

(1956) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Application No. 667 of 1953

Ch. Moinuddin

APPELLANT

Vs

Deputy Director Military Lands and Cantonments, Eastern
Command and Others

RESPONDENT

Date of Decision : 08-02-1956

Acts Referred:

Constitution of India, 1950 — Article 13, 13(2), 14, 226

Citation : AIR 1956 All 684

Hon'ble Judges : V. Bhargava, J; Agarwala, J

Bench : Division Bench

Advocate : D.P. Agarwala, for the Appellant; Makund Behari Lal and Sripat Narain Singh, for the Respondent

Final Decision : Disposed Of

Judgement

Agarwala, J.—This is a writ petition directed against the Deputy Director of Military Lands and Cantonments, Eastern Command, Calcutta, the Military Estates Office, Agra Circle, Agra Cantonment, and the Collector of Moradabad. The applicant Moinuddin claims to be a tenant of agricultural land measuring 13.42 acres situated at Rajabpur, par-gana Amroha, district Moradabad. The land belongs to the Government for the purposes of the military department. The opposite party No. 2 the Military Estate Officer, Agra, being in charge of the land, filed a suit for ejectment of the applicant on 16-9-1952 which is still pending.

On 9-7-1953 the Deputy Director, Military Lands and Cantonments, Eastern Command, Calcutta, served a notice upon the petitioner asking him to vacate the aforesaid premises within 15 days. This notice was issued u/s 3, Government Premises (Eviction) Act (Act No. 27 of 1950). It was received by the petitioner on 13-7-1953. On 28-7-1953 opposite party No. 2 the Military Estate Officer, Agra, intimated to the petitioner that in pursuance of the notice dated 9-7-1953 he would come and take possession of the disputed land on 8-8-1953 by use of force if necessary.

On 6-3-1953 the petitioner filed the present writ petition in this Court praying that a writ, direction or order in the nature of a writ of mandamus be issued against opposite party No. 2 directing him not to disturb the applicant's possession over the land in dispute or to take any action whatsoever to evict the applicant from the land or to take away the crop of the applicant, and further that the opposite party No. 3 be directed not to aid the opposite party No. 2 in carrying out his intention.

2. The grounds set forth in the petition for the reliefs claimed were:

(1) that the opposite party No. 1 was not a duly constituted authority within the meaning of Section 3(2) read with Section 2(a), Government Premises (Eviction) Act; (2) that the land in dispute was not premises within the meaning of Section 2(b) and, (c) of the said Act; (this ground was based on the fact that the land was an open piece of land whereas "premises" were formerly defined in Section 2 (b) as meaning a building or part of a building); (3) that the Government Premises (Eviction) Act (No. 27 of 1950) was beyond the legislative competence of the Parliament. (4) that the Government Premises (Eviction) Act infringed the fundamental rights guaranteed under Articles 14, 19 and 31 of the Constitution and was therefore void under Article 13 of the Constitution; and (5) that the applicant was a tenant of the land and was not in unauthorised occupation of the land.

3. The reply of the opposite parties was that the Deputy Director of Military Lands and Cantonments, Eastern Command, was a competent authority within the meaning of Section 2(a) of the Act and reference was made to the Government of India Notification No. S. R. O. 133 dated 19-4-1952; that the term "premises" having been amended by Section 25, of Requisitioning and Acquisition of Immovable Property Act (No. 30 of 1952), open lands are also now included within the meaning of the words "government premises"; that the land in question is not an agricultural land but is a military camping ground; that the applicant is in unauthorised occupation because the lease in his favour expired on 20-6-1949; that an appeal should have been preferred to the Government of India, Ministry of Defence, New Delhi, u/s 5, Government Premises (Eviction) Act of 1950; and lastly that the orders issued to the petitioner by the opposite parties 1 and 2 were perfectly right.

4. Only two points have been pressed before us by the learned counsel for the petitioner and the rest have not been pressed. These points are (1) that the Government Premises (Eviction) Act is invalid because it is beyond the legislative competence of the Union Government, and reference is made to entry No. 32 of List I of the Constitution and it is urged that under this entry the Union can legislate on the property belonging to the Union but when the property is situated in a State, then the Union legislation is subject to the legislation of the State and it is pointed out that the Government Premises (Eviction) Act is contrary to the provisions of the U. P. Tenancy Act, a State Legislation; and (2) that the Act is void because it contravenes the provisions of Articles 14, 19 and 31 of the

Constitution.

5. On behalf of the State, beyond contesting the two points raised by the petitioner, a preliminary point is also raised namely that this Court is incompetent to issue the writ prayed for as opposite party No. 1, the Deputy Director of Military Lands and Cantonments, Eastern Command, Calcutta, not being within the jurisdiction of this Court, no writ can be issued to him and further that opposite party No. 2 the Military Estates Officer, Agra, who is within the jurisdiction of this Court is merely carrying out the orders of the opposite party No. 1 and as such no writ can be issued either to opposite party No. 1 or to opposite party No. 2.

6. As the preliminary point touches the jurisdiction of this Court to issue the writ prayed for, it must be taken up first. In support of the contention raised by the Advocate General on behalf of the opposite parties that this Court has no jurisdiction to issue the writ prayed for, reliance has been placed upon some of the observations in a Full Bench decision of this Court in Azmat Ullah and Others Vs. The Custodian, Evacuee Property, U.P., Lucknow, and on a decision of a Division Bench of this Court in Gangadhar Baijnath and Others Vs. Income Tax Investigation Commission and Others, .

7. It is true that the jurisdiction of the High Court under Article 220 can be exercised within the territories in relation to which its ordinary jurisdiction extends, and further a direction, order or Writ under that Article can be issued only to a person or authority residing within those territories. The opposite party No. 1 resides at Calcutta and not within the territories of Uttar Pradesh over which this High Court exercises jurisdiction.

This matter has been now placed beyond doubt by two decisions of the Supreme Court in "Election Commission of India v. Venkata Rao", AIR 1953 SC 210 (C) and K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., . The mere fact that the official or authority concerned whose central office is beyond the jurisdiction of the Court has also an office or property within the jurisdiction of this Court will not give this Court a jurisdiction to issue a direction, order or writ against him, and the view taken by a Full Bench of this Court in Maqbulunissa and Others Vs. Union of India (UOI) and Another, , must be deemed to have been overruled by the Supreme Court decision in "K. S. Rashid"s case", (D).

This Court has therefore no jurisdiction to issue a direction, order or writ against opposite party No. 1. But the petitioner does not ask for the issue of any direction, order or writ against him. He only asks for a direction, order or writ to be issued to opposite party No. 2 who admittedly resides within the jurisdiction of this Court. Opposite party No. 2 is however merely executing the order issued by the opposite party No. 1 and the question is whether this Court should issue a direction, order or writ to opposite party No. 2 for abstaining from carrying out the order issued by the opposite party No. 1.

8. In "(S) Azmat Ullah and Others Vs. The Custodian, Evacuee Property, U.P., Lucknow, ", a Full Bench of this Court held that a writ of Mandamus could not be issued to the Custodian of Evacuee Property, U. P., commanding him to treat as a nullity an order made by the Custodian General, New Delhi, in the exercise of his revisional power u/s 27, Administration of Evacuee Property Act, 1950, so long as that order was a valid and subsisting order. But in that case the order passed by the Custodian General was within his jurisdiction to make. What the order of the Court would have been if the Custodian General's order were totally without jurisdiction was left undecided in that case. It was expressly stated by the Pull Bench that :

"It has not been pointed out that the Custodian General had no jurisdiction to make his order of 21-11-52, in the exercise of his revisional powers under Section 27 of the Act; it is not therefore necessary for us to consider the legal issues which would arise were he to act in excess of his jurisdiction."

In "(S) Gangadhar Baijnath and Others Vs. Income Tax Investigation Commission and Others, ", a Bench of this Court consisting of V. Bhargava and M. L. Chaturvedi, JJ., had a case under the Income Tax Act. The facts were that on the basis of the report submitted by the Investigation Commission, the Government of India, Ministry of Finance, issued an order dated 7-6-52 u/s 8(2), Taxation of Income (Investigation Commission) Act directing reassessment of the petitioners' firm in Uttar Pradesh & its partners on the escaped income.

Thereafter, the Income Tax Officer, Kanpur, issued notices to the petitioners u/s 34, Income Tax Act. It was not disputed that those notices were issued for purpose of initiating proceedings u/s 34 in pursuance of the directions of the Central Government given u/s 8(2) of Act 30 of 1947. After the service of those notices the petitioners moved a writ petition in this Court and impleaded the Income Tax Investigation Commission, New Delhi, The Government of India, New Delhi, The Central Board of Revenue, New Delhi, and the Income Tax Officer, Kanpur as opposite parties.

The prayer was for various writs against those authorities. Against the Income Tax Officer, Kanpur, a writ in the nature of prohibition was sought, prohibiting him from continuing further proceedings initiated in pursuance of the Central Government's order on the ground that subsequent proceedings which were going to be taken by him would offend Article 14 of the Constitution. It was held by the Bench :

"(i) that this Court "was not competent to issue writs against Income Tax Investigation Commission, Government of India, and Central Board of Revenue, as those parties were situated at New Delhi which was outside the territorial jurisdiction of the Allahabad High Court."

(ii) that so far as Income Tax Officer, Kanpur, was concerned, if it became necessary for the High Court to issue a writ to the Income Tax Officer, Kanpur, on the ground that the proceedings, which had been taken earlier by other persons

or bodies so as to invoke his jurisdiction, were void, it might not be possible for it to issue a writ to the Income Tax Officer also, because no such writ could be issued unless the previous void orders were quashed," and that for the purposes of the proceedings in the Court the orders of the Central Government had to be treated as valid; and

(iii) that a writ however could be issued to the Income tax Officer, Kanpur on the ground that subsequent proceedings which were going to be taken by him would offend against Article 14 of the Constitution."

9. In that case the objection that it was not within the jurisdiction of this Court to issue a writ of Certiorari against the Investigation Commission which was situated at Delhi to quash its findings or to issue any writ to the Government of India Ministry of Finance in respect of its order dated 7-6-1952 was not contested on behalf of the petitioners, nor was it essential to decide that point as the petition succeeded on the alternative ground that the subsequent proceedings which were going to be taken by the Income tax Officer, Kanpur would themselves offend against Article 14 of the Constitution.

The Bench, consequently did not express any final opinion whether it was possible to issue a writ to the Income Tax Officer on the ground that the proceedings which had been taken earlier by other persons or bodies so as to invoke their jurisdiction were void and left the question open by saying that it may not be possible to issue such a writ. The question which has arisen in the instant case and which has been pointedly argued is that the Government Premises (Eviction) Act (No. 27 of 1950) being ultra vires and void under Article 13 of the Constitution, orders passed under it would be totally null and void and would have no existence in the eye of law.

It is well settled that an Act which is wholly ultra vires as being in contravention of the fundamental rights guaranteed by the Constitution would be absolutely null and void under Article 13 of the Constitution. Clause (2) of Article 13 of the Constitution provides :

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to that extent of the contravention, be void."

10. Where a law is void it has no existence in the eye of "law and therefore an order purporting to have been passed under it is a nullity & may be ignored altogether. It is not possible to say that the order must be obeyed so long as it is not set aside or quashed by a competent Court of law. In "Norton v. Shelby County" (1886) 30 Law Ed. 178 at p. 188 (F), it was held that :

"an unconstitutional Act is not a law; it confers no right, it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation as inoperative as though it had never been passed."

11. Where therefore an order of an official or authority who is not resident within

the jurisdiction of the Court is a total nullity and is altogether inoperative, it may be ignored, and the official who resides within the jurisdiction of the Court and who intends to put such a null and void order into effect may be restrained because in such a case this Court will not be issuing even indirectly any direction, order or writ to the official or body residing beyond the limits of the jurisdiction of this Court. The preliminary objection therefore fails provided we hold that the Government Premises (Eviction) Act (No. 27 of 1950) is ultra vires.

12. We have given reason in "Brigade Commander, Meerut v. Ganga Prasad", Special Appeal No. 201 of 1954 : ((S) AIR 1956 All 507) (G), for holding that the Act contravenes the provisions of Article 14 of the Constitution and is therefore void under Article 13(2). It is therefore not necessary to consider whether the Parliament lacked legislative competence to enact the said Act in view of the provisions of the U. P. Tenancy Act, or whether the aforesaid Act was void as contravening Article 19 and 31 of the Constitution.

13. We therefore direct the opposite party No. 2 not to disturb the applicant's possession over the land in dispute or to take any action whatsoever to evict the applicant from the land or to take away the crop of the applicant in execution or in pursuance of the order of opposite party No. 1 issued u/s 3, Government Premises (Eviction) Act, 1950.