

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sharwan Kumar Vs. Addl. Financial Commissioner and ors.

Sharwan Kumar Vs. Addl. Financial Commissioner and ors.

SooperKanoon Citation : sooperkanoon.com/888564

Court : Himachal Pradesh

Decided On : Nov-23-1972

Reported in : AIR1974HP14

Judge : D.B. Lal, J.

Acts : Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954 - Section 118; ;[Constitution of India](#) - Articles 226 and 227

Appeal No. : C.W.P. No. 63 of 1972

Appellant : Sharwan Kumar

Respondent : Addl. Financial Commissioner and ors.

Advocate for Def. : B. Sita Ram, Adv. General for No. 1,; R.K. Gupta, Adv. for Nos. 2 and 3 and;

Advocate for Pet/Ap. : Chhabil Dass, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.B. Lal, J.

1. In this petition under Articles 226 and 227 of the [Constitution of India](#). Sharwan Kumar has called in question the order dated 10th May, 1972 Annexure-PC) passed by the Additional Financial Commissioner. H. P., whereby his application for stay has been dismissed without giving a hearing to the petitioner.

2. It is stated that the petitioner and the respondents 7 and 8 were the owners of certain Khasra numbers comprising an area of 21 Bighas, 22 Biswas situate in village Baroa. Tehsil Ghumarwin. District Bilaspur. One Sant Ram father of respondents 2 to 6 was recorded as a tenant and claimed to be in possession as such. Sometime before 31st May, 1961. the said Sant Ram filed an application under Section 62 of the H. P. Abolition of Big Landed Estates and Land Reforms Act. before the Assistant Collector alleging that he was illegally and forcibly evicted by the land-owners and therefore, he should be restored into possession of the aforesaid land. This application was accepted by the learned Assistant Collector on 31st May, 1961 and an order restoring possession was granted in favour of Sant Ram and. in addition, a fine of Rs. 1,000/- was imposed upon the petitioner and the respondents 7 and 8. Thereafter the matter was agitated by the petitioner before the Collector Who dismissed the appeal preferred before him on 21st September. 1967. Subsequently two revisions, one after the other, were fled before the Revenue Commissioner and the Financial Commissioner and the said two revisions were also dismissed on 2nd December. 1967 and 17th August, 1968 respectively In the meantime Sant Ram had died and the respondents 2 to 6 were made his legal representatives. It was alleged by the petitioner that respondents 4 to 6 relinquished their tenancy rights in favour of the petitioner and the respondent No. 7.

3. During the pendency of the aforesaid proceedings, the village of Baroa came under consolidation scheme and a re-partition took place, with the result that the petitioner and respondents 7 and 8 were granted some other land in lieu of the disputed Khasra numbers. However, the contention of the respondents has been that actual possession of the same remained with the petitioner and the respondents 7 and 8. On 13th December. 1967 the respondents 2 and 3 filed execution petition before the Assistant Collector and wanted the Court to assist them in recovering possession of land from the petitioner and the respondents 7

and 8. In this execution petition, objections were filed by the petitioner and the respondents 7 and 8, but these objections were partly dismissed on 18th March, 1969. The Assistant Collector granted some relief in respect of the relinquished tenancy rights, as according to him, the tenancy rights had merged with the land-owners in respect of that specific portion comprising the share respondents 4 to 6. The decree-holders preferred an appeal before the Collector who accepted the appeal to the extent that he held that no merger had taken place and the tenancy rights could not be splitted up. The appeal filed by the judgment-debtors was however dismissed. Thereafter the petitioner and respondents 7 and 8 came in appeal before the Commissioner and that appeal too was dismissed on 24th August, 1971. Finally they filed a revision before the Financial Commissioner which is at present pending decision before the Additional Financial Commissioner.

4. The petitioner and respondents 7 and 8 moved a stay application before the Addl. Financial Commissioner. They wanted that the delivery of possession should not be ordered till the disposal of the revision petition. The Addl. Financial Commissioner did not issue notice for appearance of the petitioner and respondents 7 and 8, but considered the stay application in absentia and rejected the same on merits.

5. The petitioner has a grievance against that order dated 10th May, 1972 of the learned Addl. Financial Commissioner and has come up in this writ petition for quashing the order. He has further asked for a direction by this Court, to the effect that the learned Addl. Financial Commissioner should fix up a date after due information to the petitioner and re-hear the stay application on merit.

6. The respondents 2 and 3 have filed a separate written statement, and their contentions are that their father Sant Ram was unlawfully dispossessed by the petitioner and respondents 7 and 8 on 24th July, 1955. Immediately thereafter on 2nd August, 1955 Sant Ram presented an application under Sections 62 and 63 of the H. P, Abolition of Big Landed Estates and Land Reforms Act for recovery of possession. The said application was made to drag on for a couple of years and the Assistant Collector made his order on 31st May, 1961 that possession be restored to the respondents. Thereafter the protracted litigation ensued and one

appeal and two revisions were filed by the petitioner and respondents 7 and 8 although he was unsuccessful in each one of them. According to these respondents, frivolous objections were raised during execution stage and the petitioner and respondents 7 and 8 wanted to delay the matter still further. Their objections were rejected by the executing Court. They came in appeal before the Collector and their appeal was dismissed Later on they filed the revision before the Addl. Financial Commissioner which is still pending decision. In this manner, the respondents have been deprived of their possession from the last 17 years due to the delaying tactics practised by the petitioner and respondents 7 and 8. According to them, the Addl. Financial Commissioner had jurisdiction to decide the stay application ex parte and it was not required of him to have issued notice to the petitioner and the respondents 7 and 8. According to respondents 2 and 3. the order made by the learned Addl. Financial Commissioner is legal and is not violative of the principles of natural justice. It is submitted that the relief of stay itself was discretionary with the Court and the extraordinary jurisdiction of this Court could not be exercised in case such a relief was not granted to the petitioner.

7. The respondent No. 1 who is the Addl Financial Commissioner has filed his affidavit and his contentions are that the matter was purely in his discretion and he could disallow the relief of stay prayed for. According to him. the jurisdiction vested in him and it could not be stated that he acted in an arbitrary manner. Rather, the respondent No. 1 carefully considered the allegations made in the petition and finding them devoid of any merit, rejected the interim relief of stay of delivery of possession. According to the respondent, even the revision petition could be dismissed on merits without giving an opportunity to the parties for a hearing and as such the interlocutory matter arising out of such a revision petition could as well be rejected on merit without issuing notice of appearance to either party.

8. The impugned order Annexure-PC and its para 2 may usefully be reproduced as below :--

'2. I have carefully considered the stay application which is accompanied by an affidavit and have come to the conclusion that there are no grounds to issue

interim stay as prayed for. Accordingly the stay application is hereby rejected.'

It is evident that the learned Addl. Financial Commissioner did go thoroughly into the allegations contained in the petition and the affidavit and only thereafter decided not to issue the interim stay order. The short question is, as to whether in the circumstances a personal hearing was required to be given to the petitioner.

9. The well-known English case *The King v Electricity Commrs.* (1924) 1 KB 171, may be referred to, as containing the genesis of the authority for asking a tribunal to act judicially or quasi-judicially. Atkin, L. J. laid down the following tests :--

'Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'

The emphasis is on the duty to act judicially. In *Board of High School and Intermediate Education U. P. v. Ghanshyam Dass Gupta* (AIR 1962 SC 1110), their Lordships of the Supreme Court said after referring to the earlier decisions.-

'Now it may be mentioned that the Statute is not likely to provide in so many words that the authority passing the order is required to act judicially that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively.'

The abovenoted observation of their Lordships points out the circumstances under which a duty to act judicially can be inferred for a tribunal or an authority.

10. It is obviously correct that any statute or rule, never laid down anywhere that the Additional Financial Commissioner was to issue a notice for personal hearing before he could dispose of the stay application. The emphasis is on the express provisions of the statute read along with the nature of the right affected and the manner of disposal provided.

11. In *Manju v. State* (AIR 1972 Him Pra 37) a Division Bench of this Court had the occasion to consider a situation under which a duty was cast upon the tribunal to act judicially and their Lordships in para 57 of that report noted what they called 'useful tests' given in Prof. S. A. De Smith's 'Judicial Review of Administrative Action' (2nd Edition pages 64 to 76). The very first test laid down by the said learned author is:

'Whether the performance of the function terminates in an order which has a conclusive effect or the force of law or is merely advisory, deliberative, investigatory, or conciliatory in character which has to be confirmed by another authority before acquiring a binding force.'

Applying this test to the present situation, the refusal of interim stay did not have decidedly any conclusive effect and it was only an investigatory stage in the proceeding. The revision petition itself has not yet been decided and the rights of the petitioner would be determined in that petition.

12. In this connection it has to be understood that in the revision itself, a personal hearing was only required to be given if the deciding authority had the intention to interfere with the order made by the subordinate Court. Otherwise a personal hearing was not required to be given and the petition could be dismissed in limine. This is so provided in Sub-section (6) of Section 118 of the H. P., Abolition of Big Landed Estates and Land Reforms Act, 1953. When the main revision petition could be disposed of without giving a personal hearing, how can it be stated that interlocutory proceeding arising out of such petition was necessarily required to be given a personal hearing when prima facie the revenue authority did not intend interfering with the previous order of the subordinate Court, at any rate for the disposal of the stay application. The nature of the right affected and the manner of disposal provided, thus very much authorised the tribunal or authority to dispose of

the petition without giving a personal hearing to the aggrieved party. In fact, the tribunal or authority had no duty to act judicially in so far as its function related to the disposal of the stay application.

13. The learned counsel has emphasized for the rules of natural justice. But as observed by their Lordships in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam* (AIR 1958 SC 398), the rules of natural justice vary with the varying constitutions of Statutory bodies and the rules prescribed by the Act under which they function. The question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions, but in the light of the statutory rules and provisions. In the present case, no statute or rule has been pointed out which could be stated to have been contravened by the tribunal, and, in my opinion, there was not even a duty cast to act judicially and therefore a personal hearing was not required to be given to the petitioner or the respondents 7 and 8.

14. In *Sardar Maharaj Chand v. State of Punjab* (AIR 1966 Funj 485) their Lordships were made aware of the rule of natural justice providing for a personal hearing to be given to an aggrieved party. The observations were that the rule of personal hearing is not to be observed as a result to 'a technical conception with a fixed content unrelated to time, place and circumstances.' It does not necessarily imply, therefore, that a personal hearing in all sets of circumstances, though statute may provide for it or not has to be given. In the present case, when the petitioner approached the Court with an application and an affidavit and stated all that he could in support of his case, and the tribunal considered the contents of the application and the affidavit and refused to grant an interlocutory relief which had practically no effect upon the main petition, the proceeding cannot be vitiated simply because a personal hearing was not given to the petitioner. This is all the more so because the revision petition itself could be disposed of in a certain contingency. without giving a personal hearing and the order made upon stay application was not conclusive in nature.

15. The order of the learned Financial Commissioner has rendered substantial justice to the petitioner with reference to the past history of the case. The petitioner

and respondents 7 and 8 are stated to be in illegal possession from the year 1955 and nearly 17 years have expired and they are postponing delivery of possession on one pretext or the other. The parties have already gone in several appeals and revisions and the learned Addl. Financial Commissioner perhaps considered that no more latitude could be granted and at any rate a prima facie case was not made out for granting interim stay of delivery of possession. No exception can be taken to his order because a substantial justice seems to have been done and the High Court should not interfere with his order in exercise of its extraordinary jurisdiction; (See: Bux Singh v. Joint Director of Consolidation U. P. Lucknow (AIR 1966 All 156). The Order made by the learned Addl. Financial Commissioner contains reasons why he dismissed the application and so it is a speaking-order. The remedy itself was discretionary and it is difficult for this Court to interfere in writ jurisdiction and ask the revenue authority to go into the merits of the case once again in the manner stated by the petitioner. The relief under Article 226 or 227 being discretionary, cannot be invoked merely to rectify any error of law or procedure unless it has resulted in manifest injustice. In the instant case, no error of law or procedure has been committed and clearly no injustice has been caused. For this, support can be taken from the decision in Bhagwan Sharma v. Prescribed Authority (Transport Commr.) Gwalior (AIR 1972 Madh Pra 134) in which case their Lordships relied upon two cases of the Supreme Court -- AIR 1952 SC 192 and AIR 1955 SC 425.

16. In view of what I have stated above, no substantial ground is made out in favour of the petitioner, and the writ petition is dismissed.

17. No order is made as to costs.