(1966) 05 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2289 of 1964

Bhupinder Singh	APPELLANT
Vs	
Commissioner Jullundur Division, Jullundur and Another	RESPONDENT

Date of Decision : 16-05-1966

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1967 P&H 354

Hon'ble Judges : J.N. Kaushal, J

Bench : Single Bench

Advocate : H.S. Wasu with Mr. B.S. Wasu, for the Appellant; Y.P. Gandhi, for the Respondent

Final Decision : Allowed

Judgement

J.N. Kaushal, J.—This petition under Articles 226 and 227 of the Constitution of India is directed against an order passed by Shri R.S. Kang Commissioner, Jullundur Division, on 7th September, 1964.

2. The circumstances which have given rise to the petition are as follows There was a Government built property unit No. 97-R situated in Model Town, Ludhiana. which was purchased by Ranjit Singh, respondent No. 2, from the Punjab Government for Rs. 7,184/- on instalment basis. After making a part payment of the price of the property, a default was committed by the said Ranjit Singh in as much as he failed to pay an instalment of Rs. 478.94 Paise. In view of this default, the Deputy Commissioner, Ludhiana, passed an order on 20th March, 1961, whereby the aforesaid property was resumed and the amount already paid towards its price was ordered to be confiscated. This order was passed by the Deputy Commissioner u/s 11 of the East Punjab Refugees Rehabilitation (Buildings and Building Sites) Act, 1948, hereinafter called the Act.

3. Ranjit Singh filed an appeal against the order of the Deputy Commissioner u/s 12(1) of the Act before the Commissioner, Jullundur Division Shri R.S. Randhawa,

who was the Commissioner then, accepted the is order dated 17th July, 1961, annexure ''A''. Since Ranjit Singh had paid Rs 5,268/5/- out of the total price of Rs. 7,184/-, the Commissioner accepted the appeal and set aside the order of the Deputy Commissioner dated 20th March, 1961, on the condition that Ranjit Singh should pay the amount in arrears along with interest etc. before 18th August, 1961. It was made clear in the order that if there was a failure in making this payment the appeal would stand dismissed.

4. Ranjit Singh again failed to abide by the order passed by the Commissioner and did not pay the arrears by 18th August. 1961. On 30th August, 1961, however, he approached the Commissioner for the extension of tine for the deposit of arrears. This application was rejected by Shri Randhawa vide his order dated 20th September, 1961, copy annexure ''B''. While rejecting the application, the following observation were made by the Commissioner :

My order was that if he failed to make this payment the appeal would stand dismissed. The effect of that order was that on his failure to make the payment before 18th August, 1961 his appeal had been dismissed. The question arises whether I can review this order of dismissal I find nothing in the Act giving me the power to review that order, Further the circumstances of the case are such that this order should not be reviewed in favour of the applicant who had been allowed time to make the deposit but he failed to do so without any reason This application is hereby dismissed.

Ranjit Singh, respondent No. 2, kept quiet after this order was passed by the Commissioner and did not do anything for about nine or ten months. On 5th July, 1962, however, he made an application to the Chief Minister, Punjab. The Chief Minister expressed his inability to interfere in the matter and the Private Secretary to the Chief Minister conveyed his order on 18th August, 1962. Respondent No. 2 again kept quiet for about a year-and-a-half after the receipt of the order of the Chief Minister. In the meantime, the Government advertised the property for public auction Tenth of February, 1964, was the date fixed for holding the auction. On the same date, namely, 10th of February, 1964, Ranjit Singh respondent No. 2 presented a review application, annexure ''E'', to the Commissioner, Jullundur Division, who was Shri R.S. Kang, at that time. The learned Commissioner accepted the review petition and vide his order dated 7th September, 1964, copy annexure ''F'', set aside the order of the Deputy Commissioner, by which the property was resumed and since a demand draft for Rs. 2,107/34 Paise was given by Ranjit Singh, it was ordered that that amount be credited towards the price of the property.

5. When the review petition was filed on 10th of February, 1964, it is alleged that an order was passed by the Commissioner staying the auction which was to be held on that date. In spite of this order, however, the property was auctioned on the spot and was purchased by Bhupinder Singh. One-fifth of the amount of bid was paid by the auction-purchaser as earnest money. Bhupinder Singh, therefore, contended before the learned Commissioner that he had no

jurisdiction to review the order passed by his predecessor. After hearing Bhupinder Singh as well as Ranjit Singh respondent No. 2, the order dated 7th September, 1964, was passed by the learned Commissioner. Bhupinder Singh feeling aggrieved from this order has filed the present petition.

6. Mr. Harnam Singh Wasu, who appears for Bhupinder Singh, contends that Shri R.S. Kang, Commissioner Jullundur Division, had no power to review the orders of his predecessor, which were passed on 17th of July, 1961, and 20th of September, 1961. According to him power, of review has not been granted in the Act. In support of his submission, reliance is placed on Deep Chand and another v. Additional Director, Consolidation of Holdings (1964) 66 P.L.R. 318 (F.B) and Harbhajan Singh Vs. Karam Singh and Others, , Roop Chand v. The State of Punjab and another (1963) 66 P.L.R. 576, another decision by the Supreme Court, is also pressed into service for the same purpose.

7. Mr Y.P. Gandhi, learned counsel for respondent Ranjit Singh, has argued that the order passed by the Commissioner on 7th of September, 1964, was rightly passed by him u/s 2, sub section (2) of the Act. In the alternate, it is contended that the earlier orders passed by Shri Randhawa were not judicial or quasi-judicial orders and, therefore, an inherent power of review vested in Shri R.S. Kang inasmuch as in his view the earlier orders were highly unjust, Another contention raised on his behalf is that no relief should be granted to Bhupinder Singh petitioner inasmuch as he has no locus sta(sic) to file the present petition. The learned counsel maintains that no legal and personal right of Bhupinder Singh has been infringed by the order pissed on 7th of September, 1984, because the auction proceedings had been stayed by an order passed by Shri R.S. Kang on 10th February, 1964. According to his submission, there was no jurisdiction in the Deputy Commissioner to hold the auction proceedings after they were stayed by the Commissioner and proceedings being a nullity, no right accrued to Bhupinder Singh only because his bid was accepted and he deposited one-fifth of the purchase money. Lastly, it was contended that since the impugned order is a highly just order, no relief should be granted under Articles 226 and 227 of the Constitution, even though the order may have been passed without jurisdiction.

8. The contention of Mr. Gandhi is that the stay order operates as soon as it is made and not when it is communicated and the legal authority to proceed with the proceedings is withdrawn by the order of stay, is supported by AIR 1949 Lahore 108 and Kaku Singh and Others Vs. Gobind Singh and Others, Mr. Wasu does not con-trover this proposition. He, on the other hand, maintains that since Shri R.S. Kang had no jurisdiction to entertain a review petition, the interlocutory order passed by him on 10th of February, 1964, staying the auction was also without jurisdiction and a nullity, The learned counsel is quite correct in his submission. If there was no jurisdiction in the Commissioner to review the orders of his predecessor, then the order staying the auction would also be without jurisdiction and it will have to be held that the auction proceedings were rightly

held. The main point of controversy, therefore is : whether Shri R.S. Kang had the power to review the orders passed by his predecessor or was the order passed by him on 10th of February, 1164, justified under sub-section (2) of section 12 of the Act ? In order to arrive at a correct conclusion, it will be necessary to decide whether the orders passed by Shri Randhawa u/s 12(1) of the Act were of a judicial or quasi-judicial nature. In order to determine this would be essential to notice the relevant provisions of the Act u/s 3 power has been given to the State Government to acquire land for the purpose of providing building sites, roads etc. u/s 4, the Stale Government has been given power to sell, lease or otherwise dispose of the building sites etc. u/s 5, the State Government has been given the power to erect such buildings or other structures or lay out gardens, as it may deem fit, on any land acquired by it either before or alter the promulgation of the Act or otherwise owned by it and a further power has been given to sell, lease or otherwise dispose of such buildings to refugees or other persons on such terms and conditions, as it may deem fit. u/s 6, the State Government has been authorised to sell the buildings or building sites either by auction or by private treaty at a fixed valuation to be determined by it. The purchase price may be paid at the option of the purchaser either in a lump sum or in instalments, as provided in sub-section (3) of section 6, which reads as follows:

6 (3) Where the purchaser proposes to pay the purchase price in instalments-

(a) a sum not less than 5 per cent of the purchase price shall be paid at the time of sale;

(b) the balance, together with interest thereon at such rate as may be fixed by the State Government in the terms and conditions of sale, shall be paid in 30 equated halt-yearly instalments, in the prescribed manner;

(c) the first instalment shall be payable on or before the expiry of a period of 6 months from the date of sale;....

The proviso to clause (c) above is not relevant for our purposes. (It was obviously under the provisions of section 6 that the present building was so d by the State Government). The other relevant provisions of the Act are sections 10, 11 and 12, which are reproduced in extenso-

10. in case of default in the payment of any instalment or any rent due in respect of a lease the Deputy Commissioner may impose such penalty as may be prescribed, and the amount in default along with the penalty, if any, shall be recoverable from the purchaser or the lessee, as the case may be as arrears of land revenue.

11. The Deputy Commissioner shall without prejudice to other rights have the power to resume the site or building sold or leased under this Act in case of non-payment of any instalment or breach of any of the terms on which the same was sold or leased or of any rule made from time to time under this Act, and may in

addition forfeit part or whole of the money already paid.

12(1) A party aggrieved by an order u/s 11 may, within thirty days, appeal to the Commissioner of the Division, who may restore the property or a part or whole of the money forfeited on such terms or conditions as he may deem fit, or pass such other order as he may deem just and equitable.

(2) The Commissioner of the Division may, whether on application made or otherwise, call for the records of any case decided by the Deputy Commissioner at any time to see if the order passed is in accordance with law, equity and justice, and pass such orders as he may deem fit.

Under section 14 of the Act, jurisdiction of the civil Courts is barred and no suit can be brought to call in question any order of resumption of a site or building or forfeiture of money or for recovery of arrears passed under the Act. Rule-making power is given to the State Government u/s 18 and it has been provided in sub-section (2), clause (vii), that the Government can make rules regarding the form and the method of filing appeals or applications under the Act and the method of presentation of and the Court-fee leviable on such applications and appeals, Rules were framed by the Governor of the East Punjab in exercise of the powers conferred by section 19 of the East Punjab Refugees Rehabilitation (Buildings and Building Sites) Ordinance, 1948. These are the rules which are still in force, since no rules seem to have been framed under the Act which replaced the Ordinance According to rule 10, "an appeal u/s 12 of the Ordinance shall be presented to the Superintendent of the office of the Financial Commissioner, Rehabilitation, or such other officers as may be appointed by Financial Commissioner Rehabilitation, in this behalf." This rule was later on amended and it was provided that the appeal shall be stamped with Court-fee of Rs. 1/-. A combined reading to sections 10, 11 and 12 of the Act and the relevant rule 10 makes it clear that the power of hearing appeals, which has been given to the Commissioner of the Division is a judicial power. Tests have been laid down by the Supreme Court to determine as to when an authority created under a statute and given power to decide a particular matter shall be considered to be exercising judicial or qunsi-judicial powers. In this connection, see Province of Bombay Vs. Kusaldas S. Advani and Others, Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, and Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, According to these decisions, where an authority which is rot a Court, is empowered by the statute to decide a dispute between parties and there is nothing in the statute to the contrary, the authority is under a duty to act judicially and the decision of the authority is a quasi-judicial act; and when a statutory authority has rower to do an act, which will affect the rights of a subject, then although there are no two parties and the contest is between the authority and the subject, the final determination of the authority will be a quasi judicial act, provided the statute requires the authority to act judicially. In a later case, Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, a recent decision of the House of Lords in Ridge v. Baldwin 1964 A.C. 40, has been noted by the Supreme Court and the following observations have been made in para 14 of the judgment -

Having set out these decisions, Lord Reid expressed his dissent from the gloss which has teen put by Lord Hewart, C.J. in Rex v. Legislative Committee of the Church Assembly (1928) 1 K.B. 411 (supra) on the observations of Atkin L.J. in Rex v. Electricity, Commissioner Exparte London Electricity joint Committee Co. (1920) Ltd (1924) 1 K.B 171 and the view taken by the Privy Council in Nakkuda Ali 1951 A.C. 66, and he held that ''the power of dismissal conferred on the watch committee by section 191 (4) could not have been exercised and cannot now be exercised until the watch committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in Defence''. In other words, according to Lord Reid''s judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the watch committee had been authorised to reach u/s 191 (4). It would thus be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of the writ jurisdiction has been extended in a corresponding measure.

It will thus be seen that according to this decision the requirement laid down by the earlier decisions viz: that the authority should be required by the statute to act judicially is no longer essential. It is the nature of the decision required to be reached under the Act which makes the order judicial or quasi judicial. In Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others, the following pertinent observations have been made -

The mere fact that the order is passed in the course of the administration of the assets of the company and for realising those assets is not by itself sufficient to make it an administrative, as distinguished from a judicial order. The question ultimately depends upon the nature of the order that is passed." In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, it has been held that ''''the Commissioner exercising revisional jurisdiction u/s 33-A (2), Income tax Act, does not function in an administrative capacity and a writ of certiorari is maintainable to quash his orders. Jurisdiction conferred u/s 33-A (2) of the Act prima facie is a judicial one". In Sardar Govindrao and Others Vs. State of Madhya Pradesh, it is observed in paragraph 10 -

The next question is whether Government was justified in making the order of April 26, 1955 ? That order gives no reason at all. The Act lays upon the Government a duty which obviously must be performed in a judicial manner. The appellants do not seem to have been heard at all. The Act bars a suit and there is all the more reason that Government must deal with such cases in a quasi-judicial manner giving an opportunity to the claimants to state their case in the light of the report of the Deputy Commissioner

Applying the principles, which have been laid down by the Lordships of the Supreme Court, to the facts of the present case, there is no doubt in my mind that the power of deciding an appeal which has been given to the Commissioner of the Division u/s 12 (1) of the Act is a judicial power. He has to apply his judicial mind before coming to a conclusion whether the order passed by the Deputy Commissioner u/s 11 should be maintained or not. The conclusion on which the learned Commissioner may arrive would affect the rights of the appellants and the decision would be final and sacrosanct. Even the civil Courts'' jurisdiction has been barred. The fact that the appeal has to be filed within a period of limitation and has to bear a court-fee stamp and has to be presented in a particular manner clearly goes to show that the Commissioner, while acting u/s 12 (1) acts more or less, like a Court. His decision is a judicial or in any case a quasi-judicial one.

9. Mr. Gandhi, learned counsel for the respondent, cited, K.V. Srinivasa Iyengar and another v Hindu Religious Endowments Board, Madras and others AIR 1937 Mad 456, Pandu Bala Jagtap Vs. Ramchandra Ganesh Deshpande, and H. Shiva Rao v. The Collector of Madras AIR 1949 Mad. 56, in support of his contention that the order passed by the Commissioner was not a judicial or quasi-judicial order. The cases cited by the learned counsel do not lay down anything which may support him. In any case, in view of the various decisions of the Supreme Court to which reference has been made earlier, it is not necessary to examine these cases in detail.

10. Since it has been held by me that the orders passed by Shri Randhawa on 17th of July, 1961, and 20th of September, 1961, were judicial or, in any case, quasi-judicial orders, they could not be reviewed by his successor Shri R.S. Kang. According to the Full Bench decision of this Court in Deep Chand''s case, the order passed by Shri R.S. Kang on 7th September, 1964, is a nulity. The view of the Supreme Court is also to the same effect as reported in Harbhajan Singh''s case.

11. Mr. Gandhi is not correct in saying that the order was rightly passed by Shri R.S. Kang under sub-section (2) of section 12 of the Act. This sub-section gives a power of revision against any case decided by the Deputy Commissioner. It does not deal with a case as the present one. No power of revision has been given to the Commissioner over an order which has been passed by himself or by his predecessor in exercise of the appellate powers u/s 12 (1). Even on general principles, such a power cannot be countenanced. Roop Chand''s case a decision by the Supreme Court, u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, is highly relevant in this connection. It has been held by their Lordships that once the Government exercises appellate powers, no revision lies to the Government again against its own order.

12. The contention of Mr. Gandhi that the order passed by Shri R.S. Kang is a just order is also not correct. Ranjit Singh had committed a default in the payment of instalments. The Deputy Commissioner passed an order u/s 11 of the

Act. Another chance was given to him by Shri Randhawa to pay the arrears. He, however, did not avail of that opportunity. Then he kept quiet for about 9 or 10 months and after the Chief Minister had expressed his inability to help him, he again kept silent for about one and a half years. His conduct, therefore, disentitles him to any relief at the hands of this Court. Since Bhupinder Singh petitioner has become an auction purchaser of the property, his rights could not be interfered with by Shri R. S. Kang when he passed the impugned order. There is no manner of doubt that there were two parties before Shri R. S. Kang when he passed the order which is under dispute. Looked at from anv angle, therefore, there is no doubt in my mind that the order passed by Shri R.S. Kang on 7th of September, 1964, being totally without jurisdiction, cannot be allowed to stand.

13. In view of what has been stated above, this petition succeeds and the order passed by Shri R.S. Kang, Commissioner, Jullundur Division; on 7th of September, 1964, is hereby quashed. In the peculiar circumstances of the case, there will no order as to costs.