
(1969) 09 DEL CK 0002
In the Delhi High Court
Case No : Civil Writ Appeal No. 28 of 1968

Narainu

APPELLANT

Vs

Deputy Commissioner Mahasu

RESPONDENT

Date of Decision : 29-09-1969

Acts Referred:

Citation : (1970) 6 DLT 15

Hon'ble Judges : V.D. Misra, J

Bench : Single Bench

Advocate : Prithvi Raj and K.C. Pandit, for the Appellant;

Judgement

V.D. Misra, J.

(1) This writ petition under Articles 226/227 of the Constitution of India is directed against the order dated 20th December, 1967 by which the respondent cancelled the grant made in the favor of the petitioner.

(2) The petitioner applied for a grant of Nau turn for horticulture purpose in village Ruhalti, pargana Karoli, Tehsil Kasumpti. This land measured 16 bighas and bore Khasra Nos.651, 355/1 in Hadbast No. 192. After following the procedure laid down in the Himachal Pradesh Nautor Rules 1954, the petition was sanctioned the said land vide order dated 17th October, 1961, by the respondent on payment of Rs. 160.00 as price of the land and Rs. 608.64 as compensation for the trees standing on the said land. The respondent had taken about two years before the land was sanctioned. The Lt. Governor of Himachal Pradesh executed a Patta on 21st February, 1962, in favor of the petitioner according to the Nautor Rules and thereafter a mutation of transfer of ownership No. 121 dated 26th March, 1962, was entered and attested in favor of the petitioner. Some interested persons of Ruhalti village filed a review petition before the respondent

(3) The petitioner further alleges that the said order was passed at the back of the petitioner, without notice to him and he came to know about it on 12th

February, 1968, when he applied for a certified copy which was not granted to him till today. He also alleged that he had spent about Rs 20,000.00 on this land by constructing a house and planting about 400 plants of apples and other fruit trees which are about three years old. He was given a loan of Rs. 1800.00 for improvement of this orchard by the State Government of Himachal Pradesh. The respondent in his return practically accepted the major allegations made by the petitioner resulting in the order of the then Judicial Commissioner. It may be noted here that though the allegation contained in para 3 of the petition alleging "a mutation of transfer of ownership" being entered and attested in favor of the petitioner has been admitted without any reservation, yet to the allegation of the petitioner contained in para 4 of the petition that he became "full and absolute owner" of the land after the execution of the Patta by the Lt. Governor, the respondent denied that the petitioner became the absolute owner of the land. Respondent's reply to petitioner's challenge of the validity of the impugned order may be reproduced as under :-

"That in reply to the para 12 of the writ petition, it is submitted that the orders of the Hon'ble Judicial Commissioner, were not an impediment in the matter of review of the earlier order of grant. The Deputy Commissioner, Mahasu, replying respondent reviewed the order after obtaining proper permission from the authority competent to accord the same. The order resuming the grant of nautor is legal and valid of which the petitioner has knowledge. At any rate Shri Surat Ram Sarpanch of Gram Panchayat Halqa Koti is a necessary party as allegations of malice are made against him."

(4) The record relating to the impugned order dated 20th December, 1967 passed by the respondent was produced on his behalf in the Court. A bare reading of this order shows that the respondent had entertained and acted on the application or review filed by the Zamindars of the village which was already pending before his predecessor. The learned counsel for the petitioner contended that clause (b) of rule 30 of the Himachal Pradesh Nautor Rules, 1965, laid down a limitation of 90 days within which an application for review can be entertained. He has further submitted that the application for review was moved by the Zamindars sometime in 1962 and there was no application for condensation of the delay. In these circumstances, he submits, the Deputy Commissioner had no jurisdiction to entertain the application and review his earlier order.

(5) Clause (b) of rule 30 of the Himachal Pradesh Nautor Rules, 1965 is as under:-

The application for review of an order shall not be entertained unless it is made within 90 days from the passing of the order, unless the applicant satisfies the Financial Commissioner or the Commissioner or the Deputy Commissioner, as the case may be, that he had sufficient cause for not making the application within that period."

This clause clearly shows that the Respondent is prohibited from entertaining

any application for review unless it is made within 90 days of the order. He has the discretion to condone the delay if he is satisfied that there was sufficient cause for not making the application within that period. Before he could exercise that discretion there has to be an application for condensation of delay-an application setting forth the circumstances why the delay should be condoned. This application has to be supported by some evidence which may take the form of at least an affidavit. Admittedly, in this case there is no such application and admittedly the application for review is hopelessly barred by limitation. Under these circumstances, the respondent had no jurisdiction to review his order of grant dated 7th October, 1961.

(6) Faced with this situation the learned counsel for the respondent submitted that the respondent has acted suo-motu and not on the basis of the application for review. I have gone through the record of the proceedings of the Respondent in respect of his impugned order. The order sheet in that case reveals that the objectors Along with their counsel had been pursuing the case against this petitioner. The respondent's order dated 29th November, 1967, is to the following effect :-

"Shri Amar Nath counsel of Shri Mathu etc. objectors is present. Shri Narainu petitioner is not present and nor he has been served with the notice. Fresh notice to Shri Narainu petitioner for 20th December 1967 be issued. If the petitioner is not found at home then the notice be served by pasting"

This leaves no doubt that the respondent was not exercising his powers suo motu but was exercising his jurisdiction on the basis of the application of review given by the villagers sometimes in 1962. It may be pointed out that the Judicial Commissioner, while deciding the petitioner's writ, had observed that the application for review had not been disposed of by the respondent by his order dated 5th November, 1963 Even a bare reading of the order passed by the respondent on 20th December, 1967, shows that he was exercising jurisdiction under rule 30 of the Himachal Pradesh Nautor Rules, 1965 and was acting on the application of review and he was not exercising his jurisdiction on any other ground.

(7) The learned counsel for the petitioner also urged that in fact the respondent has no jurisdiction to set aside the grant made in the favor of the petitioner inasmuch as he has become an absolute owner of that land after the grant of Patta by the Lt. Governor. He also contends that since the order of grant has merged into the grant of Patta by the Lt. Governor, the respondent cannot review his own order because that would result in setting aside the Patta executed by the Lt. Governor I he learned counsel for the respondent urged that since the petitioner did not become the owner of the land and since it continued to vest in Himachal Pradesh Government, the respondent had the jurisdiction to review his order. My attention has been drawn to the order of the then Judicial Commissioner where the same question had been raised by the respondent by way of a preliminary objection alleging that Himachal Pradesh Government being

the owner of the land in dispute, it was a necessary party to that petition. The decision on this aspect is reproduced as under :-

At this stage, the preliminary objections, urged against the maintainability of the petition, on behalf of the respondent may be considered. It was contended that the Himachal Pradesh Government was the owner of the land, in dispute, and was a necessary party to the petition. As already stated, the land had been granted as nautor to the petitioner. Mutation had also been sanctioned in his favor on 26th March, 1962 Patta had also beed granted to him. On the date of filing the petition, the petitioner had become the owner of the land and the Himachal Pradesh Government had ceased to be its owner. The Himachal Pradesh Government was, Therefore, not a necessary party to the petition."

The decision to which the respondent was a party had decided that Himachal Pradesh Government has ceased to be its owner and the petitioner has become the owner of the land. No appeal was preferred to the Supreme Court against the decision of the then Judicial Commissioner and it has become final and binding on the parties. It does not now lie in the mouth of the respondent to allege again that the Himachal Pradesh Government is the owner of this land and the petitioner has not become its owner. In these circumstances I must old that the petitioner had become the owner of the land and the Himachal Pradesh Government had ceased to be its owner. For this reason also the respondent had no jurisdiction to review the order of grant dated 17th October, 1961.

(8) The result is that I allow this petition and quash the orders of the respondent dated 20th December, 1967, but in the circumstances of the case I will leave the parties to bear their own costs.