inder Singh and anr. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-29-1954

Reported in : AIR1954Raj185

Judge : Wanchoo, C.J. and; Sharma, J.

Acts : Constitution of India - Articles 226 and 228; Rajasthan (Protection of Tenants) Ordinance, 1949 - Sections 7

Appeal No. : C. Writ Petn. No. 133 of 1953

Appellant : inder Singh and anr.

Respondent : State of Rajasthan and ors.

Advocate for Def. : R.K. Rastogi, Adv. for Respondent Nos. 4 to 26

Advocate for Pet/Ap. : M.M. Tiwari, Adv.

Judgement :

Sharma, J.

1. This is a petition under Article 226 of the Constitution of India by Sardar inder Singh and Krishi Sahkarini Samiti, Bhimnagar, through its Secretary, Satya Pal Singh, against the State of Rajasthan, the Board of Revenue, Rajasthan, the Anti Ejectment Officer, Bayana, and 23 other respondents, who were applicants before

the Anti Ejectment Officer in 23 different cases under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949 (NO. IX Of 1949).

2. The petitioners' case is that the petitioner No. 1 leased the whole of his land 582 bighas to the petitioner No. 2 for a period of 10 years in connection with the 'GROW MORE FOOD CAMPAIGN', and got the patta registered before the Tehsildar, Bayana, on 1-3-1952, and the possession of the land was transferred by the petitioner No. 1 to the petitioner No. 2 by the date of registration of the patta. The respondents Nos. 4 to 26 filed separate applications in the Court of S.D.O., Bayana, under Section 7, Rajasthan (Protection of Tenants) Ordinance, 1949, for reinstatement on different parcels of the above-mentioned land, saying that they were in possession of it and were dispossessed by the petitioners.

The Sub-Divisional Officer, Bayana, on 7-7-1952, ordered that the respondents Nos. 4 to 26 be reinstated on the lands mentioned in their applications. Against this order of the S.D.O., the petitioner No. 2 filed 23 revision applications, one in each of the 23 cases, before the Board of Revenue under Section 10 (2) of the Ordinance, and the Revenue Board remandad these cases on 10-1-1953, by one judgment, for disposing them of according to law after giving notice to the petitioner No. 2. It has been averred that the Anti Ejectment Officer, Bayana, was now proceeding to make enquiry in these cases without jurisdiction, and hence the necessity of this petition under Article 226 of the Constitution of India.

3. The grounds, on which the jurisdiction of the Anti Ejectment Officer is questioned are as follows:

(1) There is no relationship of landholder and tenants between the petitioner No, 2 and the respondents Nos. 4 to 26, and, therefore, the provisions of the Rajasthan (Protection of Tenants) Ordinance, 1949, do not apply, and the Anti Ejectment Officer, Bayana, and the Board of Revenue have wrongly assumed jurisdiction to give protection to the respondents Nos. 4 to 26 under Section 7 of the Ordinance.

(2) The said Ordinance is 'ultra vires', and infringes the provisions of Articles 13, 14, 15, and 19(1)(f) of the Constitution of India.

(3) Under Section 1 (3) of the Ordinance, power could not be delegated to the Rajpramukh (who ivas not the Legislature at the time of extension of the life of the Ordinance) to extend the life of the Ordinance, as the extension of the period amounted to legislation, and it could not be delegated to the Rajpramukh. The Ordinance and the extension of time for another two years were 'ultra vires' on the above ground. The extension was also not published in the Gazette by the Rajpramukh or under his orders, but was published by the Govt. of Rajasthan who was never delegated these powers.

(4) When Section 7 of the Ordinance was amended on 5th May, 1952, the whole of the Act, and not the amendment, should have been placed before the Legislature, as the extension of the life of the Ordinance was 'ultra vires' the powers of the Rajpramukh, and when the Ordinance had expired by lapse of time, the amendment was without any meaning and without any jurisdiction. The Ordinance together with the amendment was, therefore, 'ultra vires', and the respondents Nos. 4 to 26 could not get protection under it.

(5) The Ordinance was arbitrary and not based on reasonable classification, and there was no evidence that in the Bharatpur State the Ordinance should have been promulgated.

(6) The Ordinance was 'ultra vires' also on this ground that it was not put before the Legislature within six weeks when the first Rajasthan Assembly came in Session.

4. It has been prayed that a writ of certiorari be issued to call for the record of the case, and the proceedings of the Board of Revenue dated 10th January, 1953, be quashed. It is also prayed that a writ of prohibition be issued against the respondents Nos. 1, 2 and 3, and respondents Nos. 2 and 3 be ordered not to entertain applications filed under section 7 of the Ordinance by the respondents Nos. 4 to 26 for reinstatement on the lands in dispute. It has been further prayed that the Ordinance be declared 'ultra vires', null and inoperative, and any other appropriate writ, direction or order be issued which might be thought proper.

5. After the petition had been made, the Ordinance was extended to a further period of one year with effect from 1-6-1953, and thereon the petitioners made a supplementary application questioning the 'vires' of this latest extension.

6. The following preliminary objections have been raised on behalf of respondents Nos. 4 to 26 to the maintainability of the writ petition:

(1) That there being an alternative and adequate remedy under Article 228 of the Constitution of India, this writ petition should not succeed.

(2) That a single writ petition against the order of the Board of Revenue and the Anti Ejectment Officer in 23 cases is not maintainable.

7. It was argued by Mr. R. K. Rastogi on behalf of respondents Nos. 4 to 26 that under Article 228 of the Constitution of India, the High Court, if satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, shall withdraw the case, and may (a) either dispose of the case itself, or (b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

It has been argued that the Anti Ejectment Officer, before whom the cases are now pending, is a subordinate court within the meaning of Article 228 of the Constitution, and the question involved is a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, and, therefore, this Court is bound to withdraw the case, and dispose it of itself, or determine the question of law in accordance with Clause (b) of Article 228. Reliance was placed upon the interpretation of the words 'Court subordinate' by some High Courts under the Contempt of Courts Act, Section 2 (1) of which runs as follows:--

'Subject to the provisions of Sub-section (3), the High Court of Judicature established by Letters Patent shall have and exercise the same jurisdiction,

powers and authority, in accordance with the same procedure and practice, in respect of contempt's of courts subordinate to them as they have and exercise in respect of contempt of themselves.'

The first case referred to by learned Counsel for the respondents is -- 'Sukhdeo v. Brij Bhushan', AIR 1951 All 667 (A). In that case a certain article was published in a newspaper relating to proceedings before a Panchayati Adalat constituted under the U.P. panchayat Raj Act, and the party affected by this article filed an application under the Contempt of Courts Act before the High Court of Allahabad. It was held that the Panchayati Adalats constituted under the U.P. Panchayat Raj Act (Act No. XXVI of 1947) were 'Courts' within the meaning of the Contempt of Courts Act, and the High Court had under Article 227 of the Constitution the same power of superintendence which, it had up to the passing of the Government of India Act, 1935, and in exercise of it, it could check the assumption or excess of jurisdiction by Panchayati Adalats or compel them to exercise their jurisdiction and do their duty, and they were, therefore, judicially subordinate to the High Court.

8. The second is the case of -- 'S. Kapur Singh v. Jagat Narain', AIR 1851 Punj 49 (B), in which a commissioner appointed to hold an enquiry under the Public Servants Inquiries Act, 1950, was held to be a court subordinate to the High Court within the meaning of Section 2 of the Contempt of Courts Act. The reason why the commissioner was considered to be a subordinate court was that under Article 227 of the Constitution of India, the High Court could exercise powers of superintendence over him. It was held that for the purpose of the Contempt of Courts Act the word 'subordinate' would include all courts and tribunals over which the High Court was given the power of superintendence under Article 227 of the Constitution of India.

9. The above two rulings have interpreted the words 'court subordinate to it' within the meaning of section 2 of the Contempt of Courts Act, 1926. The question, however, in this case is whether the words 'court subordinate to it' used in Article 228 of the Constitution have the same meaning as have been given to them in the above two cases.

10. In order to find out the intention of the Constitution makers it is necessary to carefully examine the provisions of Article 136 and Articles 226 and 227, which find place in the same chapter as contains Article 228. Under Article 226 the High Court has been given power to issue writs, directions or orders to any person or authority including in appropriate cases any Government within the territories wherein the High Court exercises jurisdiction. The Article is very comprehensive and appropriate orders, writs or directions can be issued to an individual as well as to executive or judicial authorities.

Under Article 227 the High Court has been given power of superintendence both in judicial as well as administrative matters over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Under the Government of India Act, 1919, section 107 the High Court had similar powers as under Article 227 of the Constitution. In Section 107 of the Act of 1919 the word used was 'court' alone and the word 'tribunal' was not incorporated. In the Government of India Act, 1935, a similar provision was made in Section 224, and by sub-section (2) the power of questioning any judgment of an inferior court which was not otherwise subject to appeal or revision was taken away. Therein also the word 'tribunal' was not used and the word 'court' alone was used. The framers of the Constitution, however, intended to apply Article 227 to 'tribunals' also and hence a clear and unambiguous expression 'courts or tribunals' was used.

The Constitution makers seem to have been very anxious to use as far as possible very clear and unambiguous expressions in the various Articles of the Constitution, and, therefore, wherever they intended to apply a particular provision to any person or authority they clearly said so. In Article 226 they intended the term 'authority' to include 'Government' in appropriate cases and they did not hesitate to say so clearly. They did not stop at the expression 'authority' leaving it for courts to decide whether that term included 'Government' or not. Similarly, in Article 227, they did not rest satisfied with using the word 'court' alone leaving it for courts to interpret whether the term 'court' included the term 'tribunal' also. Likewise they intended to give to the Supreme Court powers to grant special leave to appeal from any judgment, decree, sentence or order passed or made by any court or tribunal, and they, therefore, incorporated both the words in Article 136.

They did not intend that the Article should apply to courts or tribunals constituted by or under any law relating to Armed Forces and they consequently made a clear provision to that effect in Clause (2) of Article 136. This being the case, it can hardly be believed that in Article 228, they would have been satisfied with using word 'court' alone, although they intended to apply it to courts as well as tribunals. In our opinion, power of withdrawal in Article 228 has been given only in respect of cases pending before courts alone, which were subject to appellate or ordinary revisional jurisdiction of High Court, and not before tribunals: The High Court has been given power to dispose of the case itself or only to decide the substantial question of law and return the record to subordinate court for disposal of the case.

This as well as the use of the word 'subordinate' with court shows that the High Court can withdraw that case only which it has power to dispose of after withdrawal, and has been given the option of either disposing it of finally or to decide only the substantial question of law as to the interpretation of the Constitution, and that, from a court only which is subject to its appellate or ordinary revisional jurisdiction.

Under the corresponding section 225 of the Government of India Act, 1935, the High Court could transfer a case to itself for trying it and was not given any express power to decide only the substantial question of law and return the record for disposal of the case to the subordinate court. The Constitution has conferred this power also expressly. The Anti-Ejectment Officer dealing with cases under Section 7 of the Rajasthan (Protection of Tenants) Ordinance, 1949, cannot, in our opinion, be said to be a 'court subordinate to the High Court' within the meaning of Article 228 or the Constitution. He constitutes only a tribunal invested with quasi-judicial functions. The cases, to question cannot, therefore, be withdrawn under Article 228, and objection No. 1 is consequently overruled.

11. We now proceed to consider the second objection. It was argued by Mr. R. K. Rastogi on behalf of respondents Nos. 14 to 26 that 23 separate applications were pending before the Anti Ejectment Officer, Bayana, respondent No. 3, and, therefore 23 separate petitions for writ of prohibition ought to have been filed in this Court, one in respect of each of them, and not one application like the present

in respect of all of them. Mr. N. N. Tiwari on behalf of the petitioners argued that because all the 23 cases were remanded by a single judgment of the Board of Revenue, and the same questions were involved in all the 23 cases, a single application under Article 226 in respect of all those 23 cases was proper.

12. On considering the arguments of both learned counsel we are of opinion that it was not proper for the petitioners to file a single petition, in respect of all the 23 cases. There are 23 separate applications pending before the Anti-Ejectment Officer, Bayana, in which there are different applicants. Twenty-three separate applications for revision were filed by the petitioner No. 2 in 23, cases although they were disposed of by the Boardi of Revenue by a single judgment. Separate writs' or directions or orders would, therefore, be necessary in case this Court comes to the conclusion that the petitioners in this case are entitled to any of them. In case the same questions of law and fact are involved, it may be that this Court might consider it proper to decide all the petitions under Article 226 by a single judgment. Still the orders, directions or writs, which might be issued, will have to be issued separately in respect of each case. It would, therefore, be very inconvenient, even if not altogether illegal, chat writs, directions or orders, as might be felt necessary, might be issued on a single omnibus petition in respect of all the 23 cases.

13. An incidental question was raised at the time of arguments that the petitioners had no right to come to this Court for a writ of prohibition without first taking this objection before the Anti-Ejectment Officer and obtaining his decision thereon. Prom the point of view of convenience, it is certainly desirable that objection relating to jurisdiction should first be taken before the original court or tribunal, and it should be enabled to express its opinion on this question. If such an objection is raised before the inferior courts and their decision is taken thereon, in some cases it may be that the parties might be satisfied with that decision, and may not increase the work of this Court by rushing to it without enabling the inferior courts to pronounce their decision on the question. There is no statutory bar to a criminal revision being filed straight off in the High Court against an order of a Magistrate without first filing an application in revision in the Sessions Court.

However, a practice has developed in almost all the High Courts that applications for revision against an order of a Magistrate are not entertained unless the party aggrieved has first gone in revision to the Sessions Court and obtained its decision. Such practice is very desirable in cases of prohibition under Article 226 of the Constitution. At present, however, there is no such practice. Under the English Law there is no bar to a party coming to the High Court for a writ of prohibition without first raising the question of Jurisdiction before the inferior courts and enabling them to pronounce their decision, in cases where the question of jurisdiction does not depend upon facts and is quite patent.

Lord Halsbury in his memorable work Halsbury's Laws of England, second Edition by Viscount Hailsham (1933), Volume 9, summarises the law in this respect in Article 140, pages 825-826, as follows:

'Prohibition may be applied for as soon as the absolute absence of jurisdiction is apparent on the record of the proceedings of the inferior court, without the question of jurisdiction being raised by plea or otherwise in such Court.

If, however, the record shows no absence of jurisdiction, a plea is necessary to lay the foundation for a writ where there arises in the proceedings a perversion or a denial of a right or, where the defence for the first time raises a question which the Court is incompetent to try;

moreover, if it appear judicially to the prohibiting Court that the special or inferior court will not allow a valid plea, prohibition goes without the necessity of a formal tender of a plea which is sure to be rejected.'

Of course, in cases where a right of appeal or revision to this Court has been given by a statute against orders or decrees of an inferior court, a writ of prohibition shall not be allowed because the question can be brought before this Court in appeal or revision. In the present case, there is no such statutory provision. The objection regarding jurisdiction of the Anti-Ejectment Officer in the present cases does not depend upon any fact within the knowledge of the petitioners. If the objections raised by the petitioners are valid, the absence of jurisdiction is patent. Therefore, legally the petition cannot be thrown off on this

ground. .

14. In view of our decision on objection No. 2,it is ordered that the petitioners shall, if they solike, elect to make the present petition relate toone of the 23 cases, and file an application forconsequential amendment within fifteen days,failing which the petition shall stand dismissedwith costs to the contesting respondents, includingcounsel's fee Rs. 50/-.