

(2017) 05 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : 858 of 2017

Ranjit Kumar

APPELLANT

Vs

State of H.P. & another

RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 05 SHI CK 0005

Hon'ble Judges : Sanjay Karol, Tarlok Singh Chauhan

Bench : Division Bench

Advocate : Naveen Awasthi, Shrawan Dogra, Romesh Verma, Anup Rattan, J.K. Verma

Judgement

1. At some stage, all litigation must come to an end, more so, in a case of present nature where issues of management of the properties of the defence forces are concerned. Unhesitantly, considering the attending facts and circumstances, we dismiss the present petition in limine.

2. At the State War Memorial, Dharamshala, there is a Cafeteria, which authorizedly was allowed to be managed by the petitioner for a period of eleven months commencing from 01.08.1991. We find on account of protracted litigation, by abusing and evading the process of law, on one count or the other, with success, rather unauthorizedly, petitioner managed to retain possession thereof.

3. One need not dilate upon the chequered history of litigation, save and except that most recently in the year, 2013, petitioner was directed to handover possession of the Cafeteria to the Martyrs Memorial Services and Development Society, Dharamshala. Not only was he irregular in payment of rent/occupation charges, but otherwise also his services were found to be of sub-standard quality.

4. Eventually with the initiation of the proceedings under the provisions of the

Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as the Act), an order of ejectment came to be passed by Collector, Sub Division, Dharamshala, District Kangra, H.P., in Case No.04/2015, titled as Deputy Director Sainik Welfare Kangra at Dharamshala Versus Ranjeet Singh, on 09.01.2017. Despite the same, possession of the premises was never handed and petitioner indulged in a futile litigation, which vide order dated 17.04.2017, in CWP No. 286 of 2017, titled as Ranjit Kumar Versus State of H.P. and another, was disposed off, giving two weeks" time to the petitioner to exhaust all remedies.

5. Undisputedly petitioner's appeal stands rejected with the passing of the impugned orders dated 09.01.2017 (Annexure P-10) and dated 11.04.2017, passed by Divisional Commissioner Kangra at Dharamshala, in Case No.03/2017, titled as Ranjit Singh Versus Deputy Director, Sainik Welfare, Kangra at Dharamshala, District Kangra, H.P. (Annexure P-12) and save and except for the present petition no lis is pending anywhere.

6. The scope of interference in a writ jurisdiction under Article 226 of the Constitution of India, is now well settled. The principles on which the writ of certiorari is issued are also well-settled.

7. The Constitution Bench in T.C. Basappa Vs. T. Nagappa & Anr., (1955) 1 SCR 250, held that certiorari may be and is generally granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings or from the absence of some preliminary proceedings or the court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed. An error in the decision or determination itself may also be amenable to a writ of certiorari subject to the following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari.

8. In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject- matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into reappreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.

9. Now in the instant case, authorities below did have jurisdiction to pass order. There are no extraneous circumstances or factors present in the passing of the impugned orders. It is not a case of malice in law or fact or bias. Question of prejudice caused to the petitioner does not arise and public interest is in favour

of the respondents. Entire material so placed on record stands fully considered and appreciated while passing the impugned orders.

10. The Constitution Bench in *NagendraNath Bora & Anr. Vs. Commissioner of Hills Division and Appeals, Assam &Ors.*, (1958) SCR 1240, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari where so set out by: "The Common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected and the appellate authority under a statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the appellate authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is not case for the exercise of the jurisdiction under Article 226."

11. That an error apparent on face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in *Satyanarayan Laxminarayan Hegde and Ors. Vs. Mallikarjun Bhavanappa Tirumale*, (1960) 1 SCR 890 . It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari.

12. The Constitution Bench in *The Custodian of Evacuee Property Bangalore Vs. Khan Saheb Abdul Shukoor etc.* (1961) 3 SCR 855 stated :- " The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in a 7-Judge Bench decision of this Court in *Hari Vishnu Kamath Vs. Ahmad Ishaque* 1955-I S 1104 : ((s) AIR 1955 SC 233) and the following four propositions were laid down :-

"(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."''

13. A Constitution Bench of Hon''ble Supreme Court in Rupa Ashok Hurra Vs. Ashok Hurra and Anr., (2002) 4 SCC 388, has held as under:- "109. Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

14. Hon''ble Apex Court in Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd., 2014(11)SCC 85, has held as under; ""....

"60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of "judicial review" one is instantly reminded of the classic and often quoted passage from Council of Civil Service Unions (CCSU) v. Minister for the Civil Service, [1984] 3 All ER 935, where Lord Diplock summed up the permissible grounds of judicial review thus:

Judicial Review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety".

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the State is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system... ..

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

15. It cannot be the petitioner's case that he is the owner of the premises. He does not claim to have perfected his title by way of adverse possession, which in any case, he cannot be permitted to do so, in view of the unabated and protracted litigation with respect thereto, inter se the parties. Though unsuccessfully, he contested his claim of being a tenant in perpetuity before the Civil Court, by filing a civil suit and before this Court by assailing the order passed under the provisions of the Act. Also he continued to default in abiding by the terms of the lease. In fact, he had no right to retain the premises beyond the original lease period.

16. Be that as it may, today petitioner's occupation is totally unauthorized. In detail the Appellate Authority has dealt with the contentions, so raised by the petitioner. It is a reasoned order. Material in its entirety stands considered by the authorities below. Despite repeated queries, learned counsel, failed in pointing out the illegality, impropriety, irregularity or perversity, in the orders, so passed by the authorities below. Our reasons based on the factual matrix already stand reflected in the earlier part of the judgment.

17. Indulgently, though undeservingly, we had suggested that petitioner take time to vacate the premises by filing an undertaking before this Court. But obstinately, such suggestion fell on deaf ears.

18. As such, we find no merits in the present petition and the same is dismissed, so also pending application(s), if any.