

(1974) 11 DEL CK 0015

In the Delhi High Court

Case No : Civil Writ Appeal No's. 822 and 935 of 1974

Brij Khandelwal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-11-1974

Acts Referred:

Citation : AIR 1975 Delhi 184 : (1975) ILR Delhi 501

Hon'ble Judges : T.V.R. Tatachari, J;M.R.A Ansari, J

Bench : Division Bench

Advocate : R.N. Nath, D.R. Gupta, Niren De and S.S.Chadha, for the Appellant;

Judgement

T.V.R. Tatachari, J.

(1) These are two Civil Writ Petitions. Civil Writ Petition No. 822 of 1974 has been filed by Shri Bri) Khandelwal praying that this Court may .

"(I)issue a writ of prohibition and/or any other appropriate writ, order or direction preventing the respondent from ceding the island of Kachchativu to Sri Lanka without making the necessary amendment to the Constitution; and

(II)issue a writ of mandamus and/or any other appropriate writ, order or direction compelling the respondent to perform the duty imposed on it under the Constitution of India".

(2) The other Civil Writ Petition No. 935 of 1974 has been filed by Shri Shyama Charan Gupta praying as follow? :

"THISHon"ble Court may be pleased to issue the writ of prohibition prohibiting the respondent (Union of India represented by the Secretary, Ministry of External Affairs) from handing over the possession of Kachchativu to Sri Lanka. And or in case if it is found that the transfer has been completed a writ of mandamus be issued to the Union of India to take back the island of Kachchativu from Sri Lanka. And/or to issue a writ against the respondent declaring that the respondent has transferred the island of Kachchativu to Sri Lanka without

jurisdiction and further declare that Union of India or the Parliament have no powers to cede any part of this country. And or to declare that the adjustments permissible under Article 294 have already been completed and Union of India and the Parliament have no power to make further adjustments even with Pakistan. And/or to issue such other Writ, order or directions against respondent which are deemed fit and reasonable in the premises of the present petition."

(3) The relevant averments in this Writ Petition are similar to the averments in Civil Writ Petition No. 822 of 1974 and, Therefore, it would be sufficient to mention the relevant averments in the latter Civil Writ Petition, and in the counter affidavit filed therein by the respondent who is the same in the two writ petitions.

(4) According to the averments in the writ petitions the two petitioners are citizens of India. Shri Brij Khandelwal averred in his writ petition that he came to learn on June 28, 1974, that the sovereignty over 280 acres of Kachchativu Island in the Palk Straits had been agreed to be transferred to the State of Sri Lanka, and that he came to know on the next day, i.e., on June 29, 1974, that the Prime Ministers of India and Sri Lanka had signed a copy of an agreement which had already been signed by the Prime Minister of Sri Lanka and brought to them by the Foreign Secretary of the State concerned. He averred that on learning the same, he felt that the territorial integrity, political independence and sovereignty of India had received a set back on account of the said agreement between India on the one hand and Sri Lanka on the other, and also came to know that many of his Fundamental rights, statutory rights and his rights under the common law were threatened, and the moment the cession takes place, all the said rights would come to an end. He also averred that on India becoming an independent country on August 15, 1947, it succeeded to the rights and duties of the predecessor State, and the territories which formed part of the Province of Madras in British India became the territories of India after its independence, that when India became a Republic on January 26, 1950, the said territories came to be governed by the Constitution of India, 1950, and that Kachchativu Island, which was within the administrative jurisdiction of the Province of Madras at the time of Independence and which continued to be in the Province of Madras on the day when the Constitution of India came into force, has continued to be within the jurisdiction of the State of Tamil Nadu. He alleged that though the Island is uninhabited except when the fishermen from India make use of it for purposes of fishing and except when the festival of St. Anthony is celebrated every year, the island continues to come under the criminal and civil jurisdiction of the courts functioning in the State of Tamil Nadu as well as under the jurisdiction of the Supreme Court, that he understood that the Island belonged to India since the days of Ramayana, and that India had, Therefore, a valid legal claim to the Island on account of various historical facts. He averred that he learnt that the agreement had subsequently been ratified by the Government of India on July 6, 1974, that despite all efforts he could not get a copy of the agreement, and that being aggrieved by the agreement which was entered into

by the Union of India ceding the Island of Kachchativu, a part of the territory of India, and which threatened the very existence of his fundamental rights under Articles 19(1), 21, 25, and 31, the constitutional rights under the Constitution, the statutory rights and the other common law rights, he has filed the present Writ Petition praying for the reliefs which have already been set out earlier in this order.

(5) The petitioner, Shri Khandelwal, also filed an application, C.M. No. 2159 of 1974, praying for grant of stay of the contemplated transfer of Kachchativu Island to the State of Sri Lanka till the final disposal of the Writ Petition. Notices were issued to the respondent Union of India, to show cause why the Writ Petitions should not be admitted. In answer to the notices, the respondent filed similar counter affidavits in the two writ petitions, and we shall mention only the averments in the counter affidavit filed in the Writ Petition of Shri Khandelwal. It was stated in the counter affidavit that the respondent was advised not to deal with the merits of the Writ Petition at that stage but to submit that the Writ Petition was not maintainable and should be dismissed in limine for the various reasons mentioned in the counter affidavit. The reasons given in the counter affidavit were

(I)that the petitioner had no legal right, either constitutional or statutory or otherwise, to make or maintain the writ petition;

(II)that no right of the petitioner was threatened;

(III)that none of the petitioner's fundamental rights under Articles 19, 21, 25(1) and 31(1) was threatened by the impugned agreement;

(IV)that the petitioner had no locus standi to challenge the said agreement as he had no stake in the Island of Kachchativu;

(V)that neither Article 21 nor Article 25(1) nor Article 31(1) had any relevance so far as the grievance in the Writ petition was concerned;

(VI)that in any event, in view of the continuing proclamation of emergency declared by the President on December 3, 1971, under Article 352(1), and in view of Article 358, the impugned agreement could not be challenged, as the petitioner sought to do, by invoking Article 19;

(VII)that the prayer for a writ of prohibition did not lie, as such a writ could be issued only to a Court or a judicial authority with regard to the proceedings pending therein, and that the prayer for a writ of mandamus also did not lie, as the petitioner had no right and there was no statutory duty which the petitioner could claim to have been breached; and

(VIII)that the question raised in the petition concerned a dispute as to the boundary between two independent States, India and Sri Lanka, in the historic waters between the two States, and the same had been settled in a manner fair and equitable to both sides, and that the same ought not to be entertained by

this Court in exercise of its jurisdiction under Article 226 of the Constitution. Copies of the agreement, dated June 26/28, 1974, the map, and the instrument of ratification were annexed to the counter affidavit as exhibits R. I, R. Ii, R. Hi and R. IV.

(7) It was further averred in the counter affidavit that there had been a long standing dispute, dating from very long before the achievement of independence by India and Ceylon regarding inter alia, the question whether the said Island of Kachchativu belonged to the territories of India or Ceylon (now known as Sri Lanka), that the dispute was necessarily connected with the question relating to the boundary line in the waters between the two countries, and that there was no question of cession of any part of the territory of India specified in Article 1(3) and the First Schedule-to the Constitution.

(8) At the time of the hearing of the Writ Petitions for admission, the learned Attorney General submitted that in view of the preliminary objections raised in the counter affidavit as regards the maintainability of the Writ Petitions for the main prayers therein viz., for a Writ of Prohibition and a Writ of Mandamus, and the locus standi of the petitioners to make the said prayers, the said preliminary objections should be heard and decided in the first instance, and that in case the said objections are over-ruled by this Court, the respondent may be given an opportunity to file a further counter affidavit contesting the Writ Petitions on merits. We considered that the submission was a proper one. and, therefore) heard the arguments of the learned counsel for both the parties in the two Writ Petitions on the said preliminary objections, and reserved our orders.

(9) A perusal of the prayers in the two Writ Petitions shows that the petitioners pray mainly for a Writ of Prohibition and a Writ of Mandamus, and that the other prayers for declarations and directions in Civil Writ No. 935 of 1974, are dependent upon the aforesaid two main prayers.

(10) As regards the prayer for a Writ of Prohibition, it is well settled that it lies

"To prevent an inferior tribunal from exceeding "its jurisdiction or even from assuming a jurisdiction which docs not vest in it under law (vide Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others,)."

In East India Commercial Co. Ltd.,Calcutta and Another Vs. The Collector of Customs, Calcutta, , the Supreme Court observed at page 1903 that

"AWrit of Prohibition !s an order directed to an inferior tribunal, forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise."

In Laxman Moreshwar Mahurkar Vs. Balkrishna Jagannath Kinikar and Others, , it was held that Writ of Prohibition docs not lie against Government discharging executive functions. Again, in S.K. Dutt, Income Tax Officer and Another Vs.

Anglo-India Jute Mills Co. Ltd., , it was held that a Writ of Prohibition is not intended to control executive acts or administrative action. Thus, writ of prohibition does not lie against a public Authority acting purely in an executive or administrative capacity. In the present case, the Writ of Prohibition is sought against the Union of India, and the impugned actions of entering into the agreement and the ratification thereof are not judicial or quasi-judicial functions, but are only in the exercise of the executive function of the Government of India. The prayer for a Writ of Prohibition in the Writ Petitions is thus one which does not lie.

(11) As regards the prayer for a Writ of Mandamus, it is again well settled that the petitioner who prays for such a writ should show that he has a legal right to the performance of a legal duty of a public nature by the party against whom the Mandamus is sought (vide *Praga Tools Corporation v .Emunual* AIR 1960 Supreme Court 1306, 1309 and *The State of Madhya Pradesh Vs. G.C. Mandawar*, Further the legal right to compel performance of the public duty must reside in the petitioner himself either solely, or in common with others. It will not, however, be sufficient to show merely that the petitioner has just an interest in the performance of the duty vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . In *Maganbhai Ishwarbhai Patel etc. Vs. Union of India (UOI)* and Another, . the controversy was as to whether an award made by the Indo-Pakistan Western Boundary Case Tribunal may be implemented by a constitutional amendment and not otherwise. The petitioners before the Supreme Court contended that the award may be implemented only by an amendment of the relevant provision of the Constitution, because in giving effect to the award of the Tribunal, cession of Indian territory is involved, while the contention of the Union of India was that the Award merely fixed or demarcated the boundary between the State of Gujarat in India and West Pakistan regarding which there were disputes. In dealing with the said contentions of the parties, Hidayatullah, C.J. referred to the rights claimed by the petitioners who sought writs of mandamus and observed at pages 269 and 270 as under :

"BEFORE we deal with the problem we wish to say something about the standing of the petitioners since it appears to us that most of them have no direct interest to question the action of Government or to raise any controversy regarding the implementation of the Award. Before the hearing commenced we questioned each petitioner as to the foundation of his claim. We discovered that most of the petitioners had no real or apparent stake in the areas now declared to be Pakistan territory. These persons claim that they had and still have the fundamental rights guaranteed to them by Art. 19(1)(d)(e) and (f), that is to say, the right to travel, to reside or settle down, or to acquire and hold property in these areas. None of them has so far made any move in this direction but their apprehension is that they will be deprived of these rights in the future. This, in our opinion, is too tenuous a right to be noticed by the court in administering the law and still less in enforcing fundamental rights. When we communicated our

view at an earlier hearing, some more petitioners came forward. Mr. Madhu Limaye puts forward the supporting plea that he had attempted to penetrate this area to reconnoiter possibilities for settlement, but was turned back. In this way he claims that he had attempted to exercise his fundamental rights and they were infringed. Another party claims to have had a lease of grass lands some ten years ago in this area and he is now to be deprived of the right to obtain a similar lease. Lastly, one of the parties puts forward the plea that he lives in the adjoining territory and thus has interest in the territories proposed to be ceded to Pakistan. These petitioners too have very slender rights, if at all. The only person who can claim deprivation of fundamental rights is Mr. Madhu Limaye, although in his case also the connection was temporary and almost ephemeral. However, we decided to hear him and as we were to decide the question we heard supplementary arguments from the others also to have as much assistance as possible. But we are not to be taken as establishing a precedent for this Court which declines to issue a writ of mandamus except at the instance of a party whose fundamental rights are directly and substantially invaded or are in imminent danger of being so invaded. From this point of view we would have been justified in dismissing all petitions except perhaps that of Mr. Madhu Limaye."

(12) In the present cases, the petitioners merely stated in their Writ Petitions that they are citizens of India, and did not make any averment regarding the nature of the specific right or interest they claim for themselves personally in the Island of Kachchativu. That being so, it has to be held that they have no locus standi to pray for a Writ of mandamus.

(13) Mr. R. Nath, learned counsel for petitioner in C.W.P. No. 822 of 1974, referred to ground No. 1 in the said Writ Petition in which it is averred that the impugned agreement has led to the diminution of the territory of the Union of India, and because of that diminution, his fundamental rights guaranteed under clauses (a) to (g) of Arts. 19(1), 21, 25(1) and 31(1) are threatened. So far as the clauses of Art. 19(1) are concerned, the petitioner cannot invoke the same in view of the continuance of the proclamation of emergency declared by the President of India on December 3, 1971, under Art. 352(1), and in view of Art. 358, Art. 21 and Art. 31(1) have no relevancy at all so far as the petitioner is concerned. As regards Art. 25(1), the learned Attorney General drew our attention to Art. 5 of the impugned agreement in which it was provided that Indian fishermen and pilgrims will enjoy access to visit Kachchativu as hitherto, and will not be required by Sri Lanka to obtain travel documents or Visas for those purposes. It cannot, Therefore, be said that any of the fundamental rights of the petitioner in Civil Writ Petition No. 822 of 1974 has been threatened.

(14) Shri D. R. Gupta, learned counsel for the petitioner in Civil Writ Petition No. 935 of 1974, while admitting that the petitioner in the said Writ Petition did not make any averment in his Writ Petition as regards the nature of the specific right which he claims for himself personally in the Island of Kachchativu, referred to

ground M in the said Writ Petition in which it is stated that by virtue of Art. 297 of the Constitution of India, all lands, minerals, and other things of value under the ocean within the continental shelf of India vest in the Union of India, and argued that the petitioner, as a citizen of India, has a right to collectively or individually enjoy the said properties so vested in the Union Under Art. 297. We are unable to appreciate how the petitioner can claim to have a right to enjoy the aforesaid properties merely because they vest in the Union under Article 297. In any case, the petitioner cannot be said to have such right or interest in the said properties as would give him the locus standi to pray for the issue of a writ of mandamus against the Union of India, in view of the observations of Hidayatullah, CJ. in Maganbhai Ishwarbhai Patel's case (supra) set out above.

(15) For the foregoing reasons, we hold that the petitioners. have no locus standi to pray for a writ of prohibition or a writ of mandamus. We accordingly uphold the preliminary objection raised by the respondent and dismiss the writ petitions in limine, but in the circumstances without costs.