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Calcutta High Court

Case No: Civil Rule 1395 (W) of 1974

Bhudar Mete	APPELLANT
Vs	
Junior Land Record Officer and Others	RESPONDENT

Date of Decision: Aug. 26, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226, 265, 286, 32
- Contract Act, 1872 - Section 72

Citation: 82 CWN 526

Hon'ble Judges: M.N. Roy, J

Bench: Single Bench

Advocate: Mohammad Sadek Hossein, for the Appellant;

Judgement

M.N. Roy, J.
The petitioner, who claims to be a landless person and a settlee in respect of .53 decimals of land, moved and obtained this Rule against the purported action of the respondents to have those lands settled with respondent no. 4--Sk. Tinkori, without duly and lawfully cancelling his settlement. It has been contended by the petitioner that on such settlement as aforesaid, he duly acted and entered into possession of the lands in question and is possessing them as such settlee from the date of settlement. For the purpose of establishing the fact of such settlement and his possession, the petitioner has made reference to the rent receipts, which have been granted to him up to 1379 B.S.

2. It has been alleged by him that all on a sudden he was informed that the lands so possessed by him have been settled with the respondent no. 4, even inspite of the aforesaid fact of his possession. It may be mentioned that the petitioner has also contended that in terms of Rule 20A of the West Bengal Land Reforms Rules, it was and is obligatory on the part of the respondents concerned to make permanent settlement of the lands in question with him, in view of his earlier settlement as aforesaid and in fact, he

has made such an application.

3. It may be mentioned that no order of such purported settlement with the respondent no. 4 has been annexed with the petition and a Rule was obtained on anticipation. But one fact is certain that the lands in question were previously settled with the petitioner and such settlement has not yet been cancelled in accordance with law.

4. Although this Rule was made ready as regards service on 5th of August, 1975, nobody either appeared for the respondents or opposed the prayers as made on filing any opposition or otherwise, while the matter was taken up for hearing. Thus, the allegations made in the petition have gone uncontroverted and without any challenge.

5. Be that as it may, the first and foremost point which is required to be considered in this case is, whether without any order or determination being annexed with the petition, this court can interfere with in a proceeding under Article 226 of the Constitution of India and more so only on anticipation.

6. In support of his contention that interference by this court in its jurisdiction may be made, when there is a threat to the right of the petitioner even without the relevant order being annexed, Mr. Sadik Hossein, the Learned Advocate for the petitioner, first referred to the determination of the Supreme Court in the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, . In that case sales tax was assessed and paid by the dealer concerned and after such payment, the basis of the assessment as made, was declared by competent court to be invalid in law and consequently it was found that the payment of tax was made under mistake within Section 72 of the Contract Act and so the authority, to whom such payment was made on the said mistake, was in law required to repay the same. It has been observed by the Supreme Court that the High Court has, in exercise of its jurisdiction under Article 226, power for the purpose of enforcement of fundamental rights and statutory rights and to give consequential relief by ordering repayment of money realised by such authority without the authority of law. It has further been observed that where a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid under a mistake is entitled to get it back and that too when the court finds favour with the submissions relating to the points as referred to hereinbefore and there is also no limitation fixed for such prayers being made. The determination as made in the case as referred to hereinbefore, thus in my view would not be enough for holding that this court in its writ jurisdiction can interfere even without the impugned order being annexed. That apart, reference was made by the learned Advocate, to the case of Pamidimarri Chenchulakshmma Vs. The Estates Abolition Tribunal Nellore and Others, . In that case, it has been observed that a person who seeks to file a petition under Article 226 should be one who has a personal or individual right in the subject matter of the petition. A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an

authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. The said determination has, admittedly, been made on the basis of the determination of the Supreme Court in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, , wherein it has been observed that the existence of the legal right which he is alleged to have been infringed is similarly a condition precedent to the maintenance of an application under Article 226, where the application has been brought for the enforcement of a non-fundamental right. Such legal right may be constitutional or statutory right, which, however, need not be a proprietary interest.

7. Apart from the cases as referred to hereinbefore, it would appear from a reference to the case of The Bengal Immunity Company Limited Vs. The State of Bihar and Others, and Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, that an application under Article 226 can be presented not only after the applicants'' legal rights have been invaded already but also while they have been threatened with an immediate peril. In the case of Bengal Immunity Company Ltd. -v- State of Bihar (Supra), a notice under Bihar Sales Tax Act calling upon the company to forthwith get it registered as a dealer and to submit a return and to deposit tax in a Treasury in Bihar was under consideration and it has been observed that such direction would have placed upon the company considerable hardship, harassment and liability which, if the act was void under Article 265 read with Article 286 of the Constitution. In the other case of K. K. Kochunni -v- State of Madras (supra) it has been held that the Supreme Court cannot decline to entertain a petition under Article 32, as the right to move the Supreme Court by appropriate proceedings for the enforcement of the right conferred by Part III of the Constitution is itself a guaranted right and as such the mere existence of an adequate alternative legal remedy cannot per se be a good and sufficient ground for throwing out a petition under Article 32, if the existence of a fundamental right and a breach, actual or threatened, of such right is alleged and is prima-facie established on the petition. Thus, the cases as referred to hereinbefore, would not even be enough for holding that without annexing the copy of the impugned order or in anticipation only, a writ can go as the facts in these cases were distinct and different from the facts of the present one and more particularly when, the interference in those cases were made on the happening of something, viz., the declaration of void nature of the parent Act or the actions taken thereunder and the more so when in the instant case there is no such happening. The determination as referred to hereinbefore have not, in my view, laid down the absolute proposition that writ can go without annexing the copy of the order or on anticipation, as in the instant case. Such anticipatory order is available under the Criminal Procedure Code on amendment but there is no such provision in the Constitution. The anticipatory orders under the said Code help the persons concerned or entitle them to avoid arrest and harassment from future arrest, viz., for the safeguard of his personal liberty. The Constitution of India, no doubt, guaranteed personal rights, liberties and freedom in terms of Part III but that has not specifically guaranteed protection of such rights on anticipation. The order of Mandamus is, in force, a command issuing from the High Court and directed

to any person, corporation or interior tribunal, requiring him or it to do some particular thing specified in it which appertains to his or its office and is in the nature of public duty. The order of Certiorari is an order issuing out of the High Court and directed to the Judge or Officer of an inferior tribunal to bring proceedings in a cause or matter pending before the tribunal into the High Court to be dealt with in order to ensure that the applicant for the order may have the more sure and speedy justice. I have mentioned about the writ of or writs in the nature of Mandamus and Certiorari only and not in respect of other writs as the petitioner has prayed for those writs only. Thus, I am of the view that the submissions as made by Mr. Sadik Hossein, the learned Advocate for the petitioner, viz., a writ can be issued even without annexing the copy of the order, should fail. The order or the action or inaction as depicted through the same should ordinarily be the basis for interference and issues of the Rule.

8. In view of the above, if the Respondents have a legal duty to perform and such performance is refused or such refusal can be found out from their conduct or silence, then of course an application for a writ of Mandamus can be entertained. More particularly such application can be entertained, when the Respondents have a positive duty or obligation and such duty or obligation has not been fulfilled.

9. As such, I may discharge the Rule without making any interference as no order has admittedly been annexed satisfying the aforementioned tests. But, if I do so, that would possibly create injustice so far the petitioner is concerned. Admittedly, the petitioner is a landless person and is also a settlee in respect of .53 decimals of land, for which the State Government has accepted rents up to 1379 B.S. Since such settlement has been made with him, he can very reasonably claim that under Rule 20A of the West Bengal Land Reforms Rules, the Additional District Magistrate and Collector, Birbhum--Respondent No. 2, should consider his claim for necessary permanent settlement. Such consideration, appears to be absent in this case. When the lands in question are being held by the petitioner as settlee, then in terms of the said Rule 20A, he can very reasonably claim for consideration of his case and such consideration, not having been done, this Rule must succeed on that short point only. The Rule is thus made absolute. Let appropriate directions be given to the Respondents concerned for making appropriate determination of the representation of the petitioner as mentioned hereinbefore, and thereafter to pass necessary orders in the matter of settling the lands in question. I am also of the view that without duly and properly cancelling the settlement, as is subsisting in favour of the petitioner, the distribution of those lands, which the petitioner is holding as such settlee, cannot be made.