Rajasthan High Court
Pukh Raj And Ors. vs State Of Rajasthan And Ors. on 29 July, 1999
Equivalent citations: AIR 2000 Raj 89
Author: B Chauhan.
Bench: B Chauhan
ORDER B.S. Chauhan. J.

1. The instant writ petition has been filed for setting-aside the impugned orders dated 6-5-87 and 1-6-87, by which the revision of the contesting respondents had been allowed by the Revisional Authority and the review application of the petitioners has been rejected.

2. The facts and circumstances giving rise to this case are that one Labhu Ram, who was petitioner No. 3 before this Court but had died during pendency of this petition, and father of petitioners Nos. 1 and 2 and predecessor in interest, had made an application for allotment of land measuring about 258 square yards situate adjacent to his cote ("Bara") claiming that he was using it for last several decades. One Chel Giri a brother of Basti Giri, non-petitioner No. 4, raised objection on the application filed by Shri Labhu Ram. His objections were overruled by the Gram Panchayat and a Patta was granted in favour of Shri Labhu Ram. Being aggrieved and dissatisfied, an appeal was preferred before the Panchayat Samiti, Bilara by Shri Basti Giri, respondent No. 4, and the Panchayat Samiti, Bilara, modified the conditions of grant of Patta. Being aggrieved and dissatisfied by Imposing certain conditions by the Panchayat Samiti, Shri Labhu Ram preferred a revision before the District Collector, Jodhpur, which was disposed of vide order dated 21-8-68 (Annexure P. 1). By the said order, the allotment of Patta by the Gram Panchayat as well as the appellate order of the Panchayat Samiti were quashed and certain directions were issued to the Gram Panchayat to reconsider the case. After reconsidering, allotment was made in favour of Shri Labhu Ram and his sons, petitioners Nos. 1 and 2, on 29-4-69 (Annexure P. 4). Contesting respondents preferred a revision under Section 27-A of the Rajasthan Panchayat Act, 1953 (for short, "the Act, 1953") in 1987, i.e. after eighteen years of the allotment. The same has been allowed by the impugned order dated 6-5-87 (Annexure P. 5). Review application against the said order, preferred by the petitioners, has been rejected vide order dated 1-6-87 (Annexure P. 6). Hence this petition.

3. The Authority rejected the review application on the ground that in absence of the provisions for review under the Act, the same was not maintainable. Thus, so far as the order in review application is concerned, no fault can be found with it as it is settled proposition of law that review is a creation of Statute and in absence of any provision for review, the Authority cannot entertain the review application and pass any order thereon. (Vide Baijnath Ram v. Nand Kumar Singh, (1913) 40 Ind App 54; Chunnibhai v. Narainrao, AIR 1965 SC 1457; Harbhajan Singh v. Karam Singh, AIR 1966 SC 641; Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273; Major Chander Bhan Singh v. Latatat Ullah Khan. AIR 1978 SC 1814; and Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur, AIR 1987 SC 2186).

4. So far as the impugned order is concerned, the main ground on which petitioners have been found unsuited is that if a sale or allotment of land is for a consideration exceeding Rs. 200/-. approval of the Sub-Divisional Officer was mandatory and in the instant case as approval was not

taken the allotment was liable to be cancelled.

5. There can be no dispute to the legal proposition that where a transaction requires approval of a higher authority and it is not taken, the transaction cannot be held to be legal and valid. (Vide Union of India v. Bhimsen Walaiti Ram, AIR 1971 SC 2295; Trilochan Mishra v. State of Orissa. AIR 1971 SC 737; State of Orissa v. Hari Narain Jaiswal, AIR 1972 SC 1816; and State of Uttar Pradesh v. Vijay Bahadur Singh, (1982) 2 SCC 365 : (AIR 1982 SC 1234). But in the instant case, the finding recorded by the Revisional Authority seems to be contrary to law.

6. The provisions of Sub-rule (2) of Rule 265 of the Rajasthan Panchayat (General) Rules, 1961 (for short, "the Rules, 1961") read as under :--

"(2) Where the bid of the land auctioned does not exceed rupees two hundred, a copy of the proceedings of the bid shall be sent by the Panchayat to the Sub-Divisional Officer of the area within 3 days of the acceptance thereof. If no objection to the acceptance of the bid is received within a period of one month of its receipt, the Panchayat shall proceed with the final sanction of the auction."

7. Thus, the plain and simple meaning of the said provision is that in case where the sale consideration does not exceed Rupees 200/-, a copy of the proceedings of the bid shall be sent to the Sub-Divisional Officer and if no objection is raised by the said Authority, the Patta will be sanctioned. It means that approval/confirmation of the Authority is required where the sale consideration is more than Rs. 200/- and for Rupees 200/- or less than Rs. 200/-, it requires an information to the Authority and if the Authority is willing to raise any objection, it may do so but in case objection is not received within the period of thirty days, Patta will be sanctioned. In the instant case, as the sale consideration was only Rupees 200/-, the said provisions are not attracted. This view has been fortified by the judgment of this Court in S.B. Civil Writ Petition No. 1227/1986, Fakiria Singh v. State of Rajasthan, decided on 28-8-86. The Revisional Authority has taken a view contrary to law and on this count alone, the order of the Revisional Authority is liable to be set-aside.

8. The other ground taken is that objections had not been invited and the procedural requirement under provisions of Rules 257 to 265 of the Rules, 1961 had not been followed. It is apparent from the impugned order that learned counsel for the present petitioners was not present before the Reviewing Authority at the time of hearing as there had been some misunderstanding about the date fixed and on that count the review application was filed which has been rejected. But in the reply filed by the present petitioners before the Revisional Authority, a large number of documents had been filed to show that the procedure were complied with. Even an agreement between petitioners and the contesting respondents had been filed and the proceedings taken by the Gram Panchayat regarding compliance of the rules are evident from it.

9. Be that as it may, the present petitioners had raised a plea before the Revisional Authority that the contesting respondents had been aware of the impugned order of allotment from the very beginning and they had filed the documents to show that they had obtained the copy of the Patta

immediately after it was sanctioned but they filed the revision after 18 years and, thus, the stand taken by the contesting respondents that they were not aware of the order passed on 24-9-69 was not correct. The Revisional Authority has not recorded any finding whatsoever on it nor this aspect has been considered/dealt with by the authority. Even before this Court, sufficient evidence has been adduced to show that the copy of the order of allotment of Patta in favour of present petitioners had been obtained by the contesting respondents immediately after the said date; they had also entered into an agreement with the present petitioners and the Gram Panchayat regarding allotment of Patta in favour of the petitioners. Whatever may be the sanctity of this agreement, an inference may be drawn that contesting respondents had been aware of the proceedings subsequent to remand order passed by the District Collector and in such a situation, it was necessary for the Revisional Authority to consider the issue of delay.

10. It is settled proposition of law that an authority may entertain a petition within the period of limitation, or may condone the delay on sufficient grounds if the Authority has power under the Statute to condone it. In case there is no period of limitation provided under the Act or the Rules, the petition should be filed within a reasonable period. The Law of Limitation was framed on public policy for the reason that the parties may not remain uncertain regarding their rights for ever. Principle of public policy incorporated in law of limitation is to achieve the aim of justice and to maintain peace. "Long dormant claims have often more of cruelty than of justice in them." A legal remedy cannot be kept alive for unreasonable period, if the Statute does not provide for any limitation. (Vide A. Court v. Cross (1825) 130 ER 540; N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123 : (AIR 1998 SC 3222); and L.S. Kavadia v. State of Rajasthan (1997) 3 Raj LW 1560. The Court or the statutory authorities, which exercise their powers under the Statute, have also not been invested with the power to extend the period of limitation. (Vide P. K. Ramachandran v. State of Kerala, (1997) 7 SCC 556).

11. In Mohammed Kavi Mohammed Amin v. Fatma Bai Ibrahim, (1997) 6 SCC 71, the Hon'ble Supreme Court has held that where no time has been prescribed for exercise of power under the Statute, it should be exercised within a reasonable time. While deciding the said case, reliance has been placed by the Hon'ble Supreme Court on judgment in State of Gujarat v. Patel Raghav Natha, AIR 1969 SC 1297. That was a case under the provisions of Bombay Land Revenue Code and the revision was filed after expiry of twelve years of allotment. The Court observed that if the statute does not provide for limitation for revision, it is to be exercised within a reasonable period for the reason that after allotment, the allottee may change the nature of the land and improve it by spending the hard earned money during his lifetime and cancelling such an allotment after such a delay would cause serious prejudice to the allottee.

12. Undoubtedly, the authority can be permitted to take such a recourse even after a lapse of unreasonable period, provided there are allegations of mis-respresentation or fraud in obtaining a particular order. (Vide Anandi Lal v. State of Rajasthan (1995) 1 Rajasthan LR 555; Mangi Lal v. State of Rajasthan, (1997) 3 Raj LW 2017 : (1998 AIHC 1818); and Temple of Thakur Ji Village Kansar v. State of Rajasthan, AIR 1998 Raj 85).

13. Mr. Jhakar, learned counsel appearing for contesting respondents has placed reliance upon a judgment of this Court in Dhan Raj v. Collector, Sri Ganganagar, 1995 DNJ 458, wherein this Court has held that where applications for allotment are not invited, objections on the said applications are not invited and no public auction is held, the allotment is liable to be quashed. According to Mr. Jhakar, as the procedure of law had not been complied with, the Revisional Authority could have entertained this petition at any belated stage.

14. The law on this issue is quite clear. In case of fraud or misrepresentation, the law of Limitation, delay/laches is to be ignored but not in case of illegality or irregularity. Thus, the said judgment is not an authority on entertaining a revision after about two decades on the ground of irregularity/illegality. A judgment wherein a particular issue has not been decided, cannot be held to be binding precedent. It is settled proposition of law that an issue, which has not been considered by the Court while delivering a judgment, cannot be said to be binding as a decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision" of the Court. (Vide H. H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur v. Union of India, AIR 1971 SC 530; Amar Nath Om Prakash v. State of Punjab, AIR 1985 SC 218; Rajpur Rude Meha v. State of Gujarat, AIR 1980 SC 1707; Sarva Shramik Sangh, Bombay v. Indian Hume Pipe Co. Ltd. (1993) 2 SCC 386; and CIT v. Sun Engineering Works (P) Ltd,, (1992) 4 SCC 363 : (AIR 1993 SC 43).

15. Mr. Jhakar has submitted that the present petitioners have played fraud as the application was filed only by Labhu Ram and the allotment had been made in his favour along with his two sons. The submission made by Mr. Jhakar cannot be considered for the reason that during pendency of this writ petition, Labhu Ram has expired and even otherwise the land in dispute could have devolved upon his sons, i.e. petitioners Nos. 1 and 2. More so, whether the application for allotment was made by Labhu Ram alone or along with his sons, is a question of fact. Contesting respondents had not raised this issue before the Revisional Authority and a question of fact cannot be raised first time in a writ jurisdiction and that too by the respondents.

16. It is settled proposition of law that a pure question of law, which does not require any investigation of fact, can be raised first time in writ jurisdiction. An issue which requires investigation of facts, cannot be allowed to be agitated. (Vide Ratan Lal Sharma v. Managing Committee, (1993) 4 SCC 10 ; (AIR 1993 SC 2155), St. Arunachalam Pillai v. Southern Roadways Ltd., AIR 1960 SC 1191; A. M. Allisonv. B. L. Sen, AIR 1957 SC 227; Cantonment, Ambala v. Pyare Lal, AIR 1966 SC 108; State of U. P. v. Dr. Anupam Gupta, AIR 1992 SC 932; Bhanwar Lal v. T.K.A. Abdul Karim, AIR 1992 SC 2166; Rajeshwari Amma v. Joseph, AIR 1995 SC 719; Commr. of Income Tax v. U.P. Forest Corporation, AIR 1998 SC 1125; P. R. Deshpande v. Maruti Balaram Haibatti, (1998) 6 SCC 507 ; (AIR 1998 SC 2979); State of Punjab v. R. N. Bhatnagar, (1999) 2 SCC 330 : (AIR 1999 SC 647); Oil & Natural Gas Commission v. M. C. Chelland Engineers S.A., (1999) 4 SCC 327 : (AIR 1999 SC 1614); and Rajasthan Agriculture University v. Ram Krishna Vyas, (1999)4 SCC 720 : (AIR 1999 SC 1937).

17. The contention raised by Mr. Jhakar that it is not permissible for this Court to interfere against the revisional order in exercise of its power under Article 227 of the Constitution has also no merit. Undoubtedly, this court has very limited scope of interference in exercise of its powers under Article 227 of the Constitution which can be used sparingly in an appropriate case. (Vide Mohd.Yunus v. Mohd. Mustaqim, AIR 1984 SC 38). The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For intervention, there must be a case of flagrant abuse of fundamental principles of law or justice or where order of the Tribunal etc. has resulted in grave injustice. (Vide Constitution Bench judgments of the Apex Court in D. N. Banerji v. P. R. Mukherjee, AIR 1953 SC 58; and Nagendra Nath Bora v. Commr. of Hills Division & Appeals, AIR 1958 SC 398). For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and dehors the factual and legal position on record. (Vide Nibaran Chandra Bag v. Mahendra Nath Ghughu, AIR 1963 SC 1895; Rukmanand Bairoliya v. The State of Bihar, AIR 1971 SC 746: Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, AIR 1980 SC 1896; Laxmikant R. Bhojwani v. Pratapsing Mohan Singh Pardeshi. (1995) 6 SCC 576; Reliance Industries Ltd. v. Pravinbhai Jasbhai Patel, (1997) 7 SCC 300 : (AIR 1997 SC 3892); and Virender Kashinath Ravat v. Vinayak M. Joshi, (1999) 1 SCC 47 : (AIR 1999 SC 162).

18. It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (Vide Rena Drego v. LalchandSoni, (1998) 3 SCC 341: (AIR 1998 SC 1990); Chandra Bhushan v. Beni Prasad (1999) 1 SCC 70 : (AIR 1999 SC 2266); and Savitrabal Bhausaheb Kevate v. Ralchand Dhanraj Lunja, (1999) 2 SCC 171 : (AIR 1999 SC 602); Unless the findings are patently erroneous and dehors the factual and legal position on record, exercising the power under Article 227 of the Constitution may not be justified and in that eventuality disturbing the findings of facts would amount to jurisdictional error. (Vide Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde. (1999) 4 SCC 1 : (AIR 1999 SC 2226). Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (Vide Union of India v. Himmat Singh Chahar, (1999) 4 SCC 521 : (AIR 1999 SC 1980).

19. In Pepsi Food Limited v. Special Judicial Magistrate, (1998) 5 SCC 749 : (AIR 1998 SC 128), the Hon'ble Apex Court has held that Article 227 may be resorted to for correcting grave errors committed by the subordinate Courts/Authority. In Savita Chemicals Pvt. Ltd. v. Dyes & Chemical Workers Union. (1998) 8 JT (SC) 552 : (AIR 1999 SC 413), the Hon'ble Supreme Court has held that the jurisdiction under Article 227 can be resorted to if finding recorded by the Court below is patently bad and suffers from clear error of law.' in a recent judgment in Industrial Credit & Investment Corporation of India Ltd. v. Grapco Industries Ltd., (1999) 4 SCC 710 : (AIR 1999 SC 1975). the Hon'ble Supreme Court has held that there can be no bar on the High Court to itself examine the merit of the case in exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require and such interference can also be made even against the interlocutory order passed by the Court/Authority.

20. Thus, in view of the above, where the Revisional Authority has committed an error in holding that an allotment for consideration of Rs. 200/- required the sanction of the Authority, though under the law this requirement is not there, and other Issues raised by the present petitioners have not been considered, the special features of the case warrant interference by this Court even in exercise of the powers under Article 227 of the Constitution.

21. In view of the above, it becomes immaterial for the Court to examine the issue raised by the present petitioners; whether revision is maintainable without resorting to the provision of statutory appeal before the Panchayat Samiti as appeal is provided under the statutory Rules. More so, in view of the judgments of this Court in Hari Singh v. State of Rajasthan, 1987 WLN (UC) 78; and Mahaveer Prasad v. State of Rajasthan, (1996) 3 WLC 595, wherein this Court has held that revision is maintainable even without resorting to the provision of appeal, there is no need to consider the issue as it already stood settled.

22. Thus, in view of the above, the petition succeeds and is allowed. The impugned order dated 6-5-87 (Annexure P.5) is hereby quashed. As petitioners are enjoying the possession of the land in dispute by the interim order of this Court, no further order in this respect is required to be passed. There shall be no order as to costs.