PEPSU HIGH COURT

Joginder Singh Waryam Singh

Vs

Rural Rehabilitation

Appeals Nos.8, 9, 23, 24 and 26 of 1954

(Chopra and Gurnam Singh, JJ.)

09.02.1955

JUDGMENT

Guknam Singh, J.

1. This judgment will dispose of the abovenoted five appeals in which a common question regarding the jurisdiction of the High Court under Article 226 of the Constitution is involved. The petitions were originally heard by a learned Judge of this court sitting in single bench. He dismissal all the petitions for want of jurisdiction but granted a certirieate under Section 52, Pepsu Judicature Ordinance No.10 of 2005; hence these appeals before us.

2. Shortly stated the facts out of which these appeals have arisen are as follows:
"*joginder Singh v. Director of Rural Rehabilitation and others*."

3. Joginder Singh was allotted agricultural land in village Jhill, district Patiala. The allotment in his favour was finally cancelled by the Assistant Custodian General at Delhi by his order dated 28-10-1953.

"*Inder Singh v. Director of Rural Rehabilitation and others*."

4. Similarly the allotment made in favour of Inder Singh appellant was finally cancelled by the Assistant Custodian General, Delhi, on 7-5-1953, In cases Nos.1 and 2 the Assistant Custodian. General, Delhi is one of the respondents the other two respondents being Director of Rural' Rehabilitation and the Assistant Commissioner Rehabilitation at Patiala.

5. It may here be mentioned that Inder Singh had filed a writ petition in the Punjab High Court which was dismissed for want of jurisdiction.

"*Dayal Singh v. Director of Rural Rehabilitation and others*."

6. The appellant was allotted a house in village Dham, on 28-11-1950. This allotment was

challenged before the Assistant Commissioner, Rehabilitation, at Kapurthala. This officer, however, dismissed the appeal of Sunder Singh and others. The aggrieved party then filed a revision petition before the Director, Rural Rehabilitation, at Patiala who set aside the order of allotment of the house made in favour of Dayal Singh appellant. Against this order of the Director of Rural Rehabilitation, the appellant went in revision to the Assistant Custodian General at Delhi, who by his order dated 2-3-1953 rejected the petition. The appellant then filed a writ petition in this court which was heard by a learned Judge sitting in Single Bench. It may, however, be mentioned that the Assistant Custodian General, who was originally made respondent before the Single Judge, was dropped during the pendency of the petition.

"*Parbh Dayal v. Custodian Muslim Evacuee Property, Patiala and others*."

7. Parbh Dayal appellant was allotted a house at Kumar Hatti near Kasauli on 24-1-1951 by the Supervisor, Evacuee Property, Kohistan. On 12-6-1952 he received notice under Section 8(4), Administration of Evacuee Property Act (No.31 of 1950), from the Supervisor Evacuee Property, Kohistan requiring him to surrender possession of the house by 17-6-1952. The appellant first moved the Deputy Custodian Muslim Evacuee Property and then the Custodian Muslim Evacuee Property at Patiala but remained unsuccessful. The appellant also filed a revision petition before the Assistant Custodian General, Delhi, but it was rejected. In the petition before the learned Single Judge Assistant Custodian General was not made a party by the appellant.

"*Rajinder Singh v. Director Rural Rehabilitation and others*."

8. In this case, the appellant was allotted some agricultural land on quasi-permanent basis in village Jodhpur Ramana tehsil and district Bhatinda. Subsequently, on the recommendation of the Assistant Commissioner (Revenue) who was invested with the powers of a Deputy Custodian, the Director of Rural Rehilitation Patiala, cancelled the allotment. Against this order the appellant filed a revision petition before the Custodian General at Delhi respondent No.1, but it was rejected vide his order dated 12-9-1952. The appellant then filed writ petition in the High Court.

9. All these petitions were resisted on the ground that this court was not competent under Article 226 of the Constitution to issue the writs as the Assistant Custodian General who passed the final orders resided at Delhi which place was beyond the territorial limits of this court. To the contrary the appellants urged that the location of the office of the revisional authority at Delhi did not make any difference as the subordinate authorities who were to carry out and give effect to the order resided within the territorial jurisdiction of this court. It was, therefore, urged that writs etc., as prayed for in the writ-petitions could be issued to the local authorities. Article 226 of the Constitution of India reads as under:

> "Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred

by Part III and for any other purpose."

10. It is, therefore, manifest that for purposes of jurisdiction Article 226 contemplates the following two conditions (1) the power to issue the writs etc., extends only to the territories in relation to which High Court exercises jurisdiction, and (2) the writs etc., can be issued only to the person, authority or Government within those territories. These are the only two conditions which govern the question of High Court's jurisdiction. Plain reading of the article makes it clear that the writs, orders or directions cannot travel beyond the territorial limits of the High Court's jurisdiction and the person, authority, or Government to whom they are to be issued must reside or be located within the territories in relation to which High Court exercises jurisdiction. If either of these conditions is not fulfilled the High Court will obviously be left without jurisdiction to issue such writs etc. It is not denied that the office of the revisional authority, who passed the final orders in all these cases, is located at Delhi which place is undoubtedly beyond the territorial limits of this court. A similar question came up for consideration before their Lordships of the Supreme Court in - *'Election Commission, India v. Saka Venkata Rao[1]',* In that case, the petitioner had been elected to the Madras Legislative Assembly and the Election Commission sitting at Delhi had reported to the Speaker of the Madias Legislative Assembly that the petitioner was under a certain disqualification. On this the speaker referred the matter to the Governor of Madras, who in his turn, sought the opinion of the Election Commission. The Election Commission went to Madras where an opportunity was given to the petitioner of being heard. The petitioner prayed for a writ of prohibition restraining the Election Commission from enquiring into his alleged disqualification and making a report to the Governor of Madras. A learned Judge of the Madras High Court accepted the petition and ordered issue of such a writ. On appeal to the Supreme Court their Lordships held:

> "High Court of Madras cannot issue any writ under Article 226 to Election Commision having its offices permanently located at New Delhi".

Their Lordships, however, left the question of jurisdiction open in a case where an original authority was located in one State and the appellate authority in another State. The counsel for the appellants, therefore, urged that the decision of their Lordships did not adversely affect their contention. In the course of his judgment referred to above learned Chief Justice Patanjali Sastri, who delivered the learned judgment, observed:

> "We are unable to agree with the learned Judge below that if a tribunal or authority permanently located and normally carrying on its activities elsewhere exercises jurisdiction within those territorial limits so as to affect the rights of parties therein, such tribunal or authority must be regarded as functioning within the territorial limits of the High Court and being therefore amenable to its jurisdiction under Article 226".

These observations in my view clearly repel the contention of the appellants. Apart
from this a later decision of their Lordships of the Supreme Court affirmed the view expressed in the case *'Election Commission v. Venkata Rao (A)'*. A similar question came up for consideration, in - *'K.S. Rashid and Son v. Income-tax Investigation Commision[2]',* in which it was held that:

"While Article 225 of the Constitution preserves to the existing High Courts the powers and jurisdictions which they had previously, Article 226 confers, on all the High Courts new and very wide powers in the matter of issuing writs which they never possessed before. There are only two limitations placed upon the exercise of those powers by a High Court under Article 226 of the Constitution; one is that the power is to be exercised throughout the territories in relation to which it exercises jurisdiction', that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction. The other limitation is that the person or authority to whom the High Court is empowered to issue writs must be within those territories and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Article 220 of the Constitution is to be determined".

In view of this definite pronouncement of their Lordships, it is clear that so far as the present cases are concerned this court has no jurisdiction to issue writs to the Assistant Custodian General whose Office is located at Delhi which place undoubtedly is beyond the territorial limits of this court. The learned counsel for the appellants relied on a number of authorities in support of the contention that mere location of office of Custodian General at Delhi does not debar this court to issue writs. The authorities relied upon by the counsel are - *'Karuppa Chetty v. Board of Commrs. for H.R.E., Madras*[3]*'*, - *'Buta Mal v. Financial Commr. Relief and Rehabilitation, Simla*[4]*'*, and - *'Ranganathan v. Madras Electric Tramways*[5] From the reading of these cases, it is clear that they all proceed on the authority of the judgment of the Privy Council reported in - *'Ryots of Garabandho v. Zamindar of Parlakimedi*[6]*'*, This case was considered by their Lordships of the Supreme Court in AIR 1953 SC 210. At p.214 it was observed:

"In any case, the decision did not turn on the construction of a statutory provision similar in scope, purpose, or wording to Article 226 of the Constitution, and is not of much assistance in the construction of that article."

Again considering the same case AIR 1943 PC 164 in AIR 1954 SC 207 the learned Judge observed:

"This line of reasoning does not appear to us to be proper and we do not think that the decision in the 'Parlakiniedi's case' is really of assistance in determining the question of jurisdiction of the High Courts in the matter of issuing writs under Article 226 of the Constitution. The whole law on this subject has been discussed and elucidated by this court in its recent
pronouncement in AIR 1953 SC 210, there the observations of the Judicial Committee in 'Parlakimedi's case, upon which reliance has been placed by the Punjab High Court, have been fully explained."

Following the authority of the Supreme Court, the Punjab High Court in a later case reported in - *'Prof. Ram Kumar Luthra v. Punjab University, Solan*[7]*'*, held "that as the Punjab University,

Solan, was not within the territories in relation to which Punjab High Court exercised jurisdiction, the Punjab High Court was not competent to proceed with the application." It, therefore, follows that the cases relied upon by the learned counsel for the appellants can be if no assistance in the decision of the present appeals as they do not adversely affect the contention raised by the learned counsel for the respondents. Following the authority of their Lordships of the Supreme Court I hold that merely because the Assistant Custodian General currying on his activities at Delhi exercises jurisdiction within the territorial limits of the High Court affecting the rights of the parties therein, it cannot be regarded as functioning within the territorial limits of this High Court and thus is not amenable to its jurisdiction under Article 226 of the Constitution.

11. The learned counsel for the appellants pointed out that the original orders in all the cases were passed by the local tribunals. These orders were then taken in revision to the Assistant Custodian General. In the three cases (Dayal Singh, Prabh-Dayal and Rajinder Singh) the revision petitions were merely dismissed and the orders of the local tribunals were maintained, whereas in the cases of Joginder Singh and Inder Singh the Assistant Custodian General interfered with the orders of the local tribunals and substituted his own orders. It was, therefore, submitted that at any rate in the first three cases the orders in dispute before the High Court were really not those of the Assistant Custodian General but were those of the local tribunals which tribunals were situate within the territories over which this High Court exercises jurisdiction and thus the court was within its right to issue writs etc., to the local tribunals though not to the Assistant Custodian General whose office was located at Delhi. In view of this submission, the learned counsel conceded that in the last two cases of Jogindar Singh and Inder Singh in which Assistant Custodian General substituted his own orders such orders could not be issued by this court. The submission in favour of the competency of the court to issue writs is based on the authority of the Rajasthan High Court in - *"Barkatali v. Custodian General of Evacuee Property of India[8]',* and - *'Har Prasad v. Union of India[9]",* The facts of the first case were almost similar to those of the three cases before us. Wanchoo C.J., who delivered the leading judgment while distinguishing the case *'Election Commission v. Venkata Rao[10]* observed,

> "the case here is, in our opinion, very different. Here a revision was taken to the Custodian General and unless the applicant did so, we would not have heard him as he had another remedy open to him. That revision was dismissed in toto by the Custodian General, so that the order of the Custodian, Rajasthan, stood as it was. Under these circumstances, we are of opinion that it is not the order of the Custodian General in revision which is being challenged before us, but the order of the Custodian, Rajasthan. As we have pointed out, the
> matter would have been different if the Custodian General had in any manner modified the order of the Custodian, Rajasthan, for, in that case, the order in dispute would have been the order of the Custodian General, and we would not have been in a position to issue a writ to the Custodian General.

We are, therefore, of opinion that it is unnecessary to issue a writ to the Custodian General in this case, and that we have the power to issue a writ to the Custodian of Evacuee Property, Rajasthan, and to the Assistant Custodian Evacuee Property, Pali, who arc also parties before us".

12. With due deference, I cannot persuade myself to agree with the observation made by the leagued Judge. The reasons for the conclusions arrived at by nun appear to be that where a revision is dismissed, the Custodian General does not confirm the order of the local tribunal but merely declines to interfere. It is, therefore, the order of the local tribunal which is in dispute and the High Court thus has jurisdiction to issue writs. A similar view has been expressed in the other Rajastnan case AIR 1954 Rajasthan 189 (1). The petitioner in that case was a Head Travelling Ticket Examiner. After medical examination of his eye-sight, he was ordered by the then Chief Traffic inspector, Bandikuli to rejoin as Head Ticket Collector. Against this order the petitioner tiled an appeal to D.T.S. Bandikuli, T.S. Ajmer, C.T.M. Bombay, and General Manager, Bombay. As a result of these representations, he was asked to re-appear before the Chief Medical Officer, Bombay. The Chief Medical Officer maintained his earlier opinion and thus the petitioner remained under the same orders. He then filed a writ petition under Article 226 of the Constitution. Objection to the jurisdiction of the Rajasthan High Court was raised by the respondents. Bapna J. at page 190 observed: "In our opinion, this preliminary objection has no force in the present case. There are two classes of cases where the respondent, a head of a department, against whom relief is sought, is resident outside the jurisdiction of a particular High Court. One class or cases would be where the particular order is passed by an officer resident or having office within the jurisdiction of the High Court, and the superior officer, residing outside the jurisdiction only purports to confirm the order and to dismiss the appeal or revision made by the person affected by the order. The other class of cases would be those where the superior officer residing outside the jurisdiction of the High Court purports to set aside the order of the subordinate officer and substitutes his own order for the same. This would include also a modification of the order passed by the subordinate officer. In the first class of cases what the petitioner wants is that the order of the subordinate officer should be set aside, and he only makes the superior officer a party because he avails of the remedy provided by the rules or the law of approaching the superior officer. In the second class of cases the prayer of the petitioner would directly involve a direction to the superior officer not resident within the jurisdiction." In the light of these observations, the learned Judge held, that the High Court had jurisdiction as the original order of posting of the petitioner as Head Ticket Collector was passed by the C.T.I., Bandikuli, and it was that order which was being questioned in the petition. The learned Judge observed that it was immaterial that the petitioner's efforts failed to get that order quashed by the General Manager whose office was located at Bombay. It is clear that this authority of the Rajasthan High Court also proceeds on the same line of reasoning as the other, mentioned above. Even in these authorities, it is conceded that this court has no jurisdiction to issue writs to the Custodian General. It is held, however, that they could be issued to the local tribunal. If so, the order of the Custodian General will stand. In case writ is issued to the local tribunal, it will be faced with two contradictory orders one made by the Custodian General under Section 27 of Act of 1950 and the other by this court. In my opinion this situation is not contemplated in a discretionary remedy by way of writ petition.

13. The learned counsel for the appellants also cited some authorities dealing with the matter under the Civil Procedure Code. On the anology of these cases counsel argued that it were really the orders of the local tribunal which were disputed before us. It was thus urged that the orders of the Assistant Custodian General be ignored and the writ be issued to the local tribunals which were undoubtedly within the jurisdiction of this court. The authorities relied upon by the learned counsel in support of this contention are - *'Ghafar Shah v. Sikandar Shah'*[11], - *'Batuk Nath v. Mt. Munni Dei'*[12], and - *'Subramania Iyer v. Varadarajulu Naidu'*[13], In the Peshawar case it was held:

> "An order dismissing a petition for revision does not substitute a decree of the revisional court for that of the Court below. When a revising Court refuses to exercise its power of revision, it does not confirm any decree, but merely declines to interfere, leaving the decree of the court below intact as the decree of that Court."

In this case the revision petition was dismissed in limine and thus no notice was issued to the opposite side. Naturally, therefore, the order of the Judicial Commissioner did not supersede that of the subordinate Judge.

14. In AIR 1914 PC 65 it was held that:

> "Where an appellant or his agent does not take effectual steps for the prosecution of his appeal before the Privy Council, the appeal stands dismissed for non-prosecution under rule 5 of the Order in Council of 13th June 1853; there is no order of His Majesty in Council dismissing the appeal, nor is it necessary that any such order should be made in the appeal. Therefore, where a Privy Council appeal is dismissed for non-prosecution, the executable decree is that of the lower Court and the period of limitation for execution is that prescribed by Article 179 of the second Schedule of the Indian Limitation Act, 1877'.

It is obvious that in this case there was no Order of His Majesty in Council dismissing the appeal. Under the rules of that court for non-prosecution the appeals stood dismissed without further orders. The order, therefore, did not deal judiciously with the suit and thus could not in any sense be regarded as an order adopting or confirming the decision of the lower court. In the Madras case, it was laid down that the trial court had jurisdiction to entertain the application to set aside an ex parte decree even when it was presented after dismissal of defendant's appeal against the same ex parte decree. This case also does not help the appellants. In fact there is abundant authority holding the opposite view. Almost a similar question which requires determination in this case arose before the Allahabad High Court. The Allahabad case, it appears to me, is a direct authority dealing with the contention raised by the appellants. The case referred to is reported in - *'Hafiz Mohammad Yusuf v. Custodian General, Evacuee Properties, New Delhi[14]',* There it was held:

> "Under Section 27, Administration of Evacuee Property Act, the powers of the Custodian General are very wide and for all practical purposes are indistinguishable from those of an appellate authority under the Act. Upon the general principle that the order of a Court merges in that of an appellate authority, the order of the Assistant Custodian merges in the order of the Additional Custodian and that order in its turn merges in the order passed by the Custodian General...."

In the course of the judgment the learned Judge observed:

> "It is, in our opinion, now well settled so far as this court is concerned that the decree of an appellate Court supersedes the decree of the first Court even in cases where the

appellate Court merely affirms the original decree: - *'Mohammad Sulaiman Khan v. Mohammad Yar Khan[15]', - 'Mohammad Sulaiman Khan v. Fatima'[16],* The same principle has been extended by a learned single Judge of this Court in the case of - *'Gauri Shanker v. Jagat Narain[17]',* in which it was held that the 'ex parte' decree of the lower court merged in the decree passed by this Court in revision".

The Peshawar case AIR 1935 Pesh 91 referred to above was also considered by the learned Judges of the Allahabad High Court in this case and it was observed:

> "We are not impressed by this argument because it appears to us that a Court of appeal which dismisses without modification an appeal from the decree of the lower Court declines to interfere no less than a Court of revision which dismisses an application in revision. But whatever may be the position in the case of the orders passed under Section 115, Civil Procedure Code, we think no such distinction can be drawn in the case of orders passed under Section 27 of the Administration of Evacuee Property Act."

Further dealing with Section 27, Administration of Evacuee Property Act, 1950, the learned Judge remarked:

> "Now under Section 27 of the Administration of Evacuee Property Act, 1950, the Custodian General may at any time, either on his own motion or on an application made to him call for the record of any proceeding in which any District Judge or Custodian has passed an order for the purposes of satisfying himself as to the legality or propriety of such order, and he may himself pass any order in relation thereto as he thinks fit. No restriction is placed by the Act
> upon the exercise by the Custodian General of this power other than this that he shall not pass an order prejudicial to any person without giving him a reasonable opportunity of being heard.

It is further to be observed that under Rule 31 of the Rules made under this Act a common procedure is prescribed for appeals, reviews and revisions and that sub-rule 9 of R.31 provides that the Custodian General as well as any authority hearing an appeal may admit additional evidence or remit the case for admission of additional evidence. It is manifest therefore, that the powers of the Custodian General are very wide and for all practical purposes are, in our opinion, indistinguishable from those of an appellate authority under the Act. Upon the general principle that the order of a Court merges in that of an appellate authority, we are of the view that the order of the Assistant Custodian made on 25th September 1951, merged in the order of the Additional Custodian made on the 5th April, 1952, and that that order in its turn merged in the order passed by the Custodian General on the 26th August, 1953."
I am in respectful agreement with the conclusions arrived at by the learned Judges of the Allahabad High Court. For the same reasons, I am of the view that orders of the Assistant Custodian General superseded those of the local tribunal and those really were the orders in dispute before us. It, therefore, follows that this court has no jurisdiction to issue the writs prayed for. A number of authorities were also cited by the learned counsel for the respondents in support

of the contention that the decree of the lower court merges into that of the appellate court. This proposition now appears to be well settled and it is unnecessary to burden this judgment with all those authorities specially in view of the fact that it is not denied by the counsel for the appellants. The learned counsel for the appellants, however, urged that all those authorities dealt with cases in appeals and not with revisions. The answer to this contention is also found in the Allahabad authority referred to above. In para. 7 at page 434 the learned Judge observed:

> "Looking upon the matter somewhat more broadly the word "appeal" includes an application in revision. "Appeal" has been defined in Wharton's Law Laxicon as "the removal of a cause from an inferior to a superior Court for the purpose of testing the soundness of the decision of the inferior court" and the expression "appellate jurisdiction" has been defined by the same authority as the power of superior court to review the decision of an inferior court."

With due deference I entirely agree with the observations of the learned Judge and find that there is no force in the arguments advanced by the learned counsel for the appellants.

15. Undoubtedly, the office of the Custodian General is located in New Delhi where he ordinarily resides. In my opinion, therefore, we have no power to issue writs etc. prayed for by the appellants to him. For these reasons the appeals must fail and they are hereby dismissed. There is no order as to costs.

Chopra, J

16. I agree.

Appeals dismissed.

Cases Referred.

[1] AIR 1953 SC 210
[2] AIR 1954 SC 207
[3] AIR 1949 Mad 357
[4] AIR 1952 Pun 392
[5](1904) Ltd.', AIR 1952 Mad 659
[6] AIR 1943 PC 164
[7] AIR 1954 Pun 253
[8] AIR 1954 Raj 214 (II)
[9] AIR 1954 Raj 189
[10](A) at p.216
[11] AIR 1935 Pesh 91
[12] AIR 1914 PC 65
[13] AIR 1927 Mad 722 (2) (L)
[14] AIR 1954 All 433
[15]11 All 267
[16]11 All 314
[17] AIR 1934 All 134