
(2006) 12 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Special Appeal No. 840 of 2006

Chief Settlement Officer and Others

APPELLANT

Vs

Ladu Ram and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : (2007) 1 WLN 134

Hon'ble Judges : Rajesh Balia, J;Gopal Krishan Vyas, J

Bench : Division Bench

Judgement

Rajesh Balia, J.—This appeal is directed against the judgment passed by learned Single Judge dated 21.08.2006. The appeal has arisen in the following circumstances.

2. According to Annexure 1 the Sub-Divisional Magistrate, Sri Ganganagar who was also the Managing Officer (Rehabilitation) informed the Tehsildar (Revenue), Sri Ganganagar that the sanad of allotment of land was issued on 26.09.1973 in favour of Prema Ram S/o Ramdas and members of his family namely his wife Smt. Chunni, son Kheta, brother. Majnu, Sukha, wife of his brother Rakma, wife of Koja, his niece Hardeva and his daughter Shanti. The Sanad was issued in the name of these nine persons but in the land record the name of only Prema Ram was recorded as Khetader. Therefore, directions to correct the land record to accord with the Sanad of allotment issued in favour of these nine persons were issued vide order dated 03.11.2004.

3. Against this order one Ladu Ram filed an appeal in the Court of Additional District Collector cum Authorised Settlement Commissioner, Sri Ganganagar. He vide his order dated 29.12.2005 closed the proceedings of the appeal inter alia on the ground that since the Displaced Persons (Claims and Rehabilitation) Act, 1954 has been repealed, pending proceedings under aforesaid Act cannot be continued.

4. The revision before the District Collector cum Authorised Chief Settlement Commissioner was filed who vide his order dated 09.01.2006 dismissed it inter alia on the ground that since there was no saving clause for saving the pending proceedings arising under the Act of 1954, the pending proceedings cannot be continued and they have lapsed automatically.

5. Challenging the orders dated 09.01.2006 and 29.12.2005 this petition was preferred.

6. Learned Single Judge vide his judgment under appeal dated 21.08.2006 held that in view of Section 6 of the General Clauses Act the proceedings which are pending cannot be deemed to have lapsed because that question prejudices all those who are affected. With these observations the writ petition was disposed off directing that the stand of the State Government cannot be accepted and the proceeding which are pending proceedings shall continue till their decision in accordance with law. Hence this appeal.

7. Learned counsel for the appellant has stated that in view of the Constitution Bench decision of the Hon'ble Supreme Court reported in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, in the matter of Kolhapur Canesuga Works Ltd. and Ors. v. Union of India & Ors. in which it has been held that in the absence of saving clause and on repeal of an enactment the pending proceedings are not saved and they automatically lapse. The judgment of learned Single Judge cannot be sustained.

8. Having considered the aforesaid contention raised before us we find that there is basic fallacy in contention raised by learned counsel. The decision in Kolhapur Canesugar Works makes out a clear distinction between repeal of a Central enactment and regulation as defined under Sections 3(19) and 3(50) of General Clauses Act on the one side and repeal of a Rule as defined u/s 3(51) of the General Clauses Act has clearly stated that since the provision of Section 6 has been made applicable only to an Act and regulation as defined in the Act and not to the rule framed under Central enactment which is not enacted as regulation as defined u/s 3(50) the repeal of omission of a Rule by amendment does not invite application of Section 6 of the General Clauses Act. It was pointed out that the term enactment as defined u/s 3(19) include Regulation as hereafter defined in the General Clauses Act. Regulation has been defined u/s 3(50) to mean a Regulation made by the President under Article 240 of the Constitution and includes a Regulation made by the President under Article 243 thereof and a Regulation made by the Central Government under the Government of India Act 1870 or the Government of India Act, 1915 or the Government of India Act 1935. Thus giving out specific meaning to the expression "Regulation" which has been included in term enactment Section 6 does not take within its compass any Rule framed under enactment, This position has been made more than clear while enacting Sub-section (51) of Section 3 which defines the "Rule" to mean a Rule made in exercise of a power conferred by an enactment and includes a Regulation made as a Rule under any enactment.

9. Therefore, the Court reiterated the view earlier expressed by a Constitution Bench in *Rayala Corporation of Mines v. C.K. Thapar* reported in AIR 1970 SC 494 which was a case where effect of omission of Rule 132 A of Defence of India Rules. The Constitution Bench held in the case of *Rayala's Corporation of Mines* wherein it was said that:

Section 6 of the General Clauses Act cannot obviously apply on the omission of Rule 132 A of the Defence of India rules for two obvious reasons that Section 6 only applies to repeal and not to omission and applies when the repeal is of a Central Act or Regulation and not of a Rule. If Section 6 of General Clauses Act had been applied no doubt this complaint against the two accused for offence punishable under Rule 132 A of the Defence of India Rules could have been instituted even after repeal of the Rule.

10. The Hon''ble Supreme Court in *Kolhapur Canesugar's* case while dealing with a case in which Rules 10 and 10 A of the Central Excise Rules were omitted and in its place Section 11-A was enacted in the Central Excise Act 1944 itself. It was in aforesaid context the question arose before the Supreme Court whether on omission of Rules 10 and 10-A, the pending proceedings whether by way of issuing a show cause notice or in respect of other orders made under Rules 10 and 10-A could serve in the absence of any saving provisions by aid of Section 6 of General Clauses Act. By drawing support from the aforesaid judgment in *Rayala's Case* and drawing distinction between the enactment and regulation as defined in the General Clauses Act which was included in definition of enactment and rule as given in the General Clauses Act it was held that with omission of Rules 10 and 10-A, pending proceedings in relation to Rules 10 and 10 A also came to an end on two fold grounds namely that Clause 6 of General Clauses Act does not apply to Rules and secondly that omission of Rules is not equivalent to repeal of Rules and therefore, Section 6 which applied only to repeals cannot be extended omission.

11. We are unable to read any such ratio in the judgment in *Kolhapur Canesugar's Case* that Section 6 is not applicable even in case when an Act passed by the Parliament, which undoubtedly Act of 1954 which was repealed.

12. Moreover, the order passed by Sub-Divisional Officer on 03.11.2004 was not under the Act of 1954 but was as a Land Revenue Officer to correct the land record in accordance with sanad issued on 26.09.1977 in favour of nine persons. The order relates to maintenance of land record and for correcting the land record in tune with existing orders, no exception could have been taken to that. If the order of SDM was founded on incorrect facts it could have been subjected to remedial forum viz., by contending that such sanad does not exist or said sanad if issued had been amended or revoked in appropriate proceedings or the like grounds.

13. In view thereof we do not find any force in this appeal and the same is hereby dismissed. Therefore, the orders of Sub Divisional Magistrate cum

Authorised Settlement Commissioner and that of the Collector cum Chief Settlement Commissioner which are challenged in the writ petition are quashed and the proceedings pending before the Sub Divisional Magistrate stand restored to its original number to be decided by these said officers in accordance with law. We make it clear that the proceedings were not pending as on the date of the enactment of the Act repealing the Act of 1954 Section 6 of the General Clauses Act has no application.