(2002) 10 AHC CK 0050

In the Allahabad High Court

Case No : Special Appeal No''s. 653 of 2001 and 1002, 1003, 1004 and 1005 of 2002

Commissioner and Others — APPELLANT

Vs

Jaswant Sugar Mills Ltd. and Others — RESPONDENT

Date of Decision : 03-10-2002

Acts Referred:
Allahabad High Court Rules, 1952 — Rule 5
Constitution of India, 1950 — Article 136(1), 226, 227
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285I

Citation : (2003) 1 AWC 44 : (2003) 94 RD 5

Hon'ble Judges : N.K. Mehrotra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Ravi Kant, S.C, for the Appellant; Ravi Kiran Jain, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—These five special appeals have been preferred against the judgment and order dated 27.4.2001 of a learned single Judge in Civil Misc. Writ Petition No. 16451 of 1999, Jaswant Sugar Mills Ltd. v. Commissioner, Meerut Division, Meerut. The appeals have been preferred by the Commissioner, Meerut Division, and also by the auction-purchasers.

2. M/s. Jaswant Sugar Mills Ltd. filed the writ petition for quashing the sale proclamation dated 28.3.1992, the order dated 30.5.1992, passed by the Sub-Divisional Magistrate, Meerut, confirming the auction sale of the properties of the petitioner and the order dated 5.4.1999 passed by the Commissioner, Meerut Division, Meerut, dismissing the application filed by the petitioner under Rule 285-1 of the U. P. Zamindari Abolition and Land Reforms Rules (in short, the Rules).

3. The Secretary, Chini Mill Mazdor Hitkari Samiti, Meerut, moved an application before the Collector, Meerut, for recovery of certain amount from M/s. Jaswant Sugar Mills Ltd. The Collector, Meerut, initiated proceedings for recovery of Rs.

75,99,445 towards salary, wages and gratuity of the workmen as arrears of land revenue. A sale proclamation fixing 28.3.1992 for auction of the properties was issued and thereafter auction was held. The petitioner then filed an application before the Commissioner, Meerut under Rule 285-1 of the Rules for setting aside the auction-sale, which was rejected on 5.4.1999. During this period several writ petitions were filed and proceedings before the Board of Revenue also took place, details of which have been given by the learned single Judge in the impugned order. However, they are not very relevant for deciding the special appeals. The learned single Judge allowed the writ petition and quashed the sale proclamation dated 28.3.1992, the order dated 30.5.1992, by which auction sale was confirmed and the order dated 5.4.1999 passed by the Commissioner under Rule 285-1 of the Rules.

4. Sri Ravi Kiran Jain, learned senior counsel for the respondent, M/s. Jaswant Sugar Mill Ltd. has raised a preliminary objection regarding the maintainability of the appeal. Learned counsel has submitted that the subject matter of challenge in the writ petition before the learned single Judge was an order passed by the Commissioner under Rule 285-1 of the Rules, and as he was acting as a Court, while deciding the said application, the special appeals filed under Chapter VIII. Rule 5 of the Allahabad High Court Rules are not maintainable.

5. The provision for special appeal is contained in Chapter VIII, Rule 5 of the Allahabad High Court Rules, 1952 (for short High Court Rules) and in view of the language of the Rule, no special appeal is maintainable against the judgment of a single Judge rendered in exercise of jurisdiction conferred by Article 226 or 227 of the Constitution in respect of any judgment or order of a Tribunal or Court made or purported to be made in exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution. In terms of the language of the Rule, the present special appeal will not be maintainable if the judgment and order assailed in the writ petition was given by a Court or Tribunal. This view has been consistently taken by this Court Jai Prakash Agarwal Vs. Prescribed Authority/S.D.M., Sadar, Deoria and others, ; Rajni Kant Sahai Vs. State of U.P. and others, and Ram Kripal Singh Vs. U.P. State Road Transport Corporation, Lucknow and others, . Therefore, the question which requires consideration is what is the nature of the jurisdiction exercised by the Commissioner under Rule 285-1 of the Rules and whether he functions as a Court or Tribunal.

6. The question whether the Commissioner functions as a Court while deciding the application under Rule 285-1 of the Rules was examined by a Full Bench in Ram Swaroop v. Board of Revenue, 1990 RD 291, and it was held as under :

"Rule 285-1 as extracted above indicates that the Commissioner is to adjudicate certain rights and interest of the parties in respect of Immovable property.

The order so passed by the Commissioner has been made final. Obviously the proceedings so taken by the Commissioner are judicial in nature. Though it could be said that the Commissioner is not sitting as a Court to decide the same, and there is no specific provision in this behalf, the Commissioner will be deemed to be sitting in the Court and the order passed by the Commissioner will be amenable to the revisional jurisdiction of the Board of Revenue u/s 333 of the U.P.Z.A. and L.R. Act which is analogous to Section 219 of U. P. Land Revenue Act.

The Commissioner while deciding the objection under Rule 285-1 of U. P. Z. A. and L. R. Rules will be a ''Court'' as such and the proceedings taken before him will be deemed judicial proceedings as such and the Commissioner who otherwise is a Court under U. P. Z. A. and L. R. Act will be deemed to be a Court."

7. Sri Ravi Kant, learned senior advocate appearing for some of the appellants, has submitted that the view taken in Ram Swaroop v. Board of Revenue (supra) is not correct and the Commissioner while hearing an application under Rule 285-1 of the Rules against an auction sale of the property does not function as a Court. Learned counsel has submitted that the rule confers powers upon the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it and, therefore, he exercises very limited jurisdiction which is vastly different from the jurisdiction exercised by a Court. It has been urged that as the rights of the parties are not determined by the Commissioner, he cannot be held to be functioning as Court. Reliance in support of this submission is placed upon Govindbhai Gordhanbhai Patel and Others Vs. Gulam Abbas Mulla Allibhai and Others, . Learned standing counsel has supported the contention of Shri Ravi Kant and has urged that the Commissioner does not function as a Court and, therefore, the special appeals are maintainable.

8. The decision in Ram Swaroop v. Board of Revenue (supra), has been rendered by a Full Bench of three Judges and, therefore, the same is absolutely binding upon us. Even if we accept the argument of learned counsel for the appellant that the Commissioner does not function as a Court but functions as a Tribunal, it will not make any difference as to the maintainability of the appeal.

9. The question what are the attributers of a Tribunal and whether special appeal would be maintainable against the judgment of a single Judge wherein the subject-matter of challenge was an order passed by a Tribunal, was considered in considerable detail by one of us (G. P. Mathur, J.) in a Division Bench Judgment rendered in Pratappur Sugar and Industries Limited Vs. Deputy Labour Commissioner, Gorakhpur and another, thereof are being reproduced below :

"Chapter VIII, Rule 5 of the Allahabad High Court Rules provides that no special appeal shall lie against the judgment and order of one Judge in exercise of jurisdiction conferred by Article 226 of the Constitution in respect of any Judgment and order or award of a Tribunal. The word Tribunal is not defined in the High Court Rules and therefore, it will be useful to notice its meaning as given in the dictionaries which is as under :

Wharton''s Law Lexicon

A seat of justice.

Webster''s Third New International Dictionary

A Court or forum of Justice ; a person or body of persons having authority to hear and decide disputes so as to bind disputants ; something that decides or judges something that determines or directs a judgment or course of action.

The new Lexicon Webster''s Dictionary

A group of persons empowered to decide a specific issue according to the law, arbitrator in a dispute, etc.

Oxford Advanced Learners Dictionary of Current English Language

Place of Judgment, board of officials or Judges appointed for special duty, e.g., to hear appeal against high rank, for exemption from military service.

Longman Dictionary of Contemporary English

A group of people appointed officially, Judges etc, with powers to deal with special matters.

The dictionary meaning shows that Tribunal is a body authorised by law to decide disputes and impart justice. Article 136 of the Constitution provides that the Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any case or matter passed or made by any Court or Tribunal. The Allahabad High Court Rules, 1952, have been made by the High Court of Judicature at Allahabad in exercise of powers conferred under Article 225 of the Constitution and all other powers enabling it in that behalf. It appears logical that while using the expression "judgment, order or award of Tribunal or Court" in Rule 5 of Chapter VIII of the Rules, the framers of the Rule had in their mind the language used in Article 136 of the Constitution. It will, therefore, be useful to refer to the decisions of the Supreme Court wherein the question as what is a Tribunal has been considered.

In The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, , it was held that the expression "Tribunal" as used in Article 136 of the Constitution of India meant the same thing as Court but includes within its ambit adjudicating bodies, provided they are constituted by State and are invested with judicial power as distinguished from purely administrative or executive functions.

In Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, , it was held that the Central Government exercising appellate powers u/s 111 of the Companies Act, 1956, even before it was amended by Act 65 of 1960 act as a Tribunal exercising judicial functions and is subject to the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution. Hidayatullah, J., who gave the minority opinion, was of the view that by "Courts" is meant courts of civil jurisdiction and by "Tribunal" those bodies of men who are appointed to decide controversies arising under certain special laws. It was further observed that among the powers of the State included power to decide such controversies which is called judicial power of the State and in exercise of this power, there is a clear division and broadly speaking certain special matters go before Tribunal and the residue goes to the ordinary courts of civil judicature. The same controversy was examined in great detail in a Constitution Bench decision in The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, and what will constitute a Tribunal was explained in following words :

"............The expression "a Court" in the technical sense is a Tribunal constituted by the State as a part of ordinary hierarchy of Courts which are invested with the State''s inherent judicial powers. The Tribunal as distinguished from the Court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not constitute a Court in the technical sense. The Tribunal, according to the dictionary meaning, is a seat of justice ; and in the discharge of its functions, it shares some of the characteristics of the Court. .... The Tribunals which are contemplated by Article 136(1) are clothed with some of the powers of the Courts. They can compel witnesses to appear, they can administer oath. they are required to follow certain rules of procedure ; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them ; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations. The procedural rules which regulate the proceedings before the Tribunals and the powers conferred on them in dealing with matters brought before them, are sometimes described as the ''trappings of a Court* and in determining the question as to whether a particular body or authority is a Tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a Court."

In Para 8, it was observed as follows :

"..........It would thus be noticed that apart from the importance of the trappings of a Court, the basic and essential condition which makes an authority or a body a Tribunal under Article 136, is that it should be constituted by the State and should be invested with the State''s inherent judicial power......"

The same question was again examined by a Constitution Bench in Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, , wherein, it was held as follows :

"Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution ; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to Tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the Tribunals and the Courts, and features which are distinct and separate. The basic and the fundamental features which is common to both the Courts and the Tribunals Is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

In considering the question about the status of any body or authority as a Tribunal under Article 136(1) the main test to be applied is whether the body or authority has been constituted by the State and has been clothed with the State''s inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively."

10. The test applied by the Supreme Court in determining whether any body or authority has the status of a Tribunal for the purpose of Article 136(1) of the Constitution can safely be applied while interpreting Chapter VIII, Rule 5 of the Rules of the Court. Therefore, what Is to be seen is whether the judgment or order which was subject matter of challenge in the writ petition filed under Article 226 or 227 of the Constitution had been given by a body or authority which had been constituted by the State and had been clothed with the State''s inherent judicial power to deal with disputes between the parties and to determine them on merits, fairly and objectively.

11. Applying the test laid down above, it will be clear that the power to set aside the sale has been conferred upon the Commissioner by statutory provision, namely, Rule 285-1 of the Rules. Therefore, it is the State which has conferred the authority upon the Commissioner to determine and adjudicate upon the proper conduct of the auction sale. The Commissioner records findings after giving notice to the parties and giving them opportunity of adducing oral and documentary evidence. The controversy is decided fairly and objectively on the basis of evidence adduced by the parties. The decision taken has to be consistent with the principles of natural justice and general principles of law. Sub-clause (iii) of Rule 285-1 of the Rules lays down that the order passed by the Commissioner under this rule shall be final, and thus a finality is attached to the decision. The proceedings before the Commissioner have, therefore, "trappings of Court". All these factors lead to irresistible conclusion that the Commissioner while deciding a dispute under Rule 285-1 of the Rules at least functions as a Tribunal. Since the subject-matter of challenge before the learned single Judge in the writ petition was a judgment or order of a Tribunal, the present special appeals are not maintainable.

12. We may clarify here that while making the observations as above, we are not

doubting the correctness of the view taken in the Full Bench decision rendered in Ram Swaroop v. Board of Revenue (supra). We have gone into the question whether the Commissioner can be said to be a Tribunal only for the limited purpose that even if the argument of learned counsel for some of the appellants is accepted that he does not function as a Court, even then the special appeal would not be maintainable.

13. For the reasons discussed above, we are clearly of the opinion that the present special appeals are not maintainable and are accordingly dismissed at the admission stage.

