

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-1773-1988
Date of Decision: 19.03.2024

Dalbir Kaur (since deceased) through LRsPetitioners

Versus

Union of India and others
....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

Present: Ms. Neha Lakhanpal, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana and
Mr. P.P.Chahar, Sr. Deputy Advocate General, Haryana.

Sureshwar Thakur, J. (Oral)

1. The present petitioner is the alienee from the one Shri Baij Nath. To the above said one Baij Nath, allotment(s) of land were made by the custodian under the Evacuee Property Act. The allotments as made to the vendor of the present petitioner, were made of those lands, which were left behind by Muslim migrants, who on the occurrence of the partition of India, migrated from India to Pakistan. Therefore, though in terms of the verdict rendered by the Hon'ble Apex Court in case titled as "**Gram Panchayat of Village Jamalpur V/s Malwinder Singh**", to which ***Civil Appeal No.1401(N) of 1973***, is assigned, wherein it has been expostulated that after the coming into force of the Punjab Act of 1953, the custodian concerned, was

left with no vestige of jurisdiction to make allotments of shamilat deh lands to the allottees concerned, as the said shamilat deh lands, did rather on migrations of Muslims, from India to Pakistan, become completely vested in the Gram Panchayat concerned, thus, the allotment made to the vendor of the present petitioner is not a validly made allotment.

2. Resultantly, Annexure P/3 also bring grievances to the present petitioner and has led her to institute thereagainst the instant writ petition before this Court.

3. Be that as it may, through the amending Act No.13 of 1996, Section (ii-a) became inserted in Section 2(g) of the Act 1961, provisions whereof are extracted hereinafter.

“(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July, 1985 ;]”

4. The said inserted provision though did assign retrospective validity to allotments made of shamilat deh lands, by the custodian concerned, but with a cut-off date therein, inasmuch as, the allotments being required to be made before the 9th day of July, 1985. It is pertinent to mention here, that the vires of insertion of provision (supra) through the amending Act No. 13 of 1996, was challenged before this Court, in a case titled as ***Gram Panchayat of village Kum-Kalan versus State of Punjab and others***, and, to which ***CWP No. 4816 of 1996***, is assigned. However, through a decision made on the said petition, this Court had upheld the vires of the said inserted

provision hence through the relevant amending Punjab Act No. 8 of 1995, and, Haryana Act No. 13 of 1996. Though the vires of the provision, as challenged in the petition (supra), appertained to the insertion of the relevant amended provision through an amending Act, as, passed by the Punjab Legislative Assembly, but when the phraseology of the above inserted provision in the Haryana Act of 1961, is but similar to the phraseology of the amended provision, inserted in the Punjab Act 1961, through the relevant amending Act. Therefore, the upholding, by this Court in judgment (supra) qua the vires of the insertion of the amended provision, through the relevant amending Act, does also with equal force apply, to the insertion in the Haryana Act of 1961, of provisions similar to the one, as became inserted in the Punjab Act of 1961.

5. It is but relevant to mention the reasons which prevailed upon, this Court to uphold the vires of the amended provisions. The said reasons are enunciated in paragraphs 39, and, 40 of the judgment (supra), paragraphs whereof stand extracted hereinafter.

39. To the same effect is the judgment of the Hon'ble Supreme Court in The Govt. of A.P. and another v. Hindustan Machine Tools Ltd., AIR 1975 Supreme Court 2037. In that case, it was held as under:-

“8. We see no substance in the respondent's contention that by redefining the term 'house' with retrospective effect and by validating the levies imposed under the unamended Act as if, notwithstanding anything contained in any judgment decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial function

The power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary.

9. The State legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of 'house' by the substitution of a new section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.

10. In Tirath Ram Rajindra Nath v. State of U. P. (2), the Legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by amending it retrospectively did not constitute an encroachment on the functions of the judiciary. (emphasis supplied)."

40. The Hon'ble Supreme Court while dealing with a similar controversy in M/s Utkal Contractors & Joinery (P) Ltd.'s case (supra), regarding competency of the legislature to pass Act retrospectively/prospectively, observed as under:-

“14. The next question to be considered is whether the State while purporting to amend the Act has encroached upon the judicial power and set aside the binding judgment of this Court. We do not think that Mr.Nariman was justified in contending so. The principles have been well established in a string of decisions of this Court, and we may briefly summarise as follows:

The legislature may, at any time, in exercise of the plenary power conferred on it by Arts. 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitation. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. Hari Singh v. Military Estate Officer (1973) 1 SCR 515: (AIR 1972 Supreme Court 2205), Govt. of Andhra Pradesh v. Hindustan Machine Tools Ltd. 1975 Suppl SCR 394: (AIR 1975 Supreme Court

2037), I.N. Saksena v.State of M.P. (1976) 3 SCR 237: (AIR 1976 Supreme Court 2250) and Misri Lal Jain v. State of Orissa (1977) 3 SCR 714: (AIR 1977 Supreme Court 1686).”

6. A deep reading of the above extracted paragraphs, do make imminent emergencies, qua the legislature being conferred with a plenary power by Articles 245 and 246 of the Constitution, to render a judicial decision ineffective by enacting a valid law. Moreover, it has also been pronounced therein, that to such an enacted law, retrospectivity can be assigned. Therefore, but obviously the insertion of the provision (supra), by the amending Act No.13 of 1996, did vest, in the custodian concerned, an able empowerment to allot even shamilat deh lands to the allottees concerned. However, obviously with a rider that such allotments were required to be made on or before the 9th day of July, 1985.

7. In sequel, when the said inserted provision in the Act of 1961, rather diluted the effect of the verdict made by the Hon’ble Apex Court in **“Gram Panchayat of Village Jamalpur V/s Malwinder Singh”**. Therefore, the dependence as made in the impugned order, upon, the verdict (supra) is a misplaced reliance thereons, as reiteratetly the verdict (supra) as became made by the Hon’ble Apex Court, has been diluted, vis-a-vis, its vigor through the insertion of the said provision in the Act of 1961. Significantly, also when within the domain of the said inserted provision in the Act of 1961, the allotment of the disputed lands, as made to the predecessor in interest of

the present petitioner, was made prior to 09.07.1985. Thus, the natural corollary thereof, is that, the impugned order is required to be quashed and set aside. Accordingly, the writ petition is allowed and the impugned order is quashed and set aside.

(SURESHWAR THAKUR)
JUDGE

19.03.2024

Varinder Prashad

(LALIT BATRA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No