
(2018) 12 RAJ CK 0215
In the Rajasthan High Court
Case No : Civil Writs No. 3572 Of 2001

Jagannath Meena

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 04-12-2018

Acts Referred:

Citation : (2018) 12 RAJ CK 0215

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Rajvir Sharma, Dharmendra Pareek

Final Decision : Allowed

Judgement

1. The petitioner by way of this writ petition has challenged the departmental proceedings initiated against him vide memorandum dated 14.1.1999 in relation to the action taken under the Rajasthan Lands Summary Settlement Act, 1953 whereby he had passed the orders in judicial capacity directing for opening mutation of land measuring 1.93 hectares in favour of one Ganga Charan S/o Mool Chand. The allegation against the petitioner was that the action was contrary to the provisions of law and beyond jurisdiction and as the land was 'Siwai Chak' land, therefore, could not have been entered in the name of Ganga Charan S/o Mood Chand.

2. The counsel for the petitioner submits that the departmental proceedings could not have been initiated with regard to his decision taken in quasi judicial capacity as a Asstt. Settlement Officer, Kota and passing orders under Sec.5 of the aforesaid Act of 1953. The counsel further submits that the order passed by him was appealable and infact during the pendency of this writ petition, a regular suit was filed by the UIT, Kota claiming the said land to be in its name and findings have been arrived at that the land was not Siwai Chak i.e. Government land and was in the name of UIT.

The order passed by the petitioner was on the basis of documents available

before him wherein the said Ganga Charan had claimed the said land to have been allotted to him by the State Government. Ganga Charan and UIT were parties to the revenue suit preferred by the UIT and taking into consideration the aforesaid facts, a charge-sheet could not have been issued to the petitioner in relation to his order dated 1.3.1985 in the year 1999.

The counsel also submits that the charge-sheet was highly belated and on that count also, same is liable to be set aside.

3. Per contra, counsel appearing for the respondent submits that the petitioner had illegally made an entry in the revenue record of the disputed number in the name of Ganga Charan. The UIT was unnecessarily dragged into litigation for correction in the entry of revenue record. The delay in initiating proceedings after 14 years was not in the knowledge of petitioner and it came only in his knowledge in the year 1998 whereafter the charge-sheet was issued.

4. I have heard learned counsel for the parties and find that this court vide order dated 27.9.2001 had admitted the writ petition but did not restrain the respondents with the departmental enquiry initiated vide charge-sheet dated 14.1.1999. In the ordinary course, charge-sheet ought not be interfered with at the initial stage and the inquiry ought to be allowed to be continued. In the opinion of this court, the stage is pre-mature, no one should shy from facing the inquiry.

5. In the present case, it is informed that the petitioner has already attained the age of superannuation in March, 2007 and 11 years have gone by. The question with regard to whether departmental action can be initiated on the basis of judicial decision taken by an Officer while sitting in judicial/quasi judicial capacity has been a matter of examination by various courts including the Apex Court. The Division Bench in Gauri Shankar Mishra Vs. State of Raj and ors. reported in 1987(II) RLR 560 has held that where the mutation is opened without jurisdiction, the departmental action against the Officer was not called for and it would not amount to misconduct unless there is an allegation of malafide intention. In 1993 (2) SCC 49- Union of India and anr. Vs. R.K.Desai, the Apex Court has held as under:

"10. though, these cases relate to sanction under Section 197 of Criminal Procedure Code of 1898, yet the tests laid down as to what would constitute proper exercise of power by a public servant, could be discerned. These principles will constitute the tests for launching disciplinary proceedings as well.

11. The office may occasion the bribe. But it does not mean because the officer is exercising its quasi judicial functions, he would not be amenable to judiciary proceedings.

12. We do not intend to lay down precisely in what cases disciplinary proceedings would lie and in what cases they do not lie because embarking upon the task of drawing such a line is cast with peril. Indeed, it is difficult to draw such a line

without taking into account the concrete facts and circumstances of a case. But we are certain that if there is some degree of culpability in a large sense, disciplinary proceedings can be taken."

6. In (2006) 5 SCC 680 (Union of India and ors. Vs. Duli Chand), examining other aspects and considering earlier judgment of Union of India Vs. K.K.Dhawan (1993) 2 SCC 56; Government of Tamil Nadu Vs. K.N.Ramamurthy, (1997) 7 SCC 101; and Zunjarrao Bhikaji Nagarkar Vs. Union of India, (1999) 7 SCC 409, the three judges bench reiterated the principles laid down in K.K.Dhawan's case (supra) holding the law laid down in Zunjarrao Bhikaji Nagarkar's case (supra) as contrary to it and as no one a good law. In K.K.Dhawan (supra), the Apex Court held as under:

"28. (I) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers.

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great'."

7. In view of above, thus it is only in the aforesaid circumstances that an inquiry can be initiated. A look at the present case goes to show that the Officers have been alleged to have acted beyond their jurisdiction. It is not the allegation that he had unduly favoured a party. It is also not the case where he had alleged to have been actuated by corrupt motive or that he had acted negligently or omitted the prescribed conditions in exercise of the statutory powers. It is also not the case of recklessness or misconduct nor it is a case of unbecoming of having acted in a manner which is unbecoming of a government servant.

8. In view thereof, this court does not find an allegation to come within the ambit of those conditions as quoted in K.K.Dhawan's case (supra). It is further noted that the allegations in the charge-sheet are of having caused loss to the State Government which is not factually made out in view of judgment passed by revenue court holding the land to be in the name of UIT, Kota and not in the name of State Government. The contention of the State Government in the revenue suit has not been accepted that the land belongs to Government as an agricultural land. The said person in whose name the petitioner had entered the land has contested the revenue suit wherein also he has alleged that the said land was allotted to him by the State Government.

9. In any case which is presented before the judicial Officer or an Officer exercising quasi judicial powers, a finding has to be arrived at that on the basis of contentions raised before him, such a contention may be later on found to be incorrect or even the case may be found to be decided without jurisdiction. In some cases, applications are moved under O.7 R.11 CPC for dismissing the suit at the initial stage but the concerned court/revenue court may reject the application under O.7 R.11 CPC. Merely because the said application may be subsequently allowed at the appellate stage, would not mean that concerned Officer has misconducted himself. The very purpose of Judicial Officers Protection Act, 1850 is to protect action of an Officer who is exercising judicial/quasi judicial powers from allegations against his acts done in good faith. Thus viewed, it is the element of good faith which is necessary to be examined. While exercising the powers, action is taken against the Officer who has exercised his powers in judicial/quasi judicial capacity.

10. In the present case, allegation is only of having exercised jurisdiction not vested in him, and of having caused loss to the State Government on account of decision taken, which is factually found to be not made out as the lagnd was in the name of UIT. Thus, in view of this court, departmental proceedings could not have been initiated. Similar view was taken by me in the case of Moola Ram Choudhary Vs. State of Rajasthan (SBCW Pet. No.607/2000) decided on 20.11.2018.

11. Accordingly, the writ petition is allowed. The departmental proceedings initiated against the petitioner vide order dated 14.1.1999 are quashed and set aside. The petitioner who has already attained the age of superannuation in 2007, would be entitled to all consequential benefits including retiral benefits which have not been released to the petitioner on account of pendency of this case. The petitioner would also be entitled to receive interest on the retiral benefits including gratuity @9% per annum. The exercise for release of retiral benefits shall be done within a period of three months henceforth.

12. No costs.