

Chandra Bhan Singh vs Latafat Ullah Khan & Ors on 19 September, 1978

Equivalent citations: 1978 AIR 1814, 1979 SCR (1) 891, AIR 1978 SUPREME COURT 1814, (1978) 1 S CC 321, 1978 ALL. L. J. 1217, 1978 U J (SC) 878, (1978) 1 S C J 184

Author: P.N. Shingal

Bench: P.N. Shingal, Syed Murtaza Fazalali

PETITIONER:

CHANDRA BHAN SINGH

Vs.

RESPONDENT:

LATAFAT ULLAH KHAN & ORS.

DATE OF JUDGMENT 19/09/1978

BENCH:

SHINGAL, P.N.

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SHINGAL, P.N.

FAZALALI, SYED MURTAZA

CITATION:

1978 AIR 1814

1979 SCR (1) 891

1979 SCC (1) 321

ACT:

Evacuee Interest (Separation) Act, 1951 -S. 18-No provision in the Act for review of the order passed by Competent Officer-Competent Officer-If could review his own order.

HEADNOTE:

Practice and Procedure-Conduct of parties to be taken into account while granting relief in writ petition.

The property in dispute was undivided property (composite property) of three brothers, one of whom died and his sons migrated to Pakistan. One-third share of the property was declared evacuee property and vested in the Custodian under the Administration of Evacuee Property Act, 1950. It was allotted to the appellant who was a refugee.

The Competent Officer issued individual notices under Section 6 of the Evacuee Interest (Separation) Act, 1951 to the two remaining brothers of the evacuee and their acknowledgments were placed on record. Since no claim was filed by anyone, an order was made by the Competent Officer on 31-8-1955 vesting the property in the Custodian under Sec. 11. As the property was again reported to be composite property, fresh notices were inadvertently issued to the co-sharers, but no claim was filed by anyone and an order was again made on 23-3-1957 vesting the property in the Custodian. Possession of the evacuees one-third share in the property was delivered to the appellant under order of Assistant Custodian.

After a lapse of time, the respondents filed an application for 'restoration' alleging that no notice for separation of the evacuee interest in the property was ever served on them and that they learnt of the vesting order only when the Manager of the evacuee property went to the village to take possession. The Competent Officer passed an order setting aside the vesting order dated 31-8-1955 and transferred the property to the sons of the deceased brother for Rs. 5,000/-.

The Assistant Custodian of Evacuee Property made an application to the Competent Officer for a review of his order, pointing out a wrong impression. It was stated that the evacuee interest in the property had already been allotted to the appellant. The Competent Officer partly allowed the review.

The respondents questioned the power of the Competent officer to review his order, but the objection was rejected.

The respondents filed a writ petition under Art. 226 of the Constitution. The High Court quashed the order of review on the ground that in the absence of any provision in the Act for review, it was not permissible for the Competent Officer to review his order.

Allowing the appeal to this Court,

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HELD: (1) The conduct of the respondents was such as to disentitle them to a writ and the High Court erred in ignoring that important aspect of the matter even though it was sufficient for the dismissal of the writ petition. [899B]

(2) Review is a creature of a statute and cannot be entertained in the absence of a provision therefor. [897G]

Harbhajan Singh v. Karan Singh & Ors., [1966] 1 SCR 817; Patel Chunibhai Dajibhai etc. v. Narayanrao Khanderao Jambekar & Anr., [1965] 2 SCR 328 referred to.

Baijnath Ram Goenka v. Nand Kumar Singh, 40 I.A. 54; Ananatharaju Shetty v. Appu Hegde, AIR 1919 Mad. 244, approved.

(3) The earlier two orders of the Competent Officer setting aside the vesting order and transferring the evacuee

interest in the property to the respondents were therefor without jurisdiction. [897H-898A]

(4) But when the respondents had themselves unlawfully invoked the review jurisdiction of the Competent officer, which did not exist, to their advantage, and to the disadvantage of the appellant, they could not be heard to say, when the Department invoked the self-same jurisdiction on two important grounds, that the review orders of the Competent Officer were void for want of jurisdiction and must be set aside for that reason. [898H-899B]

(5) The High Court failed to appreciate that while it was true that want of jurisdiction to review the order by the Competent Officer could not be cured by waiver, it would not necessarily follow that the Court was obliged to grant a writ at the instance of a party whose conduct was such as to disentitle it for it. The High Court was exercising its extraordinary jurisdiction and the conduct of the petitioners was a matter of considerable importance. [898E]

(6) The High Court did not take due notice of the fact that the respondents had allowed the passing of the impugned orders, in spite of the individual notices to them. It did not notice the further fact that when that order had become final because of the failure to file an appeal or an application for revision it was not permissible in view of the specific bar of Sec. 18 for the respondents to move a "restoration" application and to obtain its reversal by the Competent Officer. [898F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2329 of 1969.

Appeal by Special Leave from the Judgment and Order dated 16-12-1966 of the Allahabad High Court in S.C.A. No. 346/66.

G. N. Dikshit, M. V. Goswami and O. P. Rana for the Appellant.

S. K. Mehta and P. N. Puri, for Respondent Nos. 1-5. The Judgment of the Court was delivered by SHINGHAL, J.-This appeal by special leave arises from a Judgment of the Allahabad High Court dated February 26, 1964. It will be enough to state the admitted facts for they are quite sufficient for its disposal.

Mohammed Salamat Ullah Khan, Mohammed Sharafat Ullah Khan and Mohammed Latafat Ullah Khan were three brothers owning one third share each in their joint property. Mohammed Salamat Ullah Khan died, and his sons Karamat Ullah Khan, Dilawar Ullah Khan, Muzaffar Ullah Khan and Tahir Khan migrated to Pakistan in 1948. The remaining two brothers of Mohammed Salamat Ullah Khan, namely, Mohammed Sharafat Ullah Khan and Mohammed Latafat Ullah Khan, stayed in

India and had a two-third share in that property. Major Chandra Bhan Singh was a refugee from Pakistan, and a temporary allotment of the one-third evacuee share in the property was made in his favour on April 4, 1955. As the property was listed as composite property, notices were issued in April, 1955, under section 6 of the Evacuee Interest (Separation) Act, 1951, hereinafter referred to as the Act. They were "individual" notices and the Competent Officer has stated that they were served on Latafat Ullah Khan and Sharafat Ullah Khan and their acknowledgements were placed on the record. No claim was however filed by anyone, and an order was made by the competent Officer on August 31, 1955, under section 11 of the Act, vesting the property in the Custodian. It may be mentioned that Mohammed Sharafat Ullah Khan had died earlier, leaving behind his four sons Shaukat Ullah Khan, Habib Ullah Khan, Nasar Ullah Khan and Aman Ullah Khan.

It so happened that the property was again reported to be composite property. The earlier order dated August 31, 1955, was lost sight of, and fresh notices were issued to the co-sharers under section 6 of the Act. They were served personally on Mohammed Latafat Ullah Khan, and on Mohammed Sharafat Ullah Khan through his son Shaukat Ullah Khan, on February 25, 1956. But again no claim was filed under section 7 of the Act by anyone, claiming any interest in the composite property. An order was therefore again made on March 23, 1957, under section 11 of the Act, vesting the property in the Custodian.

The Assistant Custodian (L) sent a senior Inspector to take possession of the vested property. Shaukat Ullah Khan, the eldest son of Mohammed Sharafat Ullah Khan, took notice of that development and undertook to file his claim within 15 days. No claim was however filed even then. Possession of Mohammed Salamat Ullah Khan's one-third share in the property was delivered to Major Chandra Bhan Singh on March 7, 1958, under orders of the Assistant Custodian. Thereafter an order was made on June 6, 1958 giving him quasi-permanent allotment along with his brother Raghubir Singh.

In the meantime, an application was made by Mohammed Latafat Ullah Khan and the four sons of Mohammed Sharafat Ullah Khan on March 12, 1958, for "restoration". It was stated in the accompanying affidavit of Arshad Ullah Khan, son of Mohammed Latafat Ullah Khan, that Mohammed Sharafat Ullah Khan had died in 1950, and no notice for separation of the evacuee interest in the property was ever served on them. It was further stated that they learnt of the vesting order only on March 6, 1958, when the Manager of the evacuee property went to the village to take possession. An order was quickly made on March 15, 1958, setting aside the vesting order which, it will be recalled, had been made as far back as August 31, 1955. The case was then taken up on May 12, 1958, when it was stated by Arshad Ullah Khan on oath that the only grove in the property was in plot No. 1791. The Competent Officer relied on that statement, and gathered the impression that the Assistant Custodian (L) had no objection to the transfer of the evacuee interest in the property to Mohammed Latafat Ullah Khan and the four sons of Mohammed Sharafat Ullah Khan for Rs. 5000/-. An order was made to that effect the same day. One of the items of the property was however left out of evaluation even at that time for subsequent decision.

The Assistant Custodian of Evacuee Property however made an application to the Competent Officer soon after, on June 11, 1958, for a review of his order dated May 12, 1958, on the ground, inter alia,

that certain grove plots were treated as agricultural plots. That was followed by another application for review dated July 10, 1958, on the ground that the Competent officer made his order dated May 12, 1958 under the incorrect impression that the Assistant Custodian (L) had no objection to the transfer of the evacuee share in the land to Mohammed Latafat Ullah Khan and the four sons of Mohammed Sharafat Ullah Khan for Rs. 5000/-. It was also pointed out that the evacuee interest in the property had already been allotted to Major Chandra Bhan Singh, who was a displaced person from Pakistan. It was therefore prayed that the order dated May 12, 1958, may be reviewed and the property partitioned so as to separate the evacuee's one- third interest. The Competent Officer partly disposed of the review application dated July 10, 1958, the same day. He corrected the mistaken impression that the Assistant Custodian had no objection to the transfer of the evacuee share in the property for Rs. 5000/- and modified the earlier order dated May 12, 1958, by deleting that statement from it.

Mohammed Shaukat Ullah Khan however raised an objection against the maintainability of the review applications. The Competent Officer took the view that as the Appellate Officer had held in appeal No. 953 of 1957, that he (Competent Officer) could review his own order, there was no force in the objection to the contrary. He examined the petition in terms of the requirements of Order 47 rule 1 of the Code of Civil Procedure and held that a new and important matter regarding the allotment of the land to the refugees (Major Chandra Bhan Singh and his brother Raghubir Singh) had been discovered which justified reconsideration of the earlier decision dated May 12, 1958. He therefore reviewed that order and set it aside by his order dated September 8, 1958. He gave his reasons for taking the view that the proper course was to partition the property, and allotted the plots mentioned in that order to the Custodian in lieu of the evacuee share of Karamat Ullah Khan, Dilawar Ullah Khan, Muzaffar Ullah Khan and Tahir Khan sons of Mohammed Salamat Ullah Khan. The other plots were left to the Share of the non-evacuee co-sharers, namely, Mohammed Latafat Ullah Khan, Shaukat Ullah Khan, Aman Ullah Khan, Habib Ullah Khan and Nasar Ullah Khan their two-third share by way of non-evacuee interest. Plot No. 1791/1 was left out for separate decision after receipt of the report regarding its valuation. Mohammed Latafat Ullah Khan and the four sons of Mohammed Sharafat Ullah Khan felt aggrieved against that order of the Competent Officer and moved the High Court by a petition under article 226 of the Constitution.

The High Court took the view in its impugned judgment dated February 26, 1964, that in the absence of any provision in the Act for review, it was not permissible for the Competent Officer to review his order dated May 12, 1958. It therefore allowed the writ petition, quashed the order of review dated September 8, 1958, and directed the "opposite parties" not to give effect to it and not to disturb the possession of the writ petitioners on the plots in dispute. This, as has been stated, has given rise to the present appeal.

In order to appreciate the controversy, it will be desirable to examine the facts and circumstances of the case with due regard to the provisions of the Act.

It has not been disputed before us, and is in fact beyond challenge, that the property in question was "composite property" within the meaning of section 2(d) of the Act because the one-third undivided share of Mohammed Salamat Ullah Khan's sons Karamat Ullah Khan, Dilawar Ullah Khan, Muzaffar

Ullah Khan and Tahir Khan, who had migrated to Pakistan in 1940, had been declared to be evacuee property and had vested in the Custodian under the Administration of Evacuee Property Act, 1950, while the remaining share belonged to the other two brothers of Mohammed Salamat Ullah Khan who were non-evacuees. The evacuee interest in the property was therefore confined to that one-third share in the entire property being the right, title and interest of the evacuees therein within the meaning of clause (e) of section 2. It is equally clear that it was permissible for the non-evacuee shareholders having the remaining two-third share in the property to make a claim in respect of it within the meaning of clause (b) of section 2 of the Act in their capacity as co-sharers of the evacuees in the property.

Section 5 of the Act gives jurisdiction to the Competent Officer to decide any claim relating to a composite property, and section 6 requires that for the purpose of determining or separating the evacuee interest in a composite property, the Competent Officer may issue a general, and also an individual notice on every person who in his opinion may have a claim in that property to submit claims in the prescribed form and manner. It will be remembered that as the property was listed as "composite property", notices were issued under section 6 of the Act and the individual notices were served on Latafat Ullah Khan and Sharafat Ullah Khan and their acknowledgments were placed on the record. No claim was however filed under section 7 of the Act claiming any interest in the composite property. Section 8 of the Act provides that on receipt of a claim under section 7, the Competent Officer shall hold an inquiry into the claim and give his decision thereon, while sections 9 and 10 deal with reliefs in respect of mortgaged property of evacuees and separation of the interest of evacuees from those of the claimants in a composite property. Section 11 provides for the vesting of evacuee interest in the custodian where a notice under section 6 is issued in respect of any property but no claim is filed. As no statement of claim was received by the Competent Officer, the evacuee interest in the "composite property" vested in the Custodian and the Competent Officer accordingly took a decision to that effect on August 31, 1955. It was a lawful order under section 8 read with section 11 of the Act.

Section 14 provides that any person aggrieved by an order of the Competent Officer made under Section 8 may prefer an appeal to the Appellate Officer within 60 days of that order, and it would then be for the Appellate Officer to confirm, vary or reverse the order appealed from and to pass such orders as he deems fit. Section 15 of the Act further provides that the Appellate Officer may at any time call for the record of any proceeding in which the Competent Officer has passed an order for the purpose of satisfying himself as to the legality or propriety thereof and to pass such order in relation thereto as he thinks fit. This appellate and revisional jurisdiction was therefore available to the writ petitioners if they felt dissatisfied with the order of the Competent Officer dated August 31, 1955, but it is admitted before us that they did not avail of it. Section 18 of the Act therefore came into operation which provides as follows :-

"18. Save as otherwise expressly provided in this Act, every order made by any appellate officer or competent officer shall be final and shall not be called in question in any Court by way of an appeal or revision or in any original suit, application or execution proceedings."

So when the aggrieved persons did not invoke the appellate or revisional jurisdiction of the Appellate Officer, the order of the Competent Officer dated August 31, 1955, became final by virtue of section 18 and could not be called in question thereafter.

It will be recalled that, as has been mentioned, the property was again reported to be of a composite nature, and fresh notices were inadvertently issued to the non-evacuee shareholders. They were personally served on Mohammed Latafat Ullah Khan, and on Mohammed Shamfat Ullah Khan through his son Shaukat Ullah Khan, on February 25, 1956, but no claim was filed by anyone in spite of that second opportunity, and a vesting order was once again made under section 11 of the Act on March 23, 1957. No appeal or revision application was filed against that order also, under sections 14 and 15 of the Act. In fact it was after a lapse of some 2 1/2 years from the order dated August 31, 1955, and 1 year from March 23, 1957 that Mohammed Latafat Ullah Khan and the four sons of Mohammed Sharafat Ullah Khan made an application for "restoration" of their claims on March 12, 1958. By then the order dated August 31, 1955 had become final and binding under section 18 and it was not permissible for any one to reopen it merely on the basis of a "restoration" application and to review the earlier order dated August 31, 1955 in disregard of the statutory bar of that section. It is well settled that review is a creature of statute and cannot be entertained in the absence of a provision therefor. It will be enough to make a reference in this connection to the decision of this Court in Harbhajan Singh v. Karam Singh and others⁽¹⁾ which approved the earlier Privy Council decision in Baijnath Ram Goenka v. Nand Kumar Singh⁽²⁾ the decision in Anantharaju Shetty v. Appu Hegde⁽³⁾ and reiterated the decision in Patel Chunibhai Dajibhai etc. v. Naravanrao Khanderao Jambekar and another⁽⁴⁾. The orders of the Competent Officer dated March 15, 1958 and May 12, 1958 in favour of the writ petitioners setting aside the vesting order dated August 31, 1955, and transferring the evacuee interest in the property to Mohammed Latafat Ullah Khan and the four sons of Mohammed Sharafat Ullah Khan for Rs. 5000/- were therefore without jurisdiction. As has been stated, the Assistant Custodian felt aggrieved against the orders of the Competent Officer dated March 15, 1958, and May 12, 1958, and made application soon after, on June 11, 1958, and July 10, 1958, for review, and the Competent Officer allowed them by his orders dated July 10, 1958 and September 8, 1958. The order dated July 10, 1958 was not of much consequence. The fact therefore remains that the two sets of orders of the Competent Officer, namely, the first set of the two orders dated March 15, 1958 and May 12, 1958, and the second set consisting of the orders dated July 10, 1958 and September 8, 1958 suffered from the same vice of lack of jurisdiction and were equally void.

This fact was specifically brought to the notice of the High Court, but it ruled it out by merely saying that the "fact that the petitioners had wrongly filed a review application which was allowed by the Competent Officer would not confer jurisdiction on the Competent Officer to review his orders if the statute had not made any provision for it." That was begging the question, and could not possibly meet the objection of the present appellants. If we may say so with respect, what the High Court failed to appreciate was that while it was true that want of jurisdiction to review the order of August 31, 1955, could not be cured by waiver, it would not necessarily follow that the Court was obliged to grant certiorari at the instance of a party whose conduct was such as to disentitle it for it. The High Court was exercising its extraordinary jurisdiction and the conduct of the petitioners was a matter of considerable importance. The High Court did not take due notice of the fact that the writ petitioners

(or their predecessors-in- interest) had allowed the passing of the order dated August 31, 1955 in spite of the individual notices which were issued under section 7, and did not deserve any relief. It did not notice the further fact that when the order dated August 31, 1955 had become final because of the failure to file an appeal or an application for revision, it was not permissible under the law, in view of the specific bar of section 18, for the writ petitioners to move a "restoration" application on March 12, 1958 for its review and to obtain its reversal by the Competent Officer's orders dated March 15, 1958 and May 12, 1958, and to obtain a wholly beneficial order for the transfer of the one-third evacuee interest to them on payment of Rs. 5000/-. They, nevertheless, did so. So when the writ petitioners had themselves unlawfully invoked the review jurisdiction of the Competent Officer, which did not exist, to their advantage, and to the disadvantage of the present appellant, by their application dated March 12, 1958, they could not be heard to say, when the Department invoked the self-same jurisdiction on two important grounds (to which reference has been made earlier) that the review orders of the Competent Officer dated July 10, 1958 and September 8, 1958 were void for want of jurisdiction and must be set aside for that reason. The conduct of the writ petitioners was therefore such as to disentitle them to certiorari, and the High Court erred in ignoring that important aspect of the matter even though it was sufficient for the dismissal of the writ petition.

The appeal is allowed, the impugned judgment of the High Court dated February 26, 1964, is set aside and the writ petition is dismissed. There will however be no order as to costs in the facts and circumstances of the case.

N.V.K.

Appeal allowed.