
(1995) 02 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1005 of 1984

Kehar Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Colonisation Act, 1954 — Section 2, 22(1)
Rajasthan Land Revenue Act, 1956 — Section 91

Citation : AIR 1995 Raj 222 : (1995) 1 RLW 188 : (1996) 1 WLC 241 : (1995) 1 WLN 240

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : B.L. Purohit, for the Appellant; H.R. Panwar, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.R. Vadav, J.—The instant writ petition has been filed by the petitioners for issuing a writ of prohibition restraining the respondents from recovering the amount of Rs. 16,555/-on the basis of order dt. 28-2-1979 passed by the Tehsildar, Padampur(Annexure-4) which has been affirmed vide order dt. 22-4-1980 by the Revenue Appellate Authority (Annexure-5 to the writ petition).

2. Brief history of the facts to be noticed for the disposal of the instant writ petition is that on 27-8-1971 the Sub-Divisional Officer found that the petitioners had 72 bigha 9 biswa land in excess of the ceiling applicable to them and directed its resumption. According to the petitioners, the aforesaid order was passed without service of notice under Rule 14 of the Ceiling Rules upon them and, therefore, it was an ex parte order. It is also alleged that the petitioners applied for setting aside the aforesaid ex parte order. The application of the petitioners was dismissed by the Sub-Divisional Officer vide his order dt. 25-1-1972,

3. Aggrieved against the order passed by the Sub-Divisional Officer on 25-1-1972, the petitioners filed an appeal before the Revenue Appellate Authority and a revision was also filed against the said order. The appeal filed by the petitioners against the order dt. 25-1-1972 came up for final hearing before the Revenue Appellate Authority on 9-2-1973 who after hearing the parties set aside the orders dt. 25-1-1972 and 27-8-1971 holding them to be without jurisdiction and remanded the case to the Sub-Divisional Officer for deciding the same on merits. It is brought to my notice that since the order passed by the Revenue Appellate Authority dt. 9-2-1973 was not brought to the notice of the Board of Revenue, therefore, in utter ignorance of the order passed by the Revenue Appellate Authority on 9-2-1973, the revision was dismissed by the Board of Revenue on 28-11-1974. petitioners filed a review petition before the Board of Revenue which was dismissed on 18th March, 1975. Against the dismissal of the review petition by the Board of Revenue, one of the petitioners filed D. B. Civil Writ Petition No. 1107/84 which was admitted on 9-4-1984 and is pending consideration.

5. From the facts stated above, it is easily deducible that the so-called ex parte order dt. 27-8-1971 has not yet attained finality. It is also deducible from the aforesaid facts that against the order dt. 27-8-1971 passed by the Sub-Divisional Officer application was moved which was dismissed on 25-1-1972 by the Sub-Divisional Officer. But, the said order dt. 25-1-1972 has also been set aside by the Revenue Appellate Authority vide its order dt. 9-2-1973 and the case has been remanded to the Sub-Divisional Officer for decision on merits. It is also noticed that due to lack of knowledge about the order passed by the Revenue Appellate Authority on 9-2-1973, the Board of Revenue dismissed the revision petition and the review petition against which, as stated above, a writ petition is pending.

6. In the instant petition, in para No. 11, it is stated by the petitioners that the lands in Gang Canal area have been declared colony u/s 2 of the Rajasthan Colonisation Act. Since the land held by the petitioners lay in Gang Canal area, therefore, the disputed land was part of the colony since before passing of the impugned order by the Tehsildar on 28-2-1979. It is stated that so far as the land in the colony-area is concerned Section 22 of the Act governs the eviction as well as imposition of the penalty and only the Collector has jurisdiction to pass an order u/s 22 of the Colonisation Act. It is specifically alleged in the aforesaid paragraph that Tehsildar had no jurisdiction to pass the impugned order u/s 91 of the Land Revenue Act inasmuch as the land was situated in the colony-area and was governed by the Rajasthan Colonisation Act.

7. The answering respondents have filed reply about the averments made in paragraph No. 11 of the writ petition and, in their reply, the answering respondents have admitted the averments made in paragraph No. 11 of the writ petition and have specifically stated that Section 91 of the Rajasthan Land Revenue Act is not applicable to the land in question. Even according to the

answering respondents Section 22 of the Rajasthan Colonisation Act is applicable to the land in dispute. However, the answering respondents further stated in para No. 11 of their reply that powers u/s 22 of the Rajasthan Colonisation Act which were earlier exercised by the Collectors have been delegated to all the Tehsildars of the State of Rajasthan. In support of the averments regarding delegation of power by the State Government to all the Tehsildars (Revenue) in the State of Rajasthan, the answering respondents have filed Ex.-R/2, a notification published on 10-9-1981 in exercise of the power conferred by Sub-clause (a) of Clause (i) of Section 22 of the Rajasthan Colonisation Act, 1954. According to the aforesaid notification dt. 10-9-1981, all the Tehsildars (Revenue) have been empowered to exercise all the powers of the Collectors u/s 22 of the said Act falling within their respective jurisdiction where no separate Colony Tehsildar has been appointed.

8. I have heard Mr. B. L. Purohit, learned counsel for the petitioners as well as the learned Additional Government Advocate, Mr. H. R. Panwar and carefully gone through the material available on the record.

9. The only argument raised by Mr. B. L. Purohit is that the impugned order dt. 28-2-1979 is without jurisdiction. According to his submission on the date of the order, i.e., 28-2-1979, the Tehsildar (Revenue), Padampur had no jurisdiction to pass the impugned order.

10. In reply to the aforesaid contention, Mr. H. R. Panwar, Addl. Government Advocate urged before me that since the question of jurisdiction was not raised by the petitioners either before the Tehsildar (Revenue) or before the Revenue Appellate Authority, therefore, they have no justification to raise this question before this Court under Article 226 of the Constitution of India.

11. I have given my thoughtful consideration to the rival contentions raised before me in the instant petition.

12. In my humble opinion, on the date of passing of the order on 28-2-1979 the Tehsildar (Revenue), Padampur had no jurisdiction whatsoever to pass the impugned order. In my considered opinion, the order passed by the Tehsildar (Revenue), Padampur in the present case is without jurisdiction and is a nullity and its validity could be challenged wherever and whenever this order is sought to be enforced and even in collateral proceedings. A defect of inherent lack of jurisdiction strikes at the very authority of the Court to pass any decree or order and such defect cannot be cured by the consent of the parties. I am fortified in taking the aforesaid view by the decision of the Apex Court rendered in *Kiran Singh and Others Vs. Chaman Paswan and Others*, wherein their Lordships of the Apex Court have observed as follows:

"The answers to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and

wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such defect cannot be cured even by consent of parties...."

13. Looking into the ratio decidendi of the case of Kiran Singh (supra), the argument of the learned Addl. Government Advocate that since the argument regarding lack of jurisdiction was not raised either before the Tehsildar (Revenue) or the Revenue Appellate Authority, therefore, the petitioners are not entitled to raise this question of inherent lack of jurisdiction before this Court is not acceptable to me. As a matter of fact, the order which is without jurisdiction is a nullity and it can be challenged whenever and wherever it is sought to be enforced.

14. In view of the aforesaid facts and circumstances, the petitioners have justification to approach this Court under Article 226 of the Constitution of India and the impugned order passed by the Tehsildar (Revenue), Padampur (Annexure-4) which was sought to be enforced against them by way of recovery of Rs. 16,555/- is without jurisdiction and nullity. It is true that the petitioners have not taken the plea of jurisdiction either before the Tehsildar (Revenue), Padampur or before the Revenue Appellate Authority but, as stated above, since the impugned order passed by the Tehsildar was without jurisdiction, therefore, by non-raising of the issue of jurisdiction it will not confer jurisdiction upon the Tehsildar. It must be taken to be settled law that where there is inherent lack of jurisdiction the parties cannot confer jurisdiction upon any authority even by their consent. It is further true that the power of the Collector was delegated to every Tehsildar (Revenue) in the State with effect from 10-9-1981. But, it is further true that on the date of the order, i.e., 28-2-1979 the Tehsildar (Revenue), Padampur had no jurisdiction to pass an order of eviction against the petitioners and had also no jurisdiction to impose damages of Rs. 16,555/- . .

14. No other point was pressed before me either from the side of the petitioners or by the learned Additional Government Advocate.

15. As a result of the aforementioned discussion, the instant writ petition is allowed and the impugned order dated 28-2-1979 Annexure-4 to the writ petition passed by the Tehsildar (Revenue), Padampur and the order dt. 22-4-1980 passed by the Revenue Appellate Authority Annexure-5 to the writ petition are hereby quashed and set aside.

16. In the peculiar facts and circumstances of the case, both the parties are directed to bear their own costs.