
(1951) 07 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : C.M. No. 98 of 1951

Mulkh Raj

APPELLANT

Vs

Director of Rehabilitation and others

RESPONDENT

Date of Decision : 10-07-1951

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1951) 07 P&H CK 0028

Hon'ble Judges : Teja Singh, C.J

Bench : Single Bench

Advocate : Jagan Nath, for the Appellant; Dalip Chand for Nos. 3 to 12 and Banwari Lal for Nos. 1 and 2 for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Teja Singh, C.J.—This is a petition under Art. 227 of the Constitution of India for setting aside the order of the Director of Rehabilitation (Rural) and the Assistant Commissioner Rehabilitation, Patina (respondents Nos. 1 and 2 respectively). The facts briefly stated are as follows: The Petitioners was allotted certain land by order of the Director of Rehabilitation dated 10-12-1949 and it is alleged by him that later on he was also put in actual possession of the land. It appears that part of the land was in the actual possession of tenants and in spite of the fact that petitioner was alleged to have been given actual possession they continued to pester him and probably did not even admit his possession. On this the petitioner made a representation to (he Assistant Commissioner Rehabilitation who by his order dated 17-6-19150 ordered possession of the tenants to be restored and fixed the beta at one half. Against this order the petitioner as well as the tenants made revision petitions to the Director of Rehabilitation. The petitioner's revision was dismissed but that of the tenants was allowed and the beta was reduced to one-third. The petitioner alleges that after the land had been allotted to Mm under the orders of the Director of Rehabilitation and actual possession of it had also been delivered to him neither the Assistant

Commissioner Rehabilitation nor the Director of Rehabilitation had any jurisdiction to disturb his possession and to order that the possession of the tenants be restored. The petitioner further alleges that the Assistant Commissioner Rehabilitation and the Director of Rehabilitation being tribunals within the meaning of Article 227 their orders are liable to be set aside by this Court under the powers of superintendence. The tenants have also been made parties to this petition; they are respondents Nos. 3 to 12.

2. It is admitted before me that the Assistant Commissioner Rehabilitation and the Director of Rehabilitation by virtue of the offices that they hold are respectively the Deputy Custodian and the Additional Custodian. It has been held by a Division Bench of this Court in "Kartar Singh v. Custodian, Muslim Evacuees Property", Civil Misc. No. 1 of 1950, that in so far as the Custodian and his subordinates have to decide questions relating to the respective rights of the parties that appear before them they are tribunals and this Court has power of superintendence over them under Article 227 of the Constitution and this power includes the power to interfere with their orders in appropriate cases. The only question that has to be decided is whether this is a fit case in which that power should be exercised. As was held in the division Bench case mentioned above the power of superintendence is not a power given to the Court to correct errors and that the power should be exercised only in cases where the Courts have clearly done something which they were not intended to do and further that it must be used to keep the Courts within the bounds prescribed by law for such Court. In this case as I shall show hereafter the orders of the D. R. and the A. C. R. that are being challenged are not even erroneous. The contention that after the land had been allotted to the petitioner and possession had been ordered to be given the Director of Rehabilitation and his subordinates became functus officio is without any force, because the tenants' position was that, since they had been cultivating the land for many years and were in actual possession of their holdings the Director of Rehabilitation had no power to oust them and when this fact was brought to the notice of the Assistant Commissioner Rehabilitation I cannot understand why it was not open to him to rectify the mistake that his department had made. I may also observe that there is no definite proof of the fact that possession was actually taken from the tenants and was given to the petitioner. No doubt it was mentioned in the Assistant Commissioner's order that the petitioner was in possession, but it cannot be believed that the tenants had willingly surrendered the possession in his favour. In any case, even if somebody acting under the orders of the Assistant Commissioner or the Director of Rehabilitation had gone to the spot and given actual possession to the petitioner, this act of his was illegal. It is true that according to the provisions of the Administration of Evacuee Property Act, 1950 and the various Ordinances that were promulgated by His Highness the Rajpramukh in this State from time to time, before Act 31 of 1950 came into force, the entire property including agricultural lands which once belonged to Muslim evacuees vest in the Custodian but it must be remembered that since the Muslim owners themselves, had they

been here, could not eject the tenants except in due process of law, neither the Director of Rehabilitation nor the Assistant Commissioner, Rehabilitation while acting as Deputy Custodian or Addl. Custodian, as the case may be, could interfere with the tenants' possession. In the view that I take I hold that the Director of Rehabilitation and his subordinates had no power to order that possession of that part of the land allotted to the petitioner which was in the actual possession of the old tenants should be delivered to the petitioner and consequently if the possession was delivered it amounted to an illegal act. It follows from this that when the Assistant Commissioner Rehabilitation ordered that the possession of the tenants should be restored he merely rectified a mistake that had been committed by his department and, therefore, his order cannot be described as wrong or erroneous.

3. As a last resort the petitioner's counsel submitted that the Assistant Commissioner Rehabilitation had fixed the batai at one-half with the consent of the tenants and the Director of Rehabilitation was not justified in setting aside that order on the revision petition made to him by the tenants. Shri Dalip Chand who appears on behalf of the tenants denies that the tenants were ever agreeable to pay the batai. Since this is a matter which requires evidence, I do not think I would be justified in interfering with the Director of Rehabilitation's order in this petition.

4. The result is that the petition fails and is dismissed with costs.