

Basant Singh
and another
v.
Tirloki Nath
and others
Gosain, J.

Court cannot refuse to execute the decree on the basis that the suit in which the decree was passed had been over or under valued, but it must refuse to execute the decree when the question of valuation of the suit is not to be investigated and it is found that on the valuation as given in the plaint the Court passing the decree had no pecuniary jurisdiction to pass it. Mr. Tiwari lastly contended that the suit was filed in a Court which had jurisdiction to entertain it and, therefore, there was no defect of jurisdiction in the Court passing the decree. It has been repeatedly held that a Court must have jurisdiction to entertain it at all its stages and not merely at the initial stage. The Court in which the present suit was filed had no doubt jurisdiction to entertain the suit but on abolition of the said Court the suit went over to the Court of a Sub-Judge who was exercising only second class powers and who had no jurisdiction to entertain the suit for over Rs. 5,000 in value. On the valuation given in the plaint the Sub-Judge could not have tried the suit and the decree passed by him must, therefore, be held to be a nullity and inexecutable. The appeal has, therefore, no merit and is dismissed with costs.

B. R. T.

CIVIL WRIT

Before G. L. Chopra, J.

JIT SINGH AND OTHERS,—Petitioners

versus

THE DIRECTOR OF CONSOLIDATION OF HOLDINGS,
PUNJAB, AND OTHERS,—Respondents

Civil Writ No. 692 of 1958

1957

Feb., 25th

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Application under—Order “file” passed thereon—Such order whether amounts to the exercise of jurisdiction under the section—Subsequent order passed in the same case—Whether amounts to review of the previous order—Powers of

the State Government delegated to the Director—Government whether completely divested of such powers—Section 42—Whether ultra vires of the Constitution.

Held, that under section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the State Government or the officer to whom the powers are delegated may at any time call for and examine the record of any case pending before or disposed of by any subordinate officer and may pass such order as it or he thinks fit. But where the Director to whom the powers under the section were delegated did not call for the record, he did not go into the merits of the case and did not even say in the order that he was satisfied as to the legality or propriety of the orders of his subordinates, the order refusing to take any action under the section and merely directing the application to be filed cannot be regarded as an exercise of the jurisdiction vested in him under the section. The subsequent order passed in the same case cannot, therefore, be regarded as one reviewing the previous order passed by the Director.

Held further, that the delegation of the powers of the State Government under section 42 to the Director, Consolidation of Holdings does not completely divest the Government itself of its powers. The reference by the Director, in the order finally passed by him, to the Minister's verbal orders with which he expressed his own agreement would not invalidate the order.

Held also, that power under section 42 of the Act is given to look into the legality and propriety of any order passed by any subordinate officer. The fact that no time limit for exercise of the power is provided is of no consequence. The section does not in any way contravene any of the provision of the Constitution.

Petition under Article 226/227 of the Constitution of India praying that a writ of certiorari or any other writ or direction be issued quashing the order of respondent No. 1, dated 8th June, 1958.

HABANS SINGH DOABIA, for Petitioners.

CHETAN DASS and H. S. GUJRAL, for Respondents.

ORDER

Chopra, J.

CHOPRA, J.—This is a petition under Articles 226 and 227 of the Constitution praying for a writ of *certiorari* or any other appropriate writ or direction quashing an order, dated 8th June, 1958, made by the Director, Consolidation of Holdings, Punjab, Jullundur; under section 42 of the East Punjab Holdings, (Consolidation and Prevention of Fragmentation) Act, 1948, (hereinafter to be referred as the Act). The facts which gave rise to the petition are:

Consolidation proceedings in village Talwandi Bakhta, Tehsil Batala, were started in the year 1951. The consolidation scheme was duly prepared and implemented. Various objections to the re-partition were raised and they were finally disposed of in the year 1954. The appeals filed under section 21 were also decided on 15th September, 1954. Mutations on the basis of the new holdings were duly entered under section 22 of the Act and new Jamabandi records were also prepared in the beginning of the year 1955. On 8th June, 1958, the Director, Consolidation of Holdings, Punjab, passed an order under section 42 of the Act, whereby he reduced the valuation of certain fields from annas twelve to annas eight, and as a result thereof withdrew the excess area from the petitioner's share and allotted the same to respondents Nos. 4 to 7. It is against this order of the Director that the present petition is directed.

Mr. Doabia, learned counsel for the petitioners, contends that on a previous application presented by the respondents the Director, Consolidation of Holdings, Punjab, had already exercised the power vested in him under section 42 of the Act,

and refused to interfere and since no power of review was given under the Act, the order in question was without authority and liable to be quashed. The argument is that power of review can only be conferred by a statute and where no such power is given an order once made becomes final so far as the authority making it is concerned. There may be force in the contention, but on the facts of the present case the question of review does not arise. What actually happened was that some of the respondents had submitted an application, purporting to be one under section 42 of the Act, to the Director, Consolidation of Holdings. The application was presented on 6th May, 1955, and the same day the only order the Director made on it was, "file". The order amounted to saying that the Officer did not deem it necessary to take any action or pass any order under the said provision of law. Section 42 of the Act says—

"The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful considerations."

Under this section the State Government or the Officer to whom the powers are delegated may at

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any time call for and examine the record of any case pending before or disposed of by any subordinate officer and may pass such order as it or he thinks fit. Here, the Director did not call for the record, he did not go into the merits of the case and did not even say in the order that he was satisfied as to the legality or propriety of the orders of his subordinates. The order refusing to take any action under the section and merely directing the application to be filed cannot be regarded as an exercise of the jurisdiction vested in him under the section. The order in question cannot, therefore, be regarded as one reviewing his own previous order by the Director.

I am supported in this view by a recent decision of Mehar Singh, J., in C.W. No. 897 of 1958, where the facts were much stronger. There, the order (dated 26th March, 1958), of the Director, Consolidation of Holdings, which was relied upon as a bar to the subsequent exercise of powers under section 42 by the same authority, was in the following terms:—

“Seen. The order of Assistant Director, Consolidation of Holdings, under section 21(4) need not be amended. File and inform.”

On a consideration of the true import of the order the learned Judge concluded as follows:—

“Thus the order of 26th March, 1958, was not an order under section 42 of the Act and it does not operate so as to bar respondent No. 1 from passing an order in accordance with that section which he actually did on 16th July, 1958.”

As at present advised, I may not be inclined to go as far as that. But I have no manner of doubt that the order in context before me cannot be regarded as one made in exercise of the powers under section 42.

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It is next submitted that the Director in making the order merely acted upon the directions given by the Minister Incharge, Consolidation Department and did not independently devote his own mind to the merits of the dispute. The case was heard by the Minister in the presence of the Director, and the opinion formed by the Minister was also embodied in his order by the Director. It is not denied that the Minister could have himself made an order of the kind under the said provision of law. Delegation of the powers of the State Government under section 42 to the Director, Consolidation of Holdings, did not divest the Government itself of its powers. The mere fact that some reference to the Minister's verbal orders, with which the Director expressed his own agreement, was made in the order finally passed by the Director would not invalidate the order.

It was then, though only half-heartedly, submitted that section 42 of the Act is *ultra vires* the Constitution inasmuch as it confers an unfettered discretion on the State Government to make at any time any order it thinks fit. The power is given to look into the legality or propriety of any order passed by any subordinate officer. The fact that no time limit for exercise of the power is provided is of no consequence. Counsel has not been able to satisfy me that the provision does in any way contravene any of the provisions of the Constitution.

It is lastly submitted that the order was made long after the consolidation proceedings had been

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finally completed. I am prepared to agree with Mr. Doabia that it does appear to be very much improper that any modification should have been made in the things which had been settled and acted upon long ago. But any interference on that ground in exercise of the extraordinary jurisdiction of this Court under Article 226 would also be equally improper. The power was there, and it is not even suggested that the exercise of it was capricious or *mala fide*.

In the result, the petition fails and is dismissed with costs.

K. S. K.

CIVIL MISCELLANEOUS

Before K. L. Gosain and A. N. Grover, JJ.

JAGATJIT COTTON TEXTILE MILLS LTD.,
PHAGWARA,—Petitioner.

versus

INDUSTRIAL TRIBUNAL, PATIALA (NOW DEFUNCT)
AND OTHERS,—Respondents.

Civil Miscellaneous No. 143(P) of 1956

1958
Mar., 31st

Industrial Disputes Act (XIV of 1947)—Sections 7, 8 and 10—Industrial Tribunal appointed for six months on 13th August, 1955—Life expired on 12th February, 1956 but extended for another six months on 29th February, 1956 with retrospective effect—No fresh reference made—Award given in a pending dispute on 13th July, 1956—Whether valid—Constitution of India (1950)—Article 226—Writ of Prohibition—Issue of—Whether discretionary under the Constitution of India—Rules for the grant of such writ stated—Writ of Certiorari—Objection to the jurisdiction of the Tribunal not raised before the Tribunal—Effect of—Such objection whether can be taken for the first time in a petition for a writ of certiorari—Conduct of the petitioner—Whether disentitles him to such relief—Principles as to stated.