

Commissioner of
Income-tax,
New Delhi
v.
Hamdard Dawa-
khana
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There can be no doubt in regard to the correctness of the view taken by the Tribunal. The object of construing an instrument creating a trust is to ascertain the intention and the purpose of the settler and to effectuate that purpose in so far as it is consistent with the rules of law. The invalidity of a part of the trust does not invalidate the remainder where, as in the present case, the valid portion is independent and severable from the invalid portion. I am aware of no provision of law which prevents a partner from creating a *waqf* in respect of his own share.

The Tribunal has held that the deed by which the trust was created was a genuine document, that it was intended to be acted upon, that it was actually acted upon and that the *waqf* was in fact created. I am satisfied that these findings are findings of fact and that no question of law arises out of the order of the Tribunal. Even if any question of law does incidently arise I am of the opinion that it is not important enough to justify this Court in requiring the Tribunal to state the case.

For these reasons I would uphold the order of the Tribunal and dismiss the petition with costs which I assess at Rs. 150.

BISHAN NARAIN, J.—I agree....

B.R.T.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Falshaw, J.

JAMADAR UTTAM SINGH,—Appellant.

versus

PUNJAB STATE AND OTHERS,—Respondents

Letters Patent Appeal No. 52 of 1959.

1959
Nov., 3rd

The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Order

passed under without summoning and examining record—Whether valid—Such order—Whether can be vacated later.

Held, that it is true that Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, empowers the State Government to call for and examine the record of any case pending before or disposed of by any officer and to pass such order in reference thereto as it thinks fit, but it is not necessary that an order under section 42 should be passed only after the records have been sent for and examined. It is a matter of everyday experience that Courts of law often dismiss application for revision summarily without sending for or examining the records. If, therefore, the Director dismissed the respondents' application on the 26th March, 1958 *in limine* and without examining the records, it cannot be said that his order was void and of no effect. The order dated the 26th March, 1958 was clearly an order under section 42 of the statute.

Held, that the Tribunal constituted by the said Act has not been invested with the power to vacate an order passed by it and to replace it by another order. Even if an administrative tribunal has inherent power to review its own order, it cannot exercise this power arbitrarily and without reason. The Director in this case has given no reason for recalling his previous order and for passing a new one and as such its order recalling the first order is wholly null and void.

Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Mehar Singh, dated the 5th day of February, 1959, passed in Civil Writ No. 897 of 1958.

A. C. HOSHIARPURI, for Appellant.

S. D. BAHRI and H. R. AGGARWAL, for Respondents.

JUDGMENT

BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the Director, Consolidation of Holdings was justified in reviewing an order passed by him under section 42 of the Consolidation of Holdings Act of 1948. Bhandari, C. J.

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During the course of consolidation proceedings in village Manga of the Hoshiarpur District a plot of land towards the east of a village-path was allotted to Ujagar Singh, Raja and Khushia, respondents Nos. 2; 3 and 4 while two plots of land one on the eastern side of the path and the other on the western side of the path were allotted to Uttam Singh petitioner. Uttam Singh objected to the allotment on the ground that his land had been split up into two portions by the path in question but these objections were overruled by the Consolidation Officer. On appeal by Uttam Singh the Settlement Officer directed that respondents 2 to 4 should be given land both on the eastern and western sides of the said path in lieu of the land which had already been allotted to them. The respondents preferred an appeal to the Additional Assistant Director but were unable to secure a reversal of the order passed by the Settlement Officer. Having failed to obtain the redress to which they considered themselves entitled the respondents presented two applications to the Minister for Consolidation of Holdings. The Minister forwarded one of these applications to the Director on the 30th July, 1957 and retained the other with himself. He sent for the records of the case and when he visited Hoshiarpur on the 29th November, 1957, he afforded a hearing to the land-owners concerned in the presence of the Director. On the 3rd December 1957 he forwarded the second application presented by respondents Nos. 2 to 4 to the Director and asked the latter to dispose of the applications under section 42 of the statute after affording the respondents an opportunity of being heard. On or about the 3rd December, therefore, both the applications presented by respondents 2 to 4 to the Minister were in the hands of the Director. On the 26th March he dismissed the application which was forwarded to him

by the Minister on the 30th July, 1957, by means of a short order which 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.”

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He later summoned the parties and after hearing them at some length passed another order on the 16th July, 1958, by virtue of which he set aside the order of the Additional Assistant Director under section 42 and restored that of the Consolidation Officer. During the course of this order the Director observed as follows :—

“The C.H.M. had heard this case on 29th November, 1957, at Hoshiarpur and had expressed his opinion that it would be better to shift the petitioners to one side of the path as before.”

The petitioner challenged the validity of the order passed by the Director on the 16th July, 1958, by means of a petition under article 226 of the Constitution, the principal ground being that the Director having once passed an order under section 42 on the 26th March, 1957, had no power to vacate it. The learned Single Judge before whom this petition was put up for consideration, admitted that the powers of an administrative officer to review an order passed by him are extremely limited, but he held that the Director did not send for or examine the records of the case before passing his order dated the 26th March, 1958, that the said order cannot be deemed to have been passed under section 42 of the statute and consequently that the said order could not prevent the Director from passing an order on the 16th July, 1958. The petitioner has preferred an appeal under clause 10 of the Letters Patent.

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Section 42 of the Act of 1948 is in the following terms :—

“42. 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.

* * *

43. Except as provided in this Act no appeal or revision shall lie from any order passed under this Act.”

It is impossible to make a broad general statement which is applicable to all administrative tribunals and to all situations as to whether it is or is not within the power of an administrative officer to rehear, to reconsider or to modify an administrative decision made by him. According to certain authorities, administrative officers charged with quasi-judicial duties have inherent power to correct clerical errors in their determinations, or to consider or modify them on the ground of fraud, mistake or inadvertence or on account of newly discovered evidence. According to others, an administrative tribunal has no power to review a final determination made by it unless power of review is conferred by the statute either expressly or by necessary implication. Be that as it may, the fact remains that even if an administrative tribunal has inherent power to review its own order, it cannot exercise this power arbitrarily and without reason.

The first point for decision in the present case is whether the first order passed by the Director can be

said to be an order passed under section 42 of the statute. It is true that section 42 empowers the State Government to call for and examine the record of any case pending before or disposed of by any officer and to pass such order in reference thereto as it thinks fit, but it is not necessary that an order under section 42 should be passed only after the records have been sent for and examined. It is a matter of everyday experience that Courts of law often dismiss applications for revisions summarily without sending for or examining the records. If therefore the Director dismissed the respondents' application on the 26th March, 1958 *in limine* and without examining the records, it cannot be said that his order was void and of no effect. The order dated the 26th March, 1958, was clearly an order under section 42 of the statute.

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This brings me to consideration of the second question which has arisen in the present case, namely whether a tribunal constituted by the Act of 1948 has been invested with the power to vacate an order passed by it and to replace it by an other order. The answer is clearly in the negative. Even if a tribunal possesses some inherent power, the Director has given no reason for recalling his previous order and for passing a new one.

For these reasons I would allow the appeal, set aside the order of the learned Single Judge and declare that the order passed by the Director on the 16th July, 1958 was wholly null and void. The successful party will be entitled to the costs of this Court.

FALSHAW, J.—I agree.

B. R. T.