(1959) 04 AHC CK 0015

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 59 of 1959

Boodan		APPELLANT
	Vs	
Asstt. Custodian General, Evacuee Property and Another		RESPONDENT

Date of Decision: April 15, 1959

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 1959 All 722

Hon'ble Judges: B. Mukerji, J

Bench: Single Bench

Advocate: B.K. Dhaon, for the Appellant; G.T. Wadhwani, for the Respondent

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

B. Mukerji, J.
This is a petition by Boodan praying for a writ of certiorari or any other appropriate writ or order to be issued by this Court against the Assistant Custodian General commanding him to produce the record of the case referred to in the petition and thereafter to quash the order made by the Assistant Custodian General on the 19th January 1959.

2. It appears that in respect of certain plots of land bhumidhari rights were claimed. These plots of land were evacuee property and under the law bhumidhari rights in respect of evacuee property could only be granted by the Custodian of the Evacuee Properties on the fulfilment of certain conditions. Certain orders were made by an Assistant Custodian (Judicial) I, Meerut. Thereafter a petition in revision was made and final orders on that revision appear to have been made by the Assistant Custodian General. The Assistant Custodian General happened to be functioning at Lucknow.

3. A preliminary objection was taken on behalf of the respondents to the effect that this petition was not entertainable by the Lucknow Bench of the Allahabad High Court on the ground that the "case" out of which this writ petition had arisen did not "arise within the area" over which the Lucknow Bench could exercise jurisdiction under the provisions of Clause 14 of the Amalgamation Order. It was pointed in this connection that the plots of land in respect of which bhumidhari rights were claimed and in respeet of which the order of the Assistant Custodian General had been made were situate at Meerut which was not one of the areas over which the Lucknow Bench exercised jurisdiction.

Reliance was placed on a decision of this Court in writ petition of Baldeo Ram and Another Vs. Deputy Commissioner, Gonda and Another, wherein a Bench of this Court, of which I had the privilege of being a member held, that the Lucknow Bench could validly entertain a petition for writ only when a case arose within an area which was amenable to the jurisdication of the Lucknow Bench under the Amalgamation Order. Badloo Ram''s case was a converse! case, for there the origin of the dispute or the origin of the case was at Gonda which was admittedly within the jurisdiction of the Lucknow Bench, but the order -- the final order which was the subject of challenge in the writ petition -- was made by the Excise Commissioner at Allahabad where he had his permanent office.

In Badloo Ram''s case the preliminary objection was raised on behalf of the respondents and the preliminary objection was on the ground stated above rejected by the Bench. I am bound by the Bench Decision in Badloo Ram''s case but Mr. Dhaon, who appeared on behalf of the present petitioner Boodan, contended that he was not bound by it and that he could argue to show that the decision in Badlco Ram''s petition was incorrect or at any rate needed reconsideration. Since I was a party to that decision, I was most anxious to know from Mr. Dhaon where we had gone wrong in Badloo Ram''s case. I, therefore, let Mr. Dhaon say all he had to in regard to this rather important question.

4. The main contention of Mr. Dhaon was that the decision in Badloo Ram''s petition proceeded on the assumption that Clause 14 of the Amalgamation Order was intra vires the Constitution; it is undoubtedly true that in Badloo Ram''s case nobody contended that Clause 14 of the Amalgamation Order was in any manner nut in jeopardy by any constitutional provision. What Mr. Dhaon contended was that when the Amalgamation Order was drawn up or passed i.e. in 1948, there were no constitutional guarantees for the citizen and therefore, when the framers of the Amalgamation Order used the word "case" in Clause 14 of that Order, they only had in mind such cases as could have arisen at that time.

Mr. Dhaon contended that they could not possibly have thought of cases which could arise subsequently for the enforcement of the constitutional guarantees and they could not therefore contemplate cases under the new jurisdiction which was conferred on it by Article 22(3) of the Constitution. Mr. Dhaon''s contention was that

in interpreting a provision of law one has to bear in mind the circumstances under which that law was made and one has also to bear in mind the intendment of the enactment.

No one can have any dispute with the broad propositions of interpretation on which Mr. Dhaon relies but the difficulty was when Mr. Dhaon attempted to put into use the aforementioned principles of interpretation in showing that Clause 14 of the Amalgamation Order did not mean what it Purported to mean or the meaning of Clause 14 of the Amalgamation Order was something different from what a mere reading of that Clause showed. I tried to follow Mr. Dhaon''s argument with care but I failed to see any appropriate grounds on which I could accept that argument.

Clause 14 of the Amalgamation Order speaks of cases arising in a particular area. It also speaks of "the jurisdiction and power for the time being vested in the new High Court". The reference to jurisdiction and powers for the time being vested, must in my opinion refer to all such powers and jurisdictions of the new High Court, as it possessed by virtue of being a High Court whether those powers and jurisdictions were there or not at the date when the Amalgamation Order was made. It is trite knowledge that laws of the type of which the Amalgamation Order was one are meant to have permanent effect : They are not like those laws which constantly keep on being changed, according; to the exigencies of the situation by Legislative amendments : the Amalgamation Order was a kind of charter which created the new High Court of which the Lucknow Bench was an integral part.

The Amalgamation Order replaced what was earlier the Letters Patent of the Allahabad High Court. The old Allahabad High Court had been created as we know under the Letters Patent. The new High Court viz., the High Court that came in existence on the amalgamation of the Chief Court of Avadh and the High Court of Judicature at Allahabad, came into existence by the United Provinces High Courts (Amalgamation) Order, 1948. Therefore, it was in the nature of a charter of this Court.

If the argument of Mr. Dhaon were accepted, namely that Clause 14 of the Amalgamation Order had nothing to do with the writ jurisdiction of this Court or in other words Clause 14 of the Amalgamation Order did not affect or in any manner control the power of the Court to entertain and dispose of writ applications which could be filed under the provision of Article 226, then it would amount to Saving that a part of the jurisdiction exercised by this Court -- and a very important part at that -- was being exercised independently of the Amalgamation Order, which as I have shown above was the parent or creator of the new High Court. This Court existed as a High Court at the time when the Constitution came into effect so that this Court could exercise any of the powers which were conferred on High Courts under Article 226 of the Constitution.

5. The next contention of Mr. Dhaon was that the word "case" in Clause 14 of the Amalgamation Order did not refer and it could not refer to writ applications, which according to Mr. Dhaon were something different and outside the connotations, of the word "case" and therefore he contended that even if Clause 14 of the Amalgamation Order was valid even so it could not affect writ petitions and that writ petitions could be filed at the pleasure of the litigant at any of the two places, namely Lucknow or Allahabad.

I have seen no reason to hold that the word "case" could not or did not include a writ petition. As was pointed out in Badloo Ram''s case, the connotation of the word "case" was different from the connotation of the word "suit", "appeal" or "proceeding". The connotation of the word "case" varied under different circumstances and I have no doubt in my mind that a writ petition could very well come within the meaning of the word "case" in Clause 14 of the Amalgamation Order.

6. The next argument of Mr. Dhaon was that in respect of a writ petition it could not be contended that if the writ petition was a "case" then it arose anywhere except where an order was made which the petitioner challenged by the writ petition. If the order which was being challenged had its first origin at the place where it was made then there was no difficulty in holding that the origin of the case in respect of that particular order was the place where that order was made, but where the order which was being made the subject of challenge in the writ petition was the culmination or was the ultimate order made in a case which arose somewhere else earlier, then in attempting to determine where the case in respect of a particular writ application arose one had to find out the place of origin of the case which culminated, so to speak, in the order which was being challenged by the writ petition.

It was pointed out in Badloo Ram''s case that in respect of that case Gonda was the place of origin because it was there that the auction of the excise shops took place while Allahabad was the place of culmination of that dispute because it was at Allahabad that the Excise Commissioner made its ultimate order.

7. Clause 14 of the Amalgamation Order did not in any manner affect either by curtailment or in any other way the jurisdiction which was conferred on a High Court. One has clearly to see the distinction between power and jurisdiction and the manner in which the power is to be exercised in respect of a jurisdiction. Under Article 225 of the Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, was to remain the same as was immediately before the commencement of the Constitution.

This Court, like any other Court, did make rules whereby (the writ petitions filed against orders made in certain areas could be heard by certain Judges or heard by Judges sitting at a certain place, and if that could be so then I do not see any reason why the Amalgamation Order by Clause 14 could not prescribe a place for receiving of petitions or cases or appeals arising in certain areas at one place and another place for receiving petitions etc. arising in another area.

In this connection I may also make a reference to the decision in Union of India (UOI) Vs. Chheda Lal Ram Autar and Others, .In this Full Bench decision it was held that the Judges sitting at Lucknow could deal only with cases arising in Avadh and that sitting there they could not deal with cases arising outside Avadh but in respect of cases arising in Avadh they could exercise all the power and jurisdiction which is vested in the High Court for the time being.

8. For the reasons given above, I have come to the conclusion that the preliminary objection in this case should prevail and that the petition could not be filed and heard by the Lucknow Bench.

9. I accordingly direct that this petition be returned to Mr. Dhaon for presentation at Allaha bad.