

(1957) 01 AHC CK 0037
In the Allahabad High Court
Case No : Special Appeal No. 183 of 1956

Pooran Singh and Others

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 04-01-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1957 All 276

Hon'ble Judges : Mootham, C.J.;Srivastava, J

Bench : Division Bench

Advocate : H.C. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Srivastava, J.—This Special Appeal has been filed against an order of Chaturvedi J. dismissing a writ petition filed by the appellants under Article 226 of the Constitution.

2. The facts which had led to the writ petition were that Nitya Nand, the present respondent No. 2, was the tenant of the plots in dispute He had illegally sub-let the plots. The zamindar then filed a suit against him and his sub-tenants u/s 171 of the U. P. Tenancy Act for their ejection from the plots. That suit was filed in 1942 and was decreed. After the zamindar got possession he let out the plots to Balwant Singh, present respondent No. 3.

The appellants say that they are the sons of Balwant Singh and the zamindar let out the plots to them also along with Balwant Singh. The U. P. Tenancy (Amendment) Act (Act X of 1947) was then enacted and Nitya Nand applied u/s 27 of the Act for his reinstatement over the plots. The Sub-Divisional Officer passed an order in his favour and under the provisions of that section declared Balwant Singh respondent No. 3 to be a subtenant entitled to retain possession for three years. On the 16th of September, 1949 Balwant Singh applied to the Sub-Divisional Officer for a certificate u/s 6 of the U. P. Agricultural Tenants

(Acquisition of Privileges) Act, 1949.

He made the necessary deposit of ten times the rent and a certificate was actually issued to him along with his sons, the present appellants, on the 19th of September, 1949. When the three years period during which Balwant Singh had been declared entitled to retain possession according to Act X of 1947 expired, Nitya Nand brought a suit against him and his sons, the present appellants, u/s 202 of the Zamindari Abolition and Land Reforms Act praying for their ejectment. He treated them as asamis. The trial Court decreed the suit and an appeal was filed before the Additional Commissioner but that was also dismissed.

A second appeal was then filed before the Board of Revenue, but was dismissed on the 18th of April, 1955. In spite of the decree for ejectment, Nitya Nand could not actually eject the appellants or their father Balwant Singh because a certificate u/s 6 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act had been issued in their favour. Before he could get actual possession it was necessary for Nitya Nand to have this certificate cancelled. Nitya Nand, therefore filed an application u/s 12 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949 praying for the cancellation of the certificate.

The ground put forward for the prayer of cancellation of the certificate was that the appellants and Balwant Singh had obtained the certificate fraudulently by concealing the facts that there was an order passed u/s 27 of the Act X of 1947 according to which they were only sub-tenants entitled to retain possession for a limited period of three years. The trial Court accepted this contention and cancelled the certificate. The appellants and their father then went up in appeal to the Commissioner and this appeal was allowed ex parte on the 25th of April, 1955. The main ground which weighed with the Additional Commissioner who heard the appeal was that the appellants and their father were not parties to the proceedings u/s 27 of Act X of 1947 and the order passed under that section could not therefore affect their rights.

The appeal having been allowed ex parte Nitya Nand filed an application purporting to be one u/s 151 and Order 47, Rule 1, C. P. C., before the Additional Commissioner for setting aside the order passed in appeal. Notice was ordered to be issued and the application was heard on the 20th September 1955. The Additional Commissioner held that fairness demanded that the ex parte order should be set aside and the appeal should be heard on merits. He, therefore, set aside his previous ex parte order allowing the appeal of Balwant Singh and his sons and after hearing the appeal on merits on the same day he dismissed the appeal.

3. The appellants then filed the writ petition out of which the present appeal has arisen, and the main point which they urged before Chaturvedi J., who heard the petition was that the Additional Commissioner had no jurisdiction to review his previous order allowing the appeal ex parte. In support of this contention they relied on the case reported in Mohammad Shafique Vs. The State, .

4. It was not seriously disputed before the learned Single Judge that the Additional Commissioner had no power to review his previous order. What was urged on behalf of the respondents was that he had not in fact reviewed his previous order. The previous order had been passed ex parte and the learned Additional Commissioner had only held that in the circumstances of the case the ex parte order should be set aside and the appeal should be heard on merits.

The respondents had made out sufficient cause for not appearing on the date fixed for the hearing of the appeal and there was nothing in law to prevent the Additional Commissioner from setting aside his ex parte order and his hearing the appeal on merits. This contention was, however, not accepted by the learned Single Judge because he found that the Additional Commissioner had not recorded any finding that the respondents in the appeal before him had been unable to "appear on the date fixed for any sufficient cause.

The learned Additional Commissioner could not in the circumstances be held to have set aside the ex parte order in the exercise of his inherent powers to do justice. Chaturvedi J., therefore, took the view that the Additional Commissioner had really reviewed his previous order. As the power of review was a creation of statute and no Court had any inherent power to review its own decision, the order of the Additional Commissioner reviewing his previous ex parte order was held to be without jurisdiction.

5. In spite of his finding that the order sought to be quashed in the writ petition was an order without jurisdiction, the learned Single Judge refused to quash the order because in his view the order was quite just and the setting aside of that order "would clearly effectuate an injustice in the case". Balwant Singh and his sons had u/s 27 of Act X of 1947 only a limited right to continue in possession for three years. A decree for their ejectment had already been passed in favour of Nitya Hand and had been upheld even by the Board of Revenue. They could not, therefore, obtain any certificate u/s 6 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949 and they had obtained the certificate by suppressing material facts.

The order of the trial Court cancelling the certificate in the proceedings u/s 12 of the Act was therefore perfectly correct. The order of the Commissioner allowing the appeal of the appellants ex parte and restoring the certificate was in the circumstances, an order which was wrong and unjust. By the subsequent order the Commissioner had only cancelled the wrong order and restored the just order passed by the trial Court in the matter, Chaturvedi J., therefore, refused to exercise the discretion that was vested in him under Article 226 of the Constitution and dismissed the writ petition for quashing the later order of the Additional Commissioner.

6. The appellants have come up in appeal and the only contention urged on their behalf is that having come to the conclusion that the later order of the Additional Commissioner had been made without jurisdiction, the learned Single Judge was

bound to interfere and to quash the order; he had no discretion in the matter.

7. Under English Law a distinction exists between" writs of course and writs of right on the one hand and discretionary writs on the other. No such distinction has, however, been made in Article 226 of the Constitution and that Article puts all writs, orders and direction on the same powers conferred by Article 226 of the Constitution on the High Courts are certainly very wide and confer on them a discretion of a most extensive nature. That discretion, however, must necessarily be exercised in accordance with judicial considerations and well-established principles. As was observed in *Asiatic Engineering Co. Vs. Achhru Ram and Others*,

"the very vastness of the powers conferred imposes on the High Courts the responsibility to use them with circumspection."

The High Court will certainly not hesitate in issuing an appropriate direction, order or writ when necessary, but no person can claim to be entitled to such an order or writ as a matter of course without satisfying the High Court that the case is suitable one for the issue of such an order or writ. Various facts and circumstances have to be taken into account before deciding whether a writ is to be issued in a particular case or not,

Whether any other equally efficacious and speedy remedy is available; where a complaint is made against any act done or purported to be done under any statutory provision whether there exists in that very act itself a possible remedy; whether material facts have been suppressed by the applicant whether he has come to Court with clean hands; whether the issue of the writ is likely to be futile or unnecessary and whether it is in the interest of justice to issue a writ in the circumstances of the particular case, are all matters which have to be given due consideration. If the High Court has no discretion in the matter and is bound to interfere in every case in which order sought to be quashed was passed without jurisdiction, all these considerations will become out of place. That this is not so is clear from what Mukherjea J. said in respect of one of these considerations in the case of *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, . He observed:

".....the remedy provided for in Article 226 is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere."

The discretion is therefore there and in suitable cases the High Court may refuse to exercise that discretion in favour of the applicant.

8. It must also be borne in mind, as was observed in the case of *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, that

"Such writs as are referred to in Art. 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate Tribunals or

bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record "and such act, omission error or excess has resulted in manifest injustice".

The words we have underlined (here into " ") show clearly that the mere fact, that an order is without jurisdiction or that there is an error apparent on the face of the record is not sufficient to justify the issue of a writ. In addition to that it must be established that the order has resulted in , manifest injustice. It is therefore open to the High Court to refuse to issue a writ if it feels, as was felt by the learned Single Judge in the present case, that if the writ prayed for is issued "it will clearly effectuate an injustice in the case."

9. Even in the exercise of its ordinary revisionary powers the High Court generally refuses to set aside a wrong order if the effect is to restore another illegal order vide *Chanderbhan Singh v. Lallu Singh*, ` (E).

10. In our opinion, therefore, in the circumstances of the present case the learned Single Judge was perfectly justified in refusing to issue a writ in favour of the appellants which would have resulted in the confirmation of a certificate obtained by them wrongly by suppressing material facts.

11. The appeal must therefore fail and is dismissed.