Sm. Bhagwati Kuer And Ors. vs Lal Bahadur And Ors. on 22 February, 1955

Equivalent citations: AIR1955ALL422, AIR 1955 ALLAHABAD 422

JUDGMENT

Mukerji, J.

1. This is a petition under Article 226 of the Constitution. The petition originally contained three prayers to which it is, however, unnecessary for us to refer as on 17-2-1955 the petitioner was given leave to amend his petition by adding thereto a fourth prayer, and learned counsel has confined his argument to the relief sought in that prayer. The fourth prayer is:

> "That the opposite party No. 3 be directed by a writ of mandamus to decide the appeal pending before him according to the provisions of the U. P. Act 17 of 1939 and he commanded by a writ of prohibition not to apply the provisions of Section 20 of V. P. Act 1 of 1951."

2. The facts on which this petition was made, briefly stated, were these. On 8-11-1952 petitioner 1 obtained a decree, in a suit under Section 180, U. P. Tenancy Act, 1939, for the ejectment of respondents 1 and 2 from certain plots of land. From that decree these respondents appealed to the Additional Commissioner, Allahabad and Jhansi Divisions, who is the third respondent, and that appeal is still pending.

3. Respondents 1 and 2 claim to have acquired the rights of an 'adhivasi' under Section 20, U. P. Zamindari Abolition and Land Reforms Act, and that they cannot therefore be ejected from the plots. The petitioners do not challenge the validity of Section 20, but it is argued on their behalf that although the provisions of that section do not (it is said) apply to the facts of this case, they apprehend that the Additional Commissioner will hold otherwise.

4. In para 7 of the affidavit filed on behalf of the petitioners if is stated that the Additional Commissioner heard the appeal on 18-8-1953 and that he (the Additional Commissioner) had expressed the opinion that he was bound by the provisions of Section 20, U. P. Zamindari Abolition and Land Reforms Act as amended by Act 16 of 1953. The petitioners' case is that this view of the Additional Commissioner was erroneous inasmuch as it has been held by a Bench of this Court in --'Bikramsingh v. Sunehra', AIR 1954 All 434 (A), that Section 20 is not retrospective. It was further submitted by learned counsel for the petitioners that the Board of Revenue had held in a case that Section 20 was retrospective in its effect, and it was therefore argued that the Additional Commissioner, being bound to follow the decisions given by the Board of Revenue in preference to a decision given by this Court was certainly going to hold that Section 20 applied to the facts and

circumstances of the appeal before him and that therefore the petitioners' right was in imminent jeopardy.

5. The position that obtains in this case therefore is that there is an appeal pending before an appropriate appellate authority which has to decide the appeal in accordance with law. That court has got to decide whether under the circumstances of the case before it Section 20, U. P. Zamin-dari Abolition and Land Reforms Act applied or not. The decision has not yet been given by that court: the matter is still 'sub-judice' although a preliminary argument had been made before it on 18-8-1953. It may also be that the Additional Commissioner -may have expressed a tentative view

-- for we can say no more than this on the materials before us -- that Section 20 applied to the facts and circumstances of the appeal. The question therefore is whether this Court can by means of either of the writs the issuance of which has been sought by the petitioners, namely a writ of mandamus or prohibition, direct the Additional Commissioner to decide the appeal which is pending before him in a particular manner.

6. The scope of a writ of mandamus never has embraced in its ambit a direction to an inferior Tribunal to decide any cause before it in any particular manner, though the writ of mandamifs has undoubtedly been used to direct a subordinate judicial authority to exercise a jurisdiction vested in it. As for a writ of prohibition, it is also not an appropriate remedy available to the petitioners on the facts and circumstances of this case. There is in this case no question of any lack of jurisdiction in the judicial authority that is seized of the matter in appeal. No authority was cited to us at the Bar, and we ourselves are not aware of any authority, on which we could interfere at this stage in the matter pending before the Additional Commissioner and direct him to decide the appeal in a particular manner.

7. Mr. Bhargava relied on certain English decisions. The first case on which reliance was placed was the case of -- 'The Queen v. Adamson', (1875) 1 QBD 201 (B). This is one of the leading cases indicating the scope of the writ of mandamus, and there is nothing in this case which could be of the slightest assistance to learned counsel in support of his contention.

8. The next case on which reliance was placed was -- 'Reg. v. Evans', (1890) 62 LT 570 (C). This case, too, in our judgment, is of no assistance. In this case, like the earlier one, the proposition of law that was enunciated was that where a Court refused to exercise jurisdiction on grounds which were not judicial, that Court, if it was a subordinate court, could be directed by mandamus to exercise its powers in accordance with law. Lord Coleridge who delivered the leading judgment said this:

> "I only desire to guard myself against it being supposed that by sending this case back to the magistrate we give him any hint as to the way in which we think he ought to determine it. He will no doubt give judgment according to the principles of law."

This sentence in the judgment of Lord Coleridge is clearly indicative of the fact that this case could not be pressed into service to support the proposition that a superior Court can, by mandamus, direct a subordinate court to determine a matter in any particular manner.

9. The other case cited was 'Re Brighton Sewers Act', (1882) 9 QBD 723 (D). This case too, lays down the same proposition, and can be of no assistance to learned counsel for the petitioners.

10. Mr. Bhargava lastly relied on a decision of the Madras High Court in -- 'Lakshmindra Theertha Swamiar v. Commr., Hindu Religious Endowments, Madras', AIR 1952 Mad 613 (E). The facts of this case were entirely different and there was nothing, in our opinion, in this case which could be of any help.

11. There is one further aspect of the matter which we consider appropriate to notice, and that is that even if it were possible for us to issue either of the writs prayed for, whether under the circumstances of this case it would be proper, in our discretion, in such matters to do so. As we have noticed, the writ is to issue to the Additional Commissioner who is a court subordinate to the Board of Revenue and whose decisions can be and are made the subject matter of an appeal to the Board of Revenue. The Board of Revenue which is no party to this petition, would not be bound by any direction or order embodied in a writ issued by this Court to the Additional Commissioner, and in deciding an appeal from the judgment of the Additional Commissioner it might express an opinion which is in conflict with the decision of this Court. It is clearly desirable that the possibility of any such difference of opinion should be avoided.

12. For the reasons given above we see no force in this petition which we dismiss with costs which we assess at Rs. 100/-.