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several years of the passing of the property (in respect of which the order is passed) out of the compensation pool may possibly be liable to be struck down on the ground that it is opposed to the rule of law to the effect that quasi-judicial orders should not be lightly interfered with after they have once achieved finality merely because the Chief Settlement Commissioner thinks that the original order was not as good as it should have been. The fact that according to the opinion of a particular officer the value of certain property was fixed too low or too high before the property was transferred would not normally be a matter to be interfered with long after the absolute transfer of the property under section 24(1) of the Act because mere wrong valuation not based on any fraud or misrepresentation of the party benefited by the error is not intended to amount to illegality or impropriety within the meaning ascribed to those terms in that section.

On the facts of this case the interference with the original valuation after 9 or 10 years does not appear to be justified and appears to be outside the scope of section 24(1) of the Act.

I have, therefore, no hesitation in accepting this writ petition and in setting aside the impugned orders of the Chief Settlement Commissioner and of the Central Government setting aside the transfer of the house in dispute to the petitioner or claiming any amount whatever from him in respect of the house in dispute on the basis of the revised valuation. As the petitioner has been harassed and vexed by the respondents without any fault of his and against the spirit and intention of the relevant provisions of the Act after the absolute transfer of the title of the property in question to him, the respondent shall pay his costs of this case.

Dua, J.

INDER DEV DUA, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

SHER SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2046 of 1963

1966

January 28th.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 21, 42 and 46—Petition under S. 42—Whether competent if remedies provided in S. 21(2), (3) and (4) not followed—East Punjab Holdings (Consolidation and Prevention of

Fragmentation)—Rules (1949)—*Rule* 18—*Whether* intra vires—*State Government—When can condone the delay in filing the petition under S.* 42—*Constitution of India* (1950)—*Art.* 226—*High Court in a petition under—Whether can interfere with order of the State Government admitting a time-barred petition under S.* 42.

Held, that an aggrieved party can approach the State Government directly under section 42 of the Act without approaching the consolidation authorities under sub-sections (2), (3) or (4) of section 21 of the Act.

Held, that a petition under section 42 of the Act is no doubt an application under the Act. Clause (ff) in sub-section (2) of section 46 specifically authorises the State Government to make a rule prescribing the period within which such an application can be filed. Rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, is, therefore, *intra vires* of section 46(2)(ff) of the Act and must be enforced.

Held, that there is no doubt that the appropriate authority acting on behalf of the State Government has the jurisdiction to admit a petition under section 42 of the Act after the expiry of the period of limitation prescribed therefor. The scope of that jurisdiction is, however, circumscribed by the second proviso to rule 18. The only contingency in which a time-barred petition can be admitted and entertained by the State Government under section 42 of the Act is, if the applicant satisfies the competent authority of the fact that he had sufficient cause for not making the application within the prescribed period of six months of the date of the order. He would also have to satisfy the authority about the reason for every subsequent day's delay. The discretion to condone the delay vests in the authority under section 42 of the Act and cannot be controlled by the High Court. But in this case the competent authority has exercised the jurisdiction under the second proviso to rule 18 on a ground which is wholly extraneous to the said statutory provision. That the requirement of path is fundamental one in consolidation proceedings, cannot be claimed to be a sufficient cause which might have prevented respondent No. 2 from approaching the said authority under section 42 of the Act. That being so, the solitary ground on which the time-barred petition was admitted by the State Government is extraneous and does not form a valid consideration permitted by law to be taken into account for condoning delay under rule 18.

Held, that if the question of limitation is not raised at all before the authority exercising power under section 42 of the Act, it may not be allowed to be raised for the first time in writ proceedings as it involves a question of fact. If it is raised but the delay is condoned

by the appropriate authority either without giving any reasons or on any legal ground whatsoever, the High Court cannot interfere with the exercise of the discretion by the competent authority. But where the competent authority extends the time on extraneous grounds, the High Court is competent to interfere with that order in a writ petition under Article 226 of the Constitution.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, *or any other appropriate writ, order or direction be issued quashing the order of the Additional Director, dated 29th July,* 1963.

D. S. TEWATIA, ADVOCATE, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL, AND H. L. SARIN, SENIOR, ADVOCATE, WITH MISS ASHA KOHLI, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—The facts relevant for the decision of this writ petition are not in dispute. The repartition of village Jharsa, tehsil and district Gurgaon, was announced by the authorities under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be called the Act) on September 12, 1953. Admittedly, no proceedings under sub-sections 2, 3 or 4 of section 21 of the Act were taken by or on behalf of Mehar Chand (respondent No. 2). After about 9 years of the publication of the repartition, Mehar Chand filed a petition under section 42 of the Act before the State Government. By order dated July 29, 1963, the Additional Director accepted the application of respondent No. 2 and directed that certain area be withdrawn from Sher Singh, petitioner and the equivalent area be given to the civil Panchayat for making a pathway. This order of the Additional Director has been impugned by Sher Singh in this writ petition on two grounds. Firstly, it was contended that respondent No. 2 could not approach the State Government directly under section 42 of the Act without first exhausting his alternative remedies under section 21(2), (3) and (4) of the Act. In *Bhagat Singh* v. *State etc.*, (Civil Writ No. 2579 of 1965 decided on the 16th December, 1965) it has already been held by a Division Bench of this Court (Mehar Singh and Pandit, JJ.), that an aggrieved party can approach the State Government

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directly under section 42 of the Act without approaching the consolidation authorities under sub-sections (2), (3) or (4) of section 21 of the Act. There is, therefore, no force in this contention of the petitioner. The second ground on which the order of the Additional Director is attacked is that it is violative of the statutory provisions of rule 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter called the Rules).

At the hearing of the petition before the Additional Director, Consolidation of Holdings, Punjab, an objection appears to have been taken regarding the petition being time-barred. It is not disputed that rule 18 of the Rules, as amended, had already come into force before the application under section 42 of the Act was filed by respondent No. 2 on November 28, 1962. Rule 18 aforesaid reads as follows:—

> "18. *Limitation for application under section* 42.—An application under section 42 shall be made within six months of the date of the order against which it is filed:
>
> Provided that in computing the period of limitation, the time spent in obtaining certified copies of the orders and the grounds of appeal, if any, filed under sub-section (3) or sub-section (4) of section 21, required to accompany the application shall be excluded:
>
> Provided further, that an application may be admitted after the period of limitation prescribed therefor if the applicant satisfies the authority competent to take action under section 42 that he had sufficient cause for not making the application within such period".

There is no doubt that the appropriate authority acting on behalf of the State Government has the jurisdiction to admit a petition under section 42 of the Act after the expiry of the period of limitation prescribed therefor. The scope of that jurisdiction is, however, circumscribed

by the second proviso to rule 18. The only contingency in which a time-barred petition can be admitted and entertained by the State Government under section 42 of the Act is if the applicant satisfies the competent authority of the fact that he had sufficient cause for not making the application within the prescribed period of six months of the date of the order. A petition under section 42 of the Act against any part of the repartition did lie but the question raised before me is whether the Additional Director out-stepped his jurisdiction under the second proviso to rule 18 in admitting the petition on the solitary ground on which he purported to waive the time limit in the following words:—

> "The petition is time-barred but as the provision of path is one of the fundamental requirements of consolidation, I waive the time limit".

As stated above, the only ground on which a time-barred petition can be entertained by the competent authority under section 42 of the Act is that the petitioner before the authority had sufficient cause for not making the application within six months. He would also have to satisfy the authority about the reason for every subsequent day's delay. The discretion to condone the delay vests in the authority under section 42 of the Act and cannot be controlled by this Court. Though the expression used by the Additional Director in this case is "waive", it is apparent from the tenor of the order that what he intended to convey was that he was extending the time limit. If he had not given any reason for admitting the time-barred petition. I would not have interfered in this case as the impugned order would not then be a speaking order at all. If the question of limitation was not dealt with in the order itself, it may again be doubtful whether the Court should interfere in the matter or not. But in this case the competent authority has exercised the jurisdiction under the second proviso to rule 18 on a ground which is wholly extraneous to the said statutory provision. That the requirement of path is fundamental one in consolidation proceedings, cannot be claimed to be a sufficient cause which might have prevented respondent No. 2 from approaching the said authority under section 42 of the Act. That being so, the solitary ground on which the time-barred

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petition was admitted by the State Government is extraneous and does not form a valid consideration permitted by law to be taken into account for condoning delay under rule 18.

Mr. H. L. Sarin, the learned Senior Council for respondent No. 2 referred me to a series of judgments in connection with the application of rule 18. He had first referred to the dictum of their Lordships of the Supreme Court in *Ebrahim Aboobakar and another* v. *Custodian-General of Evacuee Property* (1), wherein it has been held that even if a question of limitation is wrongly decided by a Court of competent jurisdiction, no writ petition can be filed to quash such an order. But there is a difference between a wrong decision of fact or law on the one hand and the decision based on some extraneous considerations. Reference is then made to the judgment of Shamsher Bahadur, J., dated the 10th April, 1963, in *Chuhar Singh* v. *The State of Punjab and others* (Civil Writ No. 861 of 1962). The writ petition was dismissed in that case on two grounds. It was held that the petitioner had not suffered any substantial injustice and on the ground that rule 18 undoubtedly allowed the admission of time-barred petitions under section 42 of the Act. There is nothing to show that in the impugned order in that case delay had been condoned by the competent authority on any extraneous ground. Reference is then made to the judgment of Harbans Singh, J., in *Chand Singh* v. *The State of Punjab and others* (Civil Writ No. 1393 of 1962, decided on the 13th August, 1963), where the petitioner was not allowed to raise the question of limitation as the same had not been taken up before the Director and as there is ample provision in the rule for extension of time. The facts of that case are also different from the one in hand. If the question of limitation is not raised at all, it may not be allowed to be raised for the first time in writ proceedings as it involves a question of fact. If it is raised but the delay is condoned by the appropriate authority either without giving any reasons or on any legal ground whatsoever, this Court cannot interfere with the exercise of the discretion by the competent authority. This case, however, falls in

(1) A.I.R. 1952 S.C. 319.

the third category where the competent authority has extended time on an extraneous ground. That being so, I am not able to sustain the impugned order.

It was then argued by Mr. Sarin that the petitioner has not suffered any loss or injustice. The impugned order does not show that any area has been given to the petitioner in lieu of that withdrawn from him. On the contrary it shows that the area withdrawn from the petitioner has been given to the Panchayat. It was on this account that I had directed by my order dated the 20th December, 1965, that the Panchayat be impleaded as a respondent in this case. According the village Panchayat was added as a respondent. A notice of the writ petition was sent to it. In spite of service of notice, the Panchayat has not appeared to oppose the writ petition. The learned counsel for the petitioner has today filed a certified copy of a resolution of the Panchayat dated the 19th January, 1966, which shows that notice of the writ petition has been received by the Panchayat and that the Panchayat has left it to respondents Nos. 1 and 2 to contest the petition.

Mr. Sarin has lastly argued that effect should not be given to the time limit imposed by rule 18 quoted above because the said rule is *ultra vires* of section 42 of the Act. In support of this contention reliance is placed by the learned counsel on the judgment of Grover, J., in *Messrs Gopi Nath-Madan Gopal* v. *The State of Punjab and another* (2), Rule 36(3)(a) of the Punjab Entertainments Duty Rules, 1956, was struck out by this Court in the abovementioned case on the ground that the provision made by it for a deposit of the amount in question being insisted as a condition precedent for the entertainment of a revision petition, was outside the scope of the rule-making power given by section 12 of that Act. If section 46(I) of the Act was alone there, an argument of this type could possibly be examined. I, however, find that by section 7 of Punjab Act No. 20 of 1959, clause (ff) has been added to section 46(2) of the Act in the following words:—

> "In particular and without prejudice to the generality of the foregoing power, the State Government may make rules providing for the fees to

(2) I.L.R. (1962)2 Punj. 495=1962 P.L.R. 596.

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be paid in respect of appeals and applications made under this Act, the documents which shall accompany such appeals and applications and the period within which applications shall be filed".

The petition under section 42 of the Act is no doubt an application under the Act. The above-quoted clause in sub-section (2) of section 46 specifically authorises the State Government to make a rule prescribing the period within which such an application can be filed. I, therefore, hold that rule 18 is *intra vires* of section 46(2)(ff) of the Act and must, therefore, be enforced.

I, accordingly, allow this writ petition and set aside the impugned order of the Additional Director dated July 29, 1963. This would not, however, mean that the application of respondent No. 2 under section 42 of the Act has been dismissed by me, as a result of the quashing of the impugned order. The application of respondent No. 2 shall be deemed to be pending before the State Government and will now be heard and disposed of in accordance with law. If the second respondent is able to convince the competent authority of his having been prevented by sufficient cause for not approaching the State Government under section 42 of the Act before the 28th November, 1962, it would certainly be open to the appropriate authorities to admit, entertain and decide the second respondent's application on merits in accordance with law.

In the circumstances of the case, there will be no order as to costs in this Court.

B.R.T.

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

THE MANAGEMENT OF BAR ASSOCIATION CANTEEN,—

Petitioner

versus

THE CHIEF COMMISSIONER AND OTHERS,—*Respondents*

Civil Writ No. 1767-C of 1965

1966

January 28th.

Industrial Disputes Act (XIV of 1947)—S. 2(J)—Delhi District Courts Bar Association Canteen run on 'no profit no loss' basis—Whether 'industry'—Particular establishment—Whether an industry—How to be determined—Interpretation of Statutes—Rules of construction if literal meaning results in absurdity stated.