

State of Punjab Vs. S. Bhagwant Singh

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Court : Punjab and Haryana

Decided On : Mar-08-1972

Reported in : AIR1973P& H41

Judge : Gurdev Singh, J.

Acts : Limitation Act, 1908 - Schedule - Article 14

Appeal No. : Second Appeal No. 531 of 1966

Appellant : State of Punjab

Respondent : S. Bhagwant Singh

Judgement :

1. The respondent Bhagwant Singh while serving at Nazim in the State of Patiala was dismissed from service by an order of the Administrative committee appointed by the Ruler of that State, on 2nd April, 1927. The order further directed that his whole of self-acquired and half of ancestral property shall be confiscated. Reproduced in extenso it reads:

'Sardar Bhagwant Singh, ex-Nazim Sunam who has been under suspension pending enquiry into his conduct is hereby dismissed from service with effect from the date of suspension. The property acquired by him personally also half of his ancestral property shall be confiscated to the State and Sardar Khazan Singh suri is appointed official Receiver for the purposes.'

2. It appears that Bhagwant Singh waited for quite some time and it was only on the 31st of August, 1938, that for the first time he made a representation to the Ruler but without success. This representations was disposed of by recording this order:

'No need. File (Ex. D. W. 3/A).'

3. The second representation (Ex. D.2) dated 1st July, 1942, met the same fate and in the order dated 23rd of September, 1942, recorded thereon the Ruler refused to entertain it, saying:

'I cannot take the case up now. There is no need of putting up to me again.'

4. Despite the refusal of the Maharaja to interfere, Bhagwant Singh submitted yet another representation on 22nd of September, 1944, in which he reiterated his prayer that he be reinstated and the property which had been confiscated be restored to him. The order made on this application is not forthcoming, but presumably it also

met the same fate as the earlier representations.

5. Though as a result of the order passed by the Administrative Committee Bhagwant Singh stood removed from service, half of his ancestral property, that had been ordered to be confiscated, was not taken hold of by the State for quite a number of years. and it was only in the year 1962 that the Tahsildar took proceedings for the partition of that property, and it was thereafter on the 17th of May, 1963, several years after the State of Patiala that had in the meantime become a part of the PEPSU Union, had been merged in the state of Punjab, that Bhagwant Singh came to the Court seeking injunction restraining the Assistant Collector, Tehsildar Patiala, from continuing with the partition proceedings of his ancestral property, on the plea that the order passed by the Administrative Committee confiscating his property was ultra vires and unconstitutional.

6. In resisting the suit the State of Punjab being the successor of the State of Patiala pleaded, inter alia, that the plaintiff's claim was barred by time and the Civil Court, had no jurisdiction to entertain the suit. Though the trial Court dismissed the suit mainly on the finding that the representation of Bhagwant Singh had been rejected by the Maharaja, and the order of the Administrative Committee could not be challenged. In appeal the learned Senior Subordinate Judge, Patiala, Mr. Shamsad Ali Khan, decreed the claim of Bhagwant Singh, holding that the order of the Administrative Committee was beyond the competence and did not stand validated because of the rejection of Bhagwant Singh's representation by the ruler.

7. In this second appeal brought by the state against this appellate decree dated 19th of November, 1965, the validity of the order of the Administrative Committee by which the respondent's property stands confiscated is defended on the plea that the Administrative Committee exercised all the powers of Sovereign, including the power to confiscate the property, dismissal of Government servants, etc., as it was appointed to function for the Maharaja during his absence abroad. The learned Advocate-General further argued that even if the Administrative Committee had no power to order confiscation of the respondent's property, the defect in its jurisdiction was cured as by rejecting the respondent's representations against the same orders the Ruler had ratified and approved of the same, with the result that they should be deemed to have become the orders passed by the Ruler himself. After giving my earnest consideration to the matter, I, however, find that none of these contentions has any merit.

8. The Administrative Committee that passed the impugned order was constituted by the Maharaja on the 22nd November, 1926, by a notification Exhibit P-A in which it was stated that this Committee had been appointed 'to dispose of our ljas-i-khas work during our absence from the Capital in December and January next.' After laying down the constitution of the Committee the matters to be dealt with by it were specified and this part of the order reads thus:

'The Committee will be competent to dispose of all papers relating to :--

(a) Expenditure within the Budget.

(b) Recommendations of the Retrenchment Committee for carrying into effect the Budget as approved by us.

(c) Routine cases in which Ijlas-i-khas sanction is requisite. Court of wards cases also fall in this category.

(d) Postings and Transfers (Sub Protem).

(e) Ordinary Pension cases.

(f) All cases of emergency which require immediate action pending report to us.

(g) This committee can constitute itself into Judicial Committee of the Cabinet for disposal of cases pending before that body.'

9. Later on, however, by a notification published in the Patiala Government Gazette on the 26th of January, 1927 (Exhibit PB), the Maharaja further added to this list and directed:

'All cases coming under the following heads shall be disposed of by the Administrative Committee:--

(a) Extra grants of small amounts under Rs. 1000/-even when the money has been already disbursed.

(b) Confirmation of sentences of the Full Bench of the High Court upto life imprisonment.

(c) Confirmation of expenditure under taken under His Highness' Commands.

(d) Condonation of audit objections on the recommendation of a Minister raised on purely technical grounds by the Accountant General.'

10. From these two notifications relating to the constitution and powers of the Administrative Committee, the following facts are abundantly clear:

1. The Committee was constituted to function during the absence of the Ruler from the Capital in the months of December, 1926 and January, 1927.

2. No specific power was conferred on the committee to appoint or dismiss any servant or employee of the State or even to take any disciplinary action against any such employee.

3. The committee was not authorised to confiscate the property of any Government servant or any citizen of the State by way of punishment or otherwise.

11. Admittedly the impugned order confiscating the respondent's property was passed by the Administrative Committee on 2nd of April, 1927. This was clearly beyond the period of two months of December, 1926 and January, 1927, for which the Committee was authorised under the notification dated 22nd November, 1926. to function in absence of the Ruler. The argument of the learned Advocate-General that the term of this Committee must have been extended as it could not have otherwise passed an order of this type in April, 1927, cannot be entertained. No such plea was taken in any of the courts below and even though the appeal has been pending in this Court for nearly 6 years, no attempt has been made to place any such order on the

record by way of additional evidence. Accordingly, the impugned order of the Administrative Committee directing the confiscation of the property of the respondent, as found by the Appellate Court below must be held to have been passed without jurisdiction. Apart from this the functions which were entrusted to the Administrative Committee, as specified in the two notifications Exhibits P-A and P-B referred to above, did not confer any authority on the Administrative Committee to order confiscation of the property of the Government Servants in taking disciplinary proceedings against them, even though if it be issued (though there is nothing on the record to prove it) that the Administrative Committee was competent to take disciplinary action against the State Employees and punish them. On this ground as well, the direction contained in the order to confiscate the property of the respondent must be held to be without authority and illegal.

12. What remains to be considered is, whether the defect of jurisdiction in passing the impugned orders stood cured subsequently by the rejection of the representations of the respondent. From the facts that have been set out above at some length, it is apparent that the question whether these orders were passed by the competent authority was never decided by the Ruler. He no doubt refused to interfere and rejected the representations made by the respondent, but the two orders recorded by him, Exhibits DW3/A and DW3/B, which have been reproduced earlier leave no doubt that the Ruler refused to entertain the representations and did not go into the merits of the orders. In this situations it cannot be urged with any plausibility that the Ruler had adopted these orders, which were without jurisdiction, as his own orders or had ratified the same so as to make them his own orders and thus cured and defect of jurisdiction. Even if it be assumed, as has been urged by the learned Advocate-General that the ruler being Supreme Could validate these orders retrospectively, we find that there is no validation order in this case, of which the state can take any benefit.

13. The order of confiscation of the respondent's property having been passed by the Committee that had no jurisdiction or authority to pass it was void ab initio and could not adversely affect his interests in the property. In this view of the matter, the plea of limitation advanced by the State must be repelled. If it is a void order, as I have held, it was not necessary for the respondent to have it set aside and he could wait till an attempt was made to interfere with his rights in the property covered by the order. This is what exactly he did. When the proceedings for partition of his share of the ancestral property were taken by the Tehshildar, the respondent soon after came to the court attacking the validity of the order and seeking an injunction restraining the authorities from interfering with his property. In *Laxmanrao v. Shrinivas*, AIR 1927 PC 217, it has been ruled that if the order is illegal, the plaintiff is not bound to file a suit to set it aside, but is entitled to wait until it is enforced against him, and the attempt to enforce it against him gives him a good cause of action. Applying this rule it was held in *Chintamani v. Paika Samal*, AIR 1956 Orissa 136, that Article 14 of the Limitation Act, 1908, applies to acts or orders which need to be set aside, but it has no application in cases where jurisdiction has been usurped and that an order made without jurisdiction being a nullity does not require to be set aside. That was also a case in which the Ruler of State had ordered the resumption of holdings of some of its subjects. It was observed in that case that there was a clear distinction between want of jurisdiction and excess of jurisdiction and where the officer had no jurisdiction at all his act would be ultra vires.

14. In view of the above discussion, I find that the impugned order confiscating the

appellant's property being without jurisdiction could not enforced and the plaintiff was entitled to the relief that has been granted to him by the Lower Appellate Court,. The appeal thus fails and is, accordingly, dismissed with costs.

15. Appeal dismissed

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