

(1966) 05 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 3338 of 1963

Sant Ram Chopra and Others

APPELLANT

Vs

Jullundur Improvement Trust, Jullundur and Others

RESPONDENT

Date of Decision : 26-05-1966

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1966) 05 P&H CK 0005

Hon'ble Judges : Mehar Singh, J;A.N. Grover, J

Bench : Division Bench

Advocate : K.C. Nayar and C.M. Nayar, for the Appellant; K.L. Sachdeva, for the Respondent

Final Decision : Allowed

Judgement

A.N. Grover, J.—The main question which has to be determined in this petition under Article 227 of the Constitution which has been referred to a Division Bench is whether interference by this Court would be justified under the aforesaid Article on the facts and circumstances of this case.

2. As has been stated in the referring order, a Scheme was prepared under the Punjab Town Improvement Act, 1922, affecting land measuring 121 kanals and 16 marlas. The land of the petitioners measuring 30 kanals and 5 marlas was acquired for which the Land Acquisition Collector awarded compensation at the rate of Rs. 125/- per marla. At that rate a sum of Rs. 76,210/- was found payable as compensation to the petitioners. Being dissatisfied with the Collector's award the petitioners filed an application u/s 18 of the Land Acquisition Act read with section 59 of the Punjab Town Improvement Act. This reference was heard by the Tribunal constituted under the aforesaid Act. The Tribunal has virtually confirmed the award and has increased the compensation by an amount of Rs. 65/- only. It is common ground that no appeal is competent against the order of the Tribunal to any higher authority or Court.

3. The principal contention of Mr. Nayar for the petitioners is that the Tribunal was guilty of grave dereliction of duty inasmuch as it did not take into consideration material and almost conclusive pieces of evidence which if considered would have resulted in an order having been made in favour of the petitioners whose compensation would have been enhanced by at least Rs. 50,000/-. It has been pointed out that a plan, Exhibit C. 1, was not prepared by a local Commissioner under orders of the Tribunal which showed the situation and location of the various plots for which compensation had been awarded. If the Tribunal had considered this plan, it would have found that the land for which the Tribunal itself had granted compensation at the rate of Rs. 175/- per marla was similarly situated and there was hardly any difference or distinction between that land and the land of the petitioners for which compensation had been awarded at the rate of Rs. 125/- per marla only. Mr. Nayar has next called attention to a document, Exhibit A/2, evidencing a transaction relating to 19 marlas which relates to land at a very short distance from the petitioners' land. That land was sold at the rate of Rs. 262/- per marla. According to Mr. Nayar, the Tribunal has stated that there is no evidence in respect of the value of the well whereas in fact an estimate of the well was prepared by an expert (Exhibit A.W. 5/3), the value having been calculated at Rs. 4800/- odd. Mr. Nayar maintains that if the Tribunal had applied its mind to all the above matters which have either been completely ignored by it or have been considered without determining the relative location and the situation of the land of the petitioners as shown in the plan, it could not possibly have come to the conclusion that the petitioners were entitled to compensation at the rate of Rs. 125/- per marla only. According to Mr. Nayar, the award of the Tribunal has led to a grave miscarriage of justice as the petitioners have been deprived of their property without payment of proper compensation to the extent of at least Rs. 50,000/-. It is urged that in any case the award of the Tribunal is perverse as no judicial mind could have arrived at the conclusion at which the Tribunal did on the entire material on the record. As no appeal or other remedy is available to the petitioners, it is strenuously contended that it is a fit case in which this Court should interfere in exercise of the extraordinary powers conferred by Article 227 of the Constitution.

4. It is well established by now that the High Court's power of superintendence which could be exercised u/s 107 of the Government of India Act, 1919 and which had been curtailed by section 224 of the Government of India Act, 1935, has been fully restored by Article 227 of the Constitution. In *Manmatha Nath Biswas Vs. Emperor*, Rankin C.J. thus defined the limits of this power-

The general superintendence which this Court has over all jurisdiction subject to appeal is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. It does not involve responsibility for the correctness of their decisions, either in fact or law.

5. Tek Chand J. in AIR 1933 259 (Lahore) while deciding a petition in which the grievance was that the lower Court had shut out the evidence of party in a manifestly, improper and unjust manner, said that the jurisdiction u/s 107 of the Government of India Act, 1935 was not merely administrative but was also judicial. He observed that of course such a jurisdiction would be exercised in very rare and exceptional cases where grave and irreparable injustice had been done and he actually interfered in the petition before him and set aside the order of the lower Court directing it to do its duty. In Narendra Nath Sashmal Vs. Binode Behari Dey and Others, the Bhagchas Conciliation Board overruled the objections of the petitioner in that case to certain applications filed before that Board by a number of Bargadars, the objection being that the applications were vague and indefinite and did not conform to the rules framed under the West Bengal Bargadars Act, 1950. The petitioner's objections were dismissed and an award was eventually made by the Conciliation Board which was confirmed by the appellate officer. The legality and the validity of that award were canvassed before the Calcutta Bench presided over by Harries C.J. who quashed the award under Article 227 on the ground that the Board was bound to insist on the rules relating to applications being complied with and that unless the Court interfered grave injustice might well be done in the case. The learned Chief Justice observed with reference to Article 227 -

* * * I think it is now beyond all argument that Article 227 does allow this Court in a proper case to interfere judicially. It has been frequently laid down that such interference should be rare and only in cases where justice clearly demands interference, and where there is no other way of securing justice.

6. Harries C.J., presiding over a Special Bench of the same Court while dealing with a case under the Payment of Wages Act, 1936 in Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, , referred to the observations of Rankin C.J. in Manmatha Nath Biswas's case (supra) and followed that decision holding that the power u/s 107 of the Government of India Act, which roughly corresponded to Article 227, did not vest the High Court with limitless power which could be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence conferred by it was a power of a known and well-recognised character and should be exercised on those judicial principles which gave it its character. In general words, the High Court's power of superintendence was a power to keep subordinate Courts within the bounds of their authority, to see that they did what their duty required and that they did it in a legal manner. The power of superintendence was not given to the Court to correct errors which would be tantamount to a right to entertain appeals on law and fact. The right should be exercised only in cases where the Courts had clearly done something which they were not entitled to. The power must be used to keep the Courts within the bounds prescribed by law for such Courts. The petition in that case was dismissed because the only error which the Court below had committed was that a month's wages had been treated in lieu of leave as due. Moreover, no injustice was involved in the case nor could the order be

described as unjust or harsh. Another Division Bench of the Calcutta Court consisting of Chakravartti and Mookerjee JJ. in *Haripada Dutta Vs. Ananta Mandal*, had to deal with a decision of the Bhagchas Conciliation Board. There, an application filed by one Ananta Mandal claiming to be a Bargardar was rejected on the ground that he was not a Bargardar. The appellate officer reversed the decision of the Board and declared him to be a Bargardar. A petition under Article 227 of the Constitution was then moved in the Calcutta Court. Chakravartti J. was of the view that power under Article 227 included the power to require that the facts would be fully investigated and fairly considered after giving the parties a proper opportunity to explain them. Since that could not be said to have been done in the case which was being decided by the Calcutta Court the orders of the appellate officer as also of the Board were set aside and a direction was made that the Board must consider all the issues raised by the parties after giving them proper opportunity to adduce evidence. Mookerjee J., who delivered a separate but concurrent judgment, observed that by its very nature the remedy provided by Article 227 was to be applied only to extraordinary cases. Only, therefore, where grave injustice had occurred or was likely to occur by reason of some mistake committed by the inferior judicial or quasi-judicial bodies and the Municipal Law provided no adequate remedy, the High Court was entitled-and indeed bound-to intervene under Article 227 and correct the mistake and grant appropriate relief. In *Durgasree Stores v. Board of Revenue* AIR 1963 Cal. 400, a Division Bench after reviewing the case law has expressed the opinion that if the decision of a Tribunal can be shown to be arbitrary and devoid of reason or erroneous on the face of it or to be based on an error on a jurisdictional point then, by the exercise of the power of superintendence under Article 227, the High Court can and should revise the said decision. In the latest pronouncement of the Calcutta Court in *Satish Chandra Das v. State of West Bengal* AIR 1965 Cal. 2 (sic)² the same view was reiterated. In that case where the Commissioner and the Board of Revenue had not taken notice of the presumption which was to be drawn u/s 56 (4) of the Bengal Tenancy Act, the High Court interfered and set aside their orders.

7. Coming now to the decisions of the Supreme Court Chandrasekhara Aiyar J. speaking for the Court said in *D.N. Banerji Vs. P.R. Mukherjee and Others*, that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. The observations of Harries C.J. in *Dalmia Jain Airways Ltd v. Sukumar Mukherjee* received the imprimatur of the Supreme Court in *Waryam Singh and Another Vs. Amarnath and Another*, where the order of the Judicial Commissioner of Himachal Pradesh who had interfered under Article 227 was upheld. S.R. Das J. (as he then was) expressed the view of the Court in the following words:

As rightly pointed out by the Judicial Commissioner in the case before us the lower Courts in refusing to make an order for ejectment acted arbitrarily. The lower Courts realised the legal position but in effect declined to do what was by

section 13 (2) (i) incumbent on them to do and thereby refused to exercise jurisdiction "vested in them by law. It was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

8. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, the question was whether the excise authorities that had sanctioned the settlement of excise shops were merely administrative bodies and their orders were not amenable to the writ jurisdiction or supervisory jurisdiction of the High Court under Articles 226 and 227 of the Constitution. It was held that these authorities did not pass purely administrative orders which were beyond the ambit and power of the High Court's superintendence. It was further observed that the High Court had exceeded its powers in pronouncing upon the merits of a controversy which the Legislature had left to the discretion of the appellate authority. The background and history of the ancient writ of certiorari was examined by B.P. Sinha J. (as he then was), who delivered the judgment of the Court, and it was laid down that in order to attract such jurisdiction it was essential that the error should be something more than a mere error of law; that it must be on which was manifest on the face of the record. It was considered that the High Court in that case had interfered on errors which were errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inferences. In other words, those were errors which a Court sitting as a Court of appeal only, could have examined and, if necessary, corrected. It was then said at page 413-

The jurisdiction under Article 226 of the Constitution is limited to seeing "that the judicial or quasi-judicial tribunals or administrative bodies exercising quasi-judicial powers, do not exercise their powers in excess of their statutory jurisdiction but correctly administer the law within the ambit of the statute creating them or entrusting those functions to them.

Dealing with the question whether the Court could have interfered under Article 227 it was observed-

It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

9. In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, " the Bombay Revenue Tribunal had held that the Bombay Tenancy Act was applicable to lands held on Mulegeni tenure but the landlord must fail because he had failed to terminate the tenancy by notice before instituting the action for ejectment. The order of the Tribunal was challenged under Article 227

before the Bombay High Court and that Court was of the opinion that the Tribunal had committed an error which was apparent on the face of the record in holding that an order of possession could not be made unless a notice terminating the tenancy had been given before the institution of proceedings. K.C. Das Gupta J., delivering the judgment of the Supreme Court, said that an error which had to be established by a long drawn process of reasoning on points where there might conceivably be two opinions could hardly be said to be an error apparent on the face of the record. As in their Lordships' opinion the High Court was wrong in thinking that the alleged error in the judgment of the Tribunal was an error apparent on the face of the record it was held that such an error could not be corrected by a writ of certiorari. Dealing with the scope and power of superintendence under Article 227 it was observed that however wide it might be than the provisions of section 115 of the CPC it was well established that the High Court could not in exercise of its power under that provision of law. In the case before their Lordships there was no question of assumption of excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality in the procedure or any breach of any rule of natural justice and, if any, there was merely an erroneous decision which, the error not being apparent on the face of the record, could not be corrected in revision u/s 115 of the CPC or under Article 227. In order to understand properly the import of the observations in *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, the facts in that case may be briefly stated. The Assistant Settlement Officer had recorded the following two findings:

(1) That the status of the appellant was not that of a raiyat but of a permanent Moharari tenure holder and he accordingly directed such an entry in Khatian No. 52 being recorded.

(2) He found that the respondent was a temporary lessee under the appellant and accordingly directed a subordinate Khatian to be opened in which it would be recorded that the respondent was a temporary lessee for a period of two years during the period January, 1954 to January, 1956 at a rental of Rs. 25,000/- per year.

The District Judge having dismissed the appeal, the jurisdiction of the High Court was invoked under Article 227 of the Constitution. The High Court upheld the order of the Assistant Settlement Officer in respect of finding No. 1 but reversed it with regard to finding No. 2. It was held that there was no material on the basis of which the respondent could be found to be a temporary lessee. The submission before the Supreme Court was that the High Court had exceeded its jurisdiction in interfering what at the worst was a mere error in the appreciation of evidence and that in fact there was enough material for the finding which the Revenue Tribunals had reached, as regards the lease. Their Lordships were of the view that the High Court was not justified in interfering with the findings of the Revenue authorities as it was not sitting as a Court of appeal and had merely to consider, firstly, whether the tribunals had out-stepped the limits of their

jurisdiction, or secondly, whether the findings recorded were based on no material, or were otherwise perverse. It was further observed that even assuming that the Revenue Tribunals erred in their interpretation of the compromise, it could not be a ground on which their finding could, be set aside under Article 227, in view of the fact that the compromise was but one of the several items of evidence on which the finding was based. If thus there was material, the order could not be characterised as perverse to permit interference. Gajendragadkar J. (as he then was) reviewed the case law on Article 226 in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, while delivering the majority judgment. In that case the question arose whether overlooking material considerations in the matter of granting a stage carriage permit would be sufficient ground for interference under Article 226 with the order of the authorities constituted under the Motor Vehicles Act. It is not necessary to refer to the entire law enunciated by their Lordships and it would suffice to reproduce the following observations which are material for the purpose of the present case:

In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

An argument had been raised on behalf of respondent No 1 in that case that a letter which had important evidentiary value had not been considered by the State Transport Authority or the Appellate Tribunal. No reasons had been given by the Authority or the Tribunal in support of the findings of fact recorded by them. It was held that the High Court was not justified in granting a writ on the sole ground that the letter in question had not been considered by the said Authority. It would be useful to reproduce what was said further at page 481-

The question on which respondent No. 1 sought for the intervention of the High Court under Article 226 was a simple question of fact, and we are satisfied that on that question of fact, the Appellate Tribunal was justified in coming to the conclusion that the claim made by respondent No. 1 about the existence of a workshop at Chidambaram was not well-founded; but even if the said finding did not appear to the High Court to be satisfactory, that would be no reason for issuing a writ under Article 226. There was evidence in support of the finding of the Appellate Tribunal and it is not a case where the finding is based on no

evidence at all.

In the circumstances of that case it was felt that considerations of justice could not really arise as the Tribunals of fact had determined the question that respondent No. 1 did not own a workshop at Chidambaram which ultimately proved decisive against him. It was emphasised that a decision based on fact found by the Tribunal could not be reopened on the plausible plea that a further enquiry should be made because that would be just. Subba Rao J., who delivered a dissenting judgment, was clearly of the view that if a Tribunal ignored or failed to investigate a material circumstance put forward by a claimant and gave a finding against him the said finding could certainly be said to be vitiated by an error of law apparent on the face of the record.

10. So far as the decisions of this Court are concerned, it is only necessary to refer to the latest pronouncement in *Waryam Singh v. Punjab State* (1966) 68 P.L.R. 190, in which Dua J., delivering the judgment of the Bench in a petition under Articles 226 and 227, said-

It is true that a part of the relevant and material evidence has not been dealt with in the impugned order which could perhaps have been appropriately discussed therein; whether this omission is an error of law which can be considered to be manifest on the face of the record justifying interference by a Court of writ, has not been fully canvassed at the bar; I would, therefore, decline to comment on and to express in this case my considered opinion on this narrow point. The final conclusion of the prescribed authority, however, cannot be described to be based on no relevant evidence, because inferences on a matter of fact drawn from failure to produce relevant evidence may in a given case validly clothe the finding of fact with immunity from challenge in writ proceedings.

I have ventured to refer to the decisions of the Calcutta Court because the Supreme Court virtually adopted the observations of Harries C.J. in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* in *Waryam Singh's* case on the ambit and scope of Article 227. The principles which have been laid down by their Lordships and which have been reiterated in *Rambhu v. Shankar Singh* and another Civil Appeal 35 of 1966 Civil Appeal No. 35 of 1966 decided by the Supreme Court on 17th March 1966 leave no room for doubt that the supervisory power conferred by Article 227 is not greater than the powers under Article 226 and that they are meant to be utilised in cases where grave injustice has resulted and are to be used generally for keeping the subordinate Courts and Tribunals within the bounds of their authority and that the High Court would not be justified in interfering with the findings of the Tribunal unless it could come to the conclusion that the findings recorded were based on no material or were otherwise perverse vide *Nibaran Chandra Bag v. Mahendra Nath Ghughu*. It would be neither expedient nor proper to go into other grounds on which interference may be justified because they were not relevant for the purposes of the decision of the matter before us. It may, however, be stated that according to *Syed Yakoob v. K.S. Radhakrishnan* even in a case under Article 226 there can be interference if

the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding but the High Court would not be justified in granting a writ on the sole ground that a certain material piece of evidence had not been considered by the subordinate Tribunal or authority.

11. Adverting to the facts of the present case it can well be said that the order of the Tribunal is perverse and has led to a grave miscarriage of justice for the following reasons:

1. According to the petitioners, they were entitled to a sum of Rs. 5,000/- as compensation for the well in the land in question. The Tribunal has stated in its order that besides the solitary statement of A.W. Sudarshan Kumar, one of the petitioners, there is nothing on the record to show that the well which existed on the material date in the land which forms the subject-matter of these references was worth more than Rs. 400/-. Now, in the petition filed in this Court in paragraph 10 (v) it was stated that the petitioners had produced other evidence in the shape of an estimate prepared by Shri Hoshnak Rai, Overseer, (Exhibit A.W. 5/3) which had been proved by the testimony of that witness who had been summoned in the case under reference as well as in another case No. 8 of 1961 "Bahadur Lal vs. Improvement Trust" which was being tried on the same date and under the same provision of law, i.e., section 18 of the Land Acquisition Act. By consent of the parties and permission of the Tribunal the evidence was recorded in file No. 8 of 1961, while the estimate of well (Exhibit A.W. 5/3) was placed on the file of Shri Om Parkash vs. Improvement Trust who is petitioner No 2 before us. The Tribunal recorded the evidence of Shri Hoshnak Rai, Overseer, in respect of both the cases at one place, i.e., in the file of Bahadur Lal vs. Improvement Trust with the object of treating it as evidence in both the cases. In the written statement filed on behalf of the respondents, the aforesaid facts have not been properly controverted and all that has been stated is that the amount fixed by the Tribunal is proper and after considering all the evidence and witnesses the Tribunal has awarded the compensation and it was incorrect that the Tribunal omitted to consider any evidence. The learned Counsel for the respondents has not been able to show us from the record that the statements in the petition in the said paragraph are not correct. The position, therefore, is that the Tribunal disbelieved the statement of A.W. Sudarshan Kumar which it was entitled to do and stated wrongly that there was no other evidence (which again may not justify interference) but the Tribunal proceeded to fix the valuation of the well at Rs. 400/- on no evidence or material and none has been brought to our notice.

2. The land of Ram Singh and Didar Singh had been acquired along with the land of the petitioners and the Collector had put them in the same category and awarded compensation in respect of both the lands at the rate of Rs. 125/- per marla. Ram Singh and Didar Singh filed a reference u/s 18 of the Land Acquisition Act along with the references of petitioners 1 and 2. The Tribunal

increased the compensation of Ram Singh and Didar Singh to Rs. 175/- per marla. These facts have not been disputed. In its award the Tribunal has stated that A. W. Sudarshan Kumar admitted that the relevant plot of Ram Singh Didar Singh abuts on the Link Road which connects Model Town with Jullundur City and the land which forms the subject-matter of the case of the petitioners is not similarly situated and, therefore, the award (Exhibit A/3) made in the case of Ram Singh and Didar Singh did not afford any relevant data for determining the market value of the disputed land. According to the petitioners, the Tribunal itself got a plan (Exhibit P. 1.) prepared which showed the location of the various plots including the plot of Ram Singh and Didar Singh as also of the petitioners. This plan showed that the land in question adjoins the land of Ram Singh and Didar Singh and is similarly situated. Actually the land of the petitioners abuts on the main Model Town road and appears to be situated on a much more important road than the land of Ram Singh and Didar Singh which abuts on the Link Road. It was not a case of only ignoring the plan or a material piece of evidence but it can well be said that on the whole no Tribunal applying its mind judicially could have come to the conclusion that the land of the petitioners was not as well situated, if not better, as the land of Ram Singh and Didar Singh.

(3) If the petitioners had been awarded proper compensation for the well as also the land they would have been entitled to an enhancement of compensation which might have come to about Rs. 50,000/-.

In the result, the petition is allowed and the order of the Tribunal is quashed. It is directed to rehear and re-decide the matter in accordance with law. In giving a fresh decision the Tribunal shall not be influenced in any manner by any expression of opinion in the matter of the determination or the quantum of the amount of compensation to be awarded to the petitioners. In the circumstances there will be no order as to costs.

Mehar Singh, J.

I agree.