

Anwar Mohammad Vs. Managing Officer, Cum Custodian of Evacuee Property, Jaipur and ors.

Anwar Mohammad Vs. Managing Officer, Cum Custodian of Evacuee Property, Jaipur and ors.

SooperKanoon Citation : sooperkanoon.com/754074

Court : Rajasthan

Decided On : Mar-07-1964

Reported in : AIR1964Raj260

Judge : D.S. Dave, C.J. and; V.P. Tyagi, J.

Acts : [Constitution of India](#) - Article 226, 226(1A); [Constitution of India](#) (Fifteenth Amendment) Act, 1963; Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 20; ;Displaced Persons (Compensation and Rehabilitation) Rules, 1955 - Rules 87 and 90

Appeal No. : Civil Writ Petn. No. 196 of 1960

Appellant : Anwar Mohammad

Respondent : Managing Officer, Cum Custodian of Evacuee Property, Jaipur and ors.

Advocate for Def. : Raj Narain, Deputy Govt. Adv. for Respondents 1 to 4

Advocate for Pet/Ap. : C.K. Garg, Adv.

Disposition : Writ petition allowed

Judgement :

Tyagi, J.

1. This is a writ application by one Anwar Mohammad under Article 226 of the [Constitution of India](#).

2. Respondents Nos. 5 and 6 are not present before the Court. Shri Vishanlal, Advocate for respondent No. 6 stated before us that his file was taken away by his client and, therefore, he was not representing him now. No reply was filed either on behalf of the respondents Nos. 5 and 6 and, therefore, we have heard the writ application against them ex parte.

3. A joint reply has been filed on behalf of respondents Nos. 1 to 4.

4. It is common ground between the petitioner and the contesting respondents that a plot of land bearing No. 367, situated in Mohalla Kagziyan, Sanganer, District Jaipur, was declared an evacuee property under the Administration of Evacuee Property Act, 1950, since it belonged to one Ramjani son, of Illabux of Sanganer, who had gone away to Pakistan. This property was acquired by the Government of India under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (which will hereinafter be referred as the Act). On the application of the petitioner, the said property was leased out to him on 17th June, 1958 for a period of the year on a rent of Re. 1/- per month by order of respondent No. 1, namely, the Managing Officer-cum-Assistant Custodian of Evacuee property, Jaipur Zone, Jaipur. The petitioner deposited the lease money. At that time respondent No. 5 Kadarbux was in occupation of the said property as a tenant of a mortgagee of the evacuee. The application of mortgagee Shyamlal for confirmation of the mortgage was already rejected by the Assistant Custodian on 1st February, 1956. In spite of this respondent No. 5 was not willing to vacate the property and hand over the possession to the petitioner. Respondent No. 1, therefore, got respondent No. 5 forcibly evicted and the possession of the property was given to the petitioner. Thereafter respondent No. 1 gave a notice dated 23rd April 1959 to the petitioner offering to sell the said property to him at the reserved price of Rs. 720/-. The petitioner accepted the offer and deposited Rs. 720/- on 24th April, 1959 by Treasury Challan No. 637 at Jaipur. Meanwhile, respondent No. 5 had filed a revision application since he felt aggrieved on account of his

eviction from the said property. That revision application was heard by the Deputy Chief Settlement Officer and was dismissed by him on 12th June, 1959. A copy of that order is marked Ex. P. 9. While dismissing the revision application, however, he passed an order cancelling the sale of the property in favour of the petitioner. It was further directed by him that the property should be sold by public auction, it is against this order that the present application is directed.

5. It is contended by the petitioner that the property was sold to him by respondent No. 1 in accordance with the directions which were issued by respondent No. 2, namely, the Regional Settlement Commissioner-cum-Custodian of Evacuee Property for Rajasthan, that the said directions were approved by the Chief Settlement Officer, that according to the said directions, respondent No. 1 was authorised to sell the property by negotiations, that the sale in favour of the petitioner was complete as soon as he deposited the price demanded from him, that respondent No. 3 had thereafter no power or jurisdiction left to cancel the sale in favour of the petitioner and direct its re-sale by public auction and, therefore, it is prayed that respondents Nos. 1 and 2 be prohibited from selling the aforesaid property by public auction and, from interfering with the proprietary rights of the petitioner over the said property.

6. The petition is contested on behalf of respondents Nos. 1 to 4 on the ground that the directions given by respondent No. 2 were only administrative directions and that respondent No. 3 was not deprived of his power to cancel the sale in favour of the petitioner and direct its re-sale by public auction. It is further urged that no deed of conveyance was executed by respondent No. 1 in favour of the petitioner and that the sale was, therefore, not complete. It is also pointed out that in the view of respondent No. 3, the directions of respondent No. 2 embodied in Ex. P-5 were not applicable to the petitioner since he was not an allottee of the property and also because the property consisted of an open plot of land and was not a residential building.

7. It is also urged by the learned Deputy Government Advocate that this Court has no jurisdiction to exercise its power under Article 226 and to issue a writ to the Deputy Chief Settlement Commissioner even after the Constitution was amended

because the cause of action, in this case had arisen much before Clause (1-A) was added to Article 226 of the Constitution which had the effect of enlarging the writ jurisdiction of this Court only in respect of those causes of action which arose after 5-10-63 when the Parliament passed the fifteenth amendment Act. In other words, he meant to contend that the Parliament has not given retrospective operation to the said amendment of Article 226 and thereby did not empower this Court to issue writ in a matter where the cause of action had already arisen.

8. It is vehemently argued by learned Deputy Government Advocate that the alleged sale in favour of the petitioner did not confer any right of ownership on him because the sale was effected by the Managing Officer under the administrative instructions of the Regional Settlement Commissioner, Rajasthan which could not confer jurisdiction on the Managing officer to sell the property of the pool to the petitioner as the directions of the Regional Settlement Commissioner were merely administrative in character. In support of this argument reliance has been placed by, Mr. Raj Narain on the decisions in *Bishansingh S. Ladhasingh v. Central Government*, AIR 1961 Punj 451, *Mannarkatt Union Motor Service, v. Regional Transport Authority, Palghat*, AIR 1963 Kerala 357 and an unreported case of the Punjab High Court in *Narsing Das v. Bahadur Chand*, LPA No. 282 of 1962, D/- 8-5-1963 (Punj). We have carefully perused all these authorities and we find that they were decided under different circumstances and, therefore, they do not lend any support to the respondents.

9. In AIR 1963 Kerala 357, which was a case under the Motor Vehicles Act, the Regional Transport Authority while granting a stage carriage permit to the applicants had to evaluate their position by allotting marks to them under the instructions issued by the Home Department of the Government of Madras, and in doing so the Regional Transport Authority allotted 4 1/2 marks to the petitioner as against only 4 marks given to the third respondent. On appeal, the State Transport Appellate Tribunal reduced the petitioner's marks to 3 1/2 and gave preference to the third respondent. It was contended by the petitioner before the High Court that the State Transport Appellate Tribunal committed an error in reducing the marks allotted to him by the Regional Transport Authority, but the learned Chief Justice while discarding the petitioner's contention observed that the Government order

prescribing the mode of evaluation of the applications was in the nature of administrative directions, and the mistakes alleged, even if they were established, would not attract the jurisdiction under Article 226 of the Constitution.

10. In Narsing Das's case, LPA No. 282 of 1962, D/- 8-5-1963 (Punj), the learned Judges of the Punjab High Court held that the departmental instructions cannot be allowed to interfere with the statutory power of an officer. In that case, one Bahadurchand claimed his unauthorised occupation to be regularised under the departmental instructions issued by the Chief Settlement Commissioner where under an occupant of an evacuee property who could show that he had been in occupation thereof prior to December, 1947, was entitled to get his occupation regularised. The officers of the department in the exercise of their function under the rules refused to regularise his occupation and, therefore, he challenged the orders of the departmental officers before the High Court on the ground that the subordinate officers were bound to obey the instructions issued by the Chief Settlement Commissioner in his supervisory capacity. Learned Single Judge who first dealt with the case, was impressed by this argument and observed that the departmental instructions, although not having the force of law, should have been obeyed by the departmental officers as they were issued by the Chief Settlement Commissioner in the exercise of his power of general superintendence and control under the provisions of the Act, but in appeal before the Division Bench, learned Judges took a different view, and relying on the observations of Grover, J. in *J. B. Mangharam and Co., v. Parshotam Samp*, 1962-64 Pun LR 922, observed that it was not possible for the courts of law to take any notice of the failure on the part of the rehabilitation authorities to act according to departmental instructions as they do not have the force of statutory rules. Similar view was also taken by the Punjab High Court in an earlier case in AIR 1961 Punj 451. We feel that the above referred decisions cannot help the respondents as in this case the instructions of the Regional Settlement Commissioner Rajasthan, which were approved by the Chief Settlement Commissioner, New Delhi to sell the properties of the pool to the local occupants were issued under totally different circumstances and they cannot be placed at par with these instructions which came for the consideration of the Courts in the above referred cases. It is the nature of the instructions in this case which distinguishes it from them.

11. In the instant case, a scheme was framed by respondent No. 2 for the disposal of the rural evacuee houses which were in the occupation of the locals in Rajasthan. (except for Ganganagar district) and it was duly approved by the Chief Settlement Commissioner. Under this scheme, it was provided that the evacuee rural houses/plots, may be sold to the local occupants on the value determined by the field staff of the managing officers which shall be treated as reserve price. According to the procedure laid down in this scheme the property was to be offered by the Managing officer to the occupant with an option to deposit the price in two instalments and when the price was paid by him the ownership of the property was to vest in the purchaser from the date the full price of the property was paid in the treasury, and thereafter the rent ceased to accrue to the department. The respondent No. 1 by his notice dated 23rd April, 1959 offered to the petitioner to sell the property in his occupation for Rs. 720/- (its reserve price) and the petitioner while accepting this offer deposited the entire price on 24th April, 1959 by the treasury Challan No. 637 at the Jaipur treasury. Respondent No. 1 then by his letter No. 4041 dated 29th April, 1959 (Ex. 1) intimated to the petitioner that the property was transferred to him with effect from the date of the said letter, that is, 29th April, 1959. It was in that circumstance that the petitioner started claiming the disputed property as his own.

12. In order to decide the objection of the respondents that the disputed property could not be validly transferred under the instructions (Ex. P-5), we shall have to go through the scheme of the Act and the relevant rules made thereunder. Section 20 of the Act empowers the Managing officer or Managing Corporations to transfer any property out of the compensation pool by sale to a displaced person or any association of displaced persons, whether incorporated or not, or to any other person by public auction or otherwise. Under the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 (hereinafter to be referred as the rules), various modes have been prescribed for effecting a sale of such properties and one of the modes prescribed in that behalf is given in Rule 87 of the said rules which reads as follows:

'87. Mode of sale of property: Any property forming part Of the compensation pool may be sold by public auction or by inviting tenders or in such other manner as the

Chief Settlement Commissioner may, by general or special order, direct.'

13. This rule contemplates a sale by a method other than public auction also and envisages a sale in favour of any person even though he is not a displaced person, but it can be done only when there is general or special order, or direction issued by the Chief Settlement Commissioner. The Scheme of the sale of the rural houses/ plots of the pool to the local occupants in Rajasthan as embodied in Ex. 5, was duly approved by the Chief Settlement Commissioner, and, therefore, this scheme of sale shall be taken as the general direction of the Chief Settlement Commissioner under Rule 87, and the sale of the disputed property in favour of the petitioner under the said scheme shall be treated as a sale made by the Managing officer under Rule 87 of the rules. The scheme of sale to the local occupants in Rajasthan shall, under the circumstances, be deemed to be issued under Rule 87 by the Regional Settlement Commissioner with the approval of the Chief Settlement Commissioner and it cannot, therefore, be treated at par with the directions or orders which the Chief Settlement Commissioner in the exercise of his supervisory power under the Act may issue. The analogy of the administrative directions issued by the Chief Settlement Commissioner in his supervisory capacity cannot have any relevance with the scheme issued under Rule 87 of the rules and in view of this difference in the nature of the directions issued by Regional Settlement Commissioner with approval of the Chief Settlement Commissioner, the decisions of the Punjab High Court cannot have any bearing on the instant case.

14. It is next argued that in the absence of any deed of conveyance issued to the petitioner under Clause 6 of the said scheme no valid title in the said property could pass to the petitioner and he was therefore, not entitled to challenge the order of the Deputy Chief Settlement Commissioner dated 12th June, 1959 by filing, this writ application. We may once again re-call that the lease of the disputed property was granted to the petitioner on 17th of June, 1958 and the possession thereof was made over to him as a lessee. The property, was held by the petitioner in the first instance as a lessee and after 29-4-1959 when the ownership in the property was ordered, to be transferred to him he retained possession thereof as owner of that property. The Deputy Chief Settlement Commissioner

while deciding the appeal of one Kadar Bux, who was a tenant of the mortgagee of the evacuee decided that the sale in favour of the petitioner was not valid because the instructions as embodied in the scheme of sale Ex. P-5 were not applicable to the case of the petitioner and that the petitioner as lessee was under obligation to hand over the vacant possession of the disputed property when it was auctioned. In our opinion the order of the Deputy Chief Settlement Commissioner is erroneous on the very face of it as the scheme of sale Ex. P-5 was framed specifically for transferring the properties of the pool to the local occupants, which the petitioner undoubtedly was. So also the reasoning of the learned Deputy Chief Settlement Commissioner that the petitioner had to vacate the property when it was auctioned had no relevance to the present case as that contingency could never arise since that property was transferred to the petitioner under the order of the Managing officer. In view of these faulty reasonings the impugned order of the Deputy Chief Settlement Commissioner cannot be allowed to disturb the rights of the petitioner in the property and in view of these circumstances petitioner cannot be denied his legitimate right to invoke the extraordinary jurisdiction of the Court.

15. We regret that we cannot also accept Mr. Raj Narain's contention that under the scheme of the Act of the rules made thereunder, the property of the pool cannot be sold to anyone else except the displaced, person and as the petitioner was not a displaced person a sale made in his favour, being in violation of the specific provisions of the law, shall be illegal. He has not referred to any particular provision of law which prohibited the sale of such property to a non-displaced person except by auction. On the contrary, we find under Section 20 read with Rule 87 and the scheme of sale (Ex. P-5), a clear power given to the Managing officer to lawfully dispose of the rural evacuee houses/plots of the pool to the local occupants in Rajasthan. In view of the, said provisions of law this contention fails.

16. Mr. Rajnarain has also argued that the petitioner could be ousted from the disputed property by the order of the Deputy Chief Settlement Commissioner as he did not possess a valid title because no conveyance deed was issued by the department under Clause 6 of the said scheme of sale (Ex. P-5). It may be pointed out that in the instant case there was a completed contract of sale in favour of the

petitioner under the said scheme and it was in pursuance of that contract that he retained the possession of the property as an owner thereof. Dispossession being rightful and not that of a trespasser the Deputy Chief Settlement Commissioner had no authority to take the law in his own hands and throw him out of the property arbitrarily. It may also be observed that the learned Deputy Chief Settlement Commissioner set aside the sale made in favour of the petitioner in an appeal of Kadar Bux--the ex-tenant of an unrecognised mortgagee who had no locus standi to challenge the validity of the sale. We have observed above that the order of the Deputy Chief Settlement Commissioner was not in conformity with the provisions of law and, therefore, such an order could not confer any jurisdiction on the Managing officer to disturb the possession of the petitioner by re-auctioning the property.

17. Learned Deputy Government Advocate also referred in this connection to the provisions of Rule 90 of the Rules which empower the Chief Settlement Commissioner to set aside a sale but this rule in our opinion is not attracted to the present sale which was made under Rule 87 read with the instructions issued by the Chief Settlement Commissioner. It is nowhere alleged by the department that the sale to the petitioner was made by the Managing officer in violation of the provisions of Rule 87 or the conditions of the scheme Ex. P-5, nor was any such charge levelled against the petitioner that it was on account of the misrepresentation or fraud played by him that the Managing officer was made to sell the property to him, and therefore, the application of Rule 90 is ruled out.

18. Now we turn to examine the objection of the respondents regarding the jurisdiction of this Court to issue writ, order or direction under Article 226 of the Constitution in this case. Learned counsel for the respondents has argued that this Court, at the time when the impugned order was passed or the writ petition was filed, had no supervisory jurisdiction over the Deputy Chief Settlement Commissioner and, therefore, it could not issue writ under Article 226 of the Constitution, nor did the amendment of Article 226 confer such jurisdiction on this Court in respect of the cause of action that had already arisen before the amendment came into force. His contention, therefore, is that retrospective effect cannot be given to the provision of Clause (1-A) that has been added to Article

226 of the Constitution after the amendment of the Constitution. Learned counsel for the petitioner, on the other hand, has contended that the cause of action that accrued to the petitioner on account of the impugned order is a continuing one as his rights are in constant jeopardy on account of the order issued by respondent No. 3 whereunder he could be deprived of his possession at any time after the property was auctioned in pursuance of the said order, and, therefore, he could even today challenge the legality of the impugned order by filing a fresh writ application under the amended provision of Article 226 of the Constitution. It was, frankly conceded by Mr. Raj Narain that there is no bar for the petitioner to file a fresh application to challenge the legality of the impugned order but his contention is that the present writ application was filed by the petitioner before Article 226 of the Constitution was amended and, therefore, no relief could be granted to him on the basis of this application. This plea, in our opinion, is a highly technical one but as it goes to the root of the matter; we propose to examine it in some details.

19. Clause (1-A) has been added to Article 226 in the following form:

'(1-A) The power conferred by Clause (1) to issue directions, orders, or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.'

20. The argument of Mr. Raj Narain is that the words in the newly added clause 'cause of action, wholly or in part, arises for the exercise of such power,' go to indicate that the High Court can issue writ to the authority outside its ordinary territorial jurisdiction after October, 1963 only in respect of that cause of action which, may arise after the amendment of the Constitution and since the cause of action in the present case had arisen before the said Article was amended, the amended clause cannot be attracted to quash the impugned order passed by respondent No. 3.

21. Mr. Garg has tried to meet this objection of the respondents on two grounds. It is urged that firstly, the amendment of Article 226 of the Constitution is of

procedural nature and, therefore, retrospective effect should be given to this amendment; and secondly the cause of action that accrued to the petitioner is a continuing one, and, therefore, even if the interpretation of the amended Clause (1-A) as suggested by Mr. Raj Narain is accepted, his client cannot be debarred from getting a relief from this Court.

22. In support of his first stand, learned counsel for the petitioner while placing his reliance on the observations of the Supreme Court in *Anant Gopal Sheorsy v. State of Bombay*, AIR 1958 SC 915, has urged that no person has a vested right in any course of procedure, and if by an Act of Parliament the mode of procedure is altered, he has no other alternative but to proceed according to the altered mode. In other words, a change in law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective. His contention is that by means of the amendment of Article 225, the parliament has simply extended the jurisdiction of this Court to issue a writ, direction or order to any authority beyond its territorial jurisdiction and thus it has provided one more forum to the petitioner to seek his remedy which he could have previously got only from the Punjab High Court within whose local jurisdiction the office of respondent No. 3 was located. This argument of the learned counsel for the petitioner is not without force. The purpose of the amendment of Article 226 in our opinion is to extend the jurisdiction of the High Courts to issue writs to the Government, authority or person beyond their territorial jurisdiction provided the cause of action either in whole or in part arises in the limits of their territorial jurisdiction. This amendment cannot, therefore, be said to have conferred any additional right on the petitioner to seek his remedy which he had already got under the unamended provisions of Article 226 of the Constitution. It has, in respect of the present cause of action, given one more forum to the petitioner to enforce that right of seeking a remedy under the said Article by moving this Court instead of filing his petition in the Punjab High Court. In our opinion, the amendment of Article 226 of the Constitution is simply procedural in nature and it does not confer any vested right on the citizen of India.

23. Now we may examine the authorities cited by both the sides in support of their respective contentions. In the case of *Anant Gopal Sheorey*, AIR 1958 SC 915, certain criminal proceedings under Section 282 of the Indian Companies Act and

Sections 465 and 477A of the Indian Penal Code had actually commenced in the Court of a Special Magistrate who had started recording evidence in the case before the Criminal Procedure Code (Amendment) Act (26 of 1955) came into force on 2-1-1956. On 14-1-1955 the appellant made an application to the Magistrate claiming his right to appear as a witness on his own behalf under the amended provision of the Code of Criminal Procedure. His application was, however dismissed by the Magistrate and that order was upheld by the Nagpur High Court. On appeal against the judgment of the Nagpur High Court, learned Judges of the Supreme Court, while quoting the observations of the English Judges in *Colonial Sugar Refining Co. Ltd. v. Irving*, (1905 AC 369), held that a change in the law of procedure operates retrospectively and unlike the law relating to vested rights is not only prospective. Their Lordships also observed that no person has a vested right in any course of procedure.

24. In support of his contention that Article 226 of the Constitution confers a vested right on the citizens of India, learned Deputy Govt. Advocate has relied on another authority of the Supreme Court in *Khajoorising v. Union of India*, AIR 1961 SC 532 wherein it has been told:

'.....under Article 226 power is conferred on the High Court to issue to any person or authority or in a given case to any Government, writs or orders there specified for enforcement of any of the rights conferred by Part III and for any other purpose.'

25. On the strength of these observations of the learned Judges of the Supreme Court, it has been vehemently urged that the effect of Article 226 of the Constitution is not to provide a procedure for the issue of a writ order or direction, but it definitely confers a power on the High Court which in turn gives a corresponding right to a citizen of India to get a relief by invoking the extraordinary power of the High Court under the said Article. We do not dispute this proposition of the learned Deputy Government Advocate as there is no doubt in our mind that Article 226 of the Constitution does confer an authority on the High Court to issue writ, order or direction, but the amended Clause (1-A) of this Article does not, in any manner, confer any additional power on the High Court as it already enjoyed

such a power under the unamended Article. The purpose and intent of the amendment of Article 226 is to enlarge the jurisdiction of the High Courts to issue writ, order or direction to any Government, authority or person, notwithstanding that the seat of such Government or authority or the residence of such person is not within the territorial jurisdiction of the Court and thus it only extends jurisdiction even beyond the boundaries of the State if the cause of action arises within its territory. This authority of the Supreme Court, therefore, does not carry the case of the respondents any further.

26. Mr. Garg has relied on the observations of the learned Judges of the Bombay High Court in *Shiv Bhagwan v. Dnkarmal*, AIR 1952 Bom 365, which, according to him, completely resolves the controversy raised by the respondents. In that case, a suit for partition was filed in respect of certain properties situate in Vikroli which did not form part of Greater Bombay at the time when the suit was instituted within the ordinary original civil jurisdiction of the Bombay High Court. But by reason of Act 17 of 1945, amended by Act 8 of 1950, Vikroli was brought within the ordinary original jurisdiction of that Court. At the time when the suit came up for hearing before Mr. Justice Shah, the immovable property at Vikroli was within the ordinary original civil jurisdiction of the Court and the question that, therefore, arose for the determination of the learned Judges in that case was whether notwithstanding the fact that the Court had no jurisdiction with regard to that property at the inception of the suit, could it be tried by the High Court on its original side by reason of the fact that the jurisdiction was subsequently conferred on it. Chagla C. J., after discussing various authorities, laid down the general principle in the following language:

'Now, I think it may be stated as a general principle that no party has a vested right to a particular proceeding or to a particular forum, and it is also well settled that all procedural laws are retrospective unless the Legislature expressly states to the contrary. Therefore, procedural laws in force must be applied at the date when a suit or proceeding 'comes on for trial or disposal.' (Underlining (here into ' ') is ours).

27. Similar question also arose in a subsequent case in *Lalitabai Banwarilal v. Dominion of India*, AIR 1954 Bom 527. In that case, certain proceedings were taken to recover the amount of income-tax by attaching the property of Harkissandas after he became the owner of that property and, therefore, he had to file a suit for the declaration of his title in that property. An objection was, however, raised on behalf of the revenue that such a suit was barred on account of Section 226(1) of the Government of India Act, 1935, which provided that no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force. Before the suit was decided by the Bombay High Court in its original jurisdiction, [Constitution of India](#) came into force and proviso to Article 225 of the Constitution removed the bar previously imposed under Section 226(1) of the Government of India Act, 1935 on the exercise of original jurisdiction by the High Court in the matter of revenue. The question that arose for the decision of the High Court of Bombay was whether the provisions of Article 225 could be applied to a case which had been filed in the court before the Constitution came into force. Desai J., after discussing the provisions of Article 225 and various authorities, including the decisions of the Privy Council, observed as follows:

'The proviso (to Article 225 of the Constitution) in express terms removes the restriction to the exercise of the jurisdiction of High Courts in matters concerning revenue. That bar, therefore, no longer survives. It is true that the Constitution had not come into force when the suit was filed, but the provisions of Section 226(1) of the Government of India Act, 1935, relate, in my opinion, entirely to matters of procedure and I have to apply the procedural law in force at the time of the trial of the suit. There is authority for the proposition that no party has a vested right to a particular proceeding or to a particular forum.'

28. We have already expressed our opinion that the amendment of Article 225 of the Constitution is procedural and, therefore, the rule of interpretation as laid down by the Supreme Court and the Bombay High Court, referred to above, would apply to such a procedural change of the Constitution, and retrospective effect shall be given to the amended Article 226. We can, therefore, exercise our power

under Article 226 of the Constitution in respect of his grievance which arises out of the impugned order issued by respondent No. 3 even before the amendment of the Constitution came into force.

29. Mr. Raj Narain has produced before us a certified copy of the judgment of the Andhra High Court dated 11-11-1963 in Mohammad Fiazuddin Khan v. Custodial Evacuee Property, Andhra Pradesh, Hyderabad, W. P. No. 638 of 1961 (AP) and Mohammad Fiazuddin Khan v. Senior .Asst. Custodian Evacuee Property, (Legal), Hyderabad, WP No. 534 of 1962 (AP) wherein Justice Reddy, while dealing with this amendment of the Constitution observed:

'It is now well settled that the Constitution is not retrospective in its operation, and if the Constitution is not retrospective, equally a constitutional amendment also cannot have retrospective operation.'

30. We regret, we cannot agree with the aforesaid observation of the learned judge as it is based on a general remark that the Constitution is not retrospective if operation and, therefore, its amendment also cannot be given retrospective effect. The learned Judge did not consider in his judgment the nature of the amendment of Article 226 of the Constitution. In support of this proposition that the operation of the Constitution is always prospective, learned Deputy Government Advocate has relied on a Supreme Court decision, in State of U. P. v. Mohammad Nooh, AIR 1958 SC 86, but we could not find therein any such finding of the learned Judges that each and every provision of the Constitution, shall be retrospective in its operation. It would, in our opinion, depend upon the nature of the provision of the Constitution and if a particular provision, is purely procedural, then, according to the recognised canons of interpretation of a statute, which cannot be different in the case of the Constitution provisions, it can be declared retrospective in its operation. This aspect of the question was probably never canvassed before the learned Judge of the Andhra Pradesh High Court and, therefore, while making the aforesaid observation, he did not consider this question, which has engaged our pointed attention at length. Under these circumstances, with all respect, we differ, from the view of the learned Judge, of the Andhra Pradesh.

31. Regarding the second ground of the petitioner that the cause of action in this case is a continuing one; it would suffice, to re-produce the following observations of the Supreme Court in Balakrishna Savalram v. Dhyaneshwar Maharaj Sansthan, AIR 1959 SC 798, where the continuing cause of action has been described in the following terms:

'If the wrongful act causes an injury which re complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.'

32. It is admitted by both the parties that the impugned order has not yet been implemented and, there-fore, the danger of the encroachment on petitioner's rights to hold the possession thereof shall continue. Under these circumstances, the petitioner can even now, by filing a fresh writ application, challenge the impugned order, and that he can do so till he is ejected from the disputed property in due course of law. Learned Deputy Government Advocate has, however, contended that the rights of the petitioner, as owner of the property, having been determined by the respondent No. 3 by means of the impugned order the petitioner cannot now claim to have any right in the property to retain its possession arid as such the cause of action does not continue till such time when the property in pursuance of the impugned order is auctioned and the petitioner is ejected therefrom. We feel that this reasoning of Mr. Raj Narain negatives his prior stand when he conceded that the petitioner can file in this Court a fresh writ application to impugn the legality of the order of the Deputy Chief-Settlement Commissioner as he now falls within the supervisory jurisdiction of this Court under Article 226 of the Constitution as amended by the 15th amendment Act of the Constitution. In view of his prior stand Mr. Raj Narain cannot successfully canvass this argument before us. We find ample force in the argument of Mr. Garg that in compliance with the impugned order of the Deputy Chief. Settlement Commissioner, the property can be auctioned by the department and as a consequence of such a step his possession can be disturbed at any time and, therefore, the danger to his right to hold the

property continues till the impugned order is either exhausted after implementation or is set aside by this Court. He has in this connection also referred to the decisions of the Assam High Court and two of our own Court, in Amritlal Das v. Govt. of Assam, AIR 1954 Assam 152, Hiranmoy Bhattacharjee v. State of Assam, AIR 1954 Assam 224 (FB), Jaising v. Tahsildar, Neem-ka-Thana, ILR (1954) 4 Raj 743 : (AIR 1954 Raj 200) and Manohar Lal v. Custodian, Rajasthan, ILR (1953) 3 Raj 336 : (AIR 1953 Raj 185) but they do not require to be dealt with in details as we have, in this connection, already referred to Supreme Court authority which supports the contention of the learned counsel that a continuing cause of action has accrued to the petitioner after the impugned order was passed by respondent No. 3 which entitles him to invoke the jurisdiction of this Court even today when its jurisdiction is extended by means of the 15th amendment of the Constitution.

33. In view of the aforesaid discussions the writ application of the petitioner succeeds. That part of the order of the Deputy Chief Settlement Commissioner, New Delhi dated 12th June, 1959 whereby he has directed that the sale of the disputed property by means of public auction be carried out is hereby set aside. The petitioner shall get his costs from the contesting respondents Nos. 1 to 4.