
(1959) 11 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 39 and 42 of 1957

Ahmedali Khan and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-11-1959

Acts Referred:

Bhopal State Land Revenue Act, 1932 — Section 53
Constitution of India, 1950 — Article 226, 31(1), 32

Citation : AIR 1960 MP 282 : (1960) JLJ 1028 : (1961) 6 MPLJ 138

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : K.A. Chitale and M.C. Upadhyaya, for the Appellant; Balwantsingh, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

All these petitions are on identical grounds against the State Government, by six different grantees of certain uncultivated forest lands, the uncleared portions of which have been resumed by Government after notice to show cause, by orders passed on 27-10-1956. The grounds were that the grantees have violated the conditions of the grant, and it had been further expressly specified that such violation should lead automatically to the cancellation of the grant by Government, and the taking over of the land, and the realization, according to the procedure for arrears of lands revenue, of the value of the produce, if any collected by the defaulting grantees.

The Government has, however, given these grantees, such areas or patches as had already been cleared and made cultivable. It is also not alleged that any sums have been realised according to the last condition. The prayer is for the issue of appropriate writs or directions, directing the State Government to withdraw its order of cancellation of pattas and resumption of part of the lands granted.

Though in their statements, the parties refer to a long course of events, the actual controversy can be summarized under the following headings:

(i) It being possible for the petitioners to file suits for the declaration of their title or the grant of permanent injunction restraining the Government from taking over these lands, is it necessary and proper for the High Court to invoke its extraordinary powers under Article 226 of the Constitution?

(ii) Whether the delay of about eight months between 27-10-1956 when Government orders were passed, and the filing of these petitions on 1-7-1957 shows such want of diligence as would justify the refusal by this court to exercise the said powers and whether it has been satisfactorily explained?

(iii) Whether, apart from the violation or alleged violation of the conditions attached to the grant, the case involves a denial of the fundamental right vesting in the petitioners under Article 31(1) of the Constitution?

(iv) Whether prima facie, there has been a breach of the condition and if so, whether the extenuation pleaded by the petitioners could properly be considered in course of these proceedings. And finally,

(v) While Government was ostensibly acting in accordance with the conditions of the grant, is it really motivated by some ulterior purpose, such as its unwillingness to approve of the disposal of forest lands by the outgoing Nawab of Bhopal?

For our purpose, the following facts are relevant; The petitioners are the residents, of and the properties are located in, what used to be the State of Bhopal before the 1st of June, 1949, when in accordance with covenant dated 30-4-1949, the Government of India took it over. Well before this, both in 1939 when the war started and in 1945 when it terminated, the Bhopal Government had notified its intention to reward meritorious military service by grant of lands to the ex-military personnel for being brought under cultivation. However, for nearly four years after the latter announcement, nothing was heard of it. But suddenly in May 1949, fifteen days after the covenant, and six weeks before the actual taking over by the Government of India, the six petitioners were granted areas under forest, for the purpose of reclamation for cultivation thus--

Ahmad Ali (petition No. 37)

7100.6 acres

Syed Hamidul Hasan (No. 38)

7101.4 acres

Capt. Masud Husan Khan (No. 39)

406.06 acres.

Iqbal Ahmed (No. 40)

52.58 acres.

Mahmood Ali (No. 41)

49.63 acres.

Israrul Haq (No. 42)

104 acres.

This was a special type of tenancy advantageous to the grantee and called "pagras" authorized by Section 53 (d) of the Bhopal Land Revenue and Tenancy Act with the terms and incidents incorporated in agreements with the grantees executed on 23-7-1949 after the taking over by the Government of India; the conditions relevant for these proceedings are :

"(i) After leaving 10 per cent of the patta area for nistar, I shall bring the entirety of the remaining 90 per cent under cultivation within a period of four years.

(ii) For bringing this area under cultivation, I shall follow the procedure described below :

(a) After selecting the block for reclamation during a particular year, I shall place the khasra numbers before the Tehsildar, invite him to make an inspection, and ask him to estimate the produce on the area and only after it shall I clear that block, and bring it under cultivation within that year ;

(b) In the area outside the block selected for the particular year, I shall not do any felling of trees.

(iii) In the event of my failure to comply with these conditions, the Government of Bhopal shall be competent on its own (mukhtar va majaj hogi) to cancel the patta granting this "pagras" tenancy, and forfeit the area and evict me from it. In addition, it shall be open to the Government to realise, as if it were an arrear of land revenue, from me personally and from my property, the value of any produce I may have collected from this area while in my possession. "" as already noted, this type of conditional grant is not separately provided for in Bhopal Tenancy Act, but comes u/s 53(d):

"The provisions of Sections 51 and 52" (the general provisions regarding grant, use and relinquishment) "shall not apply to (d)land granted or leased by the government for any special purpose on special terms"

During the period of seven years, that is, for three years over and above the prescribed term of four years there was not a single occasion on which any of these grantees invited the Tehsildar to make any inspection, approve of the block for annual clearance or make any estimate of the value of the standing forest produce. All the same, the grantees began to fell trees here and there in patches; as could be expected, this invited the disapproval of the revenue authorities on the one hand, and later on, of the Chief Conservator of forests, who was acting u/s 35 of the Forest Act. Early in 1950 when the Chief

Commissioner's government was in charge, objection was taken to the clearing of certain portions of these granted lands. On behalf of the petitioners, it is contended that this was the first of a series of intentional obstructions by the government servants who felt that the Durbar had acted wrongly in thus disposing of its forest lands on the eve of its disappearance.

Actually, no felling could be done without the selection or the block, information to, and the inspection and estimate made by, the Tehsildar. It is to be noted that the petitioners never selected and placed the khasra numbers before him or invited him to make his inspection and estimate. In April 1950, the collector suggested that the pattas themselves should be cancelled; but the Chief Commissioner refused, and they remained in force. In 1951, some appraisal of the really cultivable portions was made, and a suggestion was offered by the collector that such portions as could in no event be brought under cultivation, should be excised from the pattas.

Ultimately, this was also refused by the Commissioner so that the pattas remained valid all the time, whatever might have been the recommendation of subordinate officers on the basis of the apparent impropriety on the part of the outgoing Durbar in throwing away public property in this manner, and the unsuitability of part of the lands for cultivation in any event. All the time, the grantees were telling timber here and there without getting the Tehsildar's Inspection or estimate or even informing him that such and such annual blocks had been selected. There was in fact, no selection.

By the time the four year period was ending, in June 1953, the grantees began to petition the higher authorities for an enlargement of the time, alleging that the subordinate revenue officers and the forest officers had been obstructing them and they could not do the clearing work in accordance with the time table. But no extension was granted. Meanwhile, there had been cleared small patches totalling to much less than the areas mentioned in the scheme. But they were distributed all over the place, again in contravention of the annual block system which was a condition of the grant.

In 1954, the Collector made a proposal, ostensibly u/s 38 of the Bhopal Tenancy Act, for the cancellation of the pattas. Some interim stay order was made by the Commissioner but ultimately, the suggestion of the collector was turned down. While the proceedings were pending before the commissioner, the grantees went to the judicial commissioner with an application for a writ which, in those circumstances, had necessarily to be refused as premature. But in course of this judgment, there is a discussion about the validity of the lease or grants and a finding that as grants, they were valid, whatever might have been the motive of the grantor and the circumstances, a position that the chief commissioner had already taken in 1950. It is of interest to note that all this was after the end of the four year period.

In the meantime, the Government having a scheme u/s 35 of the Forest Act, a

show cause notice was issued on 24-6-1955, calling upon the grantees why they should not be prohibited "from breaking up or clearing the land for cultivation or pasturing cattle or fire or clearing the vegetation". Ultimately, an interim prohibitory order was made by the Conservator of forests. From this order again, the petitioners went to the judicial commissioner's court with an application for a writ. The conservator's order was maintained, but the petitioners were permitted to remove the timber that had already been felled by them before the date of the prohibitory order.

This could only be done after the forest authorities had hammered a distinctive mark on the pieces; this they were directed to do in respect of the timber felled before the prohibitory order. This again was well after the four year period, Finally, in September 1956, Government noticed the grantees charging them with violating the conditions of the grant and calling upon them to show cause why in accordance with the agreements, the grants should not be resumed. The violations alleged were the following:

"(1) Before clearance you did not get the area inspected by the Tehsildar.

(2) You did not get the value of the forest growth estimated in respect of the area desired for clearance by the Tehsildar.

(3) You did not cultivate the cleared area within one year by sowing any crop.

(4) You did not restrict yourself to the already cleared area and without bringing it under cultivation first, you cleared other areas and are still carrying on selective fellings in the entire area.

(5) In general, it appears that you have not tried to utilise the land for the purpose it was given i.e. for cultivation, but instead you are exploiting only the forest growth by having given the same to the forest contractors."

The violation No. (5) is general, and numbers (1), (2) and (4) have nothing to do with any prohibitory order because there was nothing to prevent them from placing the description of the proposed annual block before the Tehsildar getting his inspection and estimate of the forest growth and there was no justification for the patch clearing in haphazard manner. No. (3) is only in respect of the areas already cleared; but these have been left to the grantees.

Cause was shown by all the petitioners substantially to the same effect, not asserting that the blocks were shown to the Tehsildar, or estimates were made by him, Or that there was no haphazard patch clearing, but setting out the various orders made by the District Revenue and the Forest Authorities. There was also no prayer for personal hearing or offer to adduce evidence. In fact, the three alleged breaches (1), (2) and (4) did not call for any such evidence. Their cause was that clearance was delayed because of the obstruction by the authorities.

Government having considered the cause, exercised the power of forfeiture given

by the "conditions" and cancelled the pattas and resumed the lands. They seem to have taken some time to prepare to take physical possession of the resumed areas. But they have shown consideration to the grantees, by allowing them to retain the patches that they had actually cleared. When Government in execution of the order, prepared to take possession of the resumed areas sometime in the summer of 1957, the grantees came up to this court. Point No. 1.

These are straight cases of alleged breach of the conditions of the grant by the grantees, and the resumption by the Government on its satisfaction that there had been a breach, and that the explanation setting out extenuating circumstances was unsatisfactory. There is controversy on the facts, both as to breach itself and more particularly in the case, as to the justification or extenuating circumstances. Obviously, a proceeding under Article 226 is not the proper forum for a consideration of these controversial facts.

So, even assuming that the petitioners have a satisfactory ground why the breach should be condoned, these cases are not the cases in which High Court should exercise its discretionary jurisdiction, under Article 226 of the Constitution. With the same amount of trouble, and may be some more of court fee, the grantees could have gone to the civil court with appropriate title suits either for declaration or permanent injunction. In principle, I would hold that whenever the controversy is for the most part on facts, and rights of a contractual nature have to be investigated, Article 226 is not appropriate.

All this is admitted by the petitioners with one material reservation, namely, that apart from these allegations of breaches and rights accruing by contract, the case involves a breach, by Government of the fundamental right guaranteed to the petitioners by Article 31(1). "Since there had been a denial of a fundamental right, it ceases, according to the petitioner, to be a matter of discretion, and the High Court is obliged as of duty to invoke its powers under Article 226 even if there is as obviously in the present cases, an equally efficacious remedy by a civil suit.

Under another heading (3), I shall examine, whether the conduct of Government in cancelling the grants on its own, without going to the civil court, is a denial of the grantees' fundamental right under Article 31(1). Immediately, the question is, whether, simply because the violation of a fundamental right is alleged, the High Court is bound to interfere under Article 226 even in the event of there being an equally efficacious remedy by a suit. On behalf of the petitioners, it is urged that there is authority for the view that the Supreme Court should take up a case if it came under Article 32. whether or not, another remedy is equally efficacious.

By analogy, it is argued that the High Court is also obliged to exercise its powers under Article 226. In any opinion, there is no analog). Article 32 is placed in Part III dealing with fundamental rights and, therefore, it can be plausibly contended that an approach to the Supreme Court in the event of a denial of the right

conferred by this part is itself a fundamental right. But such a contention cannot be made in regard to the High Court's powers under Article 226, which, in theory extends to all cases and still remains discretionary in all circumstances.

The petitioners in all cases should satisfy the High Court not that there is no other remedy possible at all, but there is no other equally efficacious and practicable remedy. Where there is controversy in regard to facts, and where at least some of the rights concerned are contractual, a civil suit is more appropriate than an application under Article 226. Thus, these petitions can be dismissed on this score alone.

Point No. 2.

It is an established principle that a party invoking the High Court's powers under Article 226 should come without avoidable delay and should at all events, explain satisfactorily any time gap between the grievance alleged and the filing of the petition. In the present cases, for example, the order of the Government cancelling the patta and ordering ejectment from part of the lands was made towards the end of October 1956. There is no right of appeal and it is also not the petitioners' case that they spent time in moving any appeal or memorial.

Their only explanation is that the actual process of implementing the order by sending the Government servants concerned actually to take possession was started several months later; therefore, they need have come only when they actually saw the Government servants on the move to take physical possession. I do not agree. As far as the petitioners were concerned, Government had done all that was necessary. There was nothing more to be done to which the grantees could be invited.

No doubt. Government machinery moves slowly, and taking possession of forest lands after the necessary demarcation and the fixing of boundary points had to be delayed till mid-summer. But that is not the reason why the party whose grievance is complete, should keep quiet. I would, therefore, hold that the delay of eight months has not been satisfactorily explained and would, other things being the same, justify the rejection of these petitions.

Point No. 3.

The sheet-anchor of the petitioners' case is that, whatever the nature of the breach and whatever the legal consequences, Government should not have cancelled the pattas and made an entry on its own, but should on the contrary, have gone to a civil court with a suit for eviction and obtained a decree. It is argued that even the express condition giving a right of re-entry on the finding of a breach, would not entitle Government to act on its own. It is a fundamental right under Article 31(1) according to the petitioners, that in all such cases the party should obtain a valid decree or order of forfeiture through a law court before visiting upon the grantee the effect of a breach.

This, according to the petitioners is the real significance of the phrase "under the

authority of the law." There is admittedly, no case law in support of this extreme theory, but the petitioners have placed as approximate or analogous decisions, the rulings reported in Hira Singh Bam Vs. The State of Himachal Pradesh and Another, , the remarks in one part of the judgment in A.K. Gopalan Vs. The State of Madras, about the meaning of "law" in certain articles of the Constitution, and Kavala-ppara Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, .

In the Hirnachal Pradesh Case, Government had a right of repurchase by an agreement; but there was no provision or condition that on failure of the other party to reconvey the property, it could enter by itself; nor was it a case of a qualified grant or conditional lease permitted by statute law as it is in the present case. The recent Supreme Court decision also is only to the effect of what I have already mentioned that the Supreme Court will act under Article 32 even where there is an adequate alternative remedy, where there has been a denial of a fundamental right. I have already pointed out that it does not necessarily follow by analogy that the High Court is also bound to act in similar circumstances under Article 226.

Anyway, we are now concerned with the question, whether the procedure adopted by Government in accordance with the conditions of the grant or lease is without the authority of law. Such grants are also governed by the Bhopal Tenancy Act, which after enumerating the general provisions expressly enables the government to make grants with special conditions in special circumstances. The argument, in fact, is that this is not sufficient "authority of law" and that a wide enabling provision in statute is insufficient, and express direction in statute necessary, before the grantor is able legally to effect the cancellation of the patta and make a re-entry.

With all respect, I am unable to accept this position. By "authority of law", I would understand the permission under the law (say, statute law) to do a thing; the question is; is it approved by the law? If the Legislature leaves it to the parties mutually to enter into such conditions as they deem proper, those conditions are made under the authority of the law, unless, of course they are otherwise illegal, say, for policy or some such respect. That does not arise here. The condition for straight re-entry by the grantor is in itself not illegal, and is allowed by the enabling provision in Section 53.

In this connection, a reference has been made on behalf of the petitioners to paragraphs 228 and 229 (at page 115) of the judgment of Das J. (as he then was) in A.K. Gopalan Vs. The State of Madras, . There the Supreme Court was considering what exactly was meant by "'law" in Article 21 which speaks of "according to procedure established by law". Obviously, in that context "law" is "State-made or statutory law." and not merely a principle of natural justice. Apropos of the discussion, the judgment refers to other articles where the same or similar phrase occurs, for example, Article 23 which speaks of an offence punishable "in accordance with law", Article 31(1) which speaks of "authority of

law"" and Sub-article (2) which, as it stood then, spoke of "any law." though after amendment (fourth amendment of 1954) it mentions "authority of law" -- Articles 32 and Articles 265 and 286.

In all these places "law" means ""State-made law"; now, there is no doubt or controversy about that. The real question here is, whether by "authority of law" is meant something which is expressly mentioned in the statute itself, or something which the statute broadly enables and leaves it to the parties concerned. In my opinion, it is the latter. When Article 21 speaks of the procedure established by law. there is no doubt that the statute law should directly lay down the procedure.

Similarly, when Article 23 says ""punishable in accordance with law"" it means that there will be a statute saying that traffic in human beings and "begar would be visited with so much of fine or imprisonment of such duration. When, Article 31(2) as it then stood, said that "no property shall be taken under any law authorising the taking unless the law provides..", it meant that the statute itself should in so many words, say that the executive may take the property and give compensation etc.

But when Article 31(1) says "authority of law" all that the statute should prescribe is an enabling power leaving it open to the parties concerned neither of which may (not) (sic) necessarily be the State, to make their own arrangement by way of contract, or a set of rules or conditions by one, which ere accepted by the other party. In fact, the subsequent amendment of the Sub-article (2) has itself in this respect brought that in line with Sub-article (1); but we are not concerned with that here.

There is, therefore, nothing in the Supreme Court judgment in A.K. Gopalan Vs. The State of Madras, . to the effect that to enable the Government to effect cancellation and re-entry on its own in accordance with a condition attached to the grant, there should not only be a valid and otherwise legal condition, but also an express provision in statute itself saying that such a condition could be made and a forfeiture and re-entry could be effected by the grantor himself. All. that is necessary is that the statute should enable Government to impose the conditions and the grantee to accept them. Looked at this way, the position becomes simple. In fact, grants with such conditions are known very generally and re-entry by the grantor Government is always effected on the strength of these conditions.

On behalf of the State several rulings have been placed, for example, P. K. Krishnan v. State of Travancore Cochin AIR 1952 TC. 287. Bukhtiarpur Bihar Light Rly. Co. Ltd. Vs. State of Bihar and Others, , Chattar Singh Vs. State of Punjab and Another, and P.R.P.L.S. Valliappa Chettiar and Another Vs. N.S. Maruda Pandian Pillai, . All these rulings lay down two distinctive though allied principles. A person who has, by contract, subjected himself to such a condition, cannot later on come to the High Court and ask for a writ that he should be freed

from the condition; unless the condition is illegal or void, such relief cannot be given. Another principle is that a right arising out of a contract cannot be enforced by an application for writ under Article 226, but the appropriate course for the aggrieved party is to bring a suit for performance or injunction, as the case may be. In the Travancore case, the licensee of certain liquor shops had as a condition to the license, agreed to locate his shops only at places selected by the Board of Revenue. He later on came to the High Court that this condition was an invasion of his fundamental right and should, therefore, be removed. In the three other cases, the emphasis is on the second proposition I have already laid down. But even apart from these rulings, there is authority in Section 53(d) for the conditions attached to the grant. Thus, I would hold that there has been no denial to the petitioners of the fundamental right granted by Article 31(1).

Point No. 4.

It is quite inappropriate in an application under Article 226 to investigate conflicting allegations of fact. This is particularly so, when it was easy for the petitioners to get the controversies settled in the civil Court. In the present case, even if we did look into the allegations, it is difficult to disagree with the Government that many of the conditions have been violated. This is practically admitted; but the petitioners had given in their cause an extenuation, namely, the orders made from time to time stopping the clearing operations, the delay on the part of the forest authorities to put the appropriate hammer mark which alone would enable them to take away the timber that had been felled and the stoppage ordered by the revenue and the forest authorities.

Several of the stoppages were ordered after 1953. All the stoppages were the result of the petitioners not proceeding in the manner agreed. At the first instance, it was the duty of the grantees to mark out a particular block for a particular year's clearance, communicate the description to the Tehsildar, invite the inspection and estimate of the value of the forest produce by him. There was nothing in any of these orders preventing the petitioners from doing this. This procedure of selection and approval was necessary to prevent indiscriminate felling by patches at the whim of the grantees, which is exactly what they had been doing till they were stopped. On the facts, this was not denied.

But appearing on behalf of the petitioners, Shri Chitale argues that these conditions, the breach of which is mentioned in the showcause notice (1, 2 and 4) had nothing to do with the purpose of the grant. I do not agree. The purpose of the grant was to bring the land under cultivation after clearing trees and the growth. But it was not intended that it should be done in a haphazard manner by removing the profitable patches here and there, but in a systematic manner which would be conducive, both to the cultivation, and the preservation of forest, and also a check upon the abuse which was too easy of felling trees even outside the granted areas. A further check was in the Telisildar's estimate, if the timber felled considerably exceeded the estimate, then the authorities could investigate if there has been abuses.

Having started in sheer violation of the agreement the petitioners invited the orders of the authorities stopping the indiscriminate felling, both in the interest of revenue and in the interest of the protection of the forest. The breach No. 3 is also admitted in part. Some of the clearances have been sown in time though in a haphazard manner. Others have not been sown. Anyway, the areas brought under cultivation have been left to the grantees, though under the terms of the agreement, they could also be resumed. It is therefore unnecessary to go into that particular breach.

Another grievance put forth is that though the Government appeared to invite the explanation of the grantees they really did not give any personal hearing or an opportunity to adduce evidence. It is difficult to understand this. Having found that there was a breach of the conditions. Government did not want to act without providing an opportunity to the grantees to give their explanation. They did so and considered the cause for what it was worth. The grantees did not seek any hearing in person and did not tender any documentary evidence, or request the Government to depute an officer to record the evidence of any witness. Actually, the breaches alleged were such that they did not call for any such proceeding. Be that as it may, the petitioners themselves did not want any such thing. Thus, there is no point in their coming to this Court and saying that they were not heard personally or were not allowed to place evidence.

Point No. 5.

Finally, it has been urged that the entire course of events shows that the Government and the subordinate authorities were up against these grants and were putting up this or that pretext to resume the areas. In other words, while there has been an ostensible ground justifying the resumption, Government has been acting with an ulterior purpose and the entire proceeding is a device. This is a serious allegation to make, but it is altogether unjustifiable. It is certain that the circumstances and the manner of these grants were unusual and indicate a clear intention on the part of the outgoing Ruler to favour the grantees.

It was done at the very last moment with four years' silence after the scheme was proposed in 1945. Therefore, the subordinate officers rightly suspected the whole process, even suggestions were made that the grants should be cancelled; but the Chief Commissioner after giving his attention to the entire matter, ordered that these grants should stand whatever the circumstances in which they had been given. Certainly, this does not look like a device to resume the land in any event. Afterwards, there was an assessment of how much of the granted lands could at all be brought under cultivation and how much out of them could not in any event be made cultivable. Considering the original purpose of the grant, there was a case for the excision of the latter from the patta.

Still, the Government did not accept that proposal; the whole lots had been granted and Government took the position that the pattas, subject of course to their conditions, should stand. This again does not indicate any ulterior purpose.

At the end, even when finding that there was a breach and ordering a forfeiture Government has shown considerable generosity to these petitioners. If they had forfeited the entire area including the patches that had been brought under cultivation, still, it would have been justified under the terms of the grant. Government, however, excluded from the operation of the resumption order, such areas as have been brought under cultivation and have given them to the grantees. Thus, the allegation of ulterior purpose is altogether baseless.

The result of the discussion is that these grantees have really no justifiable grievance. For one thing it is not a case under which action under Article 226 can be properly taken. There has been no denial of fundamental; right. There is also no ulterior purpose behind the orders of the Government and breaches have been proved after an opportunity given to the grantees to explain.

The petitions are accordingly dismissed with plea ders lee of Rs. 50/- in each payable by the peti tioners to the opposite party Government.