
(1970) 01 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 370 of 1964

Additional Director (I) Consolidation of Holdings, Punjab and Another APPELLANT

Vs

Raghwant Singh Gurbachan Singh and Others RESPONDENT

Date of Decision : 07-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226

Citation : AIR 1970 P&H 554 : (1971) 2 ILR (P&H) 533

Hon'ble Judges : Mehar Singh, C.J;R.S. Narula, J

Bench : Division Bench

Advocate : B.S. Dhillon, General and Sukhdev Khanna, for the Appellant; H.L. Sarin and R.C. Nagpal, for the Respondent

Final Decision : Allowed

Judgement

Narula, J.—The only ground on which the learned Single Judge, against whose judgment this appeal has been preferred, allowed the writ petition of Raghwant Singh and Gurdev Singh respondents and quashed the order of the Additional Director, Consolidation of Holdings, Punjab, was that the petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (50 of 1948) (hereinafter called the Act) which was entertained and allowed by the Additional Director had been filed beyond the period of limitation prescribed by Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. It is the common case of both sides that no objection as to limitation was raised by the writ petitioners or any one else on any of the dates of hearing of the application u/s 42 of the Act. While allowing the writ petition, the learned Single Judge had followed the judgment of Mahajan, J., D/- 8-4-1963, in Deendar v. State of Punjab, Civil Writ No. 1458 of 1962 (Punj). In that case, the question of limitation had been raised before the Additional Director and he had merely waived the time limit in order to redress the grievance of the petitioner. Mr. B. S. Dhillon, who appears for the appellants,

submits that he has no quarrel with the proposition of law laid down in Deendar's case. Civil Writ No. 1458 of 1962, D/- 8-4-1963 (Punj) as subsequently confirmed in various subsequent decisions of this Court, but his only argument in support of the appeal is that it was not open to the writ petitioners to raise the question of limitation for the first time in their petition under Articles 226 and 227 of the Constitution. Mr. Dhillon is no doubt supported in this submission by at least three Division Bench judgments of this Court. In Bhagat Singh v. Addl. Director. Consolidation of Holdings, Punjab, Jullundur (1966) 68 PLR 496 it was held by my Lord the Chief Justice and Pandit, J. that where the question of the revision under the Act being barred by time is not raised before the Director of Consolidation, the same cannot be raised before the High Court for the first time in proceedings under Article 226 of the Constitution. A similar question was again referred to a Division Bench consisting of Shamsheer Bahadur, J. and myself in Sewa Singh v. State of Punjab ILR (1967) P&H 89 . Shamsheer Bahadur, J., who spoke for the Division Bench, held that failure to raise an objection of limitation by a party which could have done so would be a bar to the certiorari petition made to quash such an order. The Bench held that except for a patent or inherent defect of jurisdiction, an objection which would oust the jurisdiction of a quasi-judicial tribunal ought to be raised in the first instance before the tribunal itself. The third case in which this point came up for consideration was decided by S. B. Kapoor, J. and myself in Thambu Devi Ram and Others Vs. Additional Director Consolidation of Holdings, Hissar and Others, . It was held that where an objection as to an application u/s 42 of the Act being barred by time was not raised before the Additional Director, he was not bound to take notice of it suo motu and the proceedings held before him were not a nullity. In the course of the judgment of the Division Bench prepared by me, it was observed that a petitioner who does not raise a legal defence to an action before the tribunal where the action is brought should not ordinarily be permitted to raise the said defence for the first time in a writ petition.

2. Mr. Harbans Lal Sarin, who appears to support the judgment of the learned Single Judge, submits that the decisions of the previous three Division Benches on the point in issue need reconsideration on the ground that on the principles of Section 3 of the Limitation Act, it is the duty of the Additional Director to take notice of the question of limitation suo motu and that if the Additional Director fails in so doing, his decision lacks inherent jurisdiction and should be quashed *ex debito justitiae* by a writ in the nature of certiorari. He has referred to the judgment of their Lordships of the Judicial Committee in AIR 1949 239 (Privy Council) , wherein it was held that where a subordinate Court by its own erroneous decision on a point of limitation or on a point of *res judicata* invested itself with a jurisdiction which in law it did not possess, the High Court had the power to interfere in revision u/s 115 of the Code of Civil Procedure. The observations of their Lordships of the Supreme Court in Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, , were then referred to. P. B. Gajendragadkar, C. J., as he then was, speaking for the Court observed in that case as follows:--

"It is conceivable that points of law may arise in proceedings instituted before subordinate Courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court, which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the Court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate Court which has no relation to questions of jurisdiction of that Court, cannot be corrected by the High Court u/s 115."

3. On the other hand Mr. Dhillon has placed reliance on the law laid down by the Supreme Court in *Ittavira Mathai Vs. Varkey Varkey and Another*, . In the course of the judgment of the Supreme Court prepared by Mudholkar, J., it was held as below:--

"All that the decision relied upon (AIR 1935 85 (Privy Council)) says is that Section 3 of the Limitation Act is peremptory and that it is the duty of the Court to take notice of this provision and give effect to it even though the point of limitation is not referred to in the pleadings. The Privy Council has not said that where the Court fails to perform its duty, it acts without jurisdiction. If it fails to do its duty, it merely makes an error of law and an error of law can be corrected only in the manner laid down in the Civil Procedure Code. If the party aggrieved does not take appropriate steps to have that error corrected, the erroneous decree will hold good and will not be open to challenge on the basis of being a nullity."

The legal proposition which emerges from the study of the abovementioned decisions of the Supreme Court is that though a decision on a question of limitation relates to the question of jurisdiction of the Court deciding the question, but an order based on an erroneous decision of such a question or an order passed without suo motu noticing such a bar and deciding it, is not an order without jurisdiction and cannot, therefore, be classed as a nullity so as to be liable to be quashed in certiorari proceedings. An order of a tribunal on a question of limitation, as indeed on any other legal question, would no doubt be liable to be set aside if it is either based on extraneous considerations or based on no evidence whatever, or contains an error of law apparent on its face. But in that case it would not be liable to be set aside because it is without jurisdiction, but because it suffers from an error of law apparent on its face. In this view of the matter, it appears to us that the order of Additional Director of Consolidation of Holdings was not liable to be set aside by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution merely because in the opinion of this Court the application on which the order had been passed was presented to the State Government long after the expiry of the period of limitation. If the objection had been raised before the Additional Director, the applicant u/s 42 of the Act might have applied for condonation of delay, and if

the applicant was able to show sufficient cause for not filing the application within time, the delay might have been condoned. In the alternative, the applicant might even have convinced the Additional Director that the application had been filed within time. In any event, we are bound by the earlier three Division Bench judgments referred to above, and following the same we must hold that the question of limitation not having been raised before the Additional Director, it was not open to the writ petitioners to raise the same for the first time in the writ petition. The impugned order u/s 42 of the Act was quashed by the learned Single Judge solely on the ground of limitation, and as we have held that it is not open to this Court to allow the question of limitation being raised for the first time in certiorari proceedings, we have to accept this appeal and to set aside the order of the learned Single Judge.

4. We accordingly allow this appeal, set aside the order of the learned Single Judge, and dismiss the writ petition of respondents 1 and 2, but leave the parties to bear their own costs.

Mehar Singh, C.J.

5. I agree.