Ram Niranjan Lal And Ors. vs Additional District Magistrate And ... on 15 January, 1952

Equivalent citations: AIR1952ALL822, AIR 1952 ALLAHABAD 822

JUDGMENT

Sapru, J.

1. There are three applicants in this writ application, namely, Lala Ramniranjan Lal, Lala Mata Din and Lala Harinath. They pray for a writ, under Article 226 of the Constitution, quashing the order of the learned Additional District Magistrate of Kanpur, allotting a certain land to Sardar Kartar Singh, opposite-party No. 2 and further prohibiting the learned Additional District Magistrate from allotting the said land to any other person.

2. The facts which have given rise to this application may be stated shortly. A piece of land nearly 40 acres was acquired by the father of the present applicants, Lala Munna Lal, from the Government of India by a sale-deed dated 9th July 1946. It would appear that the land was, as a matter of fact, purchased in 1943, but the sale-deed was not executed until 9th July 1946. The applicants' contention in the application and the affidavit which they have filed before this Court is that from that date right up to the date on which they were ordered to be dispossessed by the learned Additional Collector, they were in cultivatory possession of the land in dispute. Their case was that as the land was of a cultivated character in the Rabi and Kharif immediately preceding 28th January 1948, the learned Additional Collector had no jurisdiction to allot it under Section 3, U. P. Land Utilization Act, No. V [5] 1948, to the Opposite-party No. 2 or for the matter of that, to any other person.

3. The order allotting the land to Opposite-party No. 2 is an ex parte order and was passed by the learned Additional Collector on 8th April 1950. It was passed by the learned Additional Collector ex parte on the ground that notice had been issued to the zamindar applicants, that they had taken the notice but had refused to endorse the acknowledgment. He regarded that as sufficient service and proceeded with the case ex parte.

4. The case has been argued very ably by Mr. Walter Dutt on behalf of the applicants and by Mr. Dhawan on behalf of the opposite-party No. 2. Learned counsel for the parties have covered a wide ground but, in our opinion, the case can be decided on a short point. After the ex parte order had been passed, the applicants went up to the learned Additional Collector in review. The learned Additional Collector refused to review his order on the ground that, under the Act, he had no power to review or set aside the order passed by him. In this, he was undoubtedly right. Incidentally he went into the merits of the case and also based his order on his estimate of the merits of the case as presented by opposite-party No. 2. We think it was quite unnecessary for him, after having come to

the conclusion that he had no jurisdiction under the Act to review his order to go into the merits of the case.

5. The U. P. Land Utilization Act, No. V of 1948, (hereinafter called the Act) received the assent of the Governor on 28th January 1948 and was published in the U. P. Government Gazette dated 7-2-1948. Its main objective would seem to be to provide for powers to utilize uncultivated land in order that the production of foodstuffs might be increased. It, therefore, vests in the collector with vast powers. Possibly the legislature thought that it was in the social interest that the Collector should have powers of requiring by notice a landlord to let out his land or to arrange for its cultivation within 15 days thereof where that land is not grove land or land let out to or held by tenant and has not been cultivated or, if previously cultivated, has not been cultivated in the Rabi and Kharif immediately preceding the commencement of this Act. Section 2 of the Act lays down that the notice shall be served on the landlord by delivering or tendering to him a copy of such notice. It further indicates that if the landlord is not readily traceable or refuses to accept the notice, the service shall be effected by affixing a copy of such notice to the chaupal or some other public place in the village and thereupon the landlord shall be deemed to have been sufficiently served. The case of the applicants is that this is not a case in which the landlord was neither readily traceable nor had refused to accept the notice. What he had done was to take the notice but not to sign the acknowledgment. It is urged that the refusal to sign is not synonymous with refusal to accept the notice. It is contended that there was sufficient compliance with the provisions of that section and that there is, therefore, no force in the plea that the applicants were not served with proper notice such as would justify them to get the ex parte order set aside.

6. The difficulty that we feel with this and the other cognate arguments which have been advanced about the nature of service required for notice under the Act is that, in our opinion, there was no evidence of an admissible nature on which the learned Collector could record a finding that notice had been served on the landlord applicants in this case. The report of the process server which is dated 27-2-1950 is to the effect that he went to the house of the three applicants respectively, that in the case of Lala Eamniranjan Lal the notice was thrown in the baithak and in the cases of Lala Mata Din and Lala Hari Nath the notice was taken by them but they refused to sign the acknowledgment. Now, the question whether a notice served in this manner could or could not in law be described as notice within the meaning of Section 3 of the Act and the other relevant provisions of law could only have arisen if the report submitted by the process server had been either verified by him or had been sworn to by him as correct. We have gone through the entire record of the case and are satisfied that the report submitted by the process server was not verified by him as required by Rule 78, Revenue Court Manual, Rule 78, Revenue Court Manual corresponds in effect with Order 5, Rule 19, Civil P. C. We may quote below Rules 18 and 19 :

> "18. The serving officer shall, in all cases in which the summons has been served under Rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

> 19. Where a summons is returned under Rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit."

7. Now, in this case summons had not been verified by an affidavit of the serving officer. The Court could have rectified that defect by examining the serving officer on oath. This too was not done by the Court. The result is that the finding of the Court that notice had been served on the applicants is based on evidence which was not admissible in law at all. The jurisdiction of the Court to pass the order that it did relating to the land in dispute depending upon the finding that the applicants were wilfully or deliberately absent on the date fixed by it. No doubt under Section 3 of the Act the Court could issue notice either suo motu or on the application of some other party requiring the land to be brought under cultivation, in accordance with the requirements of Section 3 of the Act. But before proceeding to allot the land to a person other than the landlord, it was incumbent on the Court to make sure that the landlord had been served with proper notice of the order regarding utilization of the uncultivated land. Now, it appears to us that the Court took no steps to satisfy itself by evidence which can be regarded as admissible that notice had been served upon the applicants. For this reason, we think that the Court acted without jurisdiction. Learned counsel for opposite party No. 2 has contended that we ought to assume that the Court acted with due formalities and that the failure of the Court to record that the process server had verified the report or had been examined on oath is at best a mere irregularity or accidental omission which in all the circumstances of the case, ought to be ignored. Our attention has been drawn to a number of authorities in regard to accidental omissions. It has also been contended before us that a perusal of the record would show that the entire procedure observed in recording the statement of the process server was substantially the same as the procedure which is observed when a statement on oath is taken of an attesting witness. It was further contended that prima facie if there is any omission, it must be considered accidental, particularly as opposite party No. 2 was not given any opportunity to explain it. We are unable to accept these arguments as correct. There is nothing to show that the omission to record the process server's statement as having been made on oath or as having been accompanied by an affidavit was accidental. We may as ft test point out that the process server could not have been prosecuted under Section 193, Penal Code for perjury had the Court come to the conclusion that his statement was false. There is nothing of a positive or affirmative nature to show that there was any accidental omission to note the fact that the process server had been given oath and that the nazir had failed to record that fact. These defects cannot be supplied by speculation as to what omissions or mistakes may have occurred at the time when the process server's statements came to be recorded by the nazir. The requirement that the Court should act on statements verified by affidavits or sworn to by witnesses who appear before it is of the highest importance from the point of view of the administration of justice.

8. In the Pull Bench case of In the matter of Raghubir Saran Advocate, Meerut, A. I. R. 1949 ALL. 668 (F. B.), certificates which had not been verified by affidavits were sought to be produced by learned counsel for the applicant, Raghubir Saran, as evidence in favour of his client. In refusing to

look upon those certificates as admissible one of the members of the Bench made the following observations :

> "The certificates--and I propose to say something about their admissibility in evidence--which were not filed in the form of affidavits by those who are supposed to have given to him related to a period when his case was under consideration by the Court. It was only during the course of arguments that it struck Mr. Raghubir Saran after certain observations were made by the Bench, that perhaps the correct thing for him to do was to furnish some evidence of the estimation in which he was held by those who knew him before arguments were over and judgment was pronounced. To those certificates as also to the new certificates, I can attach no importance as they ace not legally admissible in evidence. We have a general affidavit by him that they were given to himby persons who are supposed to have signed them. That may or may not be so. It may be that the gentlemen mentioned by him gave him the old as also the new certificates; but it was incumbent on him, in my opinion, to obtain from them these certificates in the form of affidavits sworn to by them. That would have given an opportunity to the Government Advocate to test the sources of information and the credibility of the persons who have given these certificates. I have failed to discover any section of the Evidence Act which enables a Court to take into consideration testimonials given by persons who have not pledged their word to the veracity of the statements made by them. It may be that Mr. Raghubir Saran was misled by the past practice which, I am informed, was prevalent in this Court in this matter. The law, as I understand it, is that those certificates cannot be accepted as evidence of the facts deposed to in them. It is unnecessary to cite any authorities or refer to the various sections of the Evidence Act in support of this proposition."

9. Prom the remarks we have just quoted in the case mentioned above, it will be clear that it is only on statements which are either supported by affidavits or by oral evidence tendered on oath before the Court that the Court can base its findings. The finding that the applicants had been served with notice and had deliberately absented themselves from Court was based upon evidence which we regard as completely inadmissible in law. For this reason we hold that the Court had no material on which it could assume jurisdiction to proceed ex parte against the applicants. We may on this point quote para. 1484 of Halsburys Laws of England, Edn. 2, Vol. 9, p. 880 :

> "Where the Court below has acted without jurisdiction certiorari to quash the proceedings may be granted.
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> Want of jurisdiction may arise from the nature of the subject-matter; so that the inferior Court had no authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary proceeding. Thus, although the inferior Court may have jurisdiction over the subject-matter of the inquiry, it may be a condition precedent to the exercise of its jurisdiction that the proceedings should be begun within a specified time, or that some step should have been previously taken by the person who institutes proceedings before the Court. Under various

> statutes certain notices are requisite before the commencement of proceedings', and the omission to serve such notices deprives the inferior Court of jurisdiction and a/fords ground for certiorate."

10. We may say that on the facts presented to us we find it difficult to understand why the applicants should have absented themselves from the Court deliberately on the date on which the matter was taken up by it. The applicants filed an affidavit denying that they had notice of those proceedings. There would appear to be no reason why that statement should not be accepted as correct.

11. We shall now go on to consider another aspect of the case. We may point out that under Section 6 of the Act:

> "No order made in exercise of any power conferred by or under this Act or any rule made thereunder shall be called in question in any Court."

12. This provision cannot, of course, affect the jurisdiction which this Court possesses under Article 226 or 227 of the Constitution. The powers of issuing writs, directions or orders or of superintendence over inferior Courts or tribunals cannot be curtailed, modified or affected by any enactment of the Indian Parliament or of the State legislature. This is a power which has been given to this Court by the Constitution making authorities and it can only be altered in the manner provided for in the Constitution itself. No doubt, the power of issuing a writ, direction or order, as has been laid down in the Asiatic Engineering Co. v. Achhru Bam, A. I. E. 1931 ALL. 746 (F. B.) is discretionary; but in exercising that discretion this Court must be guided by judicial considerations. This Court in determining whether a particular writ, direction or order will or will not issue will take into consideration the historic background of that writ, direction or order. Indeed, it strikes us that in cases where the citizen has been left by an Act without any remedy in the shape of an ordinary suit, it may be desirable, in the interest of safeguarding the liberties for which these writs, directions or orders are intended, to help the citizen by the issue of a proper writ, direction or order. We have come to the conclusion that in the interest of justice it is necessary to interfere with the order of the learned Additional Collector in this case.

13. Arguments were addressed to us on a number of other points; but we do not think it necessary to deal with them as we are deciding this case on the narrow point of notice. We must not be understood to have decided anything which would affect the case of opposite-party No. 2.

14. For the reasons given above, we quash the order of the learned Additional Collector dated 8th April 1950 allotting the land to Sardar Kartar Singh, opposite-party No. 2. In the circumstances of this case, we make no order as to costs.