

(1952) 08 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Writ Application No. 125 of 1951

Gangadhar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-08-1952

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1953 Raj 71

Hon'ble Judges : K.N. Wanchoo, C.J;D.S. Dave, J

Bench : Division Bench

Advocate : B.B. Sharma, for the Appellant; R.A. Gupta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Gangadhar under Article 226 of the Constitution of India for a writ of certiorari and prohibition against an order of the Custodian of Evacuee Property, Rajasthan, and has arisen in the following circumstances.

2. On the basis of an anonymous petition dated the 7th October, 1948, two bullocks were seized by the Sub Inspector of Police at a "mela" at Bharatpur. Enquiries started in connection with these bullocks, and it was said that they belonged to certain Muslims of village Sonoti, who had left for Pakistan. During the course of these enquiries, allegations were made that Gangadhar applicant and Prabhu, one of the opposite parties, who were the persons in, whose possession the two bullocks had been found, had looted the houses of Muslims of Sonoti along with others after these Muslims had run away. On these allegations, the Deputy Custodian of Evacuee Property started an enquiry about the alleged looting. Eventually, on the 22nd of September, 1950, the Deputy Custodian, Bharatpur, decided the matter. He ordered that the two bullocks should remain in the custody of the Supurddar, presumably with the idea that they would be sold up, and the proceeds credited to the Evacuee Property Fund. He further ordered

that Gangadhar and Prabhu should pay Rs. 3946/-, which he assessed as the value of the property that had been looted by them. It may be mentioned that except for these two bullocks, no property of any kind was ever found in the possession of Gangadhar or Prabhu.

3. Aggrieved by this order, the applicant went in appeal to the Custodian, who decided it on the 16th of March, 1951. So far as the payment of Rs. 3946/- was concerned, the Custodian came to the conclusion that there was not sufficient evidence to warrant the making of that order, and that further enquiries should be made in the matter. So far as the two bullocks were concerned, the order of the Deputy Custodian was upheld, but though there was no such request before the Custodian, he varied it and ordered that Rs. 1200/- should be recovered from the applicant. The present application was made in November, 1951, when the Deputy Custodian started realising the sum of Rs. 1200 as arrears of land revenue in September, 1951.

4. A preliminary objection has been raised on behalf of the Custodian that as it was open to the applicant to go in revision to the Custodian. General, and as he did not do so, we should not grant him any relief, as he did not avail himself of the alternative remedy open to him. There is no doubt that generally speaking when there is an alternative remedy open to a party, this court will not interfere under its extraordinary jurisdiction. But the case of a writ of prohibition stands on a somewhat different footing from other writs. It has been held in a number of cases that where the superior court comes to the conclusion that an inferior tribunal is exercising jurisdiction which is not vested in it, the superior court will issue a writ of prohibition, even though there may be an alternative remedy. Reference may be made to Halsbury's Laws of England, Second Edition, Volume IX, paragraph 1397, where the following passage occurs:

"The court, in deciding whether or not to grant a writ of prohibition, will not be fettered by the fact that an alternative remedy exists to correct the absence or excess of jurisdiction, or an appeal lies against such absence or excess".

Reference may also be made to -- "Madan Gopal Kabra v. The Union of India 1951 R.L.W. 56", --"Jeewan Ram v. The State of Rajasthan 1952 R.L.W. 71 and -- "Rangraj v. Gram Panchayat Khinwel 1952 R.L.W. 184. We therefore, overrule the preliminary objection.

5. The case may be divided into two parts. The first part is about the order of the Deputy Custodian, by which Rs. 3946/- were to be realised from the applicant. That order has been set aside by the Custodian, but he has ordered further enquiry to be made into the matter. We must say that the order of the Deputy Custodian, passing what in effect amounts to a decree against the applicant, is justified by no law whatsoever. Learned counsel for the Custodian was unable to point out any provision either of the evacuee property law of the former covenanting State of Matsya or of similar laws passed by the Rajasthan State or the Union, from time to time in support of the order. The evacuee property law

may authorise the Custodian to seize the property of evacuees if he can get hold of it after going through certain formalities prescribed by it. But if the property is not to be found at all, and he cannot get hold of it, there is no provision in any law relating to evacuee property which authorises him or his Deputy to hold on the basis of evidence that certain property was evacuee property, and had been taken away by certain persons, and though it was not available at all, pass what amounts to a decree against the person whom he suspects of having made away with the property. So far, therefore, as the order relating to the sum of Rs. 3946/- is concerned, it is, in our opinion, completely without jurisdiction.

It has been urged that the Custodian has merely ordered further enquiries to be made, and that there is nothing wrong with this order. If the judgment of the Custodian showed that the Deputy Custodian was to pursue enquiries for the purpose of discovering the property, which was said to have been looted from Sonoti, there would have been no necessity for interference. But the judgment, as it stands, really means that the Deputy Custodian can go on to do what he did before, namely make an order for payment of Rs. 3946/- against the applicant, provided he can find better evidence in support of it. But that, in our opinion, is not justified by any provision of the evacuee property law, and, therefore, the Deputy Custodian must be prohibited from making any enquiries for this purpose. We may, however, point out that this does not mean that if the Deputy Custodian can actually find out any property, he should not try to do so.

6. The other part of the order relates to the two bullocks and one she-buffalo. The Deputy Custodian merely said that the bullocks would remain with the Supurddar. The Custodian upheld that order, but by some odd process of reasoning, changed it and passed an order to the effect that the applicant should pay Rs. 1200/- with respect to the two bullocks and one buffalo. So far as the buffalo is concerned, it is enough to say that it has nowhere been found. There is no law under which the Deputy Custodian or the Custodian can pass an order of this kind about property which has no existence. As for the two bullocks, we again do not see how the Custodian has jurisdiction in the circumstances of the present case, to order the applicant to pay Rs. 1000/- as the price of the bullocks. We are of opinion that this order of the Custodian must also be set aside. Here again we want to make it clear that it is open to the Deputy Custodian concerned to sell the bullocks if he so desires.

7. We, therefore, allow this application, and prohibit the Deputy Custodian from making any enquiries as to looted properties with the object of making an order for payment of Rs. 3946/- or any other amount against the applicant. We also prohibit opposite parties Nos. 2 and 3, namely, the Custodian and the Deputy Custodian, from realising Rs. 1200/- from the applicant. We make it clear that this does not mean that the Deputy Custodian cannot take possession of any looted property of Muslim evacuees of Sonoti, if he can find it, and is in law entitled to take possession of it, or sell the two bullocks, if he is authorised to do so. The applicant will get Rs. 50/- as costs of this application from opposite

parties Nos. 2 and 3.