

(1993) 03 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : LPA (W) No. 92/1985, LPA (W) No, 93/1985, LPA (W) No. 94/1985,
LPA (W) No. 95/1985

State of J&K & Ors.

APPELLANT

Vs

Amina Begum & Ors.

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) KashLJ 309

Hon'ble Judges : B.A.Khan, J and R.P.Sethi, J

Bench : Division Bench

Advocate : D.S.Parihar, Advocates appearing for the Parties

Judgement

Khan, J.—These four appeals arise out of a common judgement and are disposed of by a common judgement as identical questions of law

and facts are involved. The appeals raise a substantial question of law Whether the writ court, in exercise of its extraordinary jurisdiction can issue

a mandamus or for that matter any other writ or direction which has the consequence of negating the decree passed by this court on its original

side. The issue involves a survey of the boundaries of power conferred on this court under Article 226 of the constitution.

2. The Case has a chequered history. It was some time in 1959 that compartment No. 37Sindh Range was leased out to M/s Haji Abdul Aziz and

Abdul Rashid for an amount of Rs. 7,35,141/. A leaseagreement was executed between the Forest Department and the aforesaid two persons on

November 26,1959. It contained an arbitration clause and prohibited the lessees from transferring their rights or liabilities under the agreement to

any one without previous sanction of the competent authority sanctioning the

lease.

3. It appears that during the currency of the lease, M/s Abdul Aziz and Abdul Rashid entered into partnership with M/s Ali Mohd Sheikh, Ghulam

Rasool, Abdul Rehman, Ghulam Mehd, Abdul Majid and Mst. Amina Begum to constitute a firm called ""M/s Eastern Forest Company."" The goal

of the partnership was to execute the lease afore said which was in fact worked out by all the partners to the notice and knowledge of the Forest

Deptt. It also transpires that parteners of M/s Eastern Forest Company fell out after sometime resulting in the dissolution of the partnership and

when an outstanding royalty amount of Rs. 1,34,5241 was sought to be recovered some of the legal representatives of one of deceased lessee

Haji Abdul Aziz filed Arbitration application No; 59/1967 in this court culminating in appointment of the then CCF, Mr. G.A. Naqashbandi as

arbitrator. He filed an award on Aug. 11,1973 fixing liability on the firm M/s Eastern Forest Company. The petitioners of arbitration application

were allowed to go scot free. The award was thereafter made rule of the court on Oct. 23,1974. An appeal was filed against the decree by the

State which was dismissed on May 31,1985 for its failure to object to award under sections 30/33 of the Act.

4. Respondents who are the L.R.S of, partners of Eastern Forest Company, other than Haji Abdul Aziz and Abdul Rashid, remained on the fence

watching the fate of arbitration proceedings and eventually filed writ petitions in 1975 seeking mandamus to forestall official respondents therein

including the Collector, Forest Recovery from recovering the outstanding royalty amount as arrears of land revenue and from issuing a distress

warrant of attaching the property of the writ petitioners. The case set up was that since writ petitioners were neither party to the lease agreement

nor to the arbitration proceedings, they could not be bound by the award and no liability fastened on them. The contention prevailed with the

learned Single Judge who allowed the writ petitions and quashed the recovery proceedings against the writ petitioners directing that ""the

outstanding royalty amount should not be recovered from them in pursuance of the decree of this court, by which award dated Aug. 11,1974 had

been made a rule of the court."" He also restrained the collector from taking steps to recover the outstanding amount from the writ petitioners under

the provisions of Land Revenue Act but left the State appellant free to seek appropriate remedy against the writ petitioners for recovery of the amount in question,

5. The State is in appeal before us and questions the very jurisdiction of the learned Single Judge to issue the writ and directions on the ground that

he had neither any competence to review or substitute the findings of fact recorded by the competent forums nor any authority to exercise the

extraordinary writ jurisdiction to set at naught the legal process climaxed by the judgement and decree passed by this court on Oct. 23, 1974 and

affirmed in appeal on May 31, 1985.

6. As already noticed, the matter raises a very interesting and significant question which touches the very roots of writ jurisdiction and its correlation

with the court's original jurisdiction. Is writ jurisdiction all pervasive to bring within its sweep matters that stand determined in the allied jurisdiction

by the court? Notwithstanding the vastness of the power can it be overstretched to overturn the otherwise established legal process and in

common understanding can Judge of coordinate jurisdiction overrule each other? Can an authority engaged in enforcing the decree and order of

this court be restrained from so doing by a writ of mandamus? All this and more falls for consideration and determination in the controversy raised

before us.

7. Considering the importance of the issues raised, a brief reference to the Contours of Article 226 of the constitution would be in order. It would

be pointless to delve deep into the origin of various writs from the English Law. Suffice it to say the Article confers a vast power on every High

Court to issue writs mentioned there into any person or authority, including in appropriate cases, any Govt. and to pass any order or direction for

enforcement of any of the fundamental rights conferred by part III of the constitution or "for any other purpose" i.e. for enforcement of any other

legal right. It is true that the extensive power is vested in the High Court, but it is not unbridled. It is required to be exercised with responsibility and

circumspection and is governed by the well established principles incorporating some self imposed limitations. Some of these require that the writ

court would not allow itself to be turned into a court of appeal or revision to review findings of fact recorded by competent forums or even to

correct minor errors which may not occasion any injustice. The Court would also not intervene where normal remedies provided by law are

effective and adequate. In other words, the extraordinary power is not meant to be exercised to supersede established legal remedies unless

shown deficient or ineffectual. Dealing with this aspect of matter, in AIR 1955 SC : 425 the Supreme Court observed :

Though the High Court has vast powers, but that is not to say that jurisdiction will be exercised whenever there is an error of law. The High Court

should not act as a court of appeal. Its powers are purely discretionary and though no limits can be placed upon that discretion, it must be

exercised along recognised limits and one of the limitations imposed is that it will not act as a court of appeal or revision to set right mere errors of

law which do not occasion any injustice.

8. Of the five writs, we are only concerned with Certiorari and Mandamus in the present case to examine whether the LD Single Judge could issue

any one of these in the facts and circumstances of the case. It is by now elementary that Certiorari is issued to inferior courts. Tribunals or

authorises to transmit record of proceedings pending with them for scrutiny of the High Court and if necessary to quash the same. It is normally

issued when inferior authorities act in excess of their legal authority and commit errors of jurisdiction apparent on the face of record. In other

words, the Certiorari lies where there is a defect of jurisdiction of the principles of natural justice.

9. Similarly, the Mandamus lies to secure performance of a public or statutory duty in the performance of which applicant must have a sufficient

legal interest. It is a command directing a person to do some public or statutory duty cast on him by virtue of his office or under the statute. The

duty sought to be enforced must be duty of public nature i.e. it must be created by the provisions of Constitution or a statute or some rule of

common law and must be an imperative duty and not a discretionary one. This writ may be necessary adjunct of Certiorari, but it can't issue to

compel performance by an authority of an act contrary to law or to enforce a duty which corresponds to a private right or performance where of is

discretionary in nature.

10. The purpose according to Halsbury's Laws of England is to remedy defects of

justice and to do justice in all cases where there is a specific legal right and no specific legal remedy for enforcing such right. It may also issue in exceptional cases even in the face of any alternative legal

remedy, but that is beside the point. Summing up the nature of the Mandamus, the Supreme Court had this to say in *Comptroller and Auditor General Vs KS Jagan Nathan* (AIR 1987 SC 537):

There is thus no doubt that the High Courts in India exercising their jurisdiction under Art 226 have the power to issue a writ of Mandamus or a

writ in the nature of mandamus or to pass orders and give necessary directions where the Govt. or a public authority has failed to exercise or has

wrongly exercised the discretion conferred upon it by a statute or a rule of a policy decision of the Govt. or has exercised such discretion mala fide

or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring

such discretion or the policy for implementation of which such discretion has been conferred. In all such cases and in any other fit and proper

case, a High Court can in the exercise of the jurisdiction under Art. 226, issue a writ of mandamus or pass orders and give directions to compel the

performance in a proper and lawful manner of the discretion conferred upon the Govt. or a public authority and in a proper case, in order to

prevent injustice resulting to concerned parties the court may itself pass an order or give directions which the Govt. or the public authority should

have passed or given had it properly and lawfully exercised its discretion.

11. Given regard to this legal position, it remains to be seen whether the learned Single Judge could quash the recovery proceedings initiated by the

Collector in execution of the decree passed by this court and restrain him to realise the outstanding royalty amount as a consequence thereof. We

have no doubt in our mind that the Ld. Judge has overstepped his jurisdiction in the matter, and we have reasons to say so. It cannot be disputed

or denied that the decree passed by this court had assumed finality and it could be set aside or modified only by taking recourse to available

appropriate legal remedy. It could in case be upset by the writ court in exercise of extra ordinary writ jurisdiction for that would in effect amount to

two courts of coordinate jurisdiction over ruling each other. To put it differently even assuming that the controversial award could not be held

binding on the respondent writ petitioners, as it was passed at their back, it survived in law when it was made rule of the court and affirmed in appeal by this court. The recovery proceedings initiated by Collector were only in execution and implementation of the decree passed by this Court. Therefore, no duty, much less public or statutory duty, was cast on the collector to desist from taking the recovery proceedings against the judgment debtors. If anything, he was duty bound to implement the decree of this court and could not be restrained from performing the lawful duty by a mandamus. Nor would certiorari lie in the circumstances as it was not anybody's case that recovery proceedings suffered from any error of law and want or excess of jurisdiction. As such, there was no occasion to quash the recovery proceedings by resort to a roving inquiry and examination of the award which could be challenged in time, through the mechanism provided in the Arbitration Act. The writ jurisdiction is after all an equitable and discretionary jurisdiction. It is not liable to be exercised in favour of those whose conduct leaves much to be desired. One fails to understand as to what prevented the fence sitters (writ petitioners) from seeking appropriate available remedy in time, if they felt aggrieved. Even the Ld. Single Judge has found them having derived the benefit of the Forest lease. Should they have been allowed to get away with the benefit in spite of their failure, to seek redressal of their grievance through established available remedies. They never deserved to be granted any relief even in equity, more so at the cost of established legal procedure and remedy as the writ jurisdiction is not meant to supersede the established legal remedies. It would be a sad day if it is overstretched to override states and to short circuit the normal legal process. Therefore, in our view, it was not the proper exercise of jurisdiction by the Ld. Single Judge to have issued the impugned writ in the facts and circumstances of the case. We also notice that appellant state had challenged the maintainability of the writ petitions in its reply which has not been considered by him.

12. In the premises, we hold that a writ court has no jurisdiction to issue any writ, order or direction in exercise of its power under Art, 226 of the constitution which has the consequence of upsetting or overturning the judgement or decree passed by a Judge of coordinate jurisdiction the original side. Nor would the Mandamus lie to stop the implementation of such decree by a public authority. We accordingly allow these appeals

and set aside the judgment impugned.