

(1959) 10 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 818 of 1959

Phalgu Dutta Kirpa Ram

APPELLANT

Vs

Pushpa Wanti and Others

RESPONDENT

Date of Decision : 21-10-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1960 P&H 432

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Judgement

1. In this petition under Art. 227 of the Constitution of India, the order passed by the Collector of Karnal on 21-2-1959 and that of the Commissioner of Ambala Division on 14-4-1959, are sought to be quashed for the reason that they contravene the provisions of law. I may state at once that the Collector of Karnal and the Commissioner of Ambala Division, whose orders have been questioned in this petition have not been impleaded as respondents, and this is one of the grounds for the rejection of this petition. Before I deal with the questions which call for determination, I may briefly set out the facts of the case.

(2) Parcels of waste land in village Bherian and Gumthala aggregating about 330 acres were acquired under the East Punjab Utiliza of Lands Act (East Punjab Act No. 38 of 1949) and subsequently leased out to the petitioner, Phalgu Dutt, for a period of seven years commencing from Kharif 1951. Before the expiry of the lease period, the Collector had extended the term of the lease in favour of the petitioner Phalgu Dutt to twenty years. The extension in the lease was granted by two orders of the Collector dated 23rd and 29th of February, 1956, both passed on the application of the petitioner and without notice to the owners who are the four respondents in the present petition Smt. Pushpa Wanti, Tara Chand, Dina Nath and Jagdish Kumar.

When the period of lease expired these respondents applied on 14th and 24th of March 1958 for restoration of the lands belonging to them. It appears that these

respondents own only about 46 acres out of the total of 330 acres which had been leased to the petitioner Phalgu Dutt. The Collector passed two separate orders on 7th and 14th of April 1958 declining to restore the lands as the lease in respect of them had already been extended by the earlier orders of February, 1956. Thereafter the parties went in appeal to the Commissioner of Ambala Division, who passed an order on 6th of August 1958 remanding the matter for a re-decision by the Collector. Thereafter the Collector on 21-2-1959 made an order in favour of the present respondents after considering the points which had been raised in their petitions.

The Collector observed that the respondents, Pushpa Wanti, Tara Chand, Dina Nath and Jagdish Kumar were displaced persons and small land holders. Phalgu Dutt was not cultivating himself the major portion of the leased land belonging to the respondents. I gather from this order that the Collector taking into account the economic position of the respondents and the sub-tenancy which does not appear to have been denied made the order restoring the lands to the respondents. With regard to the remaining land the lease was to subsist for twenty years as previously directed. This order was made by the Collector after having heard the parties concerned who had been afforded in opportunity of adducing evidence in respect of their respective claims.

(3) A revision petition was again preferred before the Commissioner of Ambala Division who upheld the order of the Collector. An objection was raised before the Commissioner that the order passed by the Collector on 21-2-1959 was without jurisdiction. As this is one of the principal grounds on which the jurisdiction under Art. 227 is invoked, I may briefly set out what the objection is. As the East Punjab Utilization of Lands Act stood in February, 1956, the decision by the Collector on any matter under the Act was final, vide sub-s. (1) of S. 14. An amendment was made in the Act by Punjab Act No. 39 of 1956 on 25-10-1956 empowering the Commissioner of a Division on his own motion or an application made to him to call for the records of.

"any proceedings which are pending before or have been disposed of by the Collector for the purpose of satisfying himself as to the legality or propriety of such proceedings.....".

It was contended before the Commissioner that the order of the Collector, refusing the grant of extension of the lease having been passed before the enactment of the amending Act No. 39 of 1956, became final. It is, however, worthy of note that no objection was taken to the jurisdiction of the Commissioner when he passed his first order on 6-8-1958 remanding the proceedings to the Collector. When this order was passed the Amendment Act was in force and the objection with regard to jurisdiction was available to the present petitioner. The Commissioner therefore did not find the objection with regard to jurisdiction to be tenable and dismissed the revision petition on 14-4-1959.

(4) The present petition, in my opinion, should fail on more than one ground. As I have already emphasised, the authorities whose orders are challenged in this petition have not been impleaded. This is not a defect which could be lightly ignored as the Collector and the Commissioner are the appropriate persons to give an answer on the question of jurisdiction. the remedy provided under Art. 227 is of an extraordinary nature and as observed by Ferris in the "Extraordinary Legal Remedies" (1926), in paragraph 175, at page 201.

"those parties whose action is to be reviewed and who are interested therein and affected thereby and in whose possession the record of such action remains, are not only proper, but necessary parties. It is to such parties that notice to show cause against the issuance of the writ must be given and they are the only parties who may make return, or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very right (sic) of the relief sought".

This proposition is too well-founded to need any authority. Recently, Bishan Narain J. in *Delite Cinema v. Rameshwar Dayal*, AIR 1959 Punj 189, at p. 190 upheld this view on the authority of Ferris. Similarly, it was held in a Bench decision of the Madras High Court in *Sha Devichand Moolchand v. Sha Dhanraj Kantilal*, AIR 1949 Mad 53, that

"it is absolutely necessary that the tribunal to quash whose order the application for the issue of a writ of certiorari is taken should be a party because without notice issuing to him, the records of the proceedings cannot be brought up to the High Court".

There is no difference in principle or analogy to the case of a writ under Art. 227 which partakes of the essential characteristics of a writ of certiorari which is the subject-matter of Art. 226.

(5) Regarding the jurisdiction of the Commissioner who reversed the order of the Collector, It is to be observed that a party raising such a plea ought to do it at an earliest possible opportunity. The ex parte orders had been passed as far back as February, 1956 and the Collector had refused to interfere with these orders in April 1958. A revision petition was taken before the Commissioner who directed the Collector to go into the matter again after a full consideration of the merits. This order was made on 6-8-1958 and it is significant to note that Phalgu Dutt, at that time took no objection to the jurisdiction of the Commissioner in entertaining the revision application.

It appears that for the first time this objection was raised before the Commissioner on or before the 14-4-1959 when the final order was passed by him rejecting the revision application of Phalgu Dutt. The grant of relief under Arts. 226 and 227 is of a discretionary nature and if the order sought to be impugned is attacked on the ground of jurisdiction such an objection ought to be taken at the time of hearing of the application. It was held in *R. v. Williams; Ex parte Phillips*, 1914-1 K. B. 608, that where the conviction was sought to be

quashed in a writ of certiorari on the ground that one of the justices alleged to have taken part in the conviction was a person interested in the matter giving rise to such a conviction, any objection to the competence of the Court should have been taken at the hearing before the justices.

This principle was followed in a Bench decision of the Bombay High Court (Chagla C. J. and Dixt J.) in *Gandhinagar Motor Transport Society Vs. State of Bombay*, It was held that

"before a question of jurisdiction of a tribunal is raised on a petition under Arts. 226 and 227, objection to jurisdiction must be taken before the tribunal whose order is being challenged."

The reasoning given by Chagla C. J. has been pithily summarised at page 203 in the following words:

"The Court must tell the petitioner: It was open to you to raise that point before the tribunal whose order you are challenging. You have sat on the fence, you have taken a chance of the tribunal deciding in your favour, and it is not open to you now to come to us and ask for a writ."

(6) *Sinha J., in Belsund Sugar Co. Ltd. Vs. The Labour Appellate Tribunal of India and Others*, stated thus:

"Where the objection to jurisdiction was neither raised before the Industrial Tribunal nor before the Appellate Tribunal and the petitioner fought out the case in those courts and took the chance of success he ought not to be allowed to raise the point for the first time in an application for issue of writ of certiorari or mandamus."

(7) Where there are two orders of the same authority or tribunal, the earlier one is merged in the latter, and on the authority of the Bench decision of the Allahabad High Court in *Hafiz Mohammad Yusuf Vs. The Custodian General, Evacuee Properties, New Delhi and Others*, I am of the opinion that the order of the Collector merged in that of the Commissioner who was a revising authority under Act 39 of 1956. Neither of the orders of the Commissioner can be said to be in excess of jurisdiction.

(8) Finally, on the merits of the case I think both the Collector and the Commissioner have arrived at conclusion which are not contrary to law. They have found that Phalgu Dutt had sub-leased the land which had been given to him for development. It has also been found that the major part of the land had not been reclaimed by Phalgu Dutt. Now, according to condition no. 6, of the printed lease-deed, a copy of which has been made available to me, it appears that the lessee could not assign or transfer or sublet the land without the permission of the Collector.

Under condition No. 8, the lessee was bound to reclaim and bring under cultivation fifty per cent of the land leased by him, and finally under condition 15,

the lessee subjected himself to "all the provisions of the East Punjab Utilization of Lands Act as amended from time to time". This would show that the order of the Commissioner which was passed after the enactment of amending Act 39 of 1956 would be binding on the lessee. As observed by the Supreme Court in Waryam Singh and Another Vs. Amarnath and Another,

"the power of superintendence conferred by Art. 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors."

The East Punjab Utilization of Lands Act has created its own hierarchy of officers and appellate authorities to administer the law, and I do not find any jurisdiction to interfere with these orders in the present proceedings. Indeed the order of the Commissioner appears to be eminently just and reasonable in the circumstances of this case.

(9) I would accordingly dismiss this petition with costs.

(10) Petition dismissed.