Ram Sahai And Ors. vs The Custodian Of Evacuee Property, ... on 17 September, 1952

Equivalent citations: AIR1953ALL117, AIR 1953 ALLAHABAD 117

JUDGMENT

Waliullah, J.

1. This is an application for issue of a writ of certiorari for quashing the order of the Additional Custodian dated 27-2-1952 as well as the order of the Custodian General dated 4-7-1952. There are some other reliefs claimed in the application but the argument of the learned counsel before us has been confined to the question whether or not this is a fit case for the issue of a writ of certiorari for quashing the orders mentioned above. There is an affidavit filed in support of the application. Mr. Gaur, the learned counsel for the applicants, has strenuously contended that it is a fit case in which this Court should issue a writ of certiorari for quashing the orders of the Additional Custodian as well as that of the Custodian General mentioned above. The learned counsel has pressed us hard to accept his contention that in this case his clients were not tenants of certain sir land at all, but were rather holding the plots actually in their possession as sajhidars and that later on they became hereditary tenants under the Tenancy Law. The contention of the learned counsel has been that the Additional Custodian, or the Custodian General, has not considered and decided the vital matter which would have affected his jurisdiction to decide this case. The vital matter referred to by the learned counsel is the question whether or not the plots held by the applicants were comprised in the sir land of the evacuees Abdul Alim and others which later, after July 1948, became vested in the Custodian of the Evacuee Property. We have carefully looked into the order given by the Additional Custodian and also the order of the Custodian General. It is clear from those orders that the question whether the plots held by the applicants form part of the sir land of the evacuees was never raised before either of the two officers, namely, the Additional Custodian or the Custodian General. These two orders proceed on the footing that the land in which the plots held by the applicants are situate was originally sir land of Abdul Alim and his relations who later migrated to Pakistan. In this connection it is important to remember what the Supreme Court of India has laid down with regard to the scope of the provisions embodied in Article 226 of the Constitution. In the case of Ebrahim Aboobaker v. Custodian-General of Evacuee Property, New Delhi, A. i. R. 1952 S. C. 319, Mahajan J. delivering the judgment of the Court at p. 322 (para. 13) observed :

> "It is plain that, such a writ (writ of certiorari) cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior Court might not have authority to enter on the

> inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the Court has to try and which are condition precedent to the assumption of jurisdiction by it. But once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly."

Referring to the powers of the Custodian General conferred upon him by Section 24, Administration of Evacuee Property Act, 1950 (31 of 1950), the, learned Judge observed at p. 322, column 2 ;

''Like all Courts of appeal exercising general jurisdiction in civil cases, the respondent (the Custodian General) has been constituterl an appellate Court in words of the widest amplitude and the legislature has not limited his juristiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a Court of appeal has only jurisdiction to determine the soundness of the decision of the inferior Court as Court of error, but by the very nature of things it has also jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties. Such jurisdiction is inherent in its very constitution as a court of appeal."

2. Again in -- 'Parry & Co. Ltd. Dare House Madras v. Commercial Employees Association, Madras', 1952 S C R p. 519, it was held :

> "The High Court cannot issue a writ of certiorari to quash a decision passed with jurisdiction by a Labour Commissioner under the Madras Shops and Establishments Act, 1947, on the mere ground that such decision is erroneous."

At page 1324 Mukherjea J. delivering the decision of the court in this case is reported to have observed:

> "The records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus there was absolutely no grounds here which would justify a superior court in issuing a writ of certiorari for removal of an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions."

The learned Judge pointed out that in that particular case what the High Court had done really was to exercise the powers of an appellate court and correct what it considered to be an error in the decision of the Labour Commissioner. This, as the learned Judge pointed out, obviously it could not do.

3. The third case which we may refer to here, in which the Supreme Court has considered and laid down the scope of the powers of the High Court under Article 226 of the Constitution, is -- 'G.

Veerappa Pillai v. Raman & Raman Ltd., Kumbakonam, Tanjore Dist.', AIR 1952 S C 192. In this case Chandrasekhara Aiyar, J. who delivered the judgment of the Court at page 195 (paragraph 20) observed thus :

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made."

4. In view of the above authorities it seems to us clear that unless the applicants bring their case within one of the categories of cases indicated in the decisions of the Supreme Court, the application must be rejected. As mentioned already learned counsel's sole contention has been that the question of the applicants being the holders of the plots comprised in the sir land of the former zamindar i.e. the evacuee landlord, has not been correctly decided. As already stated, it seems clear to us that this question was not specifically raised before either of the Additional Custodian or the Custodian General. On the contrary the case seems to have been argued before these tribunals on the footing that the applicants were holding plots in question which formed part of the sir land of the evacuee landlord. In any view of the case we fail to discover anything in the order passed either by the Additional Custodian or the Custodian General which would indicate that either of these two officers have travelled outside his jurisdiction or has failed to exercise jurisdiction vested in him. There is nothing pointed out to us which would, show that here there has been a violation of principles of natural justice, in the decisions given by any of these two officers.

5. The result, therefore, is that we dismiss this application.