

P L D 2010 Lahore 318

Before Nasir Saeed Sheikh and Mian Shahid Iqbal, JJ

PROVINCE OF PUNJAB through Secretary Colonies, Punjab---Petitioner

Versus

Mst. WAZIRAN BIBI through Legal Heirs and 4 others---Respondents

Writ Petition No.2280 of 2004, heard on 21st April, 2010.

Land Reforms Regulations 1972 [M.L.R.115]---

---Para. 29---Constitution of Pakistan (1973), Arts.184(1) & 199---Constitutional petition--- Maintainability---Dispute between two Governments---Earlier judgment passed by High Court--- Effect---Provincial Government sought setting aside of orders passed by Federal Land Commission whereby Provincial Government was deprived of benefit of resumption of land--- Provincial Government contended that Constitutional petition was maintainable and provisions of Art.184(1) of the Constitution were not applicable---Validity---High Court had earlier passed a judgment on similar question of law and declined to change the view---Controversy between the parties qualified as a dispute between Provincial Government and Federal Government as envisaged in the provisions of Art. 184 of the Constitution because Member Federal Land Commission was a delegatee of Federal Government by virtue of paragraph No.29 of Martial Law Regulations, 115 of 1972---High Court declined to interfere in allotment orders passed by Federal Land Commission---Petition was dismissed in circumstances.

Union of India and others v. State of Mysore AIR 1977 SC 127; The State of Bihar v. The Union of India and another AIR 1970 SC 1446; Mrs. Jamila B. Naimat v. Mian Abdul Waheed PLD 1981 Kar. 138; Pakistan Railways, Headquarters Office, Lahore through Chairman and another v. Border Area Allotment Committee Lahore through Chairman and another 2005 CLC 905; Union of India v. State of Rajasthan 1984 (4) SCC 238; PLD 1976 Lah. 1135 and Punjab Province v. The Federation of Pakistan PLD 1956 FC 1972 ref.

Judgment dated 8-4-2010 in Writ Petition No.2961/2008 fol.

Khawaja Haris Ahmad A.G. Punjab with Muhammad Hanif Khatana, Addl. A.G. for Petitioner.

Syed Murtaza Ali Zaidi for Respondents.

Date of hearing: 21st April, 2010.

JUDGMENT

NASIR SAEED SHEIKH, J.---Government of Punjab through Colony Department of Punjab has instituted this writ petition seeking setting aside of the order dated 4th of August, 2003 passed by Member Federal Land Commission, Islamabad.

2. Mst. Waziran Bibi deceased respondent No.1 made declaration of her land under MLR 115 of 1972 and vide order dated 8-9-1977 passed by Deputy Land Commissioner, 5683 P.I. units were found in excess of her entitlement and land equivalent to said units was resumed in favour of Provincial Government. The Chief Land Commissioner vide order dated 17-7-2000 directed resumption of more land equivalent to 2149 P.I. units from said Mst. Waziran Bibi and the Deputy Land Commissioner Vehari vide order dated 25-7-2001 directed the completion of resumption process of said land equivalent to these 2149 P.I. units from the holding of Mst. Waziran Bibi. A revision petition was instituted by Mst. Waziran Bibi before the Member Federal Land Commission who vide order dated 4-8-2003 set aside the orders dated 17-7-2000 of Chief Land Commissioner, Punjab and order dated 25-7-2001 of Deputy Land Commissioner, Vehari directing the resumption of additional land equivalent to 2149 P.I. units from the holding of Mst. Waziran Bibi. Province of Punjab was thus deprived of the resumption of land equivalent to 2149 P.I. units from Mst. Waziran Bibi vide order dated 4-8-2003 passed by Federal Land Commissioner, therefore, instant writ petition was instituted seeking setting aside of the said order.

3. The question involved in this petition relates to the interpretation of the provisions of Article 184(1) of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the learned Advocate-General was asked to address the Court on the point as to whether the dispute raised by the Province of Punjab in the writ petition fell within the ambit of provisions of Article 184 of the Constitution of Islamic Republic of Pakistan, 1973 so as to be entertainable exclusively by the Honourable Supreme Court of Pakistan.

4. The learned Advocate-General has contended that the question raised in the writ petition pertains to the entitlement or otherwise of Mst. Waziran Bibi, the private respondent, particularly to the allegedly excess land equal to 2149 P.I. units and it does not constitute a dispute between two governments i.e. Government of Punjab and the Federal Government of Pakistan.

5. The attention of the learned Advocates-General was drawn towards the judgment dated 8-4-2010 delivered by this Court in Writ Petition No.2961/2008 and other connected writ petitions, whereby this Court has already held that a similar dispute between Government of Punjab and Federal Land Commission does constitute a dispute within the ambit of Article 184 of the Constitution of Islamic Republic of Pakistan, 1973, the adjudication of which dispute is entertainable only by the honourable Supreme Court of Pakistan.

6. The learned Advocate-General has argued while relying upon the judgments reported as Union of India and others v. State of Mysore (AIR 1977 SC 127), The State of Bihar v. The Union of India and another (AIR 1970 SC 1446), Mrs. Jamila B. Naimat v. Mian Abdul Waheed (PLD 1981 Karachi 138), Pakistan Railways, Headquarters Office, Lahore through Chairman and another v. Border Area Allotment Committee Lahore through Chairman and another (2005 CLC 905) and Union of India v. State of Rajasthan (1984 (4) SC 238) that the instant writ petition has

rightly been instituted before this Court as it was not covered by scope of Article 184(1) of the Constitution of Islamic Republic of Pakistan, 1973. It was further argued by the learned Advocate-General that view expressed by this Court in the judgment dated 8-4-2010 in Writ Petition No.2961 of 2008 needs reconsideration and requested accordingly.

7. We have considered the arguments of the learned Advocate-General.

8. The case-law cited by the learned Advocate-General comprises two sets. One set of cases is from the law reports of Indian Jurisdiction which are *The State of Bihar v. The Union of India and another* (AIR 1970 SC 1446), *Union of India and others v. State of Mysore* (AIR 1977 SC 127) and *Union of India v. State of Rajasthan* (1984 (4) SC 238). Other set of cases is decided by the superior Courts of Pakistan which are, *Mrs. Jamila B. Naimat v. Mian Abdul Waheed* (PLD 1981 Karachi 138) and *Pakistan Railways, Headquarters Office, Lahore through Chairman and another v. Border Area Allotment Committee Lahore through Chairman and another* (2005 CLC 905).

9. In the judgment reported as *State of Bihar v. The Union of India and another* (AIR 1970 SC 1446), suits were instituted by the State of Bihar against the Union of India before the honourable Supreme Court of India with the contention that due to the negligence and deliberate action of the employees of Union of India and Hindustan Steel Limited, short delivery of iron and steel material was caused which delivery of material was ordered by the State of Bihar in connection with construction work of Gandak Project and decree was prayed for a specific sum of money as damages to be awarded against the defendants of the suit. The question arose therein to the interpretation of Article 131 of Constitution of India, which reads as under:

"Article 131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other Court, have original jurisdiction in any dispute---

(a) between the Government and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends;

provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

While interpreting Article 131 of Constitution of India, the Honourable Supreme Court of India held that the dispute between State of Bihar and Hindustan Steel Mills cannot be considered to be a dispute between Government of India and one or more States of Indian Union. The contents of paras. 19 to 20 are very relevant and are reproduced here:--

"19. It was argued by counsel on behalf of the State of Bihar that so far as the Hindustan Steel Limited, is concerned it is 'State' and the suits in which the Government of India along with Hindustan Steel Limited have been impleaded are properly filed within Article 131 of the Constitution triable by this Court in its original jurisdiction. Reference was made to the case of Rajasthan State Electricity Board v. Mohan Lal (1967) 3 SCR 377=(AIR 1967 SC 1857). There the question arose between certain persons who were permanent employees of the Government of the State of Rajasthan and later placed at the disposal of the State Electricity Board and one of the questions was whether the appellants-Board could be held to be 'State' as defined in Article 12. This Court by a majority held that the Board was "other authority" within the meaning of Article 12 and therefore was a 'State' to which appropriate directions could be given under Articles 226 and 227 of the Constitution. It will be noted that under Article 12 all local or other authorities within the territory of India or under the control of the Government of India are 'State' for purpose of Part-III which defines and deals with the Fundamental Rights enshrined in the Constitution. The expression "the State" has the same meaning in Part-IV of the Constitution under Article 36. No reason was shown as to why the enlarged definition of 'State' given in Parts III and IV of the Constitution would be attracted to Article 131 of the Constitution and in our opinion a body like the Hindustan Steel Limited cannot be considered to be "a State" for the purpose of Article 131 of the Constitution.

20. In the result we hold that the suits do not lie in this Court under Article 131 of the Constitution and issue No.2 must be answered in the negative. It is not necessary to give any answer to issue No.1 nor to issue No.3. On the view we take the suits must be returned for the purpose of presentation to Courts having jurisdiction over the disputes. Let the suits be returned for presentation to the proper Court after endorsing on them the date of presentation of the suits in this Court and the date on which they were returned. We make no order as to costs of these applications. Suits returned."

10. The facts of the next cited case Union of India and others v. State of Mysore (AIR 1977 SC 127) are that State of Mysore was moved under Article 226 of the Constitution of India for quashing the demand notice issued by the Inspector Central Excise for payment duty on the products dispatched by the State's Implement Factory. The demand was raised under Central Excise and Salt Act, 1944. The objection raised before the High Court was that the dispute involved in the petition was between the Government of India and State Government of Mysore, therefore, Article 131 of the Constitution of India was applicable and it was contended that the jurisdiction of the High Court for entertaining the matter was ousted. The High Court repelled this contention and quashed the demand notice. The appeal was preferred by the Honourable Supreme Court of India, wherein the observations of the High Court were upheld. Para. 6 of the reported judgment is reproduced as follows:

"Mr. Raman tried to argue that the High Court erred in not applying Article 131 of the Constitution to the controversy even though the writ petition was barred thereunder as it fell exclusively within the jurisdiction of this Court under Article 131 of the Constitution as a dispute between the Government of India and the State of Mysore. The argument is

however futile because there is nothing on the record to show that there was any such dispute between the Central and the State Government. As the High Court has pointed out, the Union of India was made a party to the writ petition merely because it had dismissed the revision application of the State Government."

The third case cited by the learned Advocate-General from Indian Jurisdiction *Union of India v. State of Rajasthan* (1984) 4 Supreme Court Cases 238 was based upon the facts that a suit was filed by State of Rajasthan for the recovery of damages due to the loss caused to the goods dispatched through the Indian Railways. The question was raised as to whether this suit was entertainable by the ordinary Civil Court or fell within the exclusive jurisdiction of the honourable Supreme Court of India under Article 131 of the Constitution. In paragraph No.13, the honourable Supreme Court of India held as under:-

"In the instant case, the legal rights of the State of Rajasthan to sue for damages for the loss suffered by it on account of damages caused to the goods transported through Railway Administration as such is in dispute between the Union Government and the State of Rajasthan. The State Government has made a claim like any other consignee of goods dispatched through the Railway for compensation and its success or failure in the suit depends upon proof of facts which have to be established in the same way in which a private person would have to establish. This is not even a case where a formal contract is entered into between the Union of India and the State of Rajasthan in accordance of requirements of Article 299 of the Constitution. It is just a commercial contract under which an officer of the State of Rajasthan was entitled to claim delivery of the goods consigned as any ordinary consignee."

In paragraph No.14, the honourable Supreme Court of India held that the High Court and the District Judge were right in holding that the suit was entertainable by the District Court.

11. The case-law reported as *Mrs. Jamila B. Naimat v. Mian Abdul Waheed* (PLD 1981 Karachi 138) is not relevant to the legal controversy raised in the instant writ petition as it is a judgment to the effect that there is no constitutional bar in the way of this Court to express a view different from that taken by it in an earlier occasion. The judgment reported as *Pakistan Railways, Headquarters Office, Lahore through Chairman and another v. Border Area Allotment Committee Lahore through Chairman and another* (2005 CLC 905) does not help the contention of the learned Advocate-General but supports the proposition that Article 184 of the Constitution of Islamic Republic of Pakistan, 1973 is fully applicable where the dispute arises as to which of the Governments was the owner of the disputed property subject-matter of the writ petition. In the said case, the dispute concerning a big piece of land measuring 762 Kanals situated in Border Area cropped up and Border Area Committee through an order dated 21-8-2000 declared the land to be within the ownership of the Provincial Government. Pakistan Railways a Federal Department in the Federation instituted a writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 impleading the Board of Revenue and Border Area Committee as respondents and the writ petition was dismissed by a learned Single Judge of this Court by holding that the dispute squarely fell within the exclusionary jurisdiction of the Supreme Court as envisaged in Article 184 of the Constitution of Islamic Republic of Pakistan, 1973. It is important to note that in the last reported judgment a reference was also made to

another D.B. Judgment reported as PLD 1976 Lahore 1135, wherein also it was held that if a question between the Provincial Government and the Central Government in the context of its business activities is involved, the dispute fell within the exclusive jurisdiction of the Honourable Supreme Court of Pakistan and in this case an earlier judgment reported as The Punjab Province v. The Federation of Pakistan (PLD 1956 Federal Court 1972) was relied also upon.

12. The reported judgments from the Indian Jurisdiction cited by the learned Advocate-General are distinguishable from the facts of the instant cases. There is also substantial difference between the provisions of Article 131 of the Constitution of India and of the Article 184 of the Constitution of Islamic Republic of Pakistan, 1973. Article 184(1) of the Constitution of Islamic Republic of Pakistan, 1973 is more comprehensive and wider to cover the dispute agitated in the instant writ petition. We have already held in the judgment dated 8-4-2010 passed in Writ petition No.2961 of 2008 in paragraph No.8 as follows:-

"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."

In paragraph No.9 of the judgment dated 8-4-2010, the point was further elaborated in the following words:-

"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 power 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 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."

13. We are not persuaded by the learned Advocate-General to differ' with our judgment earlier announced on 8-4-2010 referred to above. In the present case, the Province of Punjab was

deprived of the benefit of resumption of land equivalent to 2149 P.I. units from Waziran Bibi by the order dated 4-8-2003 passed by Member Federal Land Commission. It was thus prayed in the writ petition that order dated 4-8-2003 passed by Federal Land Commissioner be set aside. This controversy certainly qualifies as a dispute between the Province of Punjab and Member Federal Government of Pakistan as envisaged in the provisions of Article 184 of the Constitution of Islamic Republic of Pakistan, 1973 because the Member Federal Land Commission was a delegatee of Federal Government of Pakistan by virtue of para 29 of Martial Law Regulation 115 of 1972. The instant writ petition is therefore not competent before this Court and is accordingly dismissed with no order as to costs.

M.H./P-12/L

Petition dismissed.