Azmat Ullah And Ors. vs The Custodian, Evacuee Property, U.P., ... on 21 December, 1954

Equivalent citations: AIR1955ALL435, AIR 1955 ALLAHABAD 435

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Bench: V. Bhargava

JUDGMENT

Mootham, C.J.

1. The following question has been referred to a Full Bench by two learned Judges of this Court: "Where the relief claimed is a writ o 'mandamus' relating to property situate within the jurisdiction of one High Court directed to an officer residing within the jurisdiction of that Court and it was that officer who and whose subordinates, also residing within the jurisdiction of the same High Court, originally passed the orders complained of but the writ cannot issue without setting aside, in exercise of the power of 'certiorari', the order passed in appeal, or revision by an authority residing outside the jurisdiction of that High Court and within the jurisdiction of another High Court, which is the High Court competent under Article 226 of the Constitution to issue the writ?"

2. It is necessary to state shortly the circumstances in which the reference has been made. On 8-9-1949, the Deputy Custodian of' Evacuee Property, Gonda, in the exercise of powers vested in him under the United Provinces Administration of Evacuee Property Ordinance, 1949, declared certain persons to be evacuees and their-property to be evacuee property. The petitioners now before this Court claimed to be sub-tenants of the evacuee, and they were allowed by the Assistant Custodian to remain in possession of the property upon the first petitioner being appointed supurddar. The Assistant Custodian subsequently formed the opinion that the petitioners' claim to be sub-tenants was fictitious, and he made a report to that effect to the Deputy Custodian who, on 10-5-1952, passed two orders directing that the petitioners be evicted from the property and that the latter be allotted to certain other persons.

Against these orders applications in revision were filed by the petitioners before the Additional Custodian it being asserted on their behalf that they had not been afforded an opportunity of contesting the notice of surrender served upon them under Section 8, Administration of Evacuee Property Act, 1950 (which had replaced the -original Ordinance) read with R. 8 of the Rules made under the Act. By an order dated 29-7-1952, both applications were allowed. The orders of 10-5-1952, were set aside, and the Additional Custodian directed possession of the property to be restored to the petitioners. The matter then went to the Custodian General who, by an order dated 21-11-1952, made in exercise of his powers under Section 27 of the Act, quashed the order of the

Additional Custodian and restored the two orders of the Deputy Custodian dated 10-5-1952.

3. The petitioners thereupon filed a petition in this Court under Article 226 of the Constitution. The -only person made the respondent to the petition was "The Custodian, Evacuee Property, U. P., Luck-now", and the prayer was that a "Writ, direction or order of the nature of 'mandamus', prohibition or 'certiorari' or any of these may be issued, quashing tile order of the learned Custodian General so far as it relates to applicants, "and a direction be issued to the opposite party to issue a proper notice under Section 8 (4) Evacuee Property Act (to the applicants) and of giving the applicants an opportunity to contest the said notice of eviction after holding that the notice of the learned Custodian General so far as it relates to the applicants is ultra vires and illegal and without jurisdiction."

4. When the petition first came on for hearing, a preliminary objection was taken by the respondent that as the Custodian General had his office in Delhi and the order which the petitioners sought to have quashed had been passed in Delhi, the Court had no jurisdiction to issue the writs prayed for or any of them. The learned Judges being of opinion that this objection raised an important question of law, accordingly referred to a. Full Bench the question which we have already set out.

5. With great respect we do not think that the question propounded is really the question that arises in this case. It is now clear, and learned counsel for the petitioners concedes, that after the decision of the Supreme Court in -- 'Election Commission, India v. Veiikata Rao', AIR 1953 SC 210 (A), and -- 'K.S. Rashid & Son v. Income Tax Investigation Commission', AIR 1954 SC 207 (B), no, High Court can issue a writ which will be effective beyond the limits of its own territorial jurisdiction. It therefore follows that no other High Court can issue a writ to an official who resides within the jurisdiction of this Court. After hearing counsel for the petitioners, the real question which in our opinion arises is whether this Court can issue a writ of 'mandamus' to the respondent, the Custodian1 of Evacuee Property, U. P., commanding, him to treat as a nullity an order made by the Custodian General in New Delhi in the exercise of his revisional powers under Section 27, Administration of Evacuee Property Act, 1950.

6. We are of opinion both on principle and authority that the answer to this question must be in the negative. It is argued for the petitioners that they have a legal right to contest the notices issued to them under R. 5 read with Section 8(4) of the Act; that that right has been denied by the Custodian General, and that this Court, although it cannot quash the Custodian General's order, can examine that order and, if it finds that it is contrary to law, can issue a 'mandamus' to the Additional Custodian commanding him to ignore the order and proceed on the basis that his own order of 29-7-1952, is a valid and subsisting order. Apart from the technical objection that the Additional Custodian has not been made a party to the petition, we are of opinion that as this Court has no jurisdiction to quash the Custodian General's order it has no power to examine the validity of the order.

7. In -- 'Janardhan Reddy v. State of Hyderabad', AIR 1951 SC' 217 (C) the petitioners had been convicted of certain offences, including murder, and sentenced to death by a Special Tribunal constituted under the Special Tribunals Regulation enacted by the Nizam of Hyderabad. The

convictions and sentences were subsequently confirmed by the Hyderabad High Court. After the Constitution came into force the petitioners filed petitions under Article 32 in the Supreme Court challenging the validity of their convictions. They did not in the petition as originally presented to the Supreme Court apply for the issue of writs of 'habeas corpus', but at a late stage of the hearing an application to amend by including such a prayer was made on their behalf and was allowed. The argument on their behalf was that their detention was illegal from day to day as it was based on an order made without -jurisdiction and that that order, even if it could not be quashed, could be ignored as a nullity. The Supreme Court refused to grant the writs, and one of the grounds on which it did so was that the judgment of the High Court affirming the conviction of the petitioners having acquired finality before the coming into force of the Constitution on 26-1-1950, the question of the validity of the convictions could not thereafter be challenged. Their Lordships said, at page 225 of the report:

> "Can then a new law or a change in the old law entitle us to reopen a transaction which has "become closed and final? It is common ground that the provisions of the Constitution which are invoked here were not intended to operate retrospectively, and therefore something which was legally good on the 25th January, 1950, cannot be held to have become bad on the 26th of January, 1950. If we had no jurisdiction to sit in appeal over the judgment of the Hyderabad High Court, can we now reinvestigate the cases and pass orders which cannot be passed without virtually setting aside the judgments of the High Court which have become final? Can we in other words, do indirectly what we refused to do directly? It is argued that we are asked not to reopen a past transaction but to deal with the present detention of the petitioners i.e., their detention at this moment. But, how can we hold the present detention to be invalid, unless we reopen what could not be reopened prior to 26th January, 1950? This is, in our opinion, one of the greatest difficulties which the petitioners have to face, and it rests not merely on technical grounds but on sound legal principles which have always been, and should be respected."

8. In our opinion it is no less clear that we cannot do indirectly what we have no power to do directly. We have no power to set aside the Custodian General's order; it is so far as this Court is concerned, a final order. If we examine the grounds of that order for the purpose, should we find the order to be invalid, of declaring it to be a nullity, we are in effect doing indirectly what we cannot do directly.

9. Until the Custodian General's order be quash-ed or set aside by a Court competent to do so, this Court must deem the order to be a valid order, and there is consequently no material upon the basis of which we can issue the 'mandamus' which the petitioners seek.

10. Learned counsel for the petitioners has relied on a decision of the Travamcore-Cochin High Court in -- 'Thangalkunju Musaliar v. Venkita-chalam Potti.', AIR 1954 Trav-C 131 (FB) (D) as authority for the proposition that a High Court can issue a writ of mandamus commanding a person within its jurisdiction not to carry out a quasi-judicial order which the Court has no power to quash. In that case the petitioner had applied for a writ of prohibition to prohibit the respondents from

holding an inquiry into certain cases on the file of the Income-tax Investigation Commission of Travancore, and from holding an investigation into his income. The first respondent was the Authorised Official and Income-tax Officer on Special Duty, Trivandrum, and the second respondent was the Income-tax Investigation Commission at New Delhi. A preliminary objection was taken that the Court was not competent to entertain the petition in view of the fact that the second respondent was not amenable to its jurisdiction. The Court overruled the preliminary objection, its reason being summarised in the following paragraph:

> "The first respondent in this case is a resident within the State of Travancore-Cochin and his office is situate at Trivandrum. All his communications to the petitioner have emanated from within the State and the activities complained about are activities confined, to the State. The prayer in the petition is in essence a prayer to paralyse his hands and thus prevent the mischief, and we are of the opinion that by his residence and the location of his office within the - State, he is clearly amenable to the jurisdiction of this Court under Article 226 of the Constitution. As a writ against the first respondent if issued is sufficient for stopping completely the mischief complained about, it is unnecessary for us to decide whether a writ can be issued or not as far as the Second respondent is concerned."

11. The Enactment under which the investigation into the petitioner's income was proposed to be made was the Travancore Taxation of Income (Investigation Commission) Act, 1124. That Act is not available to us and it is somewhat difficult from the report to appreciate precisely the circumstances upon which the judgment proceeds. It appears, however, that by a notification dated 18-10-1951, the first respondent had been appointed by the Central Income-tax Investigation Commission to be an "authorised official" under, Section 6 of the Travancore Act, and that the inquiry was being conducted under the provisions of the latter Act. If this be so, it is somewhat difficult to see why it was considered necessary to make the second respondent a party to the petition at all, for the act of this Commission in nominating the respondent would seem clearly to have been an executive act. It appears that the first respondent was purporting to conduct the proposed investigation under powers which he derived from the Travancore Act, and in such circumstances there would seem to be no reason why, if it thought fit, the Travancore-Cochin Court should not (as in fact it did) issue a writ of prohibition to the first respondent. It appears to us that this decision is no authority for the proposition for which it was cited.

12. The petitioners also relied on two cases of the Rajasthan High Court -- Har Prasad v. Union of India', AIR 1954 Raj 189 (E) and -- 'Barkatali v. Custodian General of Evacuee Property of India', AIR 1954 Raj 214 (F). In each of these cases, the order of a subordinate officer within the jurisdiction of the High Court had been confirmed by higher authority outside the jurisdiction. The Court each case held that in these circumstances the real urder against which relief was sought was the order of the subordinate officer, and that order the Court had jurisdiction to quash under Article 226. This Court has however held in -- 'Moharnmad Yusuf v. Custodian General, Evacuee Properties', AIR 1954 All 433 (G) that an order of the Custodian General, even if it does no more than affirm the order of an Assistant Custodian, supersedes the latter order which becomes merged in the former; and it is further to be noted the Rajasthan High Court observed that the legal position

would have been Different if--as in the petition now before us--the order of the subordinate officer had been set aside by the superior authority. The two Rajasthan cases are therefore clearly distinguishable.

13. It has not been contended that the Custodian General had no jurisdiction to make his order of 21-11-1952, in the exercise of his rcvisional powers under Section 27 of the Act; it is not therefore necessary for us to consider the legal issues which would arise were he to act in excess of his jurisdiction.

14. In our opinion this Court cannot issue a writ of mandamus to the Custodian of Evacuee Property, U. P. commanding him not to give effect to or to treat as a nullity a quasi judicial order made by the Custodian General so long as that order is a valid and subsisting order.

15. The Petition will now be placed with this opinion before the Bench which made the refer ence for final hearing.