

Mohammad Abdul Rahman Khan vs The Govt. Of The State Of Uttar Pradesh ... on 3 August, 1953

Equivalent citations: AIR1954ALL4, AIR 1954 ALLAHABAD 4

JUDGMENT

Kidwai, J.

1. This is an application under Article 228 of the Constitution, though the nature of the writ claimed is not mentioned. The petitioner, who was a considerable landholder and a man of influence before the abolition of zamin-dari, claimed that in reward for loyal services, --he had been allowed two remissions of revenue, one for Rs. 150/- & the other for Rs. 75/- granted to him in 1922 and 1923 and these remissions be allowed up to 1950, when the Government stopp- ed them. He further claimed that he was entitled to continue to enjoy these remissions and any demand by the Government for refund of either of them was illegal and infringed the petitioner's fundamental rights. He, therefore, prayed for a direction or a writ to the Government prohibiting them from "interfering in any manner in the enjoyment of the two life grants in the nature of remissions of Rs. 150/- and Rs. 75/- in the land revenue of the petitioner" and from realising a sum of Rs. 4,200/- which was the amount allowed as remission at the rate of Rs. 150/- per year for 28 years. The Government had also stopped the remission of Rs. 75/- per annum, which was valid remission, till the ar-rears amounting to Rs. 4,200/- had been realised. It was prayed that the Government be directed not to suspend this grant.

2. This application was supported by an affidavit, but the verification of this affidavit shows that Saiyid Ishaq Ali, the deponent, does not state which of the facts mentioned in it were within his personal knowledge and to which facts he deposed on the basis of the information received. According to the affidavit, his age was only 50 in 1951 and there is nothing to indicate that he was in the service of the petitioner at the relevant time, viz., 1922 to 1924. His knowledge as to what happened in those years can, therefore, not be his personal knowledge but can only be based on information.

3. Subsequently an affidavit was filed by one Nasiruddin, who swore that he had been the general agent of the petitioner at the relevant dates and he also swore that, to the best of his memory, two sanads were granted. The correspondence which has been filed in this case clearly negatives the issue of the two sanads. This affidavit too, therefore, cannot be relied upon to support the case of the petitioner.

4. A counter affidavit has been filed by one Balak Ram, Chief Revenue Accountant, Deputy Commissioner's office, Kheri, in rebuttal of the al legations contained in the application of the petitioner. Prom a perusal of this affidavit, it ap pears that originally a sum of Rs. 40,000/- per annum

was to be given as remission of land revenue or as an assignment of land revenue to certain individuals who had supported the Government loyally during the Civil Disobedience Movement of 1920-21 : that subsequently this list had to be revised at the instance of the Finance Committee and the total amount allowed was reduced to Rs. 15,000/- for the whole province;

that in view of this reduction that remission granted to the petitioner was reduced from Rs. 150/- to Rs. 75/- per annum but by mistake the entries made in the revenue papers had not been corrected, till 1950 and the sum of Rs. 150/- per annum as well as Rs. 75/- per annum were shown as two separate and distinct remissions of the land revenue, which was not in accordance with the Government orders. It is pleaded on behalf of the Government that the petitioner had taken advantage of this wrong entry in the revenue papers and that it was only the revenue which had not been paid year by year which was being realised now by the Government.

The affidavit filed by Balak Bam is supported by the documents which have been produced by the learned Additional Senior Standing Counsel, particularly by opposite party's Ex. 4. There can thus be no doubt that between 1922 and 1950 the petitioner received an unsanctioned remission of Rs. 150/- per annum & since there is no limitation to the recovery of the arrears, the Government is entitled to recover the same.

5. It has been contended on behalf of the petitioner that the procedure which has been followed is not in accordance with the Land Revenue Act. On a reference to the Land Revenue Act we find that, as a matter of fact, there should have been a certificate issued by the Tahsildar under Section 145 of the Act giving a statement of the account and certifying that there is an arrear. In the present case, this certificate is missing; since the mistake was discovered by the Chief Revenue Accountant of the Deputy Commissioner's office. Thereafter, all proceedings took place in accordance with the law. There can be no doubt however that there has been a procedural defect which affects the question of jurisdiction. The proper course which should have been adopted was for the Deputy Commissioner to proceed first of all to obtain a certificate from the Tahsildar in respect of the arrears and then to proceed as the Land Revenue Act directs.

We do not, however, feel that this is a case in which we should exercise our powers of 'certiorari' because, in fact the Government is entitled to recover the sum of Rs. 4200/- and under the Land Revenue Act it can recover it in a lump sum. Therefore, although a defective procedure has been adopted, that defect does not affect the equities & the justice of the claim, nor does it interfere in any way with the fundamental rights of the petitioner.

6. We may, however, point out that the sum which was remitted to the petitioner was spread over a period of 28 years and it was not entirely the petitioner's fault that this realisation was not made at the time when the rest of the revenue was collected. The remission was contained in the revenue paper & the revenue authorities did not correct those papers and did not realise the money from him. It is undoubtedly a matter of hardship for him to be called upon to make good the deficiency in a lump sum, but this is not a matter in which we can go in the course of a writ petition, such as the present. It is a matter for the consideration of the Government should the petitioner approach the Government on this point.

7. Accordingly we reject this application but in view of the fact that there has been a serious defect in the procedure, we do not allow the Government costs.