(1974) 07 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 12 of 1971

Rattan Chand etc. APPELLANT

Vs

The Deputy Commissioner etc. RESPONDENT

Date of Decision : 17-07-1974

Acts Referred:

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 24(1)
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 104, 104(1)
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 42, 43A, 46(1), 46(2)
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 — Rule 18

Citation : (1974) 3 ILR HP 599

Hon'ble Judges : R.S. Pathak, C.J;C.R. Thakur, J

Bench : Division Bench

Advocate : S. Malhotra, for the Appellant; R.K. Punshi and K.D. Sud, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The short question raised by this writ petition is whether Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, is ultra vires.

2. The Petitioners are residents of village Mahatpur, Tehsil Una. Aggrieved by the allotment of land made to them in consolidation proceedings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Petitioners applied in revision u/s 42 of the Act against the allotment. By his order dated November 20, 1970, the Deputy Commissioner, Bilaspur held that as the revision petition was filed beyond the period of limitation prescribed by Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, it was barred by time. Accordingly, without entering into the merits of the case, he rejected the revision petition. The Petitioners now pray for certiorari against that order.

3. Section 42 of the Act provides:

42. Power to State Government to call for proceedings: The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

....

Rule 18 provides:

18. Limitation for application u/s 42:

An application u/s 42 shall be made within six months of the date of the order against which it is filed:

....

4. The point for consideration is: Does Rule 18 exceed the rule-making power of the State Government? I think it does. It is an accepted axiom of law that a rule, being subordinate legislation, must lie within the compass of the Act, and must operate in harmony with it. Section 46(1) empowers the State Government to make rules "for carrying out the purposes of this Act". A rule which is in conflict with the Act does not carry out the purposes of the Act but tends to defeat the Act. Section 42 of the Act envisages the exercise of revisional power by the State Government "at any time". No period of limitation is contemplated. It is open to the State Government to exercise its revisional powers at any time when it comes to its knowledge that a proceeding or order by an officer under the Act is illegal or improper. That knowledge may come to it by way of application by an aggrieved party or even by way of information received from a stranger to the proceeding. If no period of limitation has been envisaged in the case of information from a stranger, it would be grossly illogical to prescribe it in the case of an application by a party to the proceeding. A question such as this arose before the Delhi High Court in M.C. Rahbar v. Union of India. 1968 D.L.T. 78 Hegde C.J. was required to consider whether Rule 104(1) of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, prescribing a period of limitation for presenting a petition invoking the revisional powers of the Chief Settlement Commissioner u/s 24(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, was invalid. The learned Chief Justice observed:

Prima facie, the period of limitation prescribed by Rule 104(1) conflicts with the power given to the. Chief Settlement Commissioner u/s 24. The rule making authority had no right to cut down the power conferred on the Chief Settlement Commissioner by that section. That section empowers him to exercise his revisional power "at any time". The rule making authority could not have whittled down that power. The learned Deputy Chief Settlement Commissioner got over that difficulty by saying that Rule 104(1) does not limit the power of the Chief

Settlement Commissioner to revise any order at any time, but it only fixes a period of limitation for an aggrieved party to invoke his jurisdiction. No right is conferred u/s 24 to any of the parties to a proceedings to compel the revisional authority to exercise its power. The revisional power is conferred on the Chief Settlement Commissioner. An aggrieved party can only bring his grievance to the notice of the Chief Settlement Commissioner. It is for him to consider whether he should exercise his revisional power or not. The Chief Settlement Commissioner, for properly exercising his power u/s 24, should have access to all sources of information which may bring to his notice the illegality or impropriety committed by his subordinates. It would be a curious reasoning to say that a third party may inform the Chief Settlement Commissioner about the illegality or impropriety of any order made by a subordinate "at any time", but an aggrieved party cannot do so after the period of thirty days, mentioned in Rule 104. There is no basis for such a classification. Rule 104 undoubtedly places an indirect restriction on the power of the Chief Settlement Commissioner. Therefore, I hold that that rule is ultra vires Section 24 of the Act.

5. It may be mentioned that the identical question raised before us has been the subject of consideration by the Punjab and Haryana High Court. In Puran Singh v. The State of Punjab 1971 C.L.J. 30, a Division Bench of that Court held that Rule 18 is ultra vires. But the learned Judges later reversed themselves in Puran Singh v. State of Punjab 1972 C.L.J. 900, and said that Rule 18 was valid. They rested their decision on the circumstance that Section 46(2)(ff) of the Act, which was inserted by Punjab Act No. 20 of 1959, empowered the State Government to make rules providing for:

the fees to be paid in respect of appeals and applications made under this Act, the documents which shall accompany such appeals and applications and the period within which applications shall be filed.

The learned Judges proceeded on the assumption that Section 42 of the Act was the only provision which envisaged the filing of applications, and therefore they observed that the limitation for filing applications provided for in Section 46(2)(ff) must relate to applications made u/s 42. They said:

It was present to the mind of the legislature while adding Clause (ff) to Section 46(2) of the Act, that the State Government and the rule-making authority will have to prescribe the period of limitation only for applications u/s 42 of the Act.

The apparent conflict between Section 42 and Section 46(2)(ff) was resolved on the principle that the latter provision, being later in point of time, would prevail over the former in case of any conflict between the two. In the view taken by them they felt fortified by the decision of a learned single Judge of the same Court in Sher Singh v. The State of Punjab 1966 C.L.J. 362. With great respect to the learned Judges who rendered the aforesaid decisions, it seems to me that the view taken by them proceeds Section on assumptions not supported by the provisions of the Act. It appears that Section 43A of the Act was not placed before them. 43-A was inserted by Punjab Act No. 20 of 1959, the same statute which inserted Section 46(2)(ff) in the Act. Both Section 43-A and Section 46(2)(ff) came in together. Section 43-A provides:

43-A. Correction of clerical errors:

Clerical or arithmetical mistakes in a scheme made, or an order passed by any officer, under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.

It will be noticed that Section 43-A speaks of the correction of clerical or arithmetical mistakes by the authority concerned either on its own motion "or on the application of any of the parties". The language of Section 43-A in this respect contrasts significantly with the terms of Section 42, which does not specifically refer to any application by anyone. Therefore, when Section 46(2)(ff) speaks of applications made under the Act, it must be taken to refer to applications made u/s 43-A. The two provisions read thus are in complete harmony, and the Court is not compelled to relate Section 46(2)(ff) and Section 42.

6. When taking the view that Rule 18 prescribes a period of limitation for invoking the revisional jurisdiction u/s 42 the learned Judges in the aforesaid cases referred to the need for expeditiously availing of those revisional powers. It was observed that consolidation proceedings should be terminated as expeditiously as possible. In my opinion, that object is fully served by the doctrine of laches applied in a case where a discretionary jurisdiction is conferred upon a court. There is a well-defined distinction between a prescribed period of limitation and the doctrine of laches. In this connection I may refer to what I said in Shri Shamsher Singh Kanwar v. The Union of India I.L.R (1973) Him 1016:

The doctrine of laches is founded in equity. It provides a defence in equity and has existed as such since the beginning of equity. It cannot be invoked where the statute prescribes a period of limitation. In contrast with a statute of limitation, equity does not fix a specific period but considers the circumstances of each case. The doctrine of laches is based on the injustice which might result from the enforcement of long neglected rights, the difficulty, if not the impossibility, of ascertaining the truth of the matters in controversy and doing justice between the parties, and on grounds of public policy, its aim being the discouragement, for the peace and repose of society, of stale and antiquated demands.

It is open to the revisional authority to consider, when exercising its revisional power u/s 42 of the Act, whether the delay occasioned in invoking its power should not be a ground for refusing to interfere.

7. Upon the aforesaid considerations, I am of definite opinion that Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 is ultra vires. That being so, the order of the Deputy Commissioner must be

quashed. It will be open to the Deputy Commissioner or the officer now authorized, to exercise power in this behalf to take up the revision application afresh and to dispose it of in accordance with law.

8. The writ petition is allowed. The order dated November 20, 1970, of the Deputy Commissioner, Bilaspur is quashed. The Petitioners are entitled to their costs, which I assess at Rs. 100.

C.R. Thakur, J.

9. I agree.

