5 of the Jammu and Kashmir State Evacuee's (Administration of Property) Act, 2006.

10. Having regard to these circumstances, therefore, I am satisfied that the order of the Custodian General reviewing his order dated 21-12-1964 being completely without jurisdiction must be quashed.

11. The application is allowed and by a writ of Certiorari the order of the Custodian General, by which he has set aside his previous order dated 21-12-1964, is hereby quashed.

12. In the circumstances of the case. I make no order as to costs.
Petition allowed.