

(2003) 04 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3906 of 2001

Baldev Singh and Others	Vs	APPELLANT
Gram Panchayat and Others		RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 134 PLR 797 : (2003) 3 RCR(Civil) 460

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : S.D. Sharma and Neeraj Sharma, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioners have filed the instant writ petition under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of Certiorari, for quashing the judgment dated 13th December, 1999 passed by the Division Bench of this Court in Civil Writ Petition No. 15334 of 1997 and further for directing the respondents not to implement the aforesaid judgment being in operative, illegal and without jurisdiction qua the petitioners as the same was passed in their absence.

2. In this writ petition, the petitioners have pleaded that they are the proprietors/ right holders of village Dudhal, Tehsil Payal, District Ludhiana. In consolidation, certain land was reserved for common purposes of the village by imposing pro rata cut on the proprietors of the village. But same land could not be earmarked for any common purpose of the village and that land, which is called the bachat land, was recorded in the revenue records" as Shamlati Deh Hasab Paimana Hakiat Khewat Daran, The said land belongs to the proprietors of the village and the same was to be repartitioned among them. However, the said land was illegally and wrongly mutated in the name of the Gram Panchayat and subsequently it was wrongly recorded under the ownership of Gram Panchayat.

Thereafter, the petitioners along with some others proprietors filed a petition u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Act") before the Additional Director, Consolidation, Punjab, for repartition of the said land among the proprietors. The aforesaid petition was allowed by the Additional Director, Consolidation, vide his order dated 28th March, 1996 (Annexure P.1) and the aforesaid land was ordered to be re-distributed among the right-holders. The petitioners further pleaded that in view of the aforesaid order, the land in question was repartitioned among the proprietors and the petitioners were put into physical possession of the land which fall to their share and the mutation was sanctioned in favour of all the right-holders, including the petitioners. Subsequently, some of the non-proprietors Natha Singh and 52 others filed Civil Writ Petition No. 15334 of 1997 under Articles 226 and 227 of the Constitution of India before this Court challenging the aforesaid order dated 28th March, 1996 passed by the Additional Director, Consolidation. In that writ petition, the petitioners, in favour of whom the aforesaid order dated 28th March, 1996 was passed, were not impleaded as a party. The said writ petition was allowed by a Division Bench of this Court vide order dated 13th December, 1999 while holding that the Additional Director, Consolidation has no jurisdiction in the matter regarding repartition of the bachat land and that authority now vested with the Collector under the provisions of Punjab Village Common Lands (Regulation) Act, 1961.

3. The petitioners have challenged the aforesaid order passed by the Division Bench of this Court in Civil Writ Petition No. 15334 of 1997 filed by the non-proprietors on the ground that the aforesaid order was passed against them without providing any opportunity of hearing to them and they were not impleaded as party respondents in spite of the fact that the order dated 28th March, 1996 was passed by the Additional Director, Consolidation, on their petition filed u/s 42 of the Act. Therefore, the order dated 13th December, 1999 passed by this Court is violative of the principles of natural justice. The contention of the petitioners is that after the order of repartition passed by the Additional Director, Consolidation, the petitioners got possession of the bachat land according to their share and mutation was sanctioned in their favour. They are in continuing possession of the land in dispute. After the repartition, they were the necessary party before this Court, but they were not impleaded as respondents in the aforesaid writ petition. It has been further pleaded that the aforesaid judgment passed by the Division Bench of this Court is illegal and inoperative against their rights and the same cannot be implemented qua the petitioners, therefore, the said judgment be quashed and a direction may be issued to the respondents not to implement the said judgment qua them.

4. When the aforesaid writ petition came up for regular hearing before this Court, the learned counsel for the petitioners was asked to satisfy this Court as to how the present writ petition under Articles 226 and 227 of the Constitution of India for quashing of the order passed by the Division Bench of this Court is maintainable. Shri S.D. Sharma, learned Senior Advocate for the petitioners

submitted that this Court has wide power under Article 226 of the Constitution of India and in exercise of that power the earlier order passed by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India can be quashed and reviewed, if it is found that the same was passed by this Court in violation of the principles of natural justice or the same was passed adverse to the persons without impleading them as a party. In support of his contention, the learned counsel relied upon a decision of the Supreme Court in *Shivdeo Singh and Ors. v. State of Punjab and Ors.* AIR 1963 S.C. 1909.

5. After considering the submissions made by the learned counsel for the petitioners and after going through the judgment, referred to above, I am of the opinion that the instant writ petition filed by the petitioners for issuance of a writ of certiorari for quashing the order dated 13th December, 1999 passed by the Division Bench of this Court is not maintainable at all. In my opinion, an order passed by this Court in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India cannot be challenged by filing another writ petition by a person under Articles 226 and 227 of the Constitution of India on the ground that the said order is illegal and the same was passed without impleading him as a party, though he was a necessary party. If a person is aggrieved by an order passed by this Court under Articles 226 and 227 of the Constitution of India, he has two remedies-either he can file a Letters Patent Appeal against the said order before this Court or SLP before the Supreme Court, or secondly he can move an application in the said writ petition for reviewing and recalling of that order by pleading that he was not made a party in the writ petition though he was a necessary party and an order in his favour was set aside without hearing him. But certainly such persons has got no right to challenge the aforesaid order by filing an independent writ petition under Article 226 of the Constitution of India for quashing of the said order and this Court, in my opinion, cannot issue a writ of Certiorari for quashing of an order passed by another bench of this Court in exercise of the writ jurisdiction under Articles 226/227 of the Constitution of India. The judgment in *Shivdeo Singh's* case (*supra*), cited by the learned counsel for the petitioners, does not support the petitioners. Rather, this judgment supports the aforesaid view taken by this Court. In that case, an order was passed by the Director of Rehabilitation (Rural), Jalandhar, in favour of certain persons. The said order was set aside by the High Court on a petition filed by some different persons in which the persons in whose favour the order as passed by the Director, Rehabilitation, were not impleaded as a party. Subsequently, those persons in whose favour the initial order was passed preferred a petition under Article 226 of the Constitution of India for impleading them as a party in the main petition and for rehearing the whole matter. On that petition/application, the matter was reheard by the same Judge and their petition/application was allowed. The said order was challenged by the other persons under the Letters Patent, which was dismissed. Against that order, SLP was filed. While dismissing the appeal, the Apex Court has observed as under:-

"The other contention of Shri Gopal Singh pertains to the second order of Khosla,

J. which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

6. From the aforesaid judgment, it is clear that the affected persons can file a petition/application in the same very petition to become a party and for rehearing of the matter and the High Court has inherent power to review its order. But the Supreme Court in the aforesaid judgment has not at all held that the affected persons have a right to file a separate writ petition for issuance of a writ in the nature of certiorari to quash an order passed by the High Court under Articles 226 and 227 of the Constitution of India. A nine Judge Bench of the Supreme Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, has considered the scope of issuing a writ of certiorari under Article 32 of the Constitution of India for quashing a judicial order passed by the Supreme Court. In that decision, it was held as under-

"It is well settled that the powers of this Court to issue writs of certiorari under Article 32(2) as well as the powers of the High Court to issue similar writs under Article 226 are very wide. In fact the powers of the High Courts under Article 226 are, in a sense, wider than those of the Supreme Court, because the exercise of the powers of the Supreme Court to issue writs of certiorari are limited to the purposes set out in Article 32(1). There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record under Article 215. If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of the Supreme Court. If questions about the jurisdiction of superior Courts of plenary jurisdiction to pass orders like the impugned order are allowed to be canvassed in writ proceedings under Article 32, logically, it would be difficult to make a valid distinction between the orders passed by the High Courts inter parties, and those which are not inter parties in the sense that they bind strangers to the proceedings.

Therefore, having regard to the fact that the impugned order has been passed by a superior Court of Record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Article 32."

7. Again, the Supreme Court in *Dr. Anil Kumar Sinha Vs. The State of Bihar and Others*, has held as under:-

"What remains to be decided is the procedure by which the direction of February 16, 1984, could be recalled or altered. There can be no doubt that certiorari shall not be to quash a judicial order of this Court. That is so on account of the fact that the Benches of this Court are not subordinate to larger Benches thereof and certiorari is, therefore, not admissible for quashing of the orders made on the judicial side of the Court. Shri Rao had relied upon the ratio in the case of *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad*, where Brother Mukherji has dealt with this case at considerable length. This Court was then dealing with an Article 32 petition which had been filed to challenge the vires of Rule 12 of Order 35 of the Court's Rules. Gajendragadkar, J., as the learned Judge then was, spoke for himself and three of his learned brethren including the learned Chief Justice. The facts of the case as appearing from the judgment, show that there was a judicial order directing furnishing of security of Rs. 2500/- towards the respondent's costs and the majority judgment directed:

In the result, the petition is allowed and the order passed against the petitioners on 12th December, 1961, calling upon them to furnish security of Rs. 2500/- is set aside.

Shah. J, who wrote a separate judgment upheld the vires of the rule and directed dismissal of the petition. The fact that a judicial order was being made the subject matter of a petition under Article 32 of the Constitution was not noticed and whether such a proceeding was tenable was not considered. A Mine Judge Bench of this Court in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, referred to the judgment in *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad*, where Gajendragadkar, C.J. who delivered the leading and majority judgment stated at pages 765-66 of the Reports:

In support of his argument that a judicial decision can be corrected by this Court in exercise of its writ jurisdiction under Article 32(2). Shri Setalvad has relied upon another decision of this Court in *Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad*, . In that case, the petitioner Prem Chand Garg had been required to furnish security for the costs of the respondent under Rule 12 of Order 35 of the Supreme Court Rules. By this petition filed under Article 32, he contended that the rule was invalid as it placed obstructions on the fundamental right guaranteed under Article 32 to move the Supreme Court for the enforcement of fundamental rights. This plea was upheld by the majority decision with the result that the order requiring him to furnish security was

vacated. In appreciating the effect of this decision, it is necessary to bear in mind the nature of the contentions raised before the Court in that case. The rule itself, in terms conferred discretion on the Court, while dealing with applications made under Article 32, to impose such terms as to costs and as to the giving of security as it thinks fit. The learned Solicitor General, who supported the validity of the rule, urged that though the order requiring security to be deposited may be said to retard or obstruct the fundamental right of the citizen guaranteed by Article 32(1), the rule itself could not be effectively challenged as invalid, because it was merely discretionary; it did not impose an obligation on the Court to demand any security; and he supplemented his argument by contending that under Article 142 of the Constitution, the powers of this Court were wide enough to impose any term or condition subject to which proceedings before this Court could be permitted to be conducted. He suggested that the powers of this Court under Article 142 were not subject to any of the provisions contained in Part III including Article 32(1). On the other hand, Shri Pathak who challenged the validity of the rule, urged that though the rule was in form and in substance discretionary, he disputed the validity of the power which the rule conferred on this Court to demand security.

It would thus be seen that the main controversy in the case of Prem Chand Garg centered round the question as to whether Article 145 conferred powers on this Court to make rules, though they may be inconsistent with the constitutional provisions prescribed by Part III. Once it was held that the powers under Article 142 had to be read subject not only to the fundamental rights, but to other binding statutory provisions, it became clear that the rule which authorised the making of the impugned order was invalid. It was in that context that the validity of the order had to be incidentally examined. The petition was made not to challenge the order as such, but to challenge the validity of the rule under which the order was made. Once the rule was struck down as being invalid, the order passed under the said rule had to be vacated. It is difficult to see how this decision can be pressed into service by Shri Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself.

In view of this decision in *Mirajkar* case it must be taken as concluded that judicial proceedings in this Court are not subject to the writ jurisdiction thereof." 8. Similarly, the Supreme Court in *Shri "X" v. Hospital "Z"* (2000)93 S.C.C. 439 and in *Ajit Kumar Barat v. Secretary, Indian Tea Association and Ors.* (2000)5 S.C.C. 42 has held that no writ petition under Article 32 of the Constitution is maintainable for impugning the correctness of a judgment already passed by the Supreme Court and it has been held that a judicial order passed by the Supreme Court can not be held to be subject to the writ jurisdiction of the Court.

9. In view of the aforesaid discussion, I am of the opinion that the instant writ petition filed by the petitioners is not maintainable and the same is hereby dismissed as not maintainable. However, in view of the fact that the petitioners

were not impleaded as a party in Civil Writ Petition No. 15534 of 1997, in which the order dated 28th March, 1996 passed by the Additional Director, Consolidation, in favour of the petitioners was set aside without hearing them, the petitioners will be at liberty to move an appropriate application in the aforesaid writ petition, if so advised, for getting the said order re viewed recalled by impleading them as a party.