

(1974) 09 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 889 of 1965

Kailash Chandra and Others

APPELLANT

Vs

Sohan Lal and Others

RESPONDENT

Date of Decision : 26-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (1974) RLW 529 : (1974) WLN 833

Hon'ble Judges : B.P. Beri, C.J.;D.P. Gupta, J

Bench : Division Bench

Judgement

B.P. Beri, C.J.—This is a petition under Article 226 of the Constitution of India, wherein the petitioner prays that the orders of the Additional Commissioner II, Jaipur, dated August 16, 1960 and that of the Board of Revenue, Rajasthan, Ajmer, dated August 11, 1985 be quashed and the decree of the Assistant Collector (S D O), Alwar, dated November 30, 1957, and June 13, 1960, be restored.

2. Way back on January 6, 1888, a patta was issued by the then Alwar State in the name of ancestor of the petitioners nomad Mansa Ram, for the purpose of the constrution of Dharmashala, house, cultivating an orchard and digging of well for the benefit of the passengers On May 24, 1949, the petitioner Badriprasad gave a Theka to respondents Nos. 1 and 2 for a period of 5 years and the consideration agreed upon was that the respondents Nos 1 and 2 will pay Rs. 400/ per annum by way of Theka money On September 16, 1957, the respondent) made default in the payment and a sum of Rs. 600/-became due for a period of 11/2 years, adding intrerest Rs. 80/. thereto, petitioner Badri Parsad (since deceased) instituted a suit in the Court of Sub Divisional Officer, Alwar On November 30, 1957, the suit was decree for Rs. 620/-An appeal was taken before the Additional Commissioner, Ajmer, but it was rejected on July 12, 1958, The matter was then taken to the Board of Revenue which, by its judgment datpd July 27,-1959, remanded the case to the Court of Assistant Collector

(S.D.O), Alwar, to decide whether Sections 3 and 4 of the Rajasthan Agricultural Rent Control Act, 1954 (hereinafter referred to as "the Act") applied or not. The case came before the Assistant Collector (S.D.O). On June 13, 1960, he expressed the view that the provisions of Sections 3 and 4 of the Act were not applicable and he again awarded a decree to Badri Parsad in the sum of Rs. 620/-. An appeal was taken by the respondents before the Additional Commissioner II, Jaipur, who expressed the view that even though the land in dispute was not duly assessed u/s 4, but the assessment of land revenue in regard to the neighbouring land may be taken as a standard and he accordingly reduced the decree to the sum of Rs. 241/5/-. This time it was Badri Parsad, who went up to the Board of Revenue and the learned members of the Board of Revenue by their judgment dated August 11, 1965, agreed with the view taken by the learned Additional Commissioner II, Jaipur. Still dissatisfied Badri Parsad filed the present writ petition.

3. During the pendency of the petition Badri Parsad died and his legal representatives Kailash Chandra and others have been brought on record.

4. The respondents have joined the issue and reiterated their submission, which they had successfully made before the learned Additional Commissioner II, Jaipur, and the Board of Revenue, Ajmer.

5. The Act was designed to provide for the fixation of maximum rents recoverable by landholders in the districts of Alwar and Bharatpur and also for making provision for the law made in this behalf to be extended to other areas. Section 3 of the Act lays down that notwithstanding any custom, usage or practice to the contrary or anything contained in any law, enactment, rule, decree, order, agreement or instrument, no landholder shall recover or be deemed entitled to recover as cash rent for any holding in an area to which this Act for the time being applied, an amount exceeding twice the land revenue assessed on such holding or the cash-rent fixed u/s 4 of the Act. It is not in dispute that this Act applied to the area of the erstwhile State of Alwar where the land is situated. Nothing more needs be noted in regard to Section 3 because both the learned Additional Commissioner, II, Jaipur, as well as the Board of Revenue, have clearly held Section 3 to be inapplicable to this case because no land revenue was assessed on the land in question, Section 4 on which reliance placed by the Additional Commissioner, the Board, and the learned Counsel for the respondent read as follows:

4. Conversion of kind-rents into Cash-rents: In areas to which this Act is made applicable the Tehsildar shall on his own motion or on application being made to him in this behalf, fix cash rents on the basis of assessed revenue rates in the adjoining (sic) villages for similar soil classes. The rates so fixed shall be announced in the village and posted at a conspicuous place in the Tehsil headquarters and village Panchayatghar. Appeals against orders of the Tehsildar shall be heard and disposed of by the Collector and shall be filed within a period of 30 days from the date of the order. The order of the Collector shall final.

The Board of Revenue observed as follows:

Here the cash-rent payable by the appellant to the Government is capable of being fixed and it is that cash rent which the appellant can charge. It has been rightly held therefore by the learned Additional Commissioner that the appellant was only entitled to the payment of arrears of rent according to the 3 times Chahi rent already fixed for the village and the question therefore of the cash-rent in the holding does not arise.

6. Now it is not in dispute that no cash rent was fixed in regard to this holding, because neither suo moto nor any application did the Tehsildar notify the fixation of cash rent for the area in which the land in dispute is situated. The reasoning given by the learned members of the Board of Revenue suffers from an obvious fallacy of begging the question. The argument is that because rent is capable of being fixed in the village, therefore, that becomes the standard rent for the holding in question. In our opinion the conclusion is erroneous. Section 4 provides for a given situation, prescribes a procedure and is appealable order. The steps having not been followed, it was unwarranted in law to apply the provisions of Section 4 to the facts of this case by analogy. After having applied Section 4 the learned members of the Board then travelled to Section 3 and observed that because the land was situated in urban area the cash rent could not be more than 3 times of land revenue of Chahi land. This was also erroneous because the basic premise was erroneous.

7. Although in the petition grounds have been raised regarding the validity of the Act but no arguments were advanced on the subject and, therefore, we need not say anything about it.

8. Now comes the question of what relief are the petitioners entitled? On behalf of the respondents it was urged that the petitioners were only entitled to get the order of the Board of Revenue quashed. Reliance was placed on *Prem Sagar v. S.V.O.I Company* AIR 1965 SC 112. In para 22 of the judgment the Supreme Court has observed:

Incidentally, we ought to point out that even if the Division Bench was right in holding that the impugned order should be corrected by the issue of a writ of certiorari, it would have been better if it had not made its own findings on the evidence and passed its own order in that behalf. In writ proceedings if an error of law apparent on the face of the record is disclosed and a writ is issued, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would, we think be inappropriate for High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted Tribunals.

9. Before the Supreme Court it was an employee of Messrs. Standard Vacuum On Company, Madras, who had filed an appeal before the Addl. Commissioner for workmen's compensation u/s 41 of the Madras Shops and Establishments Act,

1947 The Commissioner recorded the evidence of the parties and came to the conclusion that the employee Prem Sagar was the servant of Messrs. Standard Vacuum Oil Company, Madras, and he was not occupying the position of management. The oil Company challenged the decision of the Commissioner before the High Court by means of a writ. Balakrishna Ayyar, J, took the view that the appellant was in a position of management and he did not agree with the conclusion of the Commissioner, but held that because the question involved was one of fact, it was not open to him issue a writ of certiorari. This decision was challenged by the respondent under Letters Patent before a Division Bench of the Madras High Court which held that the view taken by Balakrishna Ayyar, J, was an unduly narrow view about the scope of the High Court's jurisdiction under Article 226 and allowed the writ of the Company. It was in this context that the aforesaid observations were made by their Lordships of the Supreme Court. In the case before us, both, the learned Additional Commissioner II, Jaipur and the learned members of the Board of Revenue proceeded on the assumption that the rent was payable by the Thekedar in accordance with the standard rent fixed u/s 4 when no such rent was fixed. It is the petitioners' case before us that there was no fixation of cash rent as provided in Section 4 of the Act. The question, therefore, which confronts us for an answer is that what relief should be given in a situation such as this.

10. Learned Counsel for the petitioners has brought to our notice a number of cases from which the nature of the relief that can be granted in a writ of certiorari, can be spelt out. The first is Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, In this case in an election to the House of People in 1952, Ahmed Ishaque was declared elected. The election petition of Ahmed Ishaque was upheld. Shri Kamath submitted a petition under Article 226 of the Constitution in the High Court of Nagpur praying for the issue of a writ of certiorari for quashing the decision of the Election Tribunal on the ground of its being illegal and without jurisdiction. The writ petition was rejected. On a certificate an appeal was filed before the Supreme Court and their Lordships of the Supreme Court allowed the appeal and quashed the judgment of the High Court as well as of the Election Tribunal and set aside the whole election. The relevant observations in this context are contained in para 38, which reads:

In the result, we must hold that in maintaining the election of the first respondent on the basis of 301 votes which were liable to be rejected under Rule 47(1)(c) the Tribunal was plainly in error. Mr. Chatterjee would have it that this error is one of jurisdiction. We are unable to take this view, because the Tribunal had jurisdiction to decide whether on a construction of Section 100(2)(c) it could go into the fact of breach of Rule 23, and if it committed an error, it was an error in the exercise of its jurisdiction and not in the assumption thereof. But the error is manifest on the face of the record and calls for interference in "certiorari".

11. Thus even in a case where there was a manifest error on the face of the record, the entire proceedings were quashed and the election was set aside.

12 The next case is Narendar Kumar and Others Vs. Custodian General of Evacuee Property in India, "P" New Delhi and Others, In this case Gangadhar Vidhani had sold his house for Rs. 26,500/ on 26-7 45 to Mst. Sultan Jahan Begam under a sale-deed, Mst. Sultan Jahan Begam migrated to Pakistan and the house became anr vacuee property in the year 1948 and vested in the Custodian. In February 1949 Narendra Kumar and others filed a suit in a Civil Court at Delhi claiming that the sale by their father of the joint family property during their minority was without legal necessity and would not affect the right of the petitioners The Custodian contested the jurisdiction of the Court under the provisions of Section 43 of Ordinance 27 of 1949, which is the same as Section 45 of the Act of 1960, and an issue was framed on the point, besides issues regarding the validity of the sale and the nature of the property. On July 10 1950, the parties arrived at a compromises that if the plaintiffs deposited Rs. 26,000/- in Court by August 22, 1950, their suit would be decreed and failing which the suit would stand dismissed. The amount was deposited and the suit was decreed, Subsequently the authorised Deputy Custodian by his order dated September 30, 1954, held that the decree of the civil court was void for want of jurisdiction and the property continued to be an evacuee property. The petitioners were given liberty to withdraw the amount of Rs. 26,000/-, deposited by them. A revision application was filed before the Deputy Custodian-General, who upheld the order of the authorised Deputy Custodian. On a petition under Article 226 of the Constitution, a writ of certiorari was issued and the orders of the authorised Deputy Custodian and the Deputy Custodian-General were quashed on the ground that they suffered from error manifest on the face of the record

13. In Basudeb Prasad Modi and Ors. v. Biswanath Modi and Ors. AIR 1962 On 97 an order was passed by the District Magistrate, Cuttak in his capacity as Chairman of the Municipal Council by which no additions were allowed either in the background or in the open Verandah in the first floor and alterations within the existing building were allowed. An appeal was taken to the Revene divisional Commissioner from the order of the District Magistrate, Cuttakk. The former quashed the order of the District Magistrate and remanded the case for fresh inquiry and disposal to the District Magistrate, Cuttak. On a writ petition under Article 226 of the Constitution of India, the order of remand was set aside. Subsequently all appeals pending before the Revenue Divisional Commissioner were transferred to the Board of Revenue. The petitioner Basudeo Prasad applied to the Board of Revenue for deciding the case on merits, as the order of remand has been set aside. The Board of Revenue said that the appeal could not be heard on merits, as the order of the Revenue Divisional Commissioner had been set aside Against this order, a petition was submitted under Article 226 of the Constitution for issue of a writ of certiorari. This order of the Board of Revenue refusing to hear the appeal on merit was set aside and the case was sent back to the Board of Revenue for deciding the appeal on merits, because the High Court had not expressed any view on the merits of the case and something remained

to be decided.

14. We might notice two cases of our own Court on this subject. The first is the case of Balmukand v. The Board of Revenue for Rajasthan and Ors. AIR Raj 38 in which there was a dispute about Khatedari rights in respect of certain field. The last holder Mst. Gendi died in 1945-46. The petitioner's case was that he was entered as a sub-tenant of the field in the revenue papers right from 1945-46. It further appears that an inquiry was made by the Revenue Department as to who were the heirs of the deceased Mst. Gendi. The Commissioner of Kota eventually found that there was none, and, therefore, the grant was resumed by the State. The petitioner then made an application for the grant of Khatedari rights to him on August 26, 1957. This application was accepted by the Sub Divisional Officer by his order dated May 12, 1958. Respondent Birdilal had also applied for allotment of this land on December 3, 1954, and on an inquiry made by him, the Collector informed the said respondent on July 4, 1958, that the land had been entered as Khatedari of the petitioner. Thereupon Birdilal filed an appeal before the Commissioner, Kota which was allowed on September 2, 1959. A second appeal was then taken by the petitioner to the Board of Revenue, which was dismissed by its order dated November 28, 1960. It was against this order that a writ was filed. The Division Bench took the view that the Commissioner had no authority to hear the appeal on the merit and that the Revenue Board was in error in holding that the plea of limitation could not be given effect to as an objection as to limitation had not been raised before the Commissioner. This amounted to a manifest error of law on the face of the record which inevitably attracted certiorari jurisdiction and for these reasons the learned Judges of the Division Bench allowed the writ application, set aside the orders of the Revenue Board and the Commissioner and directed that the order of the Sub-Divisional Officer should stand restored.

15. The second case is of Kamal Kishore Goyal Vs. Union Co-operative Insurance Society Ltd. and Another, In para 18 of this case the pointed question urged was that the learned Single Judge committed an error of law in not sending the case back to the Arbitrator after quashing his award and this contention was sought to be supported by the observations in Garner's "Administrative Law", third edition, at page 170 and T. Prem Sagar v. Standar Vacuum Oil Company, Madras and Ors AIR 1965 SC 112. Learned Judges observed;

There is nothing in Garner or in the judgment of their Lordships to justify the argument that it was not permissible for the learned Single Judge to grant the relief, in a case of certiorari, where it could be granted merely by quashing the defective order. This is all that learned Single Judge has done, for he has quashed the award dated July 3/4, 1969, and his order appears to be quite unexceptionable.

16. It will be profitable to make a reference to Ferris "The Law of Extraordinary Legal Remedies" 1926 Edition para 185 p. 213, which is as follows;:

The only judgment which can be rendered is to either quash the writ or the record; that is, the judgment of the inferior court must either be upheld or reversed" The Court cannot, after quashing the judgment, direct the inferior court's action in making a new record. Where the judgment is reversed, but not on the merits, the cause will be remanded for new trial, but where the proceedings below are held void, no mandate is sent to the inferior court to render judgment....

17. We might here make a brief reference to the weighty observations of their Lordships of the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, We are quoting from the head note (a), which in our opinion, accurately sums up the position;

...The language used in Articles 32 and 226 of the Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo (sic), prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for others purposes as well. In view of the express provisions in our Constitution the court need not now look back to the early history or the procedural technicalities of these writs in English Law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges It can make an order or issue a write in the nature of certiorari in all appropriate cases and manner, so long as it keeps to the Board and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such (sic) English law.

18. The essential features of the remedy of certiorari implies the revision of the decisions of the inferior court or Tribunal and broadly speaking, it admits of three positions, namely:

- (1) that the decision of the Tribunal may be quashed;
- (2) that the record may be removed from the Tribunal trying it to the court or another Tribunal or court of competent jurisdiction; and
- (3) by causing it to be reheard.

19. Leraned Counsel for the respondents urges that the appeal should be sent to be reheard after the judgment of the Board of Revenue is quashed. We have gone through the judgment of the Board of Revenue. It broadly proceeds on the lines we have already indicated. No point is left to be decided by the Board of Revenue. Therefore in a case of the nature before us, having regard to the prayer made in the petition as already indicated, the proper remedy in a case of this kind would be to quash the order of the Board of Revenue dated 11-8-65 and that of the Additional Commissioner II, Jaipur, dated August, 16, 1960 and to restore the order of the Sub-Divisional Officer, Alwar, dated June 13, 1960.

20. We, therefore, quash the orders of the Additional Commissioner II, Jaipur,

dated August 16, 1960, and of the Board of Revenue dated 11 8 65 and restore the order of the Sub-Divisional Officer, Alwar, dated June 13, 1960. The respondents 1 and 2 shall pay the costs of the petition to the petitioner.