
(2014) 08 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : LPA No. 23 of 2006

Ajmer Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 38, 39(a), 43
Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971
— Section 54

Citation : (2014) 08 SHI CK 0009

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Ajay Sharma, Advocate for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Addl. A.Gs., and J.K. Verma, Dy. A.G, Advocate for the Respondent

Judgement

Mansoor Ahmad Mir, C.J.—This Letters Patent Appeal is directed against the judgment and order, dated 24th October, 2006, passed by a learned Single Judge of this Court in CWP No. 431 of 2000, titled as Ajmer Singh vs. State of H.P. and others, whereby the writ petition filed by the petitioner (appellant herein) came to be dismissed, (for short, the impugned judgment).

2. The appellant-writ petitioner invoked the jurisdiction of the Writ Court, by the medium of writ petition, for quashing the order, dated 1st December, 1999, (Annexure P-5), passed by the Director, Consolidation of Holdings, u/s 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, (for short, the Act), on the grounds taken in the writ petition.

3. The Writ Court, after hearing the parties, dismissed the writ petition vide the impugned judgment. Feeling aggrieved, the appellant has challenged the said judgment by the medium of present appeal.

4. Heard learned counsel for the parties present.

5. The Writ Petition was not maintainable and was liable to be dismissed at the threshold for the reason that the order Annexure P-5, impugned in the Writ Petition, was made on the request of the writ petitioner and he had pressed the said revision only on the ground of allotment of land comprised in Khasra No. 1147 (new) and other grounds were given up. It is apt to reproduce paragraph 2 of the said order hereunder:

"The case came up for final hearing today in the presence of Shri Ajmer Singh applicant alongwith Sh. B.S. Thakur, Counsel and Sh. Ramesh Chand respondent alongwith Sh. Naresh Thakur, Counsel. He also represents S/Sh. Sadhu Ram and Chuhar Singh, respondents. I have heard the parties present and perused the record. During the course of hearing, the applicant stressed on only one point regarding allotment of land in Khasra No. 1147 new by the road side. As per consolidation scheme, land is required to be given to the applicant out of this Khasra No. as he has not been allotted land along roadside. The respondent Sh. Dhianu has already sold some land out of this Khasra No. The Counsel for the respondents has no objection to give some land out of the remaining portion of this Khasra No. to the applicant, provided that 2 meter wide path is left alongside this land as an access to reach the left out land of the petitioner. Hence, the revision petition is partially accepted and the following amendment is hereby ordered:"

6. The Writ Court has not taken note of the said fact but has dismissed the writ petition on merits.

7. It is also beaten law of the land that the orders made by the Authorities cannot be questioned by way of writ petition unless the orders are made without jurisdiction or having been passed in breach of the mandatory provisions of law or have caused miscarriage of justice.

8. This Court in the judgment, dated 4th August, 2014, passed in CWP No. 4622 of 2013, titled M/s. Himachal Futuristic Communications Ltd. vs. State of H.P. and another, while relying upon the latest decision of the Apex Court in Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Ltd., , has held that finding of fact recorded by the Authorities cannot be interfered with by the Writ Court. It is apt to reproduce paragraphs 16, 17 and 18 of the decision (supra) of the Apex Court hereunder:

"16.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to

be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.....

17. The judgments mentioned above can be read with the judgment of this court in Harjinder Singh's case (AIR 2010 SC 1116) (supra), the relevant paragraph of which reads as under:

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State."(The State of Mysore Vs. The Workers of Gold Mines, .)

18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant"

[Emphasis added]

9. Applying the test to the instant case, the writ petition was not maintainable. Having said so, the appeal as well as the Writ Petition merit to be dismissed.

10. We have gone through the impugned judgment, is well reasoned and needs no interference.

11. Having glance of the above discussion, the appeal is dismissed, with pending CMPs, if any.