RAJASTHAN HIGH COURT

Partumal and another

Vs.

Managing Officer

Civil Writ Case No. 117 of 1961
(Sarjoo Prosad C.J., J.S. Ranawat And D.S. Dave, JJ.)

09.10.1961

JUDGMENT

Ranawat, J.

1. This is an application under Article 226 of the Constitution of India by Partumal and his son Lakhmichand against the Managing Officer, the Regional Settlement Commissioner and the Settlement Commissioner for a writ of certiorari quashing the order of the Settlement Commissioner Respondent No.2 dated the 10th January 1961 by which the transfer of the portions of property No.A.M.C.XIX/1186 (Old). A.M.C. No.XIX/501 (New) situated at Ajmer in favour of the petitioners and some others was cancelled and also for a writ of prohibition restraining the opposite parties from resuming the said property and reauctioning the same.

2. This petition came up for hearing before a Division Bench of this Court, one member of which felt that the two Bench decisions of this Court in *Dungar Das v. Custodian Rajasthan,* [1] and *Govind Ram v. Regional Settlement Commr. Rajasthan, Jaipur,* [2] require to be reconsidered in the light of the latest decision of the Supreme Court in *Lt. Col. Khajoor Singh v. Union of India,* [3] and the following point was, therefore, referred by that bench to a Full Bench:

> "Whether this Court has territorial jurisdiction to take cognizance of cases where orders sought to be set aside had been passed by certain authorities outside the territorial jurisdiction of this Court".

3. Hon'ble the Chief Justice felt that the other point that was involved in this case was also of equal importance and he, therefore, directed that the whole case be referred.

4. The petitioner Partumal and his son Lakhmichand are displaced persons from West Pakistan. They occupied the first and third floors of property No.A.M.C.XIX/1186 (Old). A.M.C. No.XIX/501 (New) situated at Ajmer since 1st January 1948 under occupation report No.7721 of the 12th of August 1948 in the name of the petitioner No.1. The said property belonged to one Anwarul Haq who migrated to Pakistan. This portion of the property was allotted by the Custodian of Evacuee Property Ajmer, by his order No.1815/2415 dated 2nd April 1949 in the name of the petitioner No.1. The other portions of the property were allotted to the persons respectively in occupation thereof. On the 9th of October 1958 the petitioner No.2 applied to the Managing Officer, Ajmer, for allotment of the entire residential portion of the said property and on the 4th of December 1958 all the occupants of the said property gave consent for allotment of the respective portions of the property in their occupation to them and the Managing Officer, Ajmer, in pursuance thereof agreed to sell the portion of the property which was in the tenancy of the petitioners to petitioner No.2 for a consideration of Rs.4600/- by his letter dated the 3rd March 1959. The petitioner No.2 deposited Rs.920/- in cash on the 2nd of March 1959 as part payment of the consideration money. He offered verified claims of his associates for an amount of Rs.3680/- being the balance of the consideration money and the said claims were adjusted towards the price of the property on the 16th of August 1959 and in this way the entire amount of the consideration money was paid off. On the 24th of December 1959 the Managing Officer acting on behalf of the President of India granted a Deed of Conveyance in the name of the petitioner No.2 for the entire first and the third floor of the property that was already in his occupation. On the 12th of December 1959 Hemandas, to whom the second floor of the property was transferred, preferred an appeal to the Regional Settlement Commissioner, Jaipur, claiming transfer of the third floor of the property in his name. During the pendency of the said appeal, the matter was referred by the Regional Commissioner, Jaipur to the Chief Settlement Commissioner, Delhi in his administrative capacity and the Settlement Commissioner, Delhi, in exercise of the powers delegated to him by the Chief Settlement Commissioner, set aside the transfer of the said property to the respective allottees including the petitioners on the 10th of January 1961, holding that the decision of the Managing Officer about the divisibility of the property was bad in law and against instructions. The Settlement Commissioner, Delhi, therefore, directed that the property be sold by auction as it was saleable property and could not be transferred by way of allotment. The Managing Officer, Jaipur, issued letter No.18372 dated 3rd February 1961 calling upon the petitioner No.2 to surrender his deed of Conveyance. He also

made arrangements for putting the property to auction. The petitioners then came to this Court and they have challenged the jurisdiction of the Settlement Commissioner New Delhi on the ground that after the execution of the deed of Conveyance in favour of the petitioner, it was not competent for the authorities acting under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, (Act No.44 of I954), hereinafter referred to as the Act, to set aside the sales and to resume the properties and put them to auction. They have also claimed that the Managing Officer had no power under the Act to call upon the petitioners to surrender their title deeds. They further stated that the action of the Managing Officer in resuming the property and putting it to auction amounted to an infringement of the fundamental rights of the petitioners guaranteed under Article 19 of the Constitution. The petitioners therefore, prayed that the order of the 'Settlement Commissioner, Delhi be set aside and the opposite parties be restrained from interfering with their rights to the property purchased by them from the Custodian Department.

5. The opposite parties did not file a reply. Mr. Rajnarayan who appeared for the respondents did not dispute the facts stated in the petition. He has pleaded that the order of the Settlement Commissioner, New Delhi is under Section 24 of the Act, and that it was competent for the said officer to set aside the sales notwithstanding the execution of the deeds of conveyance in favour of the petitioners. He has sought support in this connection from the decisions in *Bara Singh v. Joginder Singh,* [4] and *Ram Rattan Kapur v. Union of India,* [5]

6. The Division Bench, which referred this case to a Full Bench, felt serious doubts about the jurisdiction of this Court to set aside an order of an authority whose office is located at Delhi outside the territorial jurisdiction of this Court. The learned Judges felt that the decisions of this Court in ILR 1956-6 Raj 939 and ILR 1960-10 Raj 594 were likely to cause difficulty when viewed in the light of the observations of the Supreme Court in AIR 1961 SC 532. In Dungar Das's case, ILR 1956-6 Raj 939 certain proceedings were taken against him by the Additional Custodian, Ganganagar, for recovery of a sum of Rs.8,000/- said to have been deposited with him by one Moulabux who later became an evacuee. Once the proceedings were dropped in August 1949, but they were again revived by the Deputy Custodian Evacuee Property, Ganganagar in October, 1952 and an order was passed against Dungar Das directing him to deposit the amount with 6 per cent interest. Dungar Das went in appeal to the Custodian without success and a revision to the Custodian General, New Delhi also

failed. Dungar Das came to this Court under Article 226 of the Constitution for a declaration that the order of the Custodian General, New Delhi, upholding in revision the order of the Custodian Rajasthan was contrary to law and for a direction restraining the Custodian Department from realising the amount of Rs.8,000/- with interest under the said order.

A preliminary objection was taken by the opposite party that the High Court had no jurisdiction to issue a writ or direction under Article 228 of the Constitution against the decision of the Custodian General, New Delhi for the reason that the office of the Custodian General was located outside the territorial jurisdiction of this Court. The decision in *Barkat Ali v. Custodian General,* [6] was overruled and it was held that the order of the subordinate tribunal which passed if originally is merged in the order of the appellate or revisional authority and if the appellate or the revisional authority is located beyond the territories over which a High Court has no jurisdiction, it would not be possible for the High Court to issue a writ in such a case. The decision of the Supreme Court in *Thangal Kunju Musaliar v. Venkatchalam,* [7] was relied upon.

7. In Lt. Col. Khajoor Singh's case, AIR 1961 SC 532 the petitioner was holding a regular commission in the Jammu and Kashmir State Forces which were amalgamated with the Defence Forces of the Union of India with effect from the 1st of September, 1949 and he was entitled to continue in service as Lt. Colonel until the age of 53 years. But before he attained the age of superannuation, the Government of India by its letter dated the 31st of July 1954 retired him from service with effect from 12th August 1954. The petitioner filed an application in the High Court of Jammu and Kashmir challenging the decision of the Government of India to retire him prematurely. A preliminary objection was taken up by the Union of India that the High Court had no jurisdiction to issue a writ or direction against the Union Government which had its seat at New Delhi. The High Court allowed the preliminary objection and dismissed the application of the petitioner, but granted leave to appeal to the Supreme Court of India. Their Lordships of the Supreme Court upheld the decision of the High Court and in dealing with the scope of the jurisdiction of a High Court to issue a writ under Article 226 of the Constitution, by majority judgment Per Sinha, C.J. reaffirmed the statement of law enunciated by the Supreme Court in *Election Commission India v. Saka Venkata Rao,*[8] and *K.S. Rashid and Son v. Income Tax Investigation Commission,*[9] . Their Lordships disapproved the Full Bench decision of the Allahabad High Court in *Maqbulunissa v. Union of India,* [10] and approved that of the Calcutta High Court in *Lloyds Bank Ltd. v. Lloyds Bank Indian Staff Association,*

[11] Dealing with the question whether the Government of India, as such, can be said to have a location in a particular place viz. New Delhi, irrespective of the fact that its authority extends over all the States and its officers function throughout India, their Lordships observed:

> "A Government may be functioning all over a State or all over India; but it certainly is not located all over the State or all over India........ It would, therefore, in our opinion be wrong to introduce in Article 226 the concept of the place where the order passed has effect in order to determine the jurisdiction of the High Court which can give relief under Article 226 .... It would not be right to introduce in Article 226 the concept of the functioning of Government when determining the meaning of the words "any person or authority within those territories" .... Article 226 as it stands does not refer anywhere to the accrual of cause of action and to the jurisdiction of the High Court depending on the place where the cause of action accrues being within its territorial jurisdiction. Proceedings under Article 226 are not suits; they provide for extraordinary remedies by a special procedure and gives powers of correction to the High Court over persons and authorities and these special powers have to be exercised within the limits set for them".

8. In Election Commission's case. AIR 1953 SC 210 their Lordships had held that the exercise of the power conferred by Article 226 was subject to two-fold limitation, namely (1) that the power is to be exercised "throughout the territories in relation to which a High Court exercises jurisdiction", and (2) that the person or authority to whom the High Court is empowered to issue the writs must be "within those territories". In other words their Lordships observed that the writ of the Court would run throughout the territories subject to the jurisdiction of the Court and that the person affected by the writ must be amenable to the Court's jurisdiction either by residence or location within those territories. Thus the law on the subject as laid down by the aforesaid decision may be summed up as follows:

> (1) The power to issue writs is to be exercised "throughout the territories in relation to which High Court exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction.
> (2) The person or authority to whom the High Court is empowered to issue such writs must be "within those territories", in other words they must be amenable

to its jurisdiction either by residence or location within those territories.

(3) The jurisdiction to issue writs does not depend on the place where the cause of action accrues.

(4) The scat of the Union Government is at New Delhi and no other High Court except that of the Punjab can issue writs against it.

9. The point relating to the doctrine of merger which was laid down in the two division bench decisions of this Court, namely ILR 1956-6 Raj 939 and ILR 1960-10 Raj 5.94 did not come up for consideration in Lt. Col. Khajoor Singh's case, AIR 1961 SC 532 for the reason that the impugned order in that case was of the Government of India and it was communicated to the petitioner through the Chief Secretary of the State. The Chief Secretary only acted as a post office and did not do anything in exercise of his own statutory powers. No question therefore, could arise in that case regarding the rule of merger. Thus the decision in Khajoor Singh's case AIR 1961 SC 532 cannot have any bearing on the doctrine of merger discussed in the two aforesaid judgments of this Court.

10. In ILR (1960) 10 Raj 594 certain property was allotted to the petitioner and later it was sold to him on payment of its price and a deed of conveyance was executed. One Gangadas Balani then filed an appeal to the Settlement Commissioner, Delhi and he succeeded to obtaining an order setting aside the transfer of the property made in favour of the petitioner Govindram who then moved this Court under Article 226 of the Constitution. The decision of the Supreme Court in AIR 1956 SC 246 was relied upon and the doctrine of merger as laid down by the decision in the case of Dungar Das, ILR 1956-6 Raj 939 was held to be subject to at least two exceptions: namely,

> (1) where the proceedings of the original tribunal are void ab initio and its order, therefore, a nullity, it cannot be deemed to have merged in the order of the appellate authority, for the reason that in such a case there is nothing which can merge into an order of the appellate authority. (Vide also *Collector of Customs Madras v. A.H.A. Rahiman*· [12] (2) where the superior tribunal has no jurisdiction to entertain an appeal or revision against an order of the inferior authority and its order passed on appeal or revision, is, therefore, a nullity, the order of the inferior tribunal cannot be considered to have merged in the order of the appellate authority, for there can be no merger into nothing.

On this principle it was held in the case of Govind Ram, ILR (1960) 10 Raj 594 that it is open to the High Court to look into the order of the appellate authority for the purpose of ascertaining whether it is with or without jurisdiction and to ignore it if it is found to be without jurisdiction and to control in accordance with law the activity of the inferior tribunal which is within its territorial jurisdiction. This view in our opinion stands fortified by the observations of the Supreme Court in Musaliar's Case, AIR 1956 SC 246 as discussed at length in the judgment of this Court in Govind Ram's case, ILR (1960) 10 Raj 594 . The decisions on this point in *Azmatullah v. Custodian Evacuee Property Uttar Pradesh,* [13] and *Joginder Singh v. Director Rural Rehabilitation Pepsu,* [14] were referred to in the judgment of the Supreme Court in Musaliar's case, AIR 1956 SC 246 as having little bearing on the point at issue, for in those cases the only relief claimed was of quashing the order of the Appellate Authority which was not amenable to the jurisdiction of the Court.

11. The above discussion would make it clear that the law laid down by the decisions in ILR (1956) 6 Raj 939 ; ILR (1960) 10 Raj 594 do not require to be reconsidered on account of the judgment of the Supreme Court in Lt. Col. Khajoor Singh's case, AIR 1961 SC 532.

12. In the instant case the order of the Managing Officer, Rajastnan was taken in appeal to the Regional Settlement Commissioner, Jaipur, and the appeal was dismissed, for the reason that the Settlement Commissioner, Delhi, had already set aside the order of the Managing Officer in revision. The revisional authority, it may be pointed out, is located outside the territorial jurisdiction of this Court, and the record of the case cannot, therefore, be summoned from it by a writ of certiorari.

13. Mr. Bhargava for the petitioners has urged that even though a writ of certiorari may not issue in the instant case, he is entitled to a writ or direction in the nature of a writ of prohibition against the Regional Settlement Commissioner and the Managing Officer who are amenable to the jurisdiction of this Court for the reason that they are interfering with the fundamental rights of the petitioner under Article 19 of the Constitution. The learned counsel further pointed out that the action of the Managing Officer and the Regional Settlement Commissioner cannot be justified on the basis of an order of the Settlement Commissioner, New Delhi, which is illegal and without jurisdiction and this Court is not debarred from examining the vires and the validity of the order of the Settlement Commissioner, New Delhi. The petitioners claim that they

had acquired good title by means of a deed of conveyance executed by the Managing Officer in their favour and the Settlement Commissioner had no jurisdiction in law to set aside the transfer of property after it had been made and his order is, therefore, on its very face ultra vires and illegal.

14. The deed of conveyance which was executed by the Managing Officer shows that the first and the third floor of the property described in the writ petition was sold on behalf of the President of India to the Petitioner No.2 for a consideration of Rs.4600/- that was paid before the execution of the deed. The possession of the property was also delivered to the petitioner No.2. The petitioners thus acquired title to the property by means of the said deed of sale. It is stated by the counsel of the respondents that the Managing Officer and the Regional Settlement Commissioner are only executing the order of the Settlement Commissioner that was passed in exercise of his powers under Section 24 of the Act and this Court should not issue a direction and stay the hands of these authorities for it should not do something indirectly which it could not do directly.

15. It may be noted that the Managing Officer and the Regional Settlement Commissioner are both statutory bodies and they have to function according to law. They cannot justify their actions under cover of certain orders of the revisional authority if such orders are not legal. In other words, these authorities cannot act contrary to law and if they so act, they are themselves answerable for their illegal action, and they cannot justify such action under cover of an illegal order of an appellate or revisional authority, not amenable to the jurisdiction of this Court. In order to examine the legality of the action of the Managing Officer and the Regional Settlement Commissioner who are amenable to the jurisdiction of this Court, it may become necessary for this Court to consider the vires of the order of the appellate or revisional authority even though such authority is not amenable to the jurisdiction of this Court, being located outside the limits of the territorial jurisdiction of this Court. The logic of the argument that this Court should not do indirectly what it cannot do directly was considered by the Supreme Court in Thangal Kunju Musaliar's case, AIR 1956 SC 246, and it was not accepted. There is no provision in the Act or the rules under which the Managing Officer may resume the property already sold by him or reduction it. After a property is sold, it ceases to form part of the evacuee property pool and the authorities under the Act cannot meddle with it after its Sale.

16. Section 24(1) no doubt confers very wide powers of revision on the Chief Settlement Commissioner. However, Clause 2 of the said section affords some indication on the point. By clause 2, the Chief Settlement Commissioner is authorized to cancel leases of immovable property and the order of cancellation of leases is subject to revision by the Central Government on an application filed in that behalf within 30 days by an aggrieved party. It stands to reason that if the Chief Settlement Commissioner had been given powers of cancellation of sales under sub-clause (i) of section 24, the law would have provided at least similar machinery for revision of such orders. Sale of immovable property stands much higher than a lease among the modes of transfer of immovable property and it cannot be conceived that when a safeguard of revision by the Central Government was provided against cancellation of a lease under an order of the Chief Settlement Commissioner, no such safeguard would have been considered necessary in the matter of cancellation of sales by him. We can thus safely infer that section 24(1) did not authorize cancellation of sales after they are completed. No doubt, allotments can be set aside under section 24 of the Act, but after such allotments ripen into sales they cannot be cancelled. We, therefore, hold that the Chief Settlement Commissioner or the Settlement Commissioner exercising his power had no authority to cancel sale of property and the order dated 10th January 1961, passed by him was without jurisdiction and invalid. Mr. Raj Narayan for the State has cited the decisions in AIR 1959 Punjab 370 and AIR 1961 Punjab 387. Ram Rattan Kapur's case, AIR 1961 Punjab 387 was decided on the authority of Bara Singh's decision, AIR 1959 Punjab 370. In Bara Singh's case, AIR 1959 Punjab 370 it has been held that an execution of a deed of conveyance amounts to drawing up of a formal document only and the same would become invalid no sooner the order of allotment is set aside by the appellate or revisional authority. The observations of the learned Judges are as follows:

> "In any case where a managing officer wrongly omits to cancel an allotment in circumstances where he should have cancelled it, the Chief Settlement Commissioner can, in exercise of his power of revision, correct the error, and, similarly, where a managing officer wrongly transfers proprietary rights to a claimant in respect of any property, the Chief Settlement Commissioner can reverse the order and annul the transfer........the sanad or its grant being founded solely on the decision to transfer permanent ownership that sanad must necessarily fall with the reversal of the decision on which it is based".

With due respects to the learned Judges we think the proposition of law as laid down by them cannot be accepted. The allotment of property, no doubt can be cancelled in revision under section 24 of the Act; but after a sale takes place, it cannot be disturbed by setting aside the order of allotment. The sale cannot be held to be only a formal expression of the order of allotment. Title to property is created by the sale and the vendee thereby acquires interest in the property. It would be too much to read in section 24 of the Act to hold that it extends to cancellation of sales by expressly providing for cancellation of allotments. We are unable to regard execution of a sale deed as only a formal expression of an order of allotment dependent on its subsistence. This Court had occasion to consider this aspect of the question in Govind Ram's case, ILR (1960) 10 Raj 594 . After referring to the various provisions of the Act and the rules under which evacuee property may be allotted, leased and sold, it was observed as follows:

> "In our opinion, it is inconceivable on the very face of it that a transfer of property by the Central Government under Section 10 read with R.33, should be challenged in an appeal to the Chief Settlement Commissioner. We may also in this connection refer to Section 20 which empowers the Managing Officer or Corporation to transfer the property. These powers are distinct from the powers of the Central Government under Section 10 of the Act. Even, these powers are to be exercised subject to rules. Rule 33 will operate in such cases also and, therefore, the transfer in such cases will also be on behalf of the President. Further, Rule 34 inter alia provides that when a property is transferred to any person under Chapter 3 of the Rules, the property shall be deemed to have been transferred to him where such person had made an application for payment of compensation before 31st October, 1953, from the first day of November, 1953. Section 20 'read in the light of these rules, contemplates an act of sale and not an order liable to be challenged in appeal or revision. In these circumstances, the respondent's contention that the actual transfer should pre-suppose an order of transfer and that order of transfer could be challenged by means of appeal or revision under Sections 23 and 24 of the Act. .... It was, however, contended by the respondent that the Deputy Chief Settlement Commissioner was competent to cancel the allotment and that with the cancellation of the allotment, the sale should stand ipso facto cancelled. We are unable to accept this contention. ....We are also of the opinion that even if the allotment was liable to be cancelled, it could not be cancelled after

> the property had been transferred by a formal deed of conveyance, except under the condition mentioned in the deed.... We are definitely of the opinion that respondent No.2 had no jurisdiction to cancel the transfer made in favor of the petitioner and his order is wholly without jurisdiction. It has thus to be treated as a nullity and has to be ignored."

17. We are definitely of the opinion that under section 24 of the Act, the Settlement Commissioner, New Delhi had no authority of cancelling the sale executed in favor of petitioner No.2 and his order in this behalf is wholly without jurisdiction and cannot be regarded as valid and the Managing Officer cannot be allowed to take shelter under an invalid order of the Settlement Commissioner, for resuming the property of the petitioners and in auctioning the same. The action of the Managing Officer in doing so is not warranted by law and as it interferes with the fundamental rights of the petitioner, he is entitled to protection under Article 226 of the Constitution.

18. The petition is allowed and a direction in the nature of a writ of prohibition is issued against the Managing Officer, and the Regional Settlement Commissioner restraining them from interfering with the property of the petitioners as described in the petition and auctioning the same. The petitioners shall get costs of this petition from the opposite parties Nos.1 and 2.

Petition allowed.

Cases Referred.

1. ILR 1956-6 Raj 939
2. ILR 1960-10 Raj 594
3. AIR 1961 SC 532
4. AIR 1959 Pun 370
5. AIR 1961 Pun 387
6. ILR (1954) 4 Raj 526
7. AIR 1956 SC 246
8. AIR 1953 SC 210
9. AIR 1954 SC 207
10. AIR 1953 All 477
11. ILR (1954) 2 Cal 1
12. AIR 1957 Mad 496
13. AIR 1955 All 435
14. AIR 1955 Pepsu 91