Saran Dass And Ors. vs The Chief Settlement Commissioner, ... on 16 October, 1970

Equivalent citations: (1970)3SCC301, 1971(III)UJ59(SC)

Author: M. Hidayatullah

Bench: M. Hidayatullah, A.N. Ray

JUDGMENT

M. Hidayatullah, C.J.

1. This is an appeal against the judgment of the High Court of Punjab in Civil Writ Application No. 1975 of 1963 decided on 18th December, 1963, The petitioner was allotted 170 standard acres and 8 units of lands in village Mallewala, Tehsil, Sirsa, District Hissar in lieu of lands abandoned by him in five villages in Tehsil Depalpur, District Montgomery. This was done on his application as Mahant Gaddinashin of an institution known as "Gaddi Kacha Pacca" in Tehsil Depalpur. According to him, he had re-established that institution in village Mallewala aft er the partition of India and was, therefore, entitled to get lands in lieu of lands which the institution had lost across the border. Later the Chief Settlement Commissioner considered the entire matter and held that the lands could not have been allotted to the appellant in lieu of lands which belong to "Gaddi Kacha Pacca" presumably because the 'Gaddi Kacha Pacca' was incapable of being moved to another place and established there. The settlement Commissioner in dealing with the matter observed that the institution was historical one and was, therefore, incapable of moving from a place in Pakistan to a place in India. The High Court was moved by a writ. The Writ Petition failed and this appeal is the result.

2. In Samadh Parshotam Dass v. The Union of India and Ors. reported in 1962, P.L.R , 1086 the High Court had ruled that Samadhis were not capable of being moved from one place to another and, therefore, no allotment of land could take place in lieu of lands lost across the border. That case came to this Court by way of appeal and the decision of this Court is reported in Civil Appeal No. 358 of 1965, decided on 26th February 1968. Although the appeal and the Writ Petitions were allowed to be withdrawn by this Court, there is a clear statement of the fact that Samadhs were incapable of being shifted from one place to another and that, therefore, no allotment of land could take place.

3. It appears that the institution had lands in more than one place one such being at village Kacha Pacca and the other in three different villages in which the name of the Mahant was recorded as Muafidar. The case could have been argued in the High Court that in respect of the lands which were recorded in his name as Maufidar, he was entitled to be rehabilitated by grant of lands in India. This plea, was not taken in the High Court and we may extract from the High Court judgment what

exactly the case of the appellant was. The learned Judges in the High Court observed :

> Following the above instructions, it was held in SAMADH PARSHOTAM DAS ALIAS JOWAND SINGH v. THE UNION OF INDIA AND OTHERS, reported in 1962, P.L.R. 1086 that in order to prove that an institution had moved to India under paragraph 34 of the Land Resettlement Manual the institution had to establish itself in East Punjab within a reasonable time. It was also held that the Samadhs were not entitled at all to the allotments as they were capable of moving into India and that the allotments made in favour of the Samadhs were rightly cancelled. In view of the above decision of a Division Bench of this Court, the only ground which has been taken by Mr. Wasu at the time of argument is that this Court should apply the doctrine of cypres and that even if an institution is destroyed or otherwise it has become impossible to fulfil its objects the same institution may be set up at a new place and the property attached to the former institution should vest in the newly established institution.

4. It is needless to say that the doctrine of cy-pres was completely misconceived in this case in connection with the law of rehabilitation of Displaced Persons and, therefore, it was rightly disallowed by the High Court. The question that has been debated before us by Mr. Bindra after mentioning the earlier case of the High Court is that the institution could have been re-established in India and further that apart from the institution, the lands which stood in the name of Mahant himself could be compensated for allotment of other lands in India. If this express argument had been made in the High Court then the earlier case of Punjab High Court on which reliance was placed, was perhaps distinguishable since it was a case of a Samadhi which would not be shifted. According to Mr. Bindra, the institution was no more than a carpet and a portrait of Mahant Baba Siri Chand and that the institution followed the carpet and the portrait where ever the portrait and the carpet were installed. This argument was not considered in the High Court at all presumably because Mr. Wasu did not arise it. In fact, in the written statement filed on behalf of the respondents in the Writ Petition, it was quite clearly stated in paragraph-3 that the institution was not capable of moving and could not be re-established in India and had been taken by the respondents, it was all the more necessary for Mr. Wasu to have reserved this point by arguing a distinction between the institution and a Samadhi with which our ruling was concerned. But Mr. Wasu did not mention the point and reserve it for a future appeal to this Court. Indeed it seems that Mr. Wasu was completely at a loss in the face of the ruling and that in pressing the doctrine of cy-pres before the High Court, he even forgot to mention the distinction between the two sets of land and did not make out a case that the others lands being the personal property of the appellant must be distinguished from the public property which were those of the institution at Kacha Pacca. These points apparently were not mooted in the High Court at all. It is too late now to revive the case here in this Court because by ignoring this point in the High Court, the appellant has lost his opportunity and has to thank himself. In the result, we are quite satisfied that this appeal must fail. It is needless to say that Mr. Bindra very rightly did not waste the time of the Court in pressing the doctrine of cy-pres. In the circumstances of the case, however, we make no order about the costs against the appellants.