
(1961) 04 MP CK 0020

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Petition No. 2 of 1959

Kaniram Lachman Gari and Others

APPELLANT

Vs

Regional Settlement Commissioner and Another

RESPONDENT

Date of Decision : 11-04-1961

Acts Referred:

Constitution of India, 1950 — Article 226

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 19, 22

Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 102

Citation : AIR 1962 MP 56

Hon'ble Judges : V.R. Newaskar, J; M.A. Razzaque, J

Bench : Division Bench

Advocate : Nanakchand Bahel, for the Appellant; Balwantsingh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Newaskar, J.—This is a petition under Article 226 of the Constitution submitted by the three petitioners for the issue of a writ of certiorari, prohibition and any other writ or direction against the Managing Officer Indore and Regional Settlement Commissioner Indore for quashing the notices dated 27-11-1958 issued by the said Managing Officer against the petitioners on the ground, that the said notices had been issued contrary to law and also for the issue of a writ of prohibition requiring the said officer to desist from ejecting the petitioners otherwise than in due course of law.

2. The case of the petitioners is that they were the tenants of a Muafidar of the village Piploda of erstwhile Jaora State, one Fariduddin. The said Fariduddin became an evacuee having migrated to Pakistan as a result of the setting up of the two dominions India and Pakistan. The said Fariduddin was later declared an evacuee and his property, including the Muafi lands in the occupation of the petitioners as his tenants, as evacuee property. After the interest of the Muafidar Fariduddin had vested in the Custodian the petitioner, it is said, paid rent to him

till the issue of a notification by the Central Government in June 1955 u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954 for the acquisition of the said property for the public purpose of rehabilitation of displaced persons and of paying compensation to them.

The said property on the issue of the said notification formed part of the compensation pool and fell to be managed and disposed of by the Managing Officer and the Regional Settlement Commissioner appointed u/s 16 of the Displaced Persons (Compensation and Rehabilitation) Act. The petitioners consequently continued paying rent to the said Managing Officer, who is opponent No. 2, till 27-11-1958 when the said officer served the petitioners notices intimating to them that the lands in their respective Occupation had been allotted to certain displaced persons and that from the date of service of notices upon them they were ejected. The petitioners complain that this action of the Managing Officer was contrary to the provisions of law since the petitioners enjoyed the status of lease-holders by reason of their being tenants of Muafidar Fariduddin and by their subsequent payment of rent first to the Custodian Evacuee Property and later to the said Managing Officer and that the only way in which this state of things could be put an end to was by following the procedure laid down in Section 19 of the said Act and the Rules made thereunder. This according to the petitioners was not done.

The petitioners assert that under these circumstances the opponents or any of them had no right either to treat the lease as at an end or to treat the petitioners as having been ejected or to ask them to vacate. The petitioners however entertained reasonable apprehension that the opponents would physically eject them. They, therefore, seek the quashing of the said notices and the issue of an order asking the opponents not to eject them except in due course of law.

3. The opponents in their return admitted almost all the facts alleged by the petitioners upto the stage of the issuing of the notices dated 27-11-58. These notices, it was asserted, were intended to give information to the petitioners that the said lands were required for rehabilitation purposes. There was no actual order for the eviction of the petitioners. The notices Were meant to give opportunity to the petitioners to have their say against their eviction. The petition was said to be premature for this reason. It was also contended by the opponents that the petitioners had a lawful remedy available to them under the Act by preferring appeal etc. They therefore could not invoke extra-ordinary jurisdiction of this court under Article 226 of the Constitution.

4. The petitioners in their petition had claimed rights under the Madhya Bharat Muafi and Inam Tenants and Sub-tenants Protection Act, 1954. The opponents rejoined by saying that they could not claim the protection under that Act as the provisions both of Administration of Evacuee Property Act and of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 had an overriding effect.

5. The only question which arises for consideration is as regards the nature of

the action taken by the Managing Officer by issuing notices dated 27-11-1958. The notices are to the following effect;

Name

You are in possession of evacuee agricultural land of the village Piploda bearing numbers specified below. This land has been allotted to the displaced persons. You are therefore being ejected (or ejected) from the said land from the date of the service of this notice as per Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.

Pargana--Jaora Village--Piploda.

Khasara No.

6. In order to answer the question aforesaid we have to take into account the provisions of Section 19 of the Displaced Persons (Compensation and Rehabilitation) Act No. 44 of 1954 and Rule 102 framed thereunder. Section 19 is as follows:

"Power to vary or cancel lease or allotment of any property acquired under this Act--

(1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the term of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act.

2. Where any person,--

(a) has ceased to be entitled to the possession of any evacuee property by reason of any action taken under Sub-section (1) or

(b) is otherwise in unauthorised possession of any evacuee property or any other immovable property forming part of the compensation pool; he shall, after he has been given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer or managing corporation or by any other person duly authorised by such officer or corporation.

3. If any person fails to surrender possession of any property on demand made under Sub-section (2), the managing officer, or managing corporation may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary". Rule 102 provides:

"Cancellation of allotments and leases.--A managing officer or a managing corporation may in respect of the property in the compensation pool entrusted to

him or to it cancel an allotment or terminate a lease, or vary the terms of any such lease or allotment if the allottee or lessee, as the case may be--

(a) has sublet or parted with the possession of the whole or any part of the property allotted or leased to him without the permission of a competent authority, or

(b) has used or is using such property for a purpose other than that for which it was allotted or leased to him without the permission of a competent authority, or

(c) has committed any act which is destructive of or permanently injurious to the property, or

(d) for any other sufficient reason to be recorded in writing;

Provided that no action shall be taken under this rule unless the allottee or the lessee, as the case may be, has been given a reasonable opportunity of being heard".

7. It is clear from the terms of Section 19 that the power of the Managing Officer to cancel any allotment or terminate any lease, though it be "notwithstanding anything contained in any contract or any other law for the time being in force" is subject to the rules which may be made under the Act. Rule 102 which is made for the purpose lays down conditions upon which an allotment can be cancelled or a lease can be terminated. These conditions are sub-letting or parting with possession without the permission of the competent authority, (2) Diversion of purpose for which allotment or lease was made, (3) Commission of any act destructive of or involving permanent injury to the property and (4) or any other sufficient reason to be recorded in writing. There is a further condition that before taking action under Rule 102 a reasonable opportunity ought to be afforded to the lessee or allottee for being heard against such action.

8. There can be no doubt that any other sufficient reason referred to in Clause (d) of Rule 102 can only be at least analogous to those which are mentioned in Clauses (a), (b) and (c) vide *Chhajju Ram v. Neki* 49 Ind App 144: (AIR 1922 PC 112), *M. M. B. Catholicos v. M. P Athanasius* AIR 1954 SC 526 (538), and AIR 1949 106 (Federal Court) .

9. The notices dated 27-11-1958 in the first place do not disclose the existence of any of the conditions mentioned in Clauses (a), (b) and (c) of Rule 102 nor any condition at least analogous to them. In fact the notices refer to no reason whatever beyond the fact that there had been allotment of the same to displaced persons. It is difficult to say that this is a purpose analogous to those mentioned in the earlier clauses. But even assuming that this could be such a purpose there was no reasonable opportunity afforded to the petitioner for a hearing. The notices merely inform that the petitioners were ejected as from 27-11-1958.

10. Under these circumstances it is difficult to hold that the Act or the Rules were duly followed. The contention of the opponent that the notices were intended for

affording opportunity to the petitioners for their being heard and that the petition was premature appears more to be an after-thought and untenable.

11. This leaves the question whether we should interfere by exercising our extraordinary powers when the petitioners could have appealed u/s 22 of the Act. This question may have an answer in the decision of the Supreme Court in *U. P. State v. Mohd. Nooh* AIR 1958 SC 86. Their Lordships pointed out in that case that there is no rule with regard to certiorari as there is with mandamus that it will be only where there is no other equally efficacious remedy. Their Lordships were prepared to grant that the superior court may decline to interfere until aggrieved party had exhausted his statutory remedies as a matter of policy, convenience or discretion. The decisions in *Khurshed Mody Vs. Rent Controller, and Assistant Collector of Customs for appraisalment and Another Vs. Soorajmull Nagarmull and Another*, which have a bearing on this question were approved. Some of the English decisions were also considered including those reported in *Rex v. Wandsworth Justices*, 1942-1 KB 281 (284) and *Re Authers* 1889-22 QBD 345. Their Lordships in para 11 of the report at page 94 say:

"On the authorities referred to above it appears to us that there may conceivably be cases--and the instant case is in point where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned".

12. It is thus clear that there is no absolute bar for the exercise of a writ of certiorari and the only question is whether the circumstances of the present case are such as would call for the interference by us in spite of the fact that appeal could have been filed but has not been filed. It is beyond doubt that there is no reference in the notices to existence of any condition referred to in Rule 102 of the Displaced Persons (Compensation and Rehabilitation) Rules, as I interpret it and further the action is taken without waiting to consider whether the petitioners should be heard about their proposed eviction. The infirmity in the notices was patent.

13. We would therefore accept the petition and direct the issue of a writ of certiorari and prohibition as prayed for. It would be open for the authority concerned to take necessary action after complying the provisions of law. The petitioners are entitled to costs from the opponents of this petition. Counsel's

fees shall be taxed at Rs. 100/-.

M.A. Razzaque, J.

14. I agree.