

2010 Y L R 1846

[Lahore]

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

PROVINCE OF PUNJAB through Secretary Government of Punjab---Petitioner

Versus

MEMBER, FEDERAL LAND COMMISSION, ISLAMABAD and 6 others---Respondents

Writ Petitions Nos. 2961, 2962 of 2008, 2023 to 2026 of 2009 and 5002 of 2010, heard on 8th April, 2010.

(a) Constitution of Pakistan (1973)---

---Art. 184 (1)---Original jurisdiction of Supreme Court---Scope---If any dispute between two governments either inter two or more Provincial Governments on one side and Federal Government on the other side is involved, then the original jurisdiction of entertaining such dispute for the purpose of decision has been conferred upon Supreme Court.

(b) Constitution of Pakistan (1973)---

---Arts. 184(1) & 199---Land Reforms Regulations, 1972, Paras. 18 (3) & 29---Constitutional petition---Dispute between two governments---Provincial Government sought setting aside of orders passed by Federal Land Commission whereby land in question was allotted to private persons---Validity---Basically power envisaged by paragraph No. 29 of Land Reforms Regulations, 1972, was the power of Federal Government, which the Federal Government could exercise directly or authorize any person in that behalf to exercise of that power---Federal Land Commission, while passing orders of allotments in question was in fact exercising power of Federal Government as provided of in paragraph No.29---Provincial Government raised a dispute which had arisen between Provincial Government and Federal Government and the same was exclusively entertainable by Supreme Court in view of Art. 184 (1) of the Constitution---High Court declined to interfere in allotment orders passed by Federal Land Commission---Petition was dismissed in circumstances.

The Punjab Province v. The Federation of Pakistan PLD 1956 Federal Court 72 rel.

Muhammad Hanif Khatana, Additional Addl. A.-G. for Petitioners.

Muhammad Ashraf Khan, Deputy Attorney-General for Respondents.

Date of hearing: 8th April, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---Through the instant judgment, we propose to dispose of W.Ps Nos.2961 and 2962 of 2008, W.Ps. Nos.2023, 2024,2025 and 2026 of 2009 and W.P. No.5002 of 2010 as common question of law is involved in the matter.

2. All the above mentioned writ petitions have been instituted by the Province of Punjab through Secretary, Government of the Punjab, Colonies Department, Lahore and are aimed at seeking the setting aside of orders passed by the Member Federal Land Commission, whereby the land subject-matter of the writ petitions was allotted by the Member Federal Land Commission to the private respondents in exercise of powers under para 18 (3) of MLR No.115. In all the writ petitions, the Federal Land Commission is arrayed as the main respondent, whose member has passed the orders of allotment of the subject land. It is important to submit that the land allotted by the Federal Land Commission through the impugned order is claimed by the Province of Punjab to be vested in it.

3. As the interpretation of the Article 184 (1) of the Constitution of Islamic Republic of Pakistan concerning the Government of Punjab, was involved, therefore, vide dated 29-3-2010, this Court directed the learned Advocate-General to assist the Court on the maintainability of the writ petitions before this Court in view of the provisions incorporated in Article 184(1) of the Constitution. The learned Additional Advocate-General has appeared to address the arguments on the point and the learned Deputy Attorney-General has appeared to assist the Court on behalf of the Federal Land Commission.

4. The main contention of the learned Additional Advocate-General, who has appeared to argue the writ petitions is that the land subject-matter of the writ petitions vested in the Provincial Government and it is the privilege and entitlement of the Province of Punjab to allot or not to allot the land in question through its department/official of Provincial Land Commission to any person and that the Federal Land Commission or its officials are vested with no authority to exercise any power of allotting of the land to the private respondents, thus, the orders of allotment were prayed to be declared unlawful, void and without jurisdiction. It is contended by the learned Additional Advocate-General that Article 184 (1) of the Constitution applies only if some legal right with respect to any property becomes controversial between the Provincial Government and the Federal Government. The learned Additional Advocate-General elaborated that the controversy involved in the writ petitions is with respect to the rights of private parties, who are impleaded as private respondents, to hold the allotment as granted by the Federal Land Commission in their favour, which is sought to be set aside in the writ petition and that there is no clash in between the Government of Punjab and the Federal Land Commission as such so as to attract the bar of jurisdiction created by Article 184(1) of the Constitution.

5. The learned Deputy Attorney-General has contended that the writ petitions have been instituted by the Government of Punjab in which the orders passed by the Member Federal Land Commission allotting the land to private respondents, which land is claimed by the Provincial Government of the Punjab to vest in it, is involved, therefore, this matter constitutes a dispute between the Government of Punjab and a Federal Government department, therefore, the

exclusive original jurisdiction has been conferred upon the Hon'ble Supreme Court of Pakistan by virtue of Article 184(1) of the Constitution on the matter and that the writ petitions are not entertainable by the Court.

6. We have considered the arguments of the learned counsel for the parties and have perused the record.

7. The writ petitions instituted by the Government of Punjab are based upon the basic contention that the land subject-matter of the writ petitions was resumed by the Government of Punjab in exercise of powers vested in it by virtue of Punjab Land Reforms Act, 1977, which fact is specifically narrated in grounds of the writ petitions. The jurisdiction and power of the Federal Land Commission under para.18(3) of MLR 115 of 1972 has been specifically challenged by the Government of Punjab through the instant writ petitions. The Member Federal Land Commission in the impugned orders of allotment found the private respondents eligible for allotment of land on the ground of they being the tenant in occupation of the land, which status of the private respondents has also been challenged in the writ petitions by the Government of Punjab.

8. The provisions of Article 184(1) of the Constitution of Islamic Republic of Pakistan, 1973 read as follows:---

"Article 184. Original jurisdiction of Supreme Court.---(1) The Supreme Court shall, to the exclusion of every other Court, have original jurisdiction in any dispute between any two or more Governments."

A bare reading of the above mentioned Constitutional provision sufficiently manifests that if any dispute between the two governments either inter two or more Provincial Governments or one or more Provincial Governments on the one side and the Federal Government on the other side, is involved, then the original jurisdiction of entertaining such a dispute for the purpose of decision has been conferred upon the Hon'ble Supreme Court of Pakistan. In this context, a judgment reported as *The Punjab Province v. The Federation of Pakistan* (PLD 1956 Federal Court 72) is very relevant wherein an Income Tax Officer served a notice under section 35 of the Income Tax Act upon a factory at Jallo Rosin and Turpentine Factory, which factory vested in the Province of Punjab after partition of the sub-continent. The Province of Punjab assailed the notice issued by the Income Tax Officer by filing suit before the Federal Court invoking the original jurisdiction of the said Hon'ble Court and the Federation of Pakistan raised a preliminary objection upon the maintainability of the suit in view of section 204 of the Government of India Act, 1935, which provisions were analyzed by the Hon'ble Chief Justice Muhammad Munir in the judgment at pages Nos.77, 78 and 79 and the following observations were made: -

"The first issue to be determined before we proceed further is whether we have jurisdiction to hear the suit. The original jurisdiction of this Court is defined by section 204 of the Constitution Act which is in these terms: --

"Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other Court, have an original jurisdiction in any dispute between any of the following parties, that is to say, the Federation, or any of the Provinces, if and in so far as the

dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

Thus the necessary conditions of the existence of this jurisdiction are:-

(1) that there should exist a dispute between the Federation or any province or between the provinces themselves;

(2) the dispute should involve a question on which the existence or extent of a legal right depends; and

(3) there must not be any repugnant provision in the Act.

In the present case, undoubtedly a dispute exists; this dispute is between a province and the Federation; and it involves a question of law on which the existence or extent of a legal right, namely, the right of the Federation to assess the province to tax depends. On the plain words of the section, therefore, this Court has exclusive jurisdiction in the matter, and it was admitted by Mr. Faiyaz Ali that if the Income Tax Officer were a "Court", and the objection to his jurisdiction to assess the province were taken before him, he could not have adjudicated upon the merits of the dispute, because in that case the dispute would have been exclusively cognizable by this Court. We do not consider it necessary to decide whether an Income Tax Officer is a Court, because it appears to us to be perfectly plain that keeping in view the essential nature of the dispute and the parties to it the case falls within the four corners of section 204, and we have exclusive jurisdiction in the matter. The principle underlying that section which creates a special jurisdiction that all disputes, whether of law or of fact, on which the existence or extent of a legal right depends must be determined by this Court if the parties to the dispute happened to be the Federation on the one side and any one or more of the provinces on the other or if two or more provinces are arrayed against one another, because it is in the highest degree undesirable that the Federation and the provinces should be fighting out their battles in ordinary course like common litigants. Mr. Faiyaz Ali admitted that the dispute prima facie fell within the terms of section 204, but relying on the words with which the section opens "Subject to the provisions of this Act" he contended that these words must be taken to mean "subject to the provisions of this Act or any other Act passed by a legislature in exercise of the power conferred on it by this Act or any law recognized by this Act as being in force after the passing of the Act". The learned Advocate General had the resort to this construction in a desperate effort to support the argument that because the Income Tax Act provides a complete machinery for the adjudication of disputes relating to income tax, being an exhaustive code not only governing rights and liabilities arising out of assessments to such tax but also the procedure for obtaining the determination of disputes relating to such rights and liabilities, section 204 must be read subject to the provisions of the Income Tax Act, with the result that any dispute relating to income tax, even though it may be between the Federation and a province, must be determined by the appropriate authority mentioned in the Income Tax Act and not be any other Court including the Federal Court. We see no warrant in the words of the section for this forced interpretation, particularly when by giving effect to such contention we should not only be reading in the section what is not there but also arriving at the absurd conclusion that while the original jurisdiction of all other Courts including the High Court to decide disputes between the Federation and the province are taken

away, an ordinary official like the Income Tax Officer should have been intended to be constituted the sole arbiter of disputes relating to his own jurisdiction to tax, whose decisions subject to a right of appeal or revision, were to carry an absolute finality. We see no reason for any such forced construction of the section and taking it to mean what its plain words say we hold that in the present case the necessary conditions of our exclusive jurisdiction are satisfied and that the dispute is cognizable by us alone."

The provisions of section 204 of the Government of India Act, 1935 are almost the same except the rider clause, which has been placed in section 204 in the words "subject to the provisions of this Act" is not included in Article 184(1) of the Constitution.

9. The dispute involved in the present writ petitions is certainly a dispute between the Provincial Government of Punjab and the Federal Land Commission. The exercise of powers by the Federal Land Commission in allotting the land claimed to have been resumed by the Province of Punjab has been specifically assailed in the writ petitions and even status of the allottees of the land have been seriously disputed by the Provincial Government in the writ petitions.

10. The power of passing an order by the Federal Land Commission is provided for in paragraph No.29 of the Land Reforms Regulation, 1972, which is reproduced as follows:-

"29. Revisional powers of the Federal Government.---The Federal Government, or any person authorized by it in that behalf, may at any time of its, or his own motion or otherwise, call for the record of any case or proceedings under this regulation or under the repealed Regulation 4 which is pending or in which a Commission or any other authority appointed under this Regulation or under the repealed regulation other than the Federal Land Commission contributed under paragraph 4-A, has passed an order, for the purpose of satisfying itself or himself about the correctness, legality or propriety of such an order, and may pass such order in relation thereto as the Federal Government or, as the case may be, such person thinks fit."

A reading of paragraph No.29 also clarifies that basically the power envisaged by paragraph No.29 is the power of Federal Government, which the Federal Government may exercise directly or authorize any person in that behalf to exercise that power. So the Member Federal Land Commission while passing the impugned orders of allotment in favour of the private respondents was in fact exercising the power of Federal Government as provided for in paragraph No.29 above.

11. By instituting the instant writ petitions, the Provincial Government has thus raised a dispute, which has arisen between the Provincial Government of Punjab and the Federal Government, which exclusively is entertainable by the Hon'ble Supreme Court of Pakistan in view of Article 184(1) of the Constitution of Islamic Republic of Pakistan, 1973.

12. The instant writ petitions are, therefore, not competent before this Court and are **DISMISSED** as such without any orders as to costs.

